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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 00–07]

RIN 1557–AB80

Financial Subsidiaries and Operating Subsidiaries

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its regulations to implement section 121 of the Gramm-Leach-Bliley Act, which authorizes national banks to conduct expanded financial activities through financial subsidiaries. The OCC also is revising its operating subsidiary rule to make conforming changes and streamline procedures for banks that engage in activities through operating subsidiaries. Finally, the OCC is revising its regulation governing other equity investments to make corresponding changes to the procedures for certain types of non-controlling investments.

EFFECTIVE DATE: March 11, 2000.

FOR FURTHER INFORMATION CONTACT: Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities or Karl Betz, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC, 20219.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 2000, the OCC published a notice of proposed rulemaking (65 FR 3157) (proposal) to implement section 121 of the Gramm-Leach-Bliley Act, Public Law 106–102 (GLBA), which authorizes national banks to invest in a new type of subsidiary called a ''financial subsidiary.'' As defined in the proposal, a financial subsidiary is a company that is controlled by one or more insured depository institutions, other than a subsidiary that engages solely in activities that national banks may engage in directly (under the same terms and conditions that govern the conduct of these activities by national banks) or a subsidiary that a national bank is specifically authorized to control by the express terms of a Federal statute. Under section 121 of the GLBA, a financial subsidiary may engage in specified activities that are financial in nature and in activities that are incidental to financial activities if the bank and the subsidiary meet certain requirements and comply with stated safeguards. The proposal incorporates these requirements and establishes alternative procedures for banks to obtain OCC approval to acquire control of, or an interest in, a financial subsidiary.

Following the enactment of the GLBA, national banks also may continue to use operating subsidiaries to engage in those activities that are part of, or incidental to, the business of banking. Thus, the proposal also revises the OCC's operating subsidiary regulation (12 CFR 5.34) to make conforming changes and streamline procedures for banks that engage in activities through operating subsidiaries.

Comments Received

The OCC received 30 comments on the proposal. The comments included 8 from banks and bank holding companies, 15 from trade associations, 5 from community groups, and 2 from law firms. Most commenters supported the proposal. These commenters generally commended the OCC for proposing regulatory changes that enhance the operational flexibility of national banks and facilitate the ability of national banks to engage in activities through operating subsidiaries and financial subsidiaries.

Several commenters recommended specific changes to the proposal. We carefully considered each of the comment letters, and the following discussion identifies and discusses comments received and changes and additions made to certain sections of the proposal.

Discussion

Financial Subsidiaries (new § 5.39)

Definitions (§ 5.39(d))

The proposal defines a number of key terms used in the rule. One commenter recommended that the OCC define the term ''debt'' for purposes of the regulation's long term debt rating requirement. We believe, however, that in cases where there is a question about whether an obligation qualifies as ''debt,'' the issue is better addressed on a case-by-case basis. Thus, the final rule adopts the definitions contained in the proposal without change.

Permissible Activities for Financial Subsidiaries (§ 5.39(e) and (f))

The proposal describes activities that are permissible and impermissible for a financial subsidiary. Under proposed § 5.39(e), a financial subsidiary may engage only in activities that are financial in nature or incidental to a financial activity that are not permissible for a national bank to conduct directly (expanded financial activities), as well as activities that may be conducted by an operating subsidiary pursuant to § 5.34 (activities that are part of, or incidental to, the business of banking that are permissible for national banks to conduct directly).

Proposed § 5.39(e) lists the activities that are defined in the Act as ''financial in nature.'' Among other things, this list includes activities that the Board of Governors of the Federal Reserve System (Board) has determined under section 4(c)(8) of the Bank Holding Company Act (BHCA) (12 U.S.C. 1843(c)(8)) to be so closely related to banking or controlling or managing banks as to be a proper incident thereto, and activities that the Board has found under section 4(c)(13) of the BHCA (12 U.S.C. 1843(c)(13)) to be usual in connection with the transaction of banking or other financial operations abroad. [1]

[1] The final rule also recognizes that the Secretary of the Treasury (in consultation with the Board) may determine that additional activities are financial in nature or incidental to a financial activity and therefore are permissible for a financial subsidiary. The GLBA provides specific procedures, not covered in the final rule, for coordination between the Secretary of the Treasury and the

Continued

Proposed § 5.39(f) also lists activities that the GLBA specifically describes as impermissible for financial subsidiaries. These activities include providing annuities and certain types of insurance as principal, real estate development or real estate investment (unless otherwise expressly authorized by law), and certain activities authorized for financial holding companies by new sections 4(k)(4)(H) and (I) of the BHCA, as added by the GLBA. At the end of the five-year period beginning on November 12, 1999, however, the Board and the Secretary of the Treasury may find by regulation that the activities authorized under section 4(k)(4)(H) of the BHCA are permissible for financial subsidiaries.

The OCC received no comments on the description of authorized and impermissible activities, and the final rule adopts the language in the proposal with only minor technical changes.

Qualifications (§ 5.39(g))

Proposed § 5.39(g) contains three conditions that a national bank must satisfy to acquire control of, or hold an interest in, a financial subsidiary. First, the national bank and each of its depository institution affiliates must be ''well capitalized'' and ''well managed.'' Proposed § 5.39(d) defines these terms consistent with their definitions in the GLBA. Second, under the GLBA, the aggregate consolidated total assets of all financial subsidiaries of the bank may not exceed the lesser of 45 percent of the consolidated total assets of the parent bank or $50 billion. The $50 billion limit is to be adjusted according to an indexing mechanism established jointly by the Secretary of the Treasury and the Board. Third, a national bank that is one of the 100 largest insured banks, as determined by the bank's consolidated total assets at the end of the calendar year, must have outstanding ''eligible debt'' that is rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating organization (eligible debt requirement). If a national bank is one of the second 50 of the 100 largest insured banks, the proposal permits the bank to satisfy the eligible debt requirement if it meets alternative criteria to be set jointly through regulation by the Secretary of the Treasury and the Board. The eligible debt requirement does not apply, however, if a bank intends to acquire control of, or hold an interest in, a financial subsidiary that engages solely in activities in an agency capacity.

One commenter recommended revising the eligible debt requirement to account for banks that have not issued debt. This commenter suggested permitting a bank to provide a statement from a nationally recognized statistical rating organization regarding the appropriate investment grade rating category that would apply if the bank were to issue *outstanding debt.* The OCC is aware of these concerns but notes that the GLBA requires a bank that is one of the 50 largest insured banks to have appropriately rated outstanding debt to acquire control of, or an interest in, a financial subsidiary. We also note, however, that the Secretary of the Treasury and the Board are authorized to issue regulations for the second 50 of the 100 largest insured banks that are comparable and consistent with the eligible debt rating requirement. Therefore, the final rule adopts these provisions as proposed.

Safeguards (§ 5.39(h))

Under the proposal, a national bank that controls a financial subsidiary must comply with several conditions. First, a national bank must deduct the aggregate amount of its outstanding equity investment, including retained earnings, in its financial subsidiaries from the assets and tangible equity of the bank. Further, the bank may not consolidate the assets and liabilities of its financial subsidiaries with those of the parent bank. Both of these conditions are imposed by the GLBA.

The final rule implements the required deduction from tangible equity and requires the bank to deduct the investment from its total risk-based capital, with the deduction taken equally from Tier 1 and Tier 2 capital. The bank's resulting Tier 1 and Tier 2 capital levels will then be used to determine the bank's capital category for purposes of 12 CFR part 6, including whether the bank qualifies as ''well capitalized'' as required by the GLBA and § 5.39(g)(1).

Second, any published financial statement of the national bank must, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank in a manner that reflects these capital adjustments. Under the third and fourth conditions, the bank must establish reasonable policies and procedures to preserve the separate corporate identity and limited liability of the bank and its financial subsidiaries, and must establish procedures to identify and manage financial and operational risks within the bank and the financial subsidiary that adequately protect the bank from these risks.

The fifth condition provides that a financial subsidiary is deemed a subsidiary of a bank holding company and not a subsidiary of the bank for purposes of the anti-tying prohibitions in 12 U.S.C. 1971 *et seq.*

Finally, the proposal provides that for purposes of sections 23A and 23B of the Federal Reserve Act (FRA) (12 U.S.C. 371c and 371c–1) a financial subsidiary shall be treated as an affiliate of the bank. Sections 23A and 23B therefore apply to certain transactions between a bank and its financial subsidiary, except that the proposal exempts from the 10 percent quantitative limit of FRA section 23A(a)(1)(A) (12 U.S.C. 371c(a)(1)(A)) covered transactions between a bank and any individual financial subsidiary of the bank. Thus, covered transactions between a bank and any one financial subsidiary may exceed 10 percent of the bank's capital and surplus, but are subject to the 20 percent aggregate limit on transactions with all affiliates and financial subsidiaries found in FRA section 23A(a)(1)(B) (12 U.S.C. 371c(A)(1)(B)). The proposal also provides that, for purposes of FRA sections 23A and 23B, the bank's investment in a financial subsidiary does not include retained earnings of the financial subsidiary. However, the investment in the securities of a financial subsidiary of a bank by an affiliate of the bank is considered to be an investment in those securities by the bank. In addition, the Board may determine that any extension of credit by an affiliate of a bank to a financial subsidiary of that bank is an extension of credit by the bank to the financial subsidiary. The Board can only require this treatment if it determines it is necessary or appropriate to prevent evasions of the FRA or the GLBA.

The final rule adopts the language in the proposal relating to the safeguards as proposed, with additional language clarifying the implementation of the capital deduction requirement.

Procedures (§ 5.39(i))

The GLBA specifically states that OCC approval for a national bank to engage in activities through a financial subsidiary shall be based solely upon specific statutory factors. Thus, the proposal establishes alternative streamlined procedures for national banks seeking OCC approval to acquire control of, or hold an interest in, a financial subsidiary, or to commence an expanded financial activity in an existing financial subsidiary.

Under the first alternative, a national bank may file a ''Financial Subsidiary

Board in defining additional financial and incidental activities under this provision.

Certification'' with the OCC listing the bank's depository institution affiliates and certifying that the bank and each of those affiliates is well capitalized and well managed. Thereafter, at such time as the bank seeks OCC approval to acquire control of, or hold an interest in, a new financial subsidiary, or commence an additional expanded financial activity in an existing financial subsidiary, the bank must file a written notice with the appropriate district office. The written notice must be labeled ''Financial Subsidiary Notice,'' must state that the bank's certification remains valid, and describe the activity or activities to be performed in the financial subsidiary as well as cite to the specific authority permitting the expanded financial activity to be conducted by a financial subsidiary. (Where the authority relied on is an agency order or interpretation under section 4(c)(8) or 4(c)(13), respectively, of the BHCA, a copy of the order or interpretation should be attached.) The written notice also must state that the aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of 45 percent of the bank's consolidated total assets or $50 billion (or the increased level set by the indexing process), that the bank will remain well capitalized after making the necessary capital adjustments, and, if applicable, that the bank meets the eligible debt requirement.

Alternatively, a bank may choose to seek approval by filing a combined certification and notification with the appropriate OCC district office at least five business days prior to acquiring control of, or an interest in, a financial subsidiary, or commencing a new expanded financial activity in an existing financial subsidiary. This type of notice would combine the information from the certification and notice described above, and should be labeled ''Financial Subsidiary Certification and Notice.''

The OCC received 11 comments on the proposed procedures. The commenters generally supported the availability of alternative procedures citing the flexibility they will afford national banks that wish to conduct expanded financial activities through financial subsidiaries. Some commenters, however, suggested that the OCC revise the proposed procedures to require a national bank to provide notice to the OCC at least 15 business days prior to acquiring control of, or an interest in, a financial subsidiary to provide time for public input. Other commenters commended the use of an after-the-fact notice procedure to expedite approvals and to harmonize the OCC's procedures with those recently adopted by the Board in its interim rules implementing Title 1 of GLBA (65 FR 3785, Jan. 25, 2000).

The OCC believes that the factors upon which OCC approval is based support the use of expedited time frames, and the final rule adopts the language in the proposal with minor changes.

One of the changes to the procedures relates to section 307(c) of GLBA (15 U.S.C. 6716), which requires OCC consultation with the appropriate state insurance regulator in connection with initial and continuing affiliations between a depository institution and a company engaged in insurance activities. The OCC and the National Association of Insurance Commissioners have discussed this section and procedures for sharing appropriate information.[2] Thus, the final rules for both operating subsidiaries and financial subsidiaries require that operating subsidiary and financial subsidiary filings pertaining to a company engaged in insurance activities contain in the notice or application a description of the type of insurance activity that such company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable.[3]

Consistent with the GLBA, the proposal also provides that the OCC prohibits a national bank from applying to commence any additional expanded financial activity, or to directly or indirectly acquire control of a company engaged in any such activity, if the bank or any of its insured depository institution affiliates received a Community Reinvestment Act (CRA) rating of less than ''satisfactory record of meeting community credit needs'' on its most recent CRA examination prior to when the bank files a notice under § 5.39.

Several commenters urged the OCC to allow public comment where the bank or its insured depository institution affiliates have ''low satisfactory'' ratings in an assessment area or in a lending test in an assessment area. These commenters also requested a regulatory revision that would permit the OCC to condition approvals in these situations.

The OCC recognizes the concerns raised by these commenters but notes that the GLBA imports the bank's CRA rating as a factor to determine whether that rating prohibits the bank from commencing any expanded financial activity, or directly or indirectly acquiring control of a company engaged in any expanded financial activity. Moreover, section 5136A of the Revised Statutes directs the OCC to approve a national bank's acquiring control of, or an interest in, a financial subsidiary solely upon the factors set forth in section 5136A; the statute does not provide a basis to deny an application or notice or to condition approvals based on public comment.

Some commenters also asked the OCC to clarify the treatment of insured depository institution affiliates that do not have a CRA rating. For example, certain types of special purpose banks are not subject to CRA examination. The OCC believes that the provision in the proposal, which is derived directly from the GLBA provision, is sufficiently clear to conclude that the CRA rating requirement does not apply to *de novo* banks that have not yet received (or are not the successors of banks that have received) CRA ratings and to limited purpose banks that do not receive CRA ratings. Thus, the final rule adopts these provisions as proposed.

The OCC also notes that the prohibition on commencing any *new activity* authorized under section 5136A(a)(2)(A)(i) of the Revised Statutes if the bank or any of its insured depository institution affiliates received a CRA rating of less than ''satisfactory record of meeting community credit needs'' incorporates the term ''new activity'' that is used in the GLBA to refer to the expanded financial activities newly authorized by section 5136A(a)(2)(A)(i) of the Revised Statutes. Thus, when a bank operates through a financial subsidiary, and the bank or one of its insured depository institution affiliates subsequently receives a CRA rating of less than ''satisfactory record of meeting community credit needs,'' the bank may not start up an additional financial activity that may only be conducted by a national bank through a financial subsidiary, nor may it acquire control of or establish an additional financial subsidiary or acquire all or substantially all of the assets of an additional company that is or would be a financial subsidiary, even if the financial subsidiary to be established or acquired is engaged in the same activities as the existing financial subsidiary.

[2] It should be noted that under section 5136A of the Revised Statutes the discretion of the OCC to deny approval of a proposed affiliation is limited to the statutory factors in that section.

[3] The final rule also makes conforming changes to revised § 5.35, ''Bank service companies,'' and revised § 5.36, ''Other equity investments.''

Failure To Continue To Meet Certain Requirements (§ 5.39(j)

The proposal states that a national bank and its affiliated depository institutions must continue to satisfy the well managed, well capitalized, and asset size requirements applicable to its financial subsidiaries and the conditions in proposed § 5.39(h)(1), (2), (3), and (4) after the bank acquires control of, or an interest in, a financial subsidiary. A national bank that fails to continue to satisfy these requirements is subject to several procedural requirements and OCC remedies. For example, the OCC must give notice to the bank and, in the case of an affiliated depository institution to that depository institution's appropriate Federal banking agency, promptly upon determining that the bank, or, as applicable, its affiliated depository institution, does not continue to meet these requirements. Under the proposal, the bank is deemed to have received this notice three days after mailing of the letter by the OCC. Not later than 45 days after receipt of this notice, or any additional time as the OCC may permit, the bank must execute an agreement with the OCC to comply with these requirements.

At any time until the conditions described in the notice are corrected, the OCC may impose limitations on the conduct or activities of the national bank or any subsidiary of the national bank that the OCC determines appropriate under the circumstances and consistent with the purposes of section 5136A of the Revised Statutes. The OCC also may require the bank to divest control of a financial subsidiary if the bank does not correct the conditions giving rise to the notice within 180 days after its receipt of the notice.

The GLBA provides that a national bank that does not continue to meet any applicable eligible debt requirement may not purchase, directly or through a subsidiary, any additional equity capital of a financial subsidiary. The term ''equity capital'' is defined in § 5.39(j)(2), consistent with the GLBA, to include, in addition to any equity investment, any debt instrument issued by a financial subsidiary if the instrument qualifies as capital of the subsidiary under applicable Federal or State law, regulation, or interpretation. In response to a question posed by a commenter, the final rule clarifies that this limitation applies when the bank has a financial subsidiary where the eligible debt requirement is applicable, *i.e.* where the financial subsidiary is engaged in activities other than solely in an agency capacity, and with respect to additional equity capital of such a subsidiary.

Finally, one commenter recommended adding clarifying language to § 5.39 similar to the provision in § 5.34 that recognizes the GLBA provisions relating to the functional regulation of certain types of bank subsidiaries and affiliates. The OCC agrees with this suggestion and the final rule adds a new § 5.39(k), which provides that a financial subsidiary is subject to examination and supervision by the OCC, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the GLBA (12 U.S.C. 1820a).

Operating Subsidiaries (revised § 5.34)

Proposed § 5.34 authorizes national banks to engage through operating subsidiaries in activities that are part of, or incidental to, the business of banking. The proposal makes several changes to § 5.34 to be more consistent with the procedural requirements of proposed § 5.39, to remove unnecessary regulatory burden, and to make other adjustments that are necessary in light of the GLBA.

First, the proposal consolidates and moves activities formerly subject to an expedited application review into the more streamlined category which requires banks simply to file a notice with the appropriate OCC district office no later than 10 days after establishing or acquiring an operating subsidiary, or commencing a new activity in an existing operating subsidiary. Second, the proposal expands the list of notice activities to include other activities that the OCC has found to be part of, or incidental to, the business of banking [4] and has approved on a regular basis for national bank operating subsidiaries. Finally, given the expansion of the notice category, a national bank using the notice procedure must be well capitalized and well managed as defined in § 5.34(d).[5]

The final rule makes several changes to the list of activities eligible for a notice filing, and the OCC will periodically review and update this list as necessary. First, the OCC has added two new activities to the list of activities eligible for notice processing: (1) ''acting as a digital certification authority'' to the extent that activity is permitted by published OCC precedent and is conducted in accordance with the terms and conditions set forth in that precedent; and (2) ''providing or selling public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising material, postage stamps, and Electronic Benefits Transfer (EBT) script, and similar media,'' to the extent permitted by published OCC precedent, subject to the terms and conditions contained in that precedent. The OCC also has revised the notice provision relating to underwriting credit life insurance to include other types of credit related insurance the OCC has approved. Thus, the final rule refers to underwriting credit related insurance to the extent consistent with section 302 of GLBA. The final rule also clarifies that the notice provision relating to acting as an investment adviser (§ 5.34(e)(5)(v)(I)) includes acting as an investment adviser with discretion and revises the provision on providing check guaranty and verification services to clarify that it includes payment services. Finally, the final rule clarifies that real estate appraisal services for the subsidiary, parent bank, or other financial institutions are moved from the former list of activities eligible for expedited review to the notice list.

One commenter requested that the OCC expand the language in § 5.34(e)(5)(v) regarding finder activities because of the various opportunities created by the proliferation of electronic commerce. The OCC notes that it currently is soliciting comment on a broad range of issues through an advance notice of proposed rulemaking intended to identify changes to existing rules that would facilitate bank use of new technologies.[6] The OCC will review this request in that context.

One commenter also urged the OCC to amend § 5.34(e)(5)(v)(P), which is the notice activity for acting as an insurance agent or broker, to expressly limit that activity in any manner required by 12 U.S.C. 92 or 12 U.S.C. 24 (Seventh). However, the OCC believes that additional language is unnecessary because the rule clearly states that operating subsidiaries may only engage in activities permissible for the parent bank to engage in directly, either as part of, or incidental to, the business of banking or otherwise under other statutory authority. This language would address any requirements in 12 U.S.C. 92 or 12 U.S.C. 24 (Seventh) that are applicable.

[4] This is not a complete list of activities that are part of, or incidental to, the business of banking. The OCC will review new proposals for activities that may be permissible under this section pursuant to the application procedures contained in § 5.34 and in response to requests for legal opinions.

[5] A corresponding change is made with respect to the expanded notice process available for bank service companies in § 5.35(f)(2).

[6] 65 FR 4895 (Feb. 2, 2000).

The proposal also clarifies that ''authorized products'' referenced in the GLBA are activities permissible for operating subsidiaries under § 5.34. The final rule adopts the language in the proposal without changes.

The proposal also revises § 5.34 to conform to other changes made by the GLBA. First, the OCC proposed to remove former § 5.34(f) because the GLBA makes clear that an operating subsidiary may engage only in activities that are permissible for the parent bank to engage in directly. The final rule makes clear that an operating subsidiary conducts its activities subject to the same authorization, terms, and conditions that apply to the conduct of those activities by its parent bank. Second, the proposal removes the former statement that ''each operating subsidiary is subject to examination and supervision by the OCC'' and clarifies that the OCC's authority to examine and take action against certain subsidiaries is subject to the limitations and requirements of new section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the GLBA (12 U.S.C. 1820a). The OCC did not receive any comments on these provisions, and the final rule adopts the language as proposed.

Non-Controlling Investments (revised § 5.36)

Several commenters suggested including non-controlling (or minority) investments on the list in § 5.34(e)(5)(v), or otherwise providing an expedited notice process for non-controlling investments proposed to be made in the same types of companies eligible for an expedited operating subsidiary notice. Commenters recommended that the OCC establish expedited procedures to approve non-controlling investments made either by national banks directly or by their operating subsidiaries. Among other things, the commenters suggested that the availability of definite time frames would promote the rapid consummation of transactions and enhance the ability of national banks to compete effectively in areas such as electronic banking.[7]

The OCC previously has authorized national banks to own, either directly or indirectly through an operating subsidiary, a *non-controlling* interest in an enterprise.[8] This authorization, however, is subject to certain conditions that apply in the case of minority investments but do not apply to the other activities on the list in § 5.34(e)(5)(v), and thus the § 5.34(e)(5)(v) list format does not lend itself to a clear description of these conditions. Nevertheless, the OCC believes that prescribing streamlined procedures for national banks seeking to make certain types of minority investments, directly and by operating subsidiaries, is consistent with the new structural flexibility that the GLBA affords to national banks. For these reasons, we have concluded that it is preferable to revise § 5.36, which governs non-controlling investments, rather than to include minority investments on the list of operating subsidiary activities eligible for notice.

Accordingly, the final rule amends current § 5.36 to provide that a qualifying national bank may make certain non-controlling investments, directly or through its operating subsidiary, in an enterprise by filing a written notice with the appropriate OCC district office no later than 10 days after making the investment. The term ''enterprise'' includes any corporation, limited liability company, partnership, trust, or similar business entity. The notice procedure applies if the activity conducted by the enterprise is on the list in § 5.34(e)(5)(v), or if it is substantively the same as an activity that has been previously approved for a national bank (or its operating subsidiary) in published OCC precedent, and is conducted on the same terms and conditions that apply to the activity approved in that precedent.

This procedure is available for national banks that are well capitalized and well managed (as those terms are defined in § 5.34), that engage in the activities just described, and that submit a notice that contains the following information.

First, the bank must provide a clear description of the activities conducted by the enterprise in which the bank invests. To the extent the notice relates to the affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. Second, the bank must state that the enterprise engages in activities described in § 5.34(e)(5)(v) or state, and describe how, the activities are substantively the same as those contained in published OCC precedent approving a non-controlling investment by a national bank or its operating subsidiary, and that those activities will be conducted in accordance with the same terms and conditions applicable to the activity covered by the precedent. The bank also must provide a citation to the applicable precedent. Third, the bank must certify that it is well capitalized and well managed.

Finally, the bank's notice must demonstrate that it satisfies the requirements applicable to non-controlling investments, as described in the OCC's published decisions. These include: (1) describing how the bank has the ability to prevent the enterprise from engaging in activities that are not set forth in § 5.34(e)(5)(v) or not contained in published OCC precedent approving a non-controlling investment by a national bank or its operating subsidiary, or how the bank otherwise has the ability to withdraw its investment; (2) certifying that the bank will account for its investment under the equity or cost method of accounting; (3) describing how the investment is convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to the bank's banking business; and (4) certifying that the enterprise in which the bank is investing agrees to be subject to OCC supervision and examination, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act and section 115 of GLBA.

The OCC will continue to address on a case-by-case basis situations where a national bank is not well managed or well capitalized but seeks to make a non-controlling investment directly or where a national bank wishes to invest in a company that engages in activities that are not eligible for the notice procedure.

Other Matters

Financial Subsidiaries and Operating Subsidiaries of Federal Branches and Agencies

The proposal also invited comment on whether national treatment principles would be furthered if Federal branches and agencies of foreign banks are authorized to invest in financial and

[7] Currently, national banks making non-controlling investments directly submit requests for an OCC opinion regarding the permissibility of the investment.

[8] *See, e.g.,* OCC Corporate Decision No. 97–54 (June 26, 1997); OCC Interpretive Letter No. 692, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,007 (Nov. 1, 1995); OCC Interpretive Letter No. 694, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,009 (Dec. 13, 1995); OCC Interpretive Letter No. 705, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,020 (Oct. 25, 1995); OCC Interpretive Letter No. 711, *reprinted in* [1995–1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81–026 (Feb. 23, 1996).

operating subsidiaries, and, if so, how the OCC would apply the applicable qualification standards. The OCC received six comments on this issue. The commenters strongly supported permitting Federal branches and agencies to invest in and control financial subsidiaries and operating subsidiaries. The OCC agrees that Federal branches and agencies should be authorized to hold these subsidiaries and expects to issue a separate proposal to address the details of how that authority may be implemented in the near future.

Conforming Technical Changes

Finally, the final rule makes conforming technical changes to §§ 5.24 and 5.33. These changes clarify that separate notices under § 5.39 to acquire control of, or an interest in, a financial subsidiary are not required where that information is supplied in connection with the conversion or merger application. In addition, the final rule revises § 5.35, the OCC rule relating to bank service companies, to remove the provisions in that section relating to expedited application filings. This change was made to conform to similar changes made to § 5.34. Section 5.35 refers to § 5.34 to determine which activities are eligible for notice filing. Thus, the changes to § 5.34 that consolidated and moved the activities formerly listed in the expedited processing list into the notice category will similarly affect § 5.35.

Effective Date

The Administrative Procedure Act provides that, subject to several exceptions, a final rule may not be made effective until 30 days after publication in the **Federal Register**. 5 U.S.C. 553(d). However, an agency may make a final rule immediately effective upon publication if the agency finds good cause for doing so and publishes its findings with the rule. Likewise, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Public Law 103–325, authorizes a banking agency to issue a rule to be effective before the first day of the calendar quarter that begins on or after the date on which the regulations are published in final form if the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1).

This final rule takes effect on March 11, 2000. The OCC finds good cause to dispense with the 30-day delayed effective date pursuant to 5 U.S.C. 553(d)(3). The OCC also has determined that good cause exists to adopt an effective date that is before the first day of the calendar quarter that begins on or after the date on which the regulation is published, as would otherwise be required by section 102 of the CDRI (12 U.S.C. 4802(b)(1)). Unless the OCC has a final rule in place by March 11, 2000, national banks will be unable to exercise the GLBA financial subsidiary authority when it becomes available to them under the law. Moreover, as of March 11, 2000, certain portions of the OCC's current operating subsidiary rule will be superseded by the new law. Therefore, the final rule takes effect on March 11, 2000, in order to eliminate potential confusion or disruption for banks seeking to restructure their operations in accordance with the GLBA.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The principal effect of this final rule is to provide procedures for implementing section 121 of the GLBA for national banks that wish to engage in activities through financial subsidiaries. The final rule also would require national banks making non-controlling investments in certain entities to file a notice with the OCC. The final rule also would reduce regulatory burden by increasing the number of activities that are subject to notice requirements rather than application requirements where a national bank intends to engage in activities through an operating subsidiary or to make a non-controlling investment in an enterprise through an operating subsidiary.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 12866 Determination

The Comptroller of the Currency has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

Paperwork Reduction Act

The collection of information requirements in this final rule are found in §§ 5.24(d)(2)(ii)(G), 5.33(e)(3)(i) and (ii), 5.34(b) and (e), 5.35(f), 5.36(e), and 5.39(b) and (i). These collection of information requirements have been reviewed and approved by the Office of Management and Budget in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) under OMB Control Number 1557–0215.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends chapter I of title 12 of the Code of Federal Regulations as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a; and section 5136A of the Revised Statutes (12 U.S.C. 24a).

2. In § 5.24, paragraph (d)(2)(ii)(G) is revised to read as follows:

§ 5.24 Conversion.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(G) Identify all subsidiaries that will be retained following the conversion, and provide the information and analysis of the subsidiaries' activities that would be required if the converting bank or savings association were a national bank establishing each subsidiary pursuant to §§ 5.34 or 5.39; and

* * * * *

3. In § 5.33, paragraphs (e)(3)(i) and (e)(3)(ii) are revised to read as follows:

§ 5.33 Business combinations.

* * * * *

(e) * * *

(3) * * *

(i) An applicant must identify any subsidiary to be acquired in a business combination and state the activities of each subsidiary. The OCC does not require a separate application under § 5.34 or a separate notice under § 5.39.

(ii) An applicant proposing to acquire, through a business combination, a subsidiary of a depository institution other than a national bank must provide the same information and analysis of the subsidiary's activities that would be required if the applicant were establishing the subsidiary pursuant to §§ 5.34 or 5.39.

* * * * *

4. Section 5.34 is revised to read as follows:

§ 5.34 Operating subsidiaries.

(a) *Authority.* 12 U.S.C. 24 (Seventh), 93a, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

(b) *Licensing requirements.* A national bank must file a notice or application as prescribed in this section to acquire or establish an operating subsidiary, or to commence a new activity in an existing operating subsidiary.

(c) *Scope.* This section sets forth authorized activities and application or notice procedures for national banks engaging in activities through an operating subsidiary. The procedures in this section do not apply to financial subsidiaries authorized under § 5.39.

(d) *Definitions.* For purposes of this § 5.34:

(1) *Authorized product* means a product that would be defined as insurance under section 302(c) of the Gramm-Leach-Bliley Act (Public Law 106–102, 113 Stat. 1338, 1407) (GLBA) (15 U.S.C. 6712) that, as of January 1, 1999, the OCC had determined in writing that national banks may provide as principal or national banks were in fact lawfully providing the product as principal, and as of that date no court of relevant jurisdiction had, by final judgment, overturned a determination by the OCC that national banks may provide the product as principal. An authorized product does not include title insurance, or an annuity contract the income of which is subject to treatment under section 72 of the Internal Revenue Code of 1986 (26 U.S.C. 72).

(2) *Well capitalized* means the capital level described in 12 CFR 6.4(b)(1).

(3) *Well managed* means, unless otherwise determined in writing by the OCC:

(i) The national bank has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System in connection with its most recent examination; or

(ii) In the case of any national bank that has not been examined, the existence and use of managerial resources that the OCC determines are satisfactory.

(e) *Standards and requirements*—(1) *Authorized activities.* A national bank may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC, or otherwise under other statutory authority, including:

(i) Providing authorized products as principal; and

(ii) Providing title insurance as principal if the national bank or subsidiary thereof was actively and lawfully underwriting title insurance before November 12, 1999, and no affiliate of the national bank (other than a subsidiary) provides insurance as principal. A subsidiary may not provide title insurance as principal if the state had in effect before November 12, 1999, a law which prohibits any person from underwriting title insurance with respect to real property in that state.

(2) *Qualifying subsidiaries.* An operating subsidiary in which a national bank may invest includes a corporation, limited liability company, or similar entity if the parent bank owns more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary; or the parent bank otherwise controls the operating subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary. However, the following subsidiaries are not operating subsidiaries subject to this section:

(i) A subsidiary in which the bank's investment is made pursuant to specific authorization in a statute or OCC regulation (*e.g.,* a bank service company under 12 U.S.C. 1861 *et seq.* or a financial subsidiary under section 5136A of the Revised Statutes (12 U.S.C. 24a)); and

(ii) A subsidiary in which the bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted.

(3) *Examination and supervision.* An operating subsidiary conducts activities authorized under this section pursuant to the same authorization, terms and conditions that apply to the conduct of such activities by its parent national bank. If, upon examination, the OCC determines that the operating subsidiary is operating in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety or soundness of the bank, the OCC will direct the bank or operating subsidiary to take appropriate remedial action, which may include requiring the bank to divest or liquidate the operating subsidiary, or discontinue specified activities. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(4) *Consolidation of figures.* Pertinent book figures of the parent bank and its operating subsidiary shall be combined for the purpose of applying statutory or regulatory limitations when combination is needed to effect the intent of the statute or regulation, *e.g.,* for purposes of 12 U.S.C. 56, 60, 84, and 371d.

(5) *Procedures*—(i) *Application required.* (A) Except as provided in paragraph (e)(5)(iv) or (e)(5)(vi) of this section, a national bank that intends to acquire or establish an operating subsidiary, or to perform a new activity in an existing operating subsidiary, must first submit an application to, and receive approval from, the OCC. The application must include a complete description of the bank's investment in the subsidiary, the proposed activities of the subsidiary, the organizational structure and management of the subsidiary, the relations between the bank and the subsidiary, and other information necessary to adequately describe the proposal. To the extent the application relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. The application must state whether the operating subsidiary will conduct any activity at a location other than the main office or a previously approved branch of the bank. The OCC may require the applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a pre-filing meeting with the OCC.

(B) A national bank must file an application and obtain prior approval before acquiring or establishing an

operating subsidiary, or performing a new activity in an existing operating subsidiary, if the bank controls the subsidiary but owns 50 percent or less of the voting (or similar type of controlling) interest of the subsidiary. These applications are not subject to the filing exemption in paragraph (e)(5)(vi) of this section and are not eligible for the notice procedures in paragraph (e)(5)(iv) of this section.

(ii) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, and 5.11 do not apply to this section. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that some or all provisions in §§ 5.8, 5.10, and 5.11 apply.

(iii) *OCC review and approval.* The OCC reviews a national bank's application to determine whether the proposed activities are legally permissible and to ensure that the proposal is consistent with safe and sound banking practices and OCC policy and does not endanger the safety or soundness of the parent national bank. As part of this process, the OCC may request additional information and analysis from the applicant.

(iv) *Notice process for certain activities.* A national bank that is ''well capitalized'' and ''well managed'' may acquire or establish an operating subsidiary, or perform a new activity in an existing operating subsidiary, by providing the appropriate district office written notice within 10 days after acquiring or establishing the subsidiary, or commencing the activity, if the activity is listed in paragraph (e)(5)(v) of this section. The written notice must include a complete description of the bank's investment in the subsidiary and of the activity conducted and a representation and undertaking that the activity will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activity. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(v) *Activities eligible for notice.* The following activities qualify for the notice procedures, provided the activity is conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a national bank:

(A) Holding and managing assets acquired by the parent bank, including investment assets and property acquired by the bank through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted;

(B) Providing services to or for the bank or its affiliates, including accounting, auditing, appraising, advertising and public relations, and financial advice and consulting;

(C) Making loans or other extensions of credit, and selling money orders, savings bonds, and travelers checks;

(D) Purchasing, selling, servicing, or warehousing loans or other extensions of credit, or interests therein;

(E) Providing courier services between financial institutions;

(F) Providing management consulting, operational advice, and services for other financial institutions;

(G) Providing check guaranty, verification and payment services;

(H) Providing data processing, data warehousing and data transmission products, services, and related activities and facilities, including associated equipment and technology, for the bank or its affiliates;

(I) Acting as investment adviser (including an adviser with investment discretion) or financial adviser or counselor to governmental entities or instrumentalities, businesses, or individuals, including advising registered investment companies and mortgage or real estate investment trusts, furnishing economic forecasts or other economic information, providing investment advice related to futures and options on futures, and providing consumer financial counseling;

(J) Providing tax planning and preparation services;

(K) Providing financial and transactional advice and assistance, including advice and assistance for customers in structuring, arranging, and executing mergers and acquisitions, divestitures, joint ventures, leveraged buyouts, swaps, foreign exchange, derivative transactions, coin and bullion, and capital restructurings;

(L) Underwriting credit related insurance to the extent permitted under section 302 of the GLBA (15 U.S.C. 6712);

(M) Leasing of personal property and acting as an agent or adviser in leases for others;

(N) Providing securities brokerage or acting as a futures commission merchant, and providing related credit and other related services;

(O) Underwriting and dealing, including making a market, in bank permissible securities and purchasing and selling as principal, asset backed obligations;

(P) Acting as an insurance agent or broker, including title insurance to the extent permitted under section 303 of the GLBA (15 U.S.C. 6713);

(Q) Reinsuring mortgage insurance on loans originated, purchased, or serviced by the bank, its subsidiaries, or its affiliates, provided that if the subsidiary enters into a quota share agreement, the subsidiary assumes less than 50 percent of the aggregate insured risk covered by the quota share agreement. A ''quota share agreement'' is an agreement under which the reinsurer is liable to the primary insurance underwriter for an agreed upon percentage of every claim arising out of the covered book of business ceded by the primary insurance underwriter to the reinsurer;

(R) Acting as a finder pursuant to 12 CFR 7.1002 to the extent permitted by published OCC precedent; [1]

(S) Offering correspondent services to the extent permitted by published OCC precedent;

(T) Acting as agent or broker in the sale of fixed or variable annuities;

(U) Offering debt cancellation or debt suspension agreements;

(V) Providing real estate settlement, closing, escrow, and related services; and real estate appraisal services for the subsidiary, parent bank, or other financial institutions;

(W) Acting as a transfer or fiscal agent;

(X) Acting as a digital certification authority to the extent permitted by published OCC precedent, subject to the terms and conditions contained in that precedent; and

(Y) Providing or selling public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising material, postage stamps, and Electronic Benefits Transfer (EBT) script, and similar media, to the extent permitted by published OCC precedent, subject to the terms and conditions contained in that precedent.

[1] *See, e.g.,* the OCC's monthly publication ''Interpretations and Actions.'' Beginning with the May 1996 issue, the OCC's Web site provides access to electronic versions of ''Interpretations and Actions'' (www.occ.treas.gov).

(vi) *No application or notice required.* A national bank may acquire or establish an operating subsidiary without filing an application or providing notice to the OCC, if the bank is adequately capitalized or well capitalized and the:

(A) Activities of the new subsidiary are limited to those activities previously reported by the bank in connection with the establishment or acquisition of a prior operating subsidiary;

(B) Activities in which the new subsidiary will engage continue to be legally permissible for the subsidiary; and

(C) Activities of the new subsidiary will be conducted in accordance with any conditions imposed by the OCC in approving the conduct of these activities for any prior operating subsidiary of the bank.

(vii) *Fiduciary powers.* If an operating subsidiary proposes to exercise investment discretion on behalf of customers or provide investment advice for a fee, the national bank must have prior OCC approval to exercise fiduciary powers pursuant to § 5.26.

5. Section 5.35 is amended by:

A. Revising paragraph (e);

B. Revising paragraphs (f)(1) and (f)(2);

C. Removing paragraph (f)(3);

D. Redesignating paragraphs (f)(4) through (f)(6) as paragraphs (f)(3) through (f)(5); and

E. Revising paragraphs (g)(2), (h), and (i)(2) to read as follows:

§ 5.35 Bank service companies.

* * * * *

(e) *Standards and requirements.* A national bank may invest in a bank service company that conducts activities described in paragraphs (f)(3) and (f)(4) of this section, and activities (other than taking deposits) permissible for the national bank and other state and national bank shareholders or members in the bank service company.

(f) *Procedures*—(1) *OCC notice and approval required.* Except as provided in paragraphs (f)(2) and (f)(4) of this section, a national bank that intends to make an investment in a bank service company, or to perform new activities in an existing bank service company, must submit a notice to and receive prior approval from the OCC. The OCC approves or denies a proposed investment within 60 days after the filing is received by the OCC, unless the OCC notifies the bank prior to that date that the filing presents a significant supervisory or compliance concern, or raises a significant legal or policy issue. The notice must include the information required by paragraph (g) of this section.

(2) *Notice process only for certain activities.* A national bank that is ''well capitalized'' and ''well managed'' as defined in § 5.34(d) may invest in a bank service company, or perform a new activity in an existing bank service company, by providing the appropriate district office written notice within 10 days after the investment, if the bank service company engages only in the activities listed in § 5.34(e)(5)(v). No prior OCC approval is required. The written notice must include a complete description of the bank's investment in the bank service company and of the activity conducted and a representation and undertaking that the activity will be conducted in accordance with OCC guidance. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable. Any bank receiving approval under this paragraph is deemed to have agreed that the bank service company will conduct the activity in a manner consistent with the published OCC guidance.

* * * * *

(g)* * *

(2) A complete description of the activities the bank service company will conduct. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

* * * * *

(h) *Examination and supervision.* Each bank service company in which a national bank is the principal investor is subject to examination and supervision by the OCC in the same manner and to the same extent as that national bank. OCC authority under this paragraph is subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

(i) * * *

(2) *Other limitations.* Except as provided in paragraph (f)(4) of this section, a bank service company shall only conduct activities that the national bank could conduct directly. If the bank service company has both national and state bank shareholders or members, the activities conducted must also be permissible for the state bank shareholders or members.

6. Section 5.36 is amended by:

A. Redesignating paragraphs (c) and (d) as paragraphs (d) and (f) respectively, and

B. Adding new paragraphs (c) and (e) to read as follows:

§ 5.36 Other equity investments.

* * * * *

(c) *Definitions.* For purposes of this § 5.36:

(1) *Enterprise* means any corporation, limited liability company, partnership, trust, or similar business entity.

(2) *Well capitalized* means the capital level described in 12 CFR 6.4(b)(1).

(3) *Well managed* has the meaning set forth in § 5.34(d)(3).

* * * * *

(e) *Non-controlling investments.* A national bank may make a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in paragraph (e)(2) of this section by filing a written notice. The written notice must be filed with the appropriate district office no later than 10 days after making the investment and must:

(1) Describe the structure of the investment and the activity or activities conducted by the enterprise in which the bank is investing. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(2) State which paragraphs of § 5.34(e)(5)(v) describe the activity or activities, or state that, and describe how, the activity is substantively the same as that contained in published OCC precedent approving a non-controlling investment by a national bank or its operating subsidiary, state that the activity will be conducted in accordance with the same terms and conditions applicable to the activity covered by the precedent, and provide the citation to the applicable precedent;

(3) Certify that the bank is well managed and well capitalized at the time of the investment;

(4) Describe how the bank has the ability to prevent the enterprise from engaging in activities that are not set forth in § 5.34(e)(5)(v) or not contained in published OCC precedent approving a non-controlling investment by a national bank or its operating subsidiary, or how the bank otherwise has the ability to withdraw its investment;

(5) Certify that the bank will account for its investment under this section under the equity or cost method of accounting;

(6) Describe how the investment is convenient and useful to the bank in carrying out its business and not a mere passive investment unrelated to the bank's banking business; and

(7) Certify that the enterprise in which the bank is investing agrees to be subject to OCC supervision and examination, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. 1820a).

* * * * *

7. A new § 5.39 is added to subpart C to read as follows:

§ 5.39 Financial subsidiaries.

(a) *Authority.* 12 U.S.C. 93a and section 121 of Public Law 106–102, 113 Stat. 1338, 1373.

(b) *Approval requirements.* A national bank must file a notice as prescribed in this section prior to acquiring a financial subsidiary or engaging in activities authorized pursuant to section 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a) through a financial subsidiary. When a financial subsidiary proposes to conduct a new activity permitted under § 5.34, the bank shall follow the procedures in § 5.34(e)(5) instead of paragraph (i) of this section.

(c) *Scope.* This section sets forth authorized activities, approval procedures, and, where applicable, conditions for national banks engaging in activities through a financial subsidiary.

(d) *Definitions.* For purposes of this § 5.39:

(1) *Affiliate* has the meaning set forth in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), except that the term ''affiliate'' for purposes of paragraph (h)(5) of this section shall have the meaning set forth in sections 23A or 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1), as applicable.

(2) *Appropriate Federal banking agency* has the meaning set forth in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(3) *Company* has the meaning set forth in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), and includes a limited liability company (LLC).

(4) *Control* has the meaning set forth in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(5) *Eligible debt* means unsecured long-term debt that is:

(i) Not supported by any form of credit enhancement, including a guaranty or standby letter of credit; and

(ii) Not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

(6) *Financial subsidiary* means any company that is controlled by one or more insured depository institutions, other than a subsidiary that:

(i) Engages solely in activities that national banks may engage in directly and that are conducted subject to the same terms and conditions that govern the conduct of these activities by national banks; or

(ii) A national bank is specifically authorized to control by the express terms of a Federal statute (other than section 5136A of the Revised Statutes), and not by implication or interpretation, such as by section 25 of the Federal Reserve Act (12 U.S.C. 601–604a), section 25A of the Federal Reserve Act (12 U.S.C. 611–631), or the Bank Service Company Act (12 U.S.C. 1861 *et seq.*)

(7) *Insured depository institution* has the meaning set forth in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(8) *Long term debt* means any debt obligation with an initial maturity of 360 days or more.

(9) *Subsidiary* has the meaning set forth in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(10) *Tangible equity* has the meaning set forth in 12 CFR 6.2(g).

(11) *Well capitalized* with respect to a depository institution means the capital level designated as ''well capitalized'' by the institution's appropriate Federal banking agency pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o).

(12) *Well managed* means:

(i) Unless otherwise determined in writing by the appropriate Federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution and, at least a rating of 2 for management, if such a rating is given; or

(ii) In the case of any depository institution that has not been examined by its appropriate Federal banking agency, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

(e) *Authorized activities.* A financial subsidiary may engage only in the following activities:

(1) Activities that are financial in nature and activities incidental to a financial activity, authorized pursuant to 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a) (to the extent not otherwise permitted under paragraph (e)(2) of this section), including:

(i) Lending, exchanging, transferring, investing for others, or safeguarding money or securities;

(ii) Engaging as agent or broker in any state for purposes of insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, death, defects in title, or providing annuities as agent or broker;

(iii) Providing financial, investment, or economic advisory services, including advising an investment company as defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3);

(iv) Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly;

(v) Underwriting, dealing in, or making a market in securities;

(vi) Engaging in any activity that the Board of Governors of the Federal Reserve System has determined, by order or regulation in effect on November 12, 1999, to be so closely related to banking or managing or controlling banks as to be a proper incident thereto (subject to the same terms and conditions contained in the order or regulation, unless the order or regulation is modified by the Board of Governors of the Federal Reserve System);

(vii) Engaging, in the United States, in any activity that a bank holding company may engage in outside the United States and the Board of Governors of the Federal Reserve System has determined, under regulations prescribed or interpretations issued pursuant to section 4(c)(13) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(13)) as in effect on November 11, 1999, to be usual in

connection with the transaction of banking or other financial operations abroad; and

(viii) Activities that the Secretary of the Treasury in consultation with the Board of Governors of the Federal Reserve System, as provided in section 5136A of the Revised Statutes, determines to be financial in nature or incidental to a financial activity; and

(2) Activities that may be conducted by an operating subsidiary pursuant to § 5.34.

(f) *Impermissible activities.* A financial subsidiary may not engage as principal in the following activities:

(1) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability or death, or defects in title (except to the extent permitted under sections 302 or 303(c) of the Gramm-Leach-Bliley Act (GLBA)), 113 Stat. 1407–1409, (15 U.S.C. 6712 or 15 U.S.C. 6713) or providing or issuing annuities the income of which is subject to tax treatment under section 72 of the Internal Revenue Code (26 U.S.C. 72);

(2) Real estate development or real estate investment, unless otherwise expressly authorized by law; and

(3) Activities authorized for bank holding companies by section 4(k)(4)(H) or (I) (12 U.S.C. 1843) of the Bank Holding Company Act, except activities authorized under section 4(k)(4)(H) that may be permitted in accordance with section 122 of the GLBA, 113 Stat. 1381.

(g) *Qualifications.* A national bank may, directly or indirectly, control a financial subsidiary or hold an interest in a financial subsidiary only if:

(1) The national bank and each depository institution affiliate of the national bank are well capitalized and well managed;

(2) The aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of 45 percent of the consolidated total assets of the parent bank or $50 billion (or such greater amount as is determined according to an indexing mechanism jointly established by regulation by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System); and

(3) If the national bank is one of the 100 largest insured banks, determined on the basis of the bank's consolidated total assets at the end of the calendar year, the bank has at least one issue of outstanding eligible debt that is currently rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating organization. If the national bank is one of the second 50 largest insured banks, it may either satisfy this requirement or satisfy alternative criteria the Secretary of the Treasury and the Board of Governors of the Federal Reserve System establish jointly by regulation. This paragraph (g)(3) does not apply if the financial subsidiary is engaged solely in activities in an agency capacity.

(h) *Safeguards.* The following safeguards apply to a national bank that establishes or maintains a financial subsidiary:

(1) For purposes of determining regulatory capital:

(i) The national bank must deduct the aggregate amount of its outstanding equity investment, including retained earnings, in its financial subsidiaries from its total assets and tangible equity and deduct such investment from its total risk-based capital (this deduction shall be made equally from Tier 1 and Tier 2 capital); and

(ii) The national bank may not consolidate the assets and liabilities of a financial subsidiary with those of the bank;

(2) Any published financial statement of the national bank shall, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank in the manner provided in paragraph (h)(1) of this section;

(3) The national bank must have reasonable policies and procedures to preserve the separate corporate identity and limited liability of the bank and the financial subsidiaries of the bank;

(4) The national bank must have procedures for identifying and managing financial and operational risks within the bank and the financial subsidiary that adequately protect the national bank from such risks;

(5) Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) apply to transactions involving a financial subsidiary in the following manner:

(i) A financial subsidiary shall be deemed to be an affiliate of the bank and shall not be deemed to be a subsidiary of the bank;

(ii) The restrictions contained in section 23A(a)(1)(A) of the Federal Reserve Act shall not apply with respect to covered transactions between a bank and any individual financial subsidiary of the bank;

(iii) The bank's investment in the financial subsidiary shall not include retained earnings of the financial subsidiary;

(iv) Any purchase of, or investment in, the securities of a financial subsidiary of a bank by an affiliate of the bank will be considered to be a purchase of or investment in such securities by the bank; and

(v) Any extension of credit by an affiliate of a bank to a financial subsidiary of the bank may be considered an extension of credit by the bank to the financial subsidiary if the Board of Governors of the Federal Reserve System determines that such treatment is necessary or appropriate to prevent evasions of the Federal Reserve Act and the GLBA.

(6) A financial subsidiary shall be deemed a subsidiary of a bank holding company and not a subsidiary of the bank for purposes of the anti-tying prohibitions set forth in 12 U.S.C. 1971 *et seq.*

(i) *Procedures to engage in activities through a financial subsidiary.* A national bank that intends, directly or indirectly, to acquire control of, or hold an interest in, a financial subsidiary, or to commence a new activity in an existing financial subsidiary, must obtain OCC approval through the procedures set forth in paragraph (i)(1) or (i)(2) of this section.

(1) *Certification with subsequent notice.* (i) At any time, a national bank may file a ''Financial Subsidiary Certification'' with the appropriate district office listing the bank's depository institution affiliates and certifying that the bank and each of those affiliates is well capitalized and well managed.

(ii) Thereafter, at such time as the bank seeks OCC approval to acquire control of, or hold an interest in, a new financial subsidiary, or commence a new activity authorized under section 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a) in an existing subsidiary, the bank may file a written notice with the appropriate district office at the time of acquiring control of, or holding an interest in, a financial subsidiary, or commencing such activity in an existing subsidiary. The written notice must be labeled ''Financial Subsidiary Notice'' and must:

(A) State that the bank's Certification remains valid;

(B) Describe the activity or activities conducted by the financial subsidiary. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(C) Cite the specific authority permitting the activity to be conducted by the financial subsidiary. (Where the authority relied on is an agency order or interpretation under section 4(c)(8) or 4(c)(13), respectively, of the Bank Holding Company Act of 1956, a copy of the order or interpretation should be attached);

(D) Certify that the bank will be well capitalized after making adjustments required by paragraph (h)(1) of this section;

(E) Demonstrate the aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of 45 percent of the bank's consolidated total assets or $50 billion (or the increased level established by the indexing mechanism); and

(F) If applicable, certify that the bank meets the eligible debt requirement in paragraph (g)(3) of this section.

(2) *Combined certification and notice.* A national bank may file a combined certification and notice with the appropriate district office at least five business days prior to acquiring control of, or holding an interest in, a financial subsidiary, or commencing a new activity authorized pursuant to section 5136A(a)(2)(A)(i) of the Revised Statutes in an existing subsidiary. The written notice must be labeled ''Financial Subsidiary Certification and Notice'' and must:

(i) List the bank's depository institution affiliates and certify that the bank and each depository institution affiliate of the bank is well capitalized and well managed;

(ii) Describe the activity or activities to be conducted in the financial subsidiary. To the extent the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity that the company is engaged in and has present plans to conduct. The bank must also list for each state the lines of business for which the company holds, or will hold, an insurance license, indicating the state where the company holds a resident license or charter, as applicable;

(iii) Cite the specific authority permitting the activity to be conducted by the financial subsidiary. (Where the authority relied on is an agency order or interpretation under section 4(c)(8) or 4(c)(13), respectively, of the Bank Holding Company Act of 1956, a copy of the order or interpretation should be attached);

(iv) Certify that the bank will remain well capitalized after making the adjustments required by paragraph (h)(1) of this section;

(v) Demonstrate the aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of 45% of the bank's consolidated total assets or $50 billion (or the increased level established by the indexing mechanism); and

(vi) If applicable, certify that the bank meets the eligible debt requirement in paragraph (g)(3) of this section.

(3) *Exceptions to rules of general applicability.* Sections 5.8, 5.10, 5.11, and 5.13 do not apply to activities authorized under this section.

(4) *Community Reinvestment Act (CRA).* A national bank may not apply under this paragraph (i) to commence a new activity authorized under section 5136A(a)(2)(A)(i) of the Revised Statutes (12 U.S.C. 24a), or directly or indirectly acquire control of a company engaged in any such activity, if the bank or any of its insured depository institution affiliates received a CRA rating of less than ''satisfactory record of meeting community credit needs'' on its most recent CRA examination prior to when the bank would file a notice under this section.

(j) *Failure to continue to meet certain qualification requirements*—(1) *Qualifications and safeguards.* A national bank, or, as applicable, its affiliated depository institutions, must continue to satisfy the qualification requirements set forth in paragraphs (g)(1) and (2) of this section and the safeguards in paragraphs (h)(1), (2), (3) and (4) of this section following its acquisition of control of, or an interest in, a financial subsidiary. A national bank that fails to continue to satisfy these requirements will be subject to the following procedures and requirements:

(i) The OCC shall give notice to the national bank and, in the case of an affiliated depository institution to that depository institution's appropriate Federal banking agency, promptly upon determining that the national bank, or, as applicable, its affiliated depository institution, does not continue to meet the requirements in paragraph (g)(1) or (2) of this section or the safeguards in paragraph (h)(1), (2), (3), or (4) of this section. The bank shall be deemed to have received such notice three business days after mailing of the letter by the OCC;

(ii) Not later than 45 days after receipt of the notice under paragraph (j)(1)(i) of this section, or any additional time as the OCC may permit, the national bank shall execute an agreement with the OCC to comply with the requirements in paragraphs (g)(1) and (2) and (h)(1), (2), (3), and (4) of this section;

(iii) The OCC may impose limitations on the conduct or activities of the national bank or any subsidiary of the national bank as the OCC determines appropriate under the circumstances and consistent with the purposes of section 5136A of the Revised Statutes; and

(iv) The OCC may require a national bank to divest control of a financial subsidiary if the national bank does not correct the conditions giving rise to the notice within 180 days after receipt of the notice provided under paragraph (j)(1)(i) of this section.

(2) *Eligible debt rating requirement.* A national bank that does not continue to meet the qualification requirement set forth in paragraph (g)(3) of this section, applicable where the bank's financial subsidiary is engaged in activities other than solely in an agency capacity, may not directly or through a subsidiary, purchase or acquire any additional equity capital of any such financial subsidiary until the bank meets the requirement in paragraph (g)(3) of this section. For purposes of this paragraph (j)(2), the term ''equity capital'' includes, in addition to any equity investment, any debt instrument issued by the financial subsidiary if the instrument qualifies as capital of the subsidiary under federal or state law, regulation, or interpretation applicable to the subsidiary.

(k) *Examination and supervision.* A financial subsidiary is subject to examination and supervision by the OCC, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. 1831v) and section 115 of the GLBA (12 U.S.C. 1820a).

Dated: March 3, 2000

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–5830 Filed 3–9–00; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1061]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interpretation.

SUMMARY: The Board is amending an interpretation of Regulation D (Reserve Requirements of Depository Institutions) to include the European Central Bank among the institutions that have been

specifically designated by the Board as ''supranational'' entities for purposes of certain time deposits under Regulation D.

EFFECTIVE DATE: March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Oliver I. Ireland, Associate General Counsel (202/452–3625), or Alison MacDonald, Senior Attorney (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Janice Simms (202/872–4984).

SUPPLEMENTARY INFORMATION: Regulation D (12 CFR part 204) defines those deposits against which depository institutions must maintain reserve balances with a Federal Reserve Bank and sets ratios for those reserves. The regulation imposes a marginal reserve requirement of 10 percent against transaction accounts but exempts international banking facility (''IBF'') time deposits from the reserve requirements and imposes a 0 percent reserve ratio on nonpersonal time deposits. Promissory notes and other obligations issued to ''[a]ny * * * foreign, international, or supranational entity specifically designated by the Board'' are nonpersonal time deposits and may be IBF time deposits under relevant sections of Regulation D regardless of their maturity (12 CFR 204.2(c)).

Consistent with its designation of other multi-national, regional central banks and other European Community entities as ''supranational'' entities, the Board has designated the European Central Bank a ''supranational'' entity for purposes of Regulation D and, thus, is revising § 204.125 to include the European Central Bank. Accordingly, depository institutions receiving deposits from the European Central Bank that comply with the requirements of §§ 204.2(c)(1)(iv)(E) and 204.8(a)(2)(i)(B)(5) of Regulation D do not need to hold reserves against European Central Bank deposits under the regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish a regulatory flexibility analysis for any final rule for which the agency was required to publish a general notice of proposed rulemaking. Under 12 U.S.C. 553(b), a general notice of proposed rulemaking is not required for interpretive rules. Accordingly, no regulatory flexibility analysis is required in this case.

Under 12 U.S.C. 553(d), a 30-day period between publication date and effective date is not required for interpretive rules. Accordingly, this interpretation is effective on the date of publication in the **Federal Register**.

Paperwork Reduction Act

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

List of Subjects 12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending part 204 in chapter II of title 12 of the Code of Federal Regulations as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Section 204.125 is amended as follows:

a. In the introductory text, ''§§ 204.2(c)(1)(E)'' is removed and ''§§ 204.2(c)(1)(iv)(E)'' is added in its place;

b. In the listing under Europe, a new entry is added in alphabetical order, to read as follows:

§ 204.125 Foreign, international, and supranational entities referred to in §§ 204.2(c)(1)(iv)(E) and 204.8(a)(2)(i)(B)(5).

* * * * *

Europe

* * * * *

European Central Bank.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 6, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–5861 Filed 3–9–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–1]

Establishment of Class E Airspace; Whitesburg, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Whitesburg, KY. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Whitesburg Appalachian Regional Hospital, Whitesburg, KY. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Whitesburg Appalachian Hospital.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy P. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On January 26, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Whitesburg, KY, (65 FR 4192). This action provides adequate Class E airspace for IFR operations at the Whitesburg Appalachian Regional Hospital. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at

Whitesburg, KY, for the Whitesburg Appalachian Regional Hospital.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO KY E5 Whitesburg, KY [New]

Whitesburg Appalachian Regional Hospital, Whitesburg, KY
Point in Space Coordinates
Lat. 37°07′16″N, long. 82°50′34″W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 37°07′16″N, long. 82°50′34″W) serving Whitesburg Appalachian Regional Hospital, Whitesburg, KY.

* * * * *

Issued in College Park, Georgia, on February 28, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–5951 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–51]

Amendment to Class E Airspace; Marshall, MO: Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date and corrections.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Marshall, MO, and corrects an error in the coordinates for the Marshall Memorial Municipal Airport, Airport Reference Point (ARP) as published in the **Federal Register** January 12, 2000 (65 FR 1774), Airspace Docket No. 99–ACE–51.

DATES: The direct final rule published at 65 FR 1774 is effective on 0901 UTC, April 20, 2000. This correction is effective on April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816 329–2524.

SUPPLEMENTARY INFORMATION:

History

On January 12, 2000, The FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Marshall, MO (FR document 00–582, 65 FR 1774, Airspace Docket No. 99–ACE–51). An error was subsequently discovered in the coordinates for the Marshall Memorial Municipal airport ARP. This action corrects that error. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the error in the coordinates of the Marshall Memorial Municipal Airport ARP and confirms the effective date to the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 20, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, coordinates for the Marshall Memorial Municipal Airport ARP as published in the **Federal Register** on January 12, 2000 (65 FR 1774), (**Federal Register** Document 00–782; page 1775, column three) are corrected as follows:

§ 71.1 [Corrected]

ACE MO 35 Marshall, MO [Corrected]

On page 1775, in the third column, after Marshall Memorial Municipal Airport, MO, correct the coordinates by removing (lat. 39°05′44″N., long. 93°12′02″W.) and substituting (lat. 39°05′45′N., long. 93°12′14″W.)

Issued in Kansas City, MO on February 28, 2000.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–5953 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–04]

RIN 2120–AA66

Modification of Three Jet Routes, Bellingham, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal descriptions of three Jet routes that use the Bellingham, WA, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) in their route structures. Currently, the VORTAC and the International Airport share the ''Bellingham'' name. However,

the navigational aid is approximately nine nautical miles (NM) north of airport. This has caused confusion among users. To eliminate this confusion, the Bellingham VORTAC will be renamed the ''Whatcom VORTAC,'' and all the jet routes with ''Bellingham VORTAC'' included in their legal descriptions will be amended to reflect the navigational aid name change.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 by changing the legal descriptions of three Jet Routes that have ''Bellingham VORTAC'' included as part of their route structure. Currently, the VORTAC and the International Airport share the ''Bellingham'' name but are approximately nine NM apart. This has led to confusion among users. To eliminate this confusion, the Bellingham VORTAC will be renamed the ''Whatcom VORTAC,'' and all the routes with ''Bellingham VORTAC'' included in their legal descriptions will be amended to reflect the VORTAC's name change. The name change of the VORTAC will coincide with the effective date of this rulemaking action.

Since this action merely involves editorial changes to the legal descriptions of the four Federal airways, and does not involve a change in the dimensions or operating requirements of the airways, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–528 [Revised]

From Whatcom, WA, to Williams Lake, BC, Canada. The airspace within Canada is excluded.

* * * * *

J–534 [Revised]

From INT Seattle, WA, 033° and Whatcom, WA, 090° radials; Whatcom; to Williams Lake, BC, Canada, excluding the airspace within Canada.

J–591 [Revised]

From Whatcom, WA; to Kelowna, BC, Canada. The segment within Canada is excluded.

* * * * *

Issued in Washington, DC, on March 2, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–5950 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 734, 738, 740, 742, 743, 744, 748 and 774

[Docket No. 000204027–0027–01]

RIN 0694–AC14

Revisions to License Exception CTP

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by revising License Exception CTP to reflect continuing technological advancement in the computer industry. Accordingly, High Performance Computers (HPCs) with a composite theoretical performance (CTP) of up to 33,000 millions of theoretical operations per second (MTOPS) can be exported to Computer Tier 2 countries, and HPCs with a CTP up to 20,000 MTOPS can be exported to civilian end-users and end-uses in Computer Tier 3 destinations under License Exception CTP. For military end-users and end-uses in Computer Tier 3 countries, the CTP limit remains at 6,500 MTOPS until August 14, 2000, when it is raised to 12,500 MTOPS. This coincides with the date this rule raises the advance notification level for HPC exports to Computer Tier 3 countries to 12,500 MTOPS. As required by the National Defense Authorization Act of 1998 (NDAA), changes in the advance notification level for HPC exports to Tier 3 destinations are only effective 180 days following the submission of a report to Congress. This report was sent to Congress on February 16, 2000. This rule also moves Romania from Computer Tier 3 to Computer Tier 2, effective June 15, 2000, and links the level of HPCs requiring post-shipment verification reporting to the advance notification level for HPC exports to Computer Tier 3 destinations. This rule also revises the Commerce Control List (CCL) to liberalize the national security thresholds for digital computers to conform with recently agreed changes in the Wassenaar List of Dual-Use Goods and Technologies, and corrects/updates the mailing address for submission of post-shipment reports.

DATES: This rule is effective March 10, 2000.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, Office of Strategic Trade and Foreign Policy Controls,

Bureau of Export Administration, Telephone: (202) 482–0092.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2000, the President announced significant changes to export control policy for HPCs. The new policy continues the Administration's commitment, as announced on July 1, 1999, to review and update its HPC policy every 6 months to reflect rapid advancements in microprocessor technology, as well as identify any risk posed by HPC exports to certain end-users and countries. This policy strengthens America's high-tech competitiveness, while maintaining export controls to protect U.S. national security.

The Administration, in consultation with the national security community and industry, has determined the following adjustments are warranted. Effective immediately, the upper License Exception CTP level for Computer Tier 2 countries is raised from 20,000 to 33,000 MTOPS and the upper License Exception CTP level for civil end-users and civil end-uses in Computer Tier 3 countries is raised from 12,300 to 20,000 MTOPS. For military end-users and end-uses in Computer Tier 3 countries, the upper CTP level remains at 6,500 MTOPS until August 14, 2000, when it is raised to 12,500 MTOPS. This coincides with the date this rule raises the advance notification level for HPC exports to Computer Tier 3 countries from 6,500 to 12,500 MTOPS. As required by the NDAA, changes in the advance notification level for HPC exports to Tier 3 destinations are only effective 180 days following the submission of a report to Congress. This report was sent to Congress on February 16, 2000. This new advance notification level reflects the Administration's determination that widespread commercial availability of computers with performance capabilities up to 12,500 MTOPS makes that a realistic and enforceable level.

This rule removes Romania from Computer Tier 3 and places it in Computer Tier 2. However, due to requirements in the 1998 NDAA, removing Romania from Computer Tier 3 is not effective until 120 days after the Congress receives a report justifying such a removal. On February 16, 2000, the President informed the Congress of his intent to remove Romania from Computer Tier 3; thus, Romania will be moved to Computer Tier 2 effective June 15, 2000.

This rule also links the performance level of HPCs requiring post-shipment verification reporting to the advance notification level for HPC exports to Computer Tier 3 destinations. This change implements Section 1407(c) of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106–65, October 5, 1999), which amended Section 1213(e) of the NDAA for FY98. As a result, post-shipment verification reporting is required for exports of computers with a CTP greater than 6,500 MTOPS to Computer Tier 3 destinations made on or after January 23, 2000. Post-shipment verification reporting is required for exports of computers with a CTP greater than 12,500 MTOPS to Computer Tier 3 destinations made on or after August 14, 2000.

In addition, this rule amends Export Control Classification Number (ECCN) 4A003 by increasing the control level for digital computers from 2,000 to 6,500 MTOPS to conform with recently agreed changes in the Wassenaar List of Dual-Use Goods and Technologies. To fulfill U.S. commitments to the Wassenaar Arrangement with regard to dual-use items, this final rule also revises the reporting requirements for exports of digital computers controlled under the Wassenaar Arrangement and by conforming § 740.7 (License Exception CTP) and § 742.12 (High Performance Computers) to be consistent with the recently agreed national security levels for digital computers.

Finally, this rule makes conforming changes in parts 734, 738, 742, 744 and 748.

Due to rapid advancement in HPC and microprocessor technology, the United States will routinely review these levels to determine if further adjustments are warranted. In particular, agencies will review control levels by April 2000 to determine if further changes are warranted; additional countries may also be moved between tiers.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 13, 1999 (64 FR 44101).

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This regulation involves collections previously approved by the Office of Management and Budget under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Information is also collected under OMB control number 0694–0107, ''National Defense Authorization Act,'' Advance Notifications and Post-Shipment Verification Reports, which carries a burden hour estimate of 15 minutes per report. Information is also collected under OMB control number 0694–0106, ''Reporting and Recordkeeping Requirements under the Wassenaar Arrangement EAR Section 743'', which carries a burden hour estimate of 11 minutes per report. This rule also involves collections of information under OMB control number 0694–0073, ''Export Controls of High Performance Computers'' and OMB control number 0694–0093, ''Import Certificates and End-User Certificates''.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rule making and an opportunity for public comment be given for this rule. Because a notice of proposed rule making and opportunities for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Office of Exporter Services, Bureau of Export Administration,

Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects

15 CFR Parts 734 and 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Parts 740, 743 and 748

Administrative practice and procedure, Exports, Foreign trade, Reporting and record keeping requirements.

15 CFR Part 742

Exports, Foreign trade.

15 CFR Parts 744 and 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 734, 738, 740, 742, 743, 744, 748 and 774 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

1. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. The authority citation for 15 CFR Part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

3. The authority citation for 15 CFR Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

4. The authority citation for 15 CFR Part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

5. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

6. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of August 15, 1995 (60 FR 42767, August 17, 1995); Notice of August 14, 1996 (61 FR 42527); Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

7. The authority citation for 15 CFR part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

8. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 734—[AMENDED]

§ 734.4 [Amended]

9. Section 734.4 is amended by revising the phrase ''12,300 MTOPS'' in paragraph (a) to read ''20,000 MTOPS''.

PART 738—[AMENDED]

10. Supplement No. 1 to Part 738 is amended by revising the phrase ''greater than 20,000 MTOPS'' in the second footnote to read ''greater than 33,000 MTOPS''.

PART 740—[AMENDED]

11. Section 740.7 is amended by:

a. Adding a sentence at the end of paragraph (c)(1) and adding two sentences at the end of paragraph (d)(1); and

b. Revising paragraphs (b)(2), (c)(2), (d)(2), (d)(5)(i), (d)(5)(v), introductory text (d)(5)(v)(B)(*1*), and (d)(5)(v)(B)(*2*) to read as follows:

§ 740.7 Computers (CTP).

* * * * *

(b) * * *

(2) *Eligible Computers.* The computers eligible for License Exception CTP to Tier 1 destinations are those having a Composite Theoretical Performance (CTP) greater than 6,500 Millions of Theoretical Operations Per Second (MTOPS).

* * * * *

(c) * * *

(1) *Eligible Countries.* * * * As of June 15, 2000, Romania is a Computer Tier 2 country.

(2) *Eligible computers.* The computers eligible for License Exception CTP to Tier 2 destinations are those having a CTP greater than 6,500 MTOPS, but less than or equal to 33,000 MTOPS.

(d) * * *

(1) *Eligible Countries.* * * * Until June 14, 2000, Romania is a Computer Tier 3 country. As of June 15, 2000, Romania is moved to Computer Tier 2.

(2) *Eligible computers.* Computers with a CTP greater than 6,500 MTOPS, but less than or equal to 20,000 MTOPS, are eligible for License Exception CTP to civil end-users and end-uses. Beginning on August 14, 2000, computers having a CTP greater than 6,500 MTOPS, but less than or equal to 12,500 MTOPS, are eligible for License Exception CTP to military end-users and end-uses subject to the restrictions in paragraph (d)(3) of this section.

* * * * *

(5) *NDAA notification.* (i) *General requirement.* The National Defense Authorization Act (NDAA) of FY98 enacted on November 18, 1997 requires advance notification of certain exports and reexports of computers to Computer Tier 3 countries. Prior to August 14, 2000, advance notification is required for all exports and reexports of computers with a CTP greater than 6,500 but less than or equal to 20,000 MTOPS to Computer Tier 3 destinations. Beginning on August 14, 2000, advance notification is required for all exports and reexports of computers with a CTP greater than 12,500 but less than or equal to 20,000 MTOPS to Computer Tier 3 destinations. For each such transaction destined to Computer Tier 3, prior to using License Exception CTP, you must first notify BXA by submitting a completed Multipurpose Application Form (BXA–748P). The Multipurpose Application Form must be completed including all information required for a license application according to the

instructions described in Supplement No. 1 to part 748 of the EAR, with two exceptions. You (the applicant as listed in Block 14) shall in Block 5 (Type of Application) mark the box ''Other.'' This designator will permit BXA to route the NDAA notice into a special processing procedure. (Blocks 6 and 7, regarding support documentation, may be left blank.) You must also provide a notice using this procedure prior to exporting or reexporting items that you know will be used to enhance beyond 6,500 MTOPS the CTP of a previously exported or reexported computer. Beginning on August 14, 2000, you must provide a notice using this procedure prior to exporting or reexporting items that you know will be used to enhance beyond 12,500 MTOPS the CTP of a previously exported or reexported computer. BXA will not initiate the registration of an NDAA notice unless all information on the Multipurpose Application form is complete.

* * * * *

(v) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of certain computers to destinations in Computer Tier 3. Exporters must file post-shipment reports for computer exports, as well as exports of items used to enhance previously exported or reexported computers, according to the following schedule: for exports occurring on or after February 3, 1998, but on or before January 22, 2000, reports are required for computers with a CTP greater than 2,000 MTOPS; for exports occurring on or after January 23, 2000, but on or before August 13, 2000, reports are required for computers with a CTP greater than 6,500 MTOPS; and for exports occurring on or after August 14, 2000, reports are required for computers with a CTP greater than 12,500 MTOPS. Post-shipment reports must be submitted in accordance with the provisions of this paragraph (d)(5)(v), and all relevant records of such exports must be kept in accordance with part 762 of the EAR.

(A) * * *

(B) * * *

(*1*) For deliveries by U.S. postal service: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Attn: Office of Enforcement Analysis HPC Team, Room 4065, Washington, D.C. 20044.

(*2*) For courier deliveries: U.S. Department of Commerce, Office of Enforcement Analysis HPC Team, Room 4065, 14th Street and Constitution Ave. NW, Washington, DC 20230.

* * * * *

§ 740.11 [Amended]

12. Section 740.11 is amended by revising the phrase ''20,000 MTOPS'' in paragraphs (a)(2)(ii) and (iii) and in paragraph (c)(2)(i) to read ''33,000 MTOPS''.

13. Supplement No. 1 to section 740.11 is amended by revising the phrase ''20,000 MTOPS'' in paragraphs (a)(1)(ii), (a)(1)(iii), (b)(1)(ii), and (b)(1)(iii) to read ''33,000 MTOPS''.

PART 742—[AMENDED]

14. Section 742.12 is amended by revising the phrase ''greater than 2000'' in paragraph (a)(1) to read ''greater than 6,500''; revising the phrase ''4,000 MTOPS'' in paragraph (a)(3) to read ''6,500 MTOPS''; revising the phrase ''greater than 20,000'' in paragraph (b)(2)(i) to read ''greater than 33,000''; revising the phrase ''2,000 MTOPS'' in paragraphs (b)(3)(i)(A), (b)(3)(iii), and (b)(3)(iv) to read ''6,500 MTOPS'' wherever it occurs; and by revising paragraphs (b)(3)(i)(B), (b)(3)(i)(C), (b)(3)(iv) introductory text, (b)(3)(iv)(B)(*1*), and (b)(3)(iv)(B)(*2*) to read as follows:

* * * * *

§ 742.12 High Performance Computers

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) A license is required to export or reexport computers with a CTP greater than 20,000 MTOPS for civilian end-users and end-uses in countries in Computer Tier 3. Prior to August 14, 2000, a license is required to export or reexport computers having a CTP greater than 6,500 MTOPS to military end-users and end-uses in Computer Tier 3. Beginning on August 14, 2000, a license is required to export or reexport computers having a CTP greater than 12,500 MTOPS to military end-users and end-uses in Computer Tier 3.

(C) Prior to August 14, 2000, a license may be required to export or reexport computers with a CTP greater than 6,500 MTOPS to countries in Computer Tier 3 pursuant to the NDAA (see § 740.7(d)(5) of the EAR). Beginning on August 14, 2000, a license may be required to export or reexport computers with a CTP greater than 12,500 MTOPS to countries in Computer Tier 3 pursuant to the NDAA (see § 740.7(d)(5) of the EAR).

(ii) * * *

(iii) * * *

(iv) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of certain computers to destinations in Computer Tier 3. Exporters must file post-shipment reports for computer exports, as well as exports of items used to enhance previously exported or reexported computers, according to the following schedule: for exports occurring on or after February 3, 1998, but on or before January 22, 2000, reports are required for computers with a CTP greater than 2,000 MTOPS; for exports occurring on or after January 23, 2000, but on or before August 13, 2000, reports are required for computers with a CTP greater than 6,500 MTOPS; and for exports occurring on or after August 14, 2000, reports are required for computers with a CTP greater than 12,500 MTOPS. Post-shipment reports must be submitted in accordance with the provisions of this paragraph (b)(3)(iv), and all relevant records of such exports must be kept in accordance with part 762 of the EAR.

(A) * * *

(B) * * *

(1) For deliveries by U.S. postal service: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Attn: Office of Enforcement Analysis HPC Team, Room 4065, Washington, D.C. 20044.

(2) For courier deliveries: U.S. Department of Commerce, Office of Enforcement Analysis HPC Team, Room 4065, 14th Street and Constitution Ave. NW, Washington, DC 20230.

* * * * *

PART 743—[AMENDED]

15. Section 743.1 is amended by removing and reserving paragraph (e)(2); and by revising paragraph (c)(2) (the note is unchanged), as follows:

§ 743.1 Wassenaar Arrangement.

* * * * *

(c) * * *

(2) Reports for ''digital computers'' and ''electronic assemblies'' controlled under ECCN 4A003.b and .c are required only for computers with a composite theoretical performance (CTP) exceeding 6,500 MTOPS or computer enhancements thereof such that the CTP exceeds 6,500 MTOPS. Records for software controlled by 4D001 are required for software specially designed for the development or production of computers having a CTP exceeding 6,500 MTOPS. For the calculation of CTP, see the Technical Note for Category 4 in the Commerce Control List (Supplement No. 2 to part 774 of the EAR).

* * * * *

PART 744—[AMENDED]

16. Supplement No. 4 to part 744 is amended by revising the phrase ''For computers between 2,000 and 7,000 MTOPS'' in the License requirement column for the Israeli entity ''Ben Gurion University, Israel'' to read ''For computers above the Tier 3 military level described in § 742.12(b)(3)(i)(B)''.

PART 748—[AMENDED]

17. Section 748.10 is amended by revising paragraphs (b)(3) and (b)(4) introductory text as follows:

§ 748.10 Import and End-User Certificates.

* * * * *

(b) * * *

(3) Your transaction involves an export to the People's Republic of China of a computer, you must obtain a PRC End-User Certificate, regardless of dollar value, as follows:

(i) For license applications submitted on or before August 13, 2000, a PRC End-User Certificate is required for computers with a Composite Theoretical Performance (CTP) greater than 6,500 Million Operations Per Second (MTOPS) and for license applications submitted on or after August 14, 2000, a PRC End-User Certificate is required for computers with a CTP greater than 12,500 MTOPS;

(ii) For exports under License Exception CTP occurring on or before August 13, 2000, a PRC End-User Certificate is required for computers with a CTP of greater than 6,500 MTOPS and for such exports occurring on or after August 14, 2000, a PRC End-User Certificate is required for computers with a CTP greater than 12,500.

(4) Your license application involves the export of commodities and software classified in a single entry on the CCL, the total value of which exceeds $5,000. Note that this $5,000 threshold does not apply to exports to the People's Republic of China of computers subject to the provisions of § 748.10(b)(3).

* * * * *

PART 774—[AMENDED]

18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers is amended by revising Export Control Classification Number (ECCN) 4A003, to read as follows:

4A003 ''Digital computers'', ''electronic assemblies'', and related equipment therefor, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

Control(s)	Country chart
NS applies to 4A003.b and .c.	NS Column 1.
NS applies to 4A003.a, d, .e, and .g.	NS Column 2.
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006.	MT Column 1.
CC applies to digital computers for computerized finger-print equipment.	CC Column 1.
AT applies to entire entry (refer to 4A994 for controls on digital computers with a CTP ≥ 6 but ≤ to 6,500 Mtops).	AT Column 1.
NP applies to digital computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. See § 742.3(b) of the EAR for information on applicable licensing review policies.	
XP applies to digital computers with a CTP greater than 6,500 Mtops, unless a License Exception is available. XP controls vary according to destination and end-user and end-use. See § 742.12 of the EAR for additional information.	

Note: For all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria, no license is required (NLR) for computers with a CTP greater than 6,500 Mtops, and for assemblies described in 4A003.c that are not capable of exceeding a CTP greater than 6,500 Mtops in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

LVS: $5000; N/A for MT and ''digital'' computers controlled by 4A003.b and having a CTP exceeding 10,000 MTOPS; or ''electronic assemblies'' controlled by 4A003.c and capable of enhancing performance by aggregation of ''computing elements'' so that the CTP of the aggregation exceeds 10,000 MTOPS.

GBS: Yes, for 4A003.d, .e, and .g and specially designed components therefor, exported separately or as part of a system.

CTP: Yes, for computers controlled by 4A003.a, .b and .c, to the exclusion of other technical parameters, with the exception of parameters specified as controlled for Missile Technology (MT) concerns and 4A003.e (equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits of 3A001.a.5.a). See § 740.7 of the EAR.

CIV: Yes, for 4A003.d (having a 3–D vector rate less than 75 M vectors/sec), .e, and .g.

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: See also 4A994 and 4A980.

Related Definitions: N/A.

Items:

Note 1: 4A003 includes the following:

a. Vector processors;

b. Array processors;

c. Digital signal processors;

d. Logic processors;

e. Equipment designed for ''image enhancement'';

f. Equipment designed for ''signal processing''.

Note 2: The control status of the ''digital computers'' and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:

a. The ''digital computers'' or related equipment are essential for the operation of the other equipment or systems;

b. The ''digital computers'' or related equipment are not a ''principal element'' of the other equipment or systems; *and*

N.B. 1: The control status of ''signal processing'' or ''image enhancement'' equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the ''principal element'' criterion.

N.B. 2: For the control status of ''digital computers'' or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).

c. The ''technology'' for the ''digital computers'' and related equipment is determined by 4E.

a. Designed or modified for ''fault tolerance'';

Note: For the purposes of 4A003.a., ''digital computers'' and related equipment are not considered to be designed or modified for ''fault tolerance'' if they utilize any of the following:

1. Error detection or correction algorithms in ''main storage'';

2. The interconnection of two ''digital computers'' so that, if the active central processing unit fails, an idling but mirroring

central processing unit can continue the system's functioning;

3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or

4. The synchronization of two central processing units by ''software'' so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. ''Digital computers'' having a ''composite theoretical performance'' (''CTP'') exceeding 6,500 million theoretical operations per second (Mtops);

c. ''Electronic assemblies'' specially designed or modified to be capable of enhancing performance by aggregation of ''computing elements'' (''CEs'') so that the ''CTP'' of the aggregation exceeds the limit in 4A003.b.;

Note 1: 4A003.c applies only to ''electronic assemblies'' and programmable interconnections not exceeding the limit in 4A003.b. when shipped as unintegrated ''electronic assemblies''. It does not apply to ''electronic assemblies'' inherently limited by nature of their design for use as related equipment controlled by 4A003.d, or 4A003.e

Note 2: 4A003.c does not control ''electronic assemblies'' specially designed for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

d. Graphics accelerators and graphics coprocessors exceeding a ''three dimensional Vector Rate'' of 3,000,000;

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;

f. Reserved.

g. Equipment specially designed to provide external interconnection of ''digital computers'' or associated equipment that allows communications at data rates exceeding 80 Mbyte/s.

Note: 4A003.g does not control internal interconnection equipment (e.g., backplanes, buses) passive interconnection equipment, ''network access controllers'' or ''communication channel controllers''.

Dated: March 2, 2000.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 00–5516 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–33–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendments.

SUMMARY: The Commission is amending the flammability standards for children's sleepwear in sizes 0 through 6X and sizes 7 through 14 by revising the laundering procedure specified in those standards. These laundering procedures help assure that any chemical flame retardants are not removed or degraded with repeated washing and drying, thereby creating a flammability hazard. The Commission is issuing these amendments because the detergent specified by the existing laundering procedure is no longer available and the operating characteristics of the washing and drying machines required by that procedure are no longer representative of machines now used for home laundering.

DATES: The rule will become effective on April 10, 2000 and will apply to products manufactured or imported after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400, extension 1370.

SUPPLEMENTARY INFORMATION:

A. Background

The Flammable Fabrics Act (''FFA'') (15 U.S.C. 1191 *et seq.*) authorizes the Commission to issue and amend flammability standards and regulations to protect the public from unreasonable risks of death, injury, and property damage from fire associated with products of wearing apparel made from fabric and related materials.

In 1971, the Secretary of Commerce issued a flammability standard for children's sleepwear in sizes 0 through 6X to protect young children from death and serious burn injuries which had been associated with ignition of sleepwear garments such as nightgowns and pajamas, by small open-flame sources. That standard became effective in 1972, and is codified at 16 CFR Part 1615.

In 1973, authority to issue flammability standards under the FFA was transferred from the Department of Commerce to the Consumer Product Safety Commission by section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)). In 1974, the Commission issued a flammability standard for children's sleepwear in sizes 7 through 14. That standard became effective in 1975 and is codified at 16 CFR part 1616.

B. Amending the Flammability Standards

As discussed below, laundering procedures are prescribed by the standards to help assure that any flame retardant treatment used in the production of children's sleepwear does not deteriorate over time and thereby create a flammability hazard. However, the current procedures are out of date in several respects.

1. Current Laundering Procedures

Each of the children's sleepwear standards describes the apparatus and procedure used to test items for compliance with the standard. See 16 CFR 1615.4 and 1616.5. Section 1615.4(g)(4) of the standard for sizes 0 through 6X and section 1616.5(c)(4) of the standard for sizes 7 through 14 require that testing shall be performed on finished items, as produced (or after one washing and drying in the case of garments labeled with instructions to wash before wearing) and after they have been washed and dried 50 times in accordance with a specified laundering procedure. That laundering procedure is AATCC Test Method 124–69, published by the American Association of Textile Chemists and Colorists (''AATCC'').(1) [1] Each standard incorporates specific aspects of that laundering procedure by reference.

The AATCC Test Method was developed in 1967 and revised in 1969. AATCC Test Method 124–69 specifies operating characteristics of the washing machine and dryer to be used, wash water and rinse water temperatures, exhaust temperature of the dryer, and a particular detergent, AATCC Standard Detergent 124. These specifications are representative of the equipment, wash, rinse, and drying temperatures, and detergent used for home laundering in the 1960s. For example, AATCC

[1] Numbers in parentheses identify reference documents in the List of Relevant Documents at the end of this notice. Requests for inspection of any of these documents should be made at the Office of the Secretary, 4330 East-West Highway, room 502, or by calling that office at (301) 504–0800.

Standard Detergent 124 is a high-phosphate powder with optical brightener, similar to the phosphate-based detergents sold to consumers between 1950 and 1970.(3)

Since 1970, environmental concerns about water pollution have resulted in the elimination of phosphate-based detergents for home laundering. Today, all laundry detergents sold to consumers are nonphosphate-based. Additionally, energy-efficient washing machines and dryers currently sold for consumer use have operating characteristics and temperature settings which differ from those specified by AATCC Test Method 124–69.(3)

2. Revised Laundering Test Method

In 1996, AATCC revised AATCC Test Method 124, ''Appearance of Fabrics After Repeated Home Laundering.''(2) The 1996 AATCC test method more closely resembles the equipment and practices currently used for household laundering of fabrics. The revised test method differs from AATCC Test Method 124–69 by specifying the use of a nonphosphate-based detergent. The 1996 test method also specifies use of a washing machine with different operating characteristics than those specified by AATCC Test Method 124–69, and rinse water temperatures which differ from those in the older test method.(3) Table 1, below, provides a summary comparison of the two test methods.

TABLE 1.—AATCC TEST METHOD 124

Wash/dry Conditions	Version 1969	Version 1996	
Washing Machine;			
Cycle	Normal	Normal/Cotton Sturdy.	
Wash Water Temp.	60±3°C	60 ± 3°C.	
Rinse Water Temp.	41±3°C	Less Than 29°C.	
Water Level	Full	18 ±1 gal.	
Agitator Speed	70 ± 5 spm	179±2spm.	
Wash Time	12 minutes	12 minutes.	
Spin Speed	500–510 rpm	630–660 rpm.	
Final Spin Cycle	4 minutes	6 minutes.	
Dryer:			
Cycle	Normal	Cotton Sturdy	Durable Press
Exhaust Temp.	140–160°F	140–160°F	140–160°F.
Cool Down Cycle	5 minutes	5 minutes	10 minutes.

spm: strokes (or cycles) per minute: rpm = revolutions per minute

In 1996, AATCC also announced that when that organization's supply of Standard Detergent 124 is depleted, that detergent will no longer be available. AATCC is the only source for Standard Detergent 124. Additionally, washing machines now offered for sale do not have the settings and operating characteristics of the washing machine specified by AATCC Test Method 124–69.(3)

3. Review of Existing Standards

As explained in the notice of proposed rulemaking, the Commission staff reviewed and analyzed twelve other international and technical association standards or test methods to determine if any were appropriate for consideration in this proceeding. All of the identified standards for fabric laundering have significant deficiencies. They are either based on earlier versions of AATCC Test Method 124 (with obsolete detergent and equipment), require equipment not available in the U.S., use only water in the laundering procedure, or specify significantly lower wash and rinse water temperatures than those still available for consumers.

4. Comparability of Test Results

In order to compare the results of laundering using AATCC Test Method 124–69 with those of the new AATCC Test Method 124–96 the Commission performed some tests of fabrics using each method. The laundering tests indicated that changes in washing machine and dryer operating conditions between the old and new versions of AATCC Test Method 124 did not make a difference in the flammability performance of the fabrics tested. However, the cotton sleepwear that was treated with the phosphorous-based Pyrovatex CP-new did not perform well in flammability testing after laundering with the new AATCC detergent or after laundering with common powder detergents. Liquid detergents did not seem to adversely affect flammability performance. Fabrics treated with the antimony-based FR showed some random failures that, according to laboratory chemical analyses, apparently were unrelated to the detergent and laundering conditions. The new AATCC detergent did not affect the flammability of the untreated polyester fabrics. However, one polyester fabric did show reduced flame resistance when a liquid fabric softener was used. Labels on both liquid and sheet fabric softener packages state that they should not be used on garments labeled as flame resistant.

After CPSC informed the manufacturer of Pyrovatex of the results the manufacturer conducted additional studies and determined that such factors as the fabric, the application process, storage conditions, and consumer care practices can affect the flame resistance of the light weight fabrics used for children's sleepwear. Because the manufacturer has little control over these factors, the company decided, with one exception, to withdraw Pyrovatex from sale to the sleepwear industry.

With the withdrawal of Pyrovatex for treating children's sleepwear, the change in detergent and laundering equipment from AATCC 124–69 to AATCC 124–96 will not have any effect on the flammability performance of children's sleepwear on the market.

5. Proposed Amendment of Standards

On March 17, 1999, the Commission proposed to revise the laundering procedures specified in 16 CFR 1632.5(b) to those of AATCC Test Method 124–1996. 64 FR 13132. As explained in the preamble to the proposed rule, the Commission determined that an advance notice of proposed rulemaking was not necessary to begin this proceeding. *Id.* at 13128. The amendments preserve the original intent and effect of the existing test method, modifying that method only as necessary to reflect the existence of modern equipment and detergent.

Moreover, the existing regulations permit the Commission to employ a laundering test method different from AATCC Test Method 124 if it concludes that the test method is substantively as protective.

The Commission received comments on the proposed rule from the Soap and Detergent Association (''SDA''), American Textile Manufacturers Institute (''ATMI''), and the National Cotton Council (''NCC''). ATMI and NCC both expressed their support for the proposed revision. SDA's comments are discussed below.

Wash and Rinse Water Temperatures

SDA suggested that the Commission consider a laundering protocol different than AATCC Test Method 124. SDA's suggested protocol calls for cooler wash and rinse temperatures, stating that they are more representative of today's laundering conditions.

The Commission declines to make this change. Many water heaters in use today are set at 60C/140F. Thus, consumers have hotter wash water available to them than the 32C/90F that SDA recommends. It is appropriate that the laundering requirements reflect not necessarily the average conditions, but the most rigorous that a consumer is likely to use. By specifying a hot water wash and a cold water rinse, the revised CPSC standard represents the most rigorous real, although not necessarily average, wash conditions.

Water Hardness

SDA also suggested that the revised standard should specify water hardness criteria. While water hardness is one factor that may affect the flammability performance of some fabrics, the Commission has no evidence that water hardness is a significant problem for flame retardant treated products currently marketed. At this time, the Commission is only correcting the outdated detergent and laundering conditions in the current FFA standards. It is not within the scope of this proceeding to consider additional criteria.

Ballast Load Weight

The SDA suggested changing the ballast load weight to 2.7±0.1 kg (6±0.2 lb). CPSC's current standard specifies 3.64 kg (8 lb) while the AATCC Test Method 124 only requires 1.8kg (4 lb). SDA may not have realized that CPSC is retaining the larger load requirement. As explained above, the Commission is only correcting the outdated aspects of the laundering standard. It is not altering other criteria.

Omit Reference to a Specific Date

Finally, SDA suggested that the Commission not refer to the specific year of the AATCC standard but simply refer to the most current method. This would alleviate the need to revise the standard every time the AATCC standard is revised.

The Commission cannot accept this suggestion. For any change by AATCC to have the force and effect of a Commission rule, the Commission must formally adopt it through notice and comment rulemaking.

6. Final Rule

The amendments require specimens to be tested as produced (or after one washing and drying) and after washing and drying 50 times using the procedure specified in AATCC Test Method 124–1996. The amendments incorporate that test method into the sleepwear standard by reference.

The amendments also include minor changes to the enforcement regulations at 16 CFR 1615.32 and 1616.32 prescribing the procedure for seeking approval from the Commission for use of alternate laundering procedures. The amendments of those sections:

(i) Update the laundering procedure prescribed by the sleepwear standards to AATCC Test Method 124–1996; and

(ii) Substitute the words ''Assistant Executive Director for Compliance'' for ''Associate Executive Director for Compliance and Enforcement'' to reflect the current title for that position.

The amendments of the enforcement rules implementing the standard for sizes 7 through 14 also include a revision of § 1616.32(g), Commission testing for compliance. The amendment corrects an erroneous citation in the regulations to the laundering provisions of the standard. The correct citation in the amendment is to § 1616.5(c)(4)(ii) of the standard rather than § 1616.5(c)(4)(iii) in the existing text. No similar error exists in the enforcement rules implementing the standard for sizes 0 through 6X.

7. Effective Date

The Commission proposed that the amendments become effective 30 days after publication of a final rule. 64 FR 13128. As discussed in the preamble to the proposed rule, the standard detergent specified by the existing laundering method in the standard is no longer available. Thus the Commission believes that an effective date 30 days after publication of final amendments will be in the public interest. The Commission is not withdrawing or limiting the exemption for products in inventory or with the trade as provided by section 4(b) of the FFA.

The Commission received no comments on the proposed effective date. The Commission continues to believe that an effective date of thirty days allows adequate notice to all interested persons of the change in laundering procedure, and at the same time assures that the Commission will be able to test for compliance with the standards without interruption. Those manufacturers who perform prototype testing in accordance with the laundering procedure specified in the standard will also benefit from a relatively short effective date.

C. Other Issues

1. Impact on Small Businesses

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certified that the proposed amendments to the children's sleepwear standards and enforcement rules will not have a significant economic impact on a substantial number of small entities, including small businesses. 64 FR 13129. Because the amendment codifies existing industry testing practices (and reflects current consumer practices), it is not expected to have an effect on small entities.

2. Environmental Considerations

The amendments fall within the categories of Commission actions described at 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. As discussed in the proposed rule, neither an environmental assessment nor an environmental impact statement is required.

3. Executive Orders

Executive Order 12988 (February 5, 1996), requires agencies to state in clear language the preemptive effect, if any, to be given to a new regulation. The amendments modify two flammability standards issued under the FFA. With certain exceptions which are not applicable in this instance, no state or political subdivision of a state may enact or continue in effect ''a flammability standard or other regulation'' applicable to the same fabric or product covered by an FFA standard if the state or local flammability standard or other regulations is ''designed to protect against the same risk of the occurrence fire'' unless the state or local flammability standard or regulation ''is identical'' to the FFA standard. See section 16 of the FFA (15 U.S.C. 1203). Consequently, the

amendments will preempt nonidentical state or local flammability standards or regulations that are intended to address the unreasonable risk of fire associated with ignition of children's sleepwear in sizes 0 through 14.

The Commission has also evaluated this rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer protection, Flammable materials, Incorporation by reference, Infants and children, Labeling, Records, Sleepwear, Textiles, Warranties.

Conclusion

Therefore, pursuant to the authority of section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)) and sections 4 and 5 of the Flammable Fabrics Act (15 U.S.C. 1193, 1194), the Commission hereby amends title 16 of the Code of Federal Regulations, chapter II, Subchapter D, parts 1615 and 1616 to read as follows:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X

1. The authority for subpart A of part 1615 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1615.4 is amended by revising paragraphs (g)(4)(i) and (g)(4)(ii) to read as follows:

§ 1615.4 Test procedure.

(g) *Testing* * * *

(4) *Laundering.* (i) The procedures described in sections 1615.4(b) through (g) shall be carried out on finished items (as produced or after one washing and drying) and after they have been washed and dried 50 times in accordance with sections 8.2.2, 8.2.3, and 8.3.1(A) of AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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. Items which do not withstand 50 launderings shall be tested at the end of their useful service life.

(ii) Washing shall be performed in accordance with sections 8.2.2 and 8.2.3 of AATCC Test Method 124–1996, using wash temperature V (60°±3°C, 140°±5°F) specified in Table II of that method, and the water level, agitator speed, washing time, spin speed and final spin cycle specified for ''Normal/Cotton Sturdy'' in Table III. A maximum washer load shall be 3.64 Kg (8 pounds) and may consist of any combination of test samples and dummy pieces. Drying shall be performed in accordance with section 8.3.1(A) of that test method, Tumble Dry, using the exhaust temperature (66°±5°C, 150°±10°F) and cool down time of 10 minutes specified in the ''Durable Press'' conditions of Table IV. Alternatively, a different number of times under another washing and drying procedure may be specified and used, if that procedure has previously been found to be equivalent by the Consumer Product Safety Commission. Such laundering is not required of items which are not intended to be laundered, as determined by the Consumer Product Safety Commission.

* * * * *

3. The authority for subpart B of part 1615 continues to read as follows:

Authority: Sec. 5, 67 Stat. 112–113, as amended, 81 Stat. 570; 15 U.S.C. 1194.

4. Section 1615.32 is amended by revising paragraphs (a)(1), (b)(1), introductory text and (b)(2), the first 3 sentences of (c)(1), (c)(2), the first sentence of (d)(3), the first sentence of (e)(1), the first sentence of (e)(2), and (f) to read as follows:

§ 1615.32 Method for establishment and use of alternate laundering procedures under section 4(g)(4)(ii) of the standard.

(a) *Scope.* (1) Section 1615.4(g)(4)(ii) of the Standard for the Flammability of Children's Sleepwear in sizes 0–6X (16 CFR 1615.4(g)(4)(ii)) requires that all fabrics and certain garments subject to the standard be tested for flammability as produced (or after one washing and drying) and after the items have been washed and dried 50 times in machines, using the procedure specified in AATCC Test Method 124–1986.[6] This section also provides that items may be laundered a different number of times under another washing and drying procedure if the Commission finds that such an alternate laundering procedure is equivalent to the procedure specified in the standard.

* * * * *

(b) *Application procedure.* (1) Applicants seeking approval for use of an alternate laundering procedure under § 1615.4(g)(4)(ii) of the standard must submit the following information in writing to the Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207:

* * * * *

(2) Applications shall be certified by the chief executive officer of the applicant or the official to whom the duty to certify has been delegated in writing. The Commission's Assistant Executive Director for Compliance must be notified in writing of any such delegation.

(c) *Use of alternate laundering procedure.* (1) The applicant may begin to use the alternate laundering procedure 30 days after the application is received by the Assistant Executive Director for Compliance unless notified to the contrary. The Assistant Executive Director for Compliance will normally furnish an applicant with written notice of approval within 30 days. The applicant may be notified that a longer time is needed for evaluation of the application, and in the discretion of the Assistant Executive Director for Compliance, may be authorized to use the alternate laundering procedure pending the final decision. * * *

(2) As provided in detail in § 1615.32(e), applicants must immediately discontinue use of an alternate procedure, and must immediately notify the Assistant Executive Director for Compliance if there are test failures during revalidation testing.

(d) *Revalidation testing.* * * *

(3) Records of revalidation testing need not be submitted to the Assistant

[6] AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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.

Executive Director for Compliance.
* * *

(e) *Revalidation testing failures.* (1) If revalidation testing for any fabric or garment does not meet the criteria of § 1615.32(f), the applicant must immediately discontinue use of the alternate laundering procedure for the fabric or garment and must immediately notify the Assistant Executive Director for Compliance in writing of the failure to meet the criteria. * * *

(2) When use of an alternate laundering procedure for a particular fabric or garment has been discontinued because of a failure to meet the criteria of § 1615.32(f), the alternate laundering procedure shall not be used again unless a new application for approval is submitted to the Assistant Executive Director for Compliance and that officer approves the application in writing. * * *

(f) *Commission criteria for evaluating applications.* (1) The Assistant Executive Director for Compliance will approve the alternate laundering procedure as equivalent to the laundering procedure specified in § 1615.4(g)(4)(ii) of the standard if testing from 20 specimens laundered by the proposed alternate procedure yields as many or more char lengths in excess of five inches as does testing from the twenty specimens laundered by the 50-laundering cycle method prescribed in the standard.

(2) If the alternate laundering procedure yields fewer char lengths in excess of five inches than does the 50-wash and dry cycle, then the Assistant Executive Director for Compliance will not consider the alternate procedure to be equivalent, with the following exception: If the number of five-inch chars from the alternate procedure is within one of the number of five-inch chars obtained from the 50-cycle procedure, the applicant may repeat the original test with new specimens and if the combined results of both tests show the count of chars exceeding five inches from the alternate is equal to, or greater than, the count from the 50-wash cycle procedure, the Assistant Executive Director for Compliance will approve the alternate laundering procedure.
* * * * *

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14

1. The authority for subpart A of part 1616 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1616.5 is amended by revising paragraphs (c)(4)(i) and (c)(4)(ii) to read as follows:

§ 1616.5 Test procedure.

(c) *Testing* * * *

(4) *Laundering.* (i) The procedures described under §§ 1616.4 Sampling and acceptance procedures, 1616.5(b) Conditioning and mounting of specimens, and 1616.5(c) Testing shall be carried out on finished items (as produced or after one washing and drying) and after they have been washed and dried 50 times in accordance with sections 8.2.2, 8.2.3, and 8.3.1(A) of AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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. Items which do not withstand 50 launderings shall be tested at the end of their useful service life with prior approval of the Consumer Product Safety Commission.

(ii) Washing shall be performed in accordance with sections 8.2.2 and 8.2.3 of AATCC Test Method 124–1996, using wash temperature V (60°±3°C, 140°±5°F) specified in Table II of that method, and the water level, agitator speed, washing time, spin speed and final spin cycle specified for ''Normal/Cotton Sturdy'' in Table III. A maximum washer load shall be 3.64 Kg (8 pounds) and may consist of any combination of test samples and dummy pieces. Drying shall be performed in accordance with section 8.3.1(A) of that test method, Tumble Dry, using the exhaust temperature (66°±5°C, 150°±10°F) and cool down time of 10 minutes specified in the ''Durable Press'' conditions of Table IV. Alternatively, a different number of times under another washing and drying procedure may be specified and used, if that procedure has previously been found to be equivalent by the Consumer Product Safety Commission. Such laundering is not required of items which are not intended to be laundered, as determined by the Consumer Product Safety Commission.
* * * * *

3. The authority for subpart B of part 1616 continues to read as follows:

Authority: Sec. 5, 67 Stat. 112–113, as amended, 81 Stat. 570; 15 U.S.C. 1194.

4. Section 1616.32 is amended by revising paragraphs (a)(1), (b)(1), introductory text and (b)(2), the first 3 sentences of (c)(1), (c)(2), the first sentence of (d)(3), the first sentence of (e)(1), the first sentence of (e)(2), (f), and (g)(1) to read as follows:

§ 1616.32 Method for establishment and use of alternate laundering procedures under section 5(c)(4)(ii) of the standard.

(a) *Scope.* (1) Section 1616.5(c)(4)(ii) of the Standard for the Flammability of Children's Sleepwear in sizes 7–14 (16 CFR 1616.5(c)(4)(ii)) requires that all fabrics and certain garments subject to the standard be tested for flammability as produced (or after one washing and drying) and after the items have been washed and dried 50 times in machines, using the procedure specified in AATCC Test Method 124–1996.[7] This section also provides that items may be laundered a different number of times under another washing and drying procedure if the Commission finds that such an alternate laundering procedure is equivalent to the procedure specified in the standard.
* * * * *

(b) *Application procedure.* (1) Applicants seeking approval for use of an alternate laundering procedure under § 1616.5(c)(4)(ii) of the standard must submit the following information in writing to the Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, DC 20207:
* * * * *

(2) Applications shall be certified by the chief executive officer of the applicant or the official to whom the duty to certify has been delegated in writing. The Commission's Assistant Executive Director for Compliance must be notified in writing of any such delegation.

(c) *Use of alternate laundering procedure.* (1) The applicant may begin to use the alternate laundering procedure 30 days after the application is received by the Assistant Executive Director for Compliance unless notified

[7] AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' Technical Manual of the American Association of Textile Chemists and Colorists, Vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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.

to the contrary. The Assistant Executive Director for Compliance will normally furnish an applicant with written notice of approval within 30 days. The applicant may be notified that a longer time is needed for evaluation of the application, and in the discretion of the Assistant Executive Director for Compliance, may be authorized to use the alternate laundering procedure pending the final decision. * * *

(2) As provided in detail in § 1616.32(e), applicants must immediately discontinue use of an alternate procedure, and must immediately notify the Assistant Executive Director for Compliance if there are test failures during revalidation testing.

(d) *Revalidation testing.* * * *

(3) Records of revalidation testing need not be submitted to the Assistant Executive Director for Compliance. * * *

(e) *Revalidation testing failures.* (1) If revalidation testing for any fabric or garment does not meet the criteria of § 1616.32(f), the applicant must immediately discontinue use of the alternate laundering procedure for the fabric or garment and must immediately notify the Assistant Executive Director for Compliance in writing of the failure to meet the criteria. * * *

(2) When use of an alternate laundering procedure for a particular fabric or garment has been discontinued because of a failure to meet the criteria of § 1616.32(f), the alternate laundering procedure shall not be used again unless a new application for approval is submitted to the Assistant Executive Director for Compliance and that officer approves the application in writing. * * *

(f) *Commission criteria for evaluating applications.* (1) The Assistant Executive Director for Compliance will approve the alternate laundering procedure as equivalent to the laundering procedure specified in § 1616.5(c)(4)(ii) of the standard if testing from 20 specimens laundered by the proposed alternate procedure yields as many or more char lengths in excess of five inches as does testing from the twenty specimens laundered by the 50-laundering cycle method prescribed in the standard.

(2) If the alternate laundering procedure yields fewer char lengths in excess of five inches than does the 50-wash and dry cycle, then the Assistant Executive Director for Compliance will not consider the alternate procedure to be equivalent, with the following exception: If the number of five-inch chars from the alternate procedure is within one of the number of five-inch chars obtained from the 50-cycle procedure, the applicant may repeat the original test with new specimens and if the combined results of both tests show the count of chars exceeding five inches from the alternate is equal to, or greater than, the count from the 50-wash cycle procedure, the Assistant Executive Director for Compliance will approve the alternate laundering procedure.

(g) *Commission testing for compliance.* (1) For the purpose of determining compliance with the standard, the Commission will rely on testing employing the laundering procedure now prescribed by § 1616.5(c)(4)(ii) of the standard. (15 U.S.C. 1193, 1194; 15 U.S.C. 2079(b)) * * * * * *

Dated: March 2, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. American Association of Textile Chemists and Colorists, ''Appearance of Durable Press Fabrics After Repeated Home Launderings,'' AATCC Test Method 124–1969. AATCC Technical Manual, Vol. 46, 1970.

2. American Association of Textile Chemists and Colorists, ''Appearance of Fabrics After Repeated Home Laundering,'' AATCC Test Method 124–1996. AATCC Technical Manual, Vol. 73, 1997.

3. Briefing memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, ''Proposed Amendments to Flammable Fabrics Act Standards to Replace Obsolete Standard Detergent and Update Laundering Procedures Required for Tests,'' November 18, 1998.

4. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Amending the Laundering Provisions of the CPSC Flammability Regulations,'' August 18, 1998.

5. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Textile Laundering Standards,'' August 18, 1998.

6. Memorandum from Gail Stafford and Shing-Bong Chen, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Detergent Comparison Tests,'' August 19, 1998.

7. Log of Meeting on January 21, 1998 concerning Flammability Test of Pyrovatex-treated Flame Resistant Fabrics.

8. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Margaret Neily, Project Manager, ''Amendments to FFA Standards,'' August 10, 1998.

9. Memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, ''Briefing Package Supplement: Laundering/Detergent Update for Flammable Fabrics Act Standards—The Soap and Detergent Association (SDA) Laundering Procedures,'' January 11, 1999.

10. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Soap and Detergent Association Proposed Laundering Procedure,'' December 23, 1998.

11. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, including SDA Recommended Wash Conditions for CFR 1615.4, September 15, 1998.

12. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, follow-up comments to September 15, 1998, letter, November 12, 1998.

13. Memorandum from Margaret L. Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, ''Laundering/Detergent Updates—FR notice supplements,'' February 19, 1999.

14. Briefing Memorandum, from Ron Medford, AED, Office of Hazard Identification and Reduction and Margaret L. Neily, Project Manager, ESME, to the Commission, ''Final Rule Updating Standard Detergent and Laundering Procedures for Flammable Fabrics Act Standards,'' January 6, 2000.

15. Memorandum from Martha A. Kosh, OS, ''Comments on Children's Sleepwear Laundering Procedures, Mattress Pads Laundering Procedures, Carpet and Rugs Laundering Procedures,'' June 1, 1999.

16. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Response to Comments Received as a Result of the Notice of Proposed Rulemaking (NPR) for the Laundering/Detergent Update for the Flammable Fabrics Act Standards,'' October 25, 1999.

[FR Doc. 00–5531 Filed 3–9–00; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1630 and 1631

Standard for the Surface Flammability of Carpets and Rugs; Standard for the Surface Flammability of Small Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendments.

SUMMARY: The Commission is amending the flammability standards for carpets and rugs and for small carpets and rugs by revising the laundering procedure specified in those standards. The laundering procedures help assure that any fire retardant treatment used on carpets or on fibers used in the manufacture of carpets will not be

removed or degraded by cleaning, thereby creating a flammability hazard. The Commission is issuing these amendments because the detergent specified by the existing laundering procedure is no longer available and the operating characteristics of the washing and drying machines required by that procedure are no longer representative of machines now used for home laundering.

DATES: The rule will become effective on April 10, 2000 and will apply to products manufactured or imported after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400, extension 1370.

SUPPLEMENTARY INFORMATION:

A. Background

The Flammable Fabrics Act (''FFA'') (15 U.S.C. 1191 *et seq.*) authorizes the Commission to issue and amend flammability standards and regulations to protect the public from unreasonable risks of death, injury, and property damage from fire associated with products of interior furnishing made from fabric and related materials.

In 1970, the Secretary of Commerce issued two flammability standards for carpets and rugs to protect the public from risks of deaths, injuries, and economic losses associated with ignition of carpets and rugs by small ignition sources. The Standard for the Surface Flammability of Carpets and Rugs, now codified at 16 CFR part 1630, is applicable to carpets and rugs with a surface area greater than 24 square feet and one dimension longer than six feet. The Standard for the Surface Flammability of Small Carpets and Rugs, now codified at 16 CFR part 1631, is applicable to carpets and rugs which have an area of 24 square feet or less, and no dimension longer than six feet.

In 1973, authority to issue and amend flammability standards under the FFA was transferred from the Department of Commerce to the Consumer Product Safety Commission by section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)).

B. Amending the Flammability Standards

As discussed below, laundering procedures are required by the standards to help assure that any fire-retardant chemicals used in the production of carpets or rugs will not be removed or degraded by repeated cleaning and create a flammability hazard. However, the current procedures are out of date in several respects.

1. Current Procedures

The carpet flammability standards describe the apparatus and procedure to be used to test carpets and rugs for compliance with the standards. See 16 CFR 1630.4 and 1631.4.

At the time the carpet standards were issued, some carpets and rugs were treated with fire retardants or made from fibers that were treated with fire retardants. Section 1630.4(b)(1)(ii) of the standard for large carpets and rugs and § 1631.4(b)(1)(ii) of the standard for small carpets and rugs require that specimens of a carpet or rug that has a fire-retardant treatment or that is made from fibers which have had a fire-retardant treatment shall be tested after they have been washed and dried 10 times in accordance with a specified laundering procedure, or ''such number of times under such other washing and drying procedures as shall have been found to be equivalent by the Consumer Product Safety Commission.''

The laundering procedure specified by the standards is AATCC Test Method 124–67, published by the American Association of Textile Chemists and Colorists (''AATCC'').(1) [1] This procedure involves washing and drying the specimens in a household washing machine and dryer. The AATCC test method is similar to the method that might be used by consumers to clean small washable carpets and rugs such as bath mats and small area rugs.

Although the AATCC laundering procedure does not resemble the method that consumers could be expected to use for cleaning wall-to-wall carpeting and large carpets or rugs, the Commission has not made a finding that any other washing and drying procedure is equivalent to AATCC Test Method 124–67. Nor has the Commission approved an alternate cleaning procedure that is normally used for them.

AATCC Test Method 124–67 specifies operating characteristics of the washing machine and dryer to be used, wash water and rinse water temperatures, exhaust temperature of the dryer, and a particular detergent, AATCC Standard Detergent 124. AATCC Test Method 124–67 was developed in 1967. These specifications are representative of the equipment, wash, rinse, and drying temperatures, and detergent used for home laundering in the 1960s. For example, AATCC Standard Detergent 124 is a high-phosphate powder with optical brightener, similar to the phosphate-based detergents sold to consumers between 1950 and 1970.(3)

Since 1970, environmental concerns about water pollution have resulted in the elimination of phosphate-based detergents for home laundering. Today, all laundry detergents sold to consumers are nonphosphate-based. Additionally, energy-efficient washing machines and dryers currently sold for consumer use have operating characteristics and temperature settings which differ from those specified by AATCC Test Method 124–67.(3)

2. Revised Laundering Test Method

In 1996, AATCC revised AATCC Test Method 124, ''Appearance of Fabrics After Repeated Home Laundering.''(2) The 1996 AATCC test method more closely resembles the equipment and practices used for household laundering of fabrics at this time. The revised test method differs from AATCC Test Method 124–67 by specifying the use of 1993 AATCC detergent, a nonphosphate-based detergent. The 1996 test method also specifies use of a washing machine with different operating characteristics than those specified by AATCC Test Method 124–67, and rinse water temperatures which differ from those in the older test method.(3) Table 1, below, provides a summary comparison of the two test methods.

[1] Numbers in parentheses identify reference documents in the List of Relevant Documents at the end of this notice. Requests for inspection of any of these documents should be made at the Office of the Secretary, 4330 East-West Highway, room 502, or by calling that office at (301) 504–0800.

TABLE 1.—AATCC TEST METHOD 124

Wash/Dry conditions	Version 1967	Version 1996	
Washing machine:			
Cycle	Normal	Normal/cotton sturdy	
Wash Water Temp.	60±3°C	60±3°C	
Rinse Water Temp.	41±3C	Less than 29°C	
Water Level	Full	18±1 gal	
Agitator Speed	70±5 spm	179±1 spm	
Wash Time	12 minutes.		
Spin Speed	500–510 rpm	630–660 rpm	
Final Spin cycle	4 minutes	6 minutes	
Dryer:			
Cycle	Normal	Cotton Sturdy	Durable Press
Exhaust Temp.	140–140°F	140–160°F	140–160°F
Cool Down Cycle	5 minutes	5 minutes	10 minutes

spm=strokes (or cycles) per minutes; rpm=revolutions per minute.

In 1996, AATCC also announced that when that organization's supply of Standard Detergent 124 is depleted, that detergent will no longer be available. AATCC is the only source for Standard Detergent 124. Additionally, washing machines offered for sale at this time do not have the settings and operating characteristics of the washing machine specified by AATCC Test Method 124–67.(3)

The laundering procedures specified in the carpet flammability standards must be followed by the Commission when testing carpets manufactured with a fire-retardant treatment to determine their compliance. Information available to the Commission indicates that at this time, no carpets or rugs treated with a fire retardant or made from fibers which have been treated with a fire retardant are offered for sale. However, it is possible that carpets treated with fire retardants may be marketed in the future.

3. Review of Other Existing Standards

As explained in the notice of proposed rulemaking, the Commission staff reviewed and analyzed fourteen other international and technical association standards or test methods to determine if any were appropriate for consideration in this proceeding. All of the standards designed for fabric laundering have significant deficiencies. They are either based on earlier versions of AATCC Test Method 124 (with obsolete detergent and equipment), require equipment not available in the U.S., use only water in the laundering procedure, or specify significantly lower wash and rinse water temperatures than those still available for consumers.

Two of these methods (AATCC 138 and a Canadian standard CAN/CGSB–4.2 No. 30.2-M90) were specifically developed for carpets. However, they use different liquid detergents, and neither of these methods approximates the typical home laundering used in the Flammability Standard for Carpets and Rugs. Further, the AATCC 138 was judged to be too harsh for the hand washable flokati rugs because of the brushing specified by the method.

4. Proposed Amendment

On March 17, 1999, the Commission proposed to revise the laundering procedures specified in 16 CFR 1632.5(b) to those of AATCC Test Method 124–1996. 64 FR 13132. As explained in the preamble to the proposed rule, the Commission determined that an advance notice of proposed rulemaking was not necessary to begin this proceeding. Id. at 13134. The amendments preserve the original intent and effect of the existing test method, modifying that method only as necessary to reflect the existence of modern equipment and detergent. Moreover, the existing regulations permit the Commission to employ a laundering test method different from AATCC Test Method 124 if it concludes that the test method is substantively as protective.

The Commission received comments on the proposed rule from the Soap and Detergent Association (''SDA''), American Textile Manufacturers Institute (''ATMI''), the National Cotton Council (''NCC''), and Shaw Industries. ATMI and NCC both expressed their support for the proposed revision. SDA's and Shaw Industries comments are discussed below.

Wash and Rinse Water Temperatures

SDA suggested that the Commission consider a laundering protocol different than AATCC Test Method 124. SDA's suggested protocol calls for cooler wash and rinse temperatures, stating that they are more representative of today's laundering conditions.

The Commission declines to make this change. Many water heaters in use today are set at 60C/140F. Thus, consumers have hotter wash water available to them than the 32C/90F that SDA recommends. It is appropriate that the laundering requirements reflect not necessarily the average conditions, but the most rigorous that a consumer is likely to use. By specifying a hot water wash and a cold water rinse, the revised CPSC standard represents the most rigorous real, although not necessarily average, wash conditions.

Water Hardness

SDA also suggested that the revised standard should specify water hardness criteria. While water hardness is one factor that may affect the flammability performance of some fabrics, the Commission has no evidence that water hardness is a significant problem for flame retardant treated products currently marketed. At this time, the Commission is only correcting the outdated detergent and laundering conditions in the current FFA standards. It is not within the scope of this proceeding to consider additional criteria.

Ballast Load Weight

The SDA suggested changing the ballast load weight to 2.7±0.1 kg (6±0.2 lb). CPSC's current standard specifies 3.64 kg (8 lb) while the AATCC Test Method 124 only requires 1.8kg (4 lb). SDA may not have realized that CPSC is retaining the larger load requirement. As explained above, the Commission is only correcting the outdated aspects of the laundering standard. It is not altering other criteria.

Omit Reference to a Specific Date

Finally, SDA suggested that the Commission not refer to the specific year of the AATCC standard but simply refer to the most current method. This would alleviate the need to revise the standard every time the AATCC standard is revised.

The Commission cannot accept this suggestion. For any change by AATCC

to have the force and effect of a Commission rule the Commission must formally adopt it through notice and comment rulemaking.

New Cleaning Method for Carpets

Shaw Industries suggested that the Commission adopt a new cleaning method for carpets, AATCC Test Method 171–1995, because it would better replicate the manner in which most carpets are cleaned.

AATCC Test Method 171–1995 simulates on-floor cleaning of carpets. While most carpets are not cleaned in washing machines as AATCC Test Method 124 prescribes, the purpose of this proceeding is to revise the laundering requirements for those carpets that may be washed in a home washing machine, not to require a new method.

5. Final Rule

The amendments require specimens of carpet manufactured with a fire-retardant treatment to be tested after washing and drying 10 times using the procedure specified in AATCC Test Method 124–1996. The amendments incorporate that test method into the carpet flammability standards by reference.

Existing §§ 1630.4(b)(1)(ii) and 1631.4(b)(1)(ii) contain the following language:

> *Alternatively*, the selected sample or oversized specimens thereof may be *washed, dry-cleaned, or shampooed* 10 times prior to cutting of test specimens, *in such manner* as the manufacturer or other interested party shall previously have established to the satisfaction of the Consumer Product Safety Commission is *normally used* for that type of carpet or rug in service. [Emphasis added.]

Alternative laundering procedures have been approved in accordance with provisions of §§ 1630.4(b)(1)(ii) and 1631.4(b)(1)(ii) for hide carpets and rugs and wool flokati carpets and rugs. See 16 CFR 1630.61, 1630.62 and 1630.63; 16 CFR 1631.61 and 1631.62. The amendments change the references in subpart C of §§ 1630 and 1631 to the revised AATCC Test Method 124–1996 so that they are consistent with the other changes.

6. Effective Date

The Commission proposed that the amendments become effective 30 days after publication of a final rule. 64 FR 13134–35. As discussed in the preamble to the proposed rule, the standard detergent specified by the existing laundering method in the standard is no longer available. Thus the Commission believes that an effective date 30 days after publication of final amendments will be in the public interest. The Commission is not withdrawing or limiting the exemption for products in inventory or with the trade as provided by section 4(b) of the FFA.

The Commission received no comments on the proposed effective date. The Commission continues to believe that an effective date of thirty days allows adequate notice to all interested persons of the change in laundering procedure, and at the same time assures that the Commission will be able to test for compliance with the standards without interruption. Those manufacturers who perform prototype testing in accordance with the laundering procedure specified in the standard will also benefit from a relatively short effective date.

C. Other Issues

1. Impact on Small Businesses

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certified that the proposed amendments to the carpet flammability standards would not have a significant economic impact on a substantial number of small entities, including small businesses. 64 FR 13135. Because the Commission is unaware of any carpets or rugs currently offered for sale which have been treated with a fire-retardant treatment or made from fibers treated with a fire-retardant, the Commission estimates that the amendments will have no economic consequences to any manufacturers, large or small, of carpets and rugs. In the event that some carpets treated with a fire-retardant or made from fibers treated with a fire-retardant treatment come onto the market in the future, manufacturers will be able to apply for approval of any alternate laundering procedure which is normally used for cleaning those products if the procedure specified by the amendments is not appropriate.

2. Environmental Considerations

The amendments fall within the categories of Commission actions described at 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. As discussed in the proposed rule, neither an environmental assessment nor an environmental impact statement is required. 64 FR 13135.

3. Executive Orders

Executive Order 12988 (February 5, 1996), requires agencies to state in clear language the preemptive effect, if any, to be given to any new regulation. The amendments would modify two flammability standards issued under the FFA. With certain exceptions which are not applicable here, no state or political subdivision of a state may enact or continue in effect ''a flammability standard or other regulation'' applicable to the same fabric or product as an FFA standard if the state or local flammability standard or regulation is ''designed to protect against the same risk of the occurrence of fire'' unless the state or local flammability standard or regulation ''is identical'' to the FFA standard. See section 16 of the FFA (15 U.S.C. 1203). Consequently, the amendments will preempt nonidentical state or local flammability standards or regulations that are intended to address the unreasonable risk of the occurrence of fire associated with ignition of carpets and rugs.

The Commission has also evaluated this rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 16 CFR Parts 1630 and 1631

Carpets, Consumer protection, Flammable materials, Floor coverings, Incorporation by reference, Labeling, Records, Rugs, Textiles, Warranties.

Conclusion

Therefore, pursuant to the authority of section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)) and sections 4 and 5 of the Flammable Fabrics Act (15 U.S.C. 1193, 1194), the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter D, Parts 1630 and 1631 to read as follows:

PART 1630—STANDARD FOR THE SURFACE FLAMMABILITY OF CARPETS AND RUGS

1. The authority for subpart A of part 1630 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1630.4 is amended by revising paragraph (b)(1)(ii), removing footnote 3 and 4 redesignating footnote 5 as footnote 3, and adding new paragraph (b)(1)(iii) to read as follows:

§ 1630.4 Test procedure.

* * * * *

(b) Sampling—(1) * * *

(ii) If the carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the selected sample or oversized specimens thereof shall be washed, prior to cutting of test specimens after they have been washed and dried either 10 times in accordance with sections 8.2.2, 8.2.3, and 8.3.1(A) of AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' using wash temperature V (60°±3° C, 140°±5° F) specified in Table II of that method, and the water level, agitator speed, washing time, spin speed and final spin cycle specified for ''Normal/Cotton Sturdy'' in Table III, and drying shall be performed in accordance with section 8.3.1(A) of that test method, Tumble Dry, maximum load 3.64 Kg (8 pounds), using the exhaust temperature (66°±5° C, 150°±10° F) and cool down time of 10 minutes specified in the ''Durable Press'' conditions of Table IV; or such number of times by another washing and drying procedure which the Consumer Product Safety Commission has determined to be equivalent of AATCC Test Method 124–1996. Alternatively, the selected sample or oversized specimens thereof may be washed, drycleaned, or shampooed 10 times, prior to cutting of test specimens, in such manner as the manufacturer or other interested party shall previously have established to the satisfaction of the Consumer Product Safety Commission is normally used for that type of carpet or rug in service.

(iii) AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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.

* * * * *

3. The authority for subpart C of part 1630 continues to read as follows:

Authority: Secs. 4, 5, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193, 1194.

4. Section 1630.61 is amended by revising the first sentence of paragraph (a) and adding four new sentences after the first sentence of paragraph (a) to read as follows:

§ 1630.61 Hide carpets and rugs—alternative washing procedure.

(a) The Standard for the Surface Flammability of Carpets and Rugs (FF 1–70) at § 1630.4(b)(1)(ii) provides that if a carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the sample or oversized specimens thereof selected for testing under the standard shall be washed prior to the cutting of test specimens either 10 times under the washing and drying procedure prescribed in Method 124–1996 of the American Association of Textile Chemists and Colorists or such number of times under such other washing and drying procedure as shall previously have been found to be equivalent by the Consumer Product Safety Commission. AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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. * * *

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5. Section 1630.62 is amended by revising the first sentences in paragraphs (a) and (d)(3) and adding four new sentences after the first sentence of paragraph (a) to read as follows:

§ 1630.62 Wool flokati carpets and rugs—alternative washing procedure.

(a) The Standard for the Surface Flammability of Carpets and Rugs (FF 1–70) at § 1630.4(b)(1)(ii) provides that if a carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the sample or oversized specimens thereof selected for testing under the standard shall be washed prior to the cutting of test specimens either 10 times under the washing and drying procedure prescribed in Method 124–1996 of the American Association of Textile Chemists and Colorists or such number of times under such other washing and drying procedure as shall previously have been found to be equivalent by the Consumer Product Safety Commission. AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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. * * *

* * * * *

(d) * * *

(3) Place individual specimen face down in a shallow pan which has been filled to a depth of 2″ with a wash solution of 1.1 grams of AATCC (American Association of Textile Chemists and Colorists) Standard Detergent as specified in AATCC Method 124–1996 (or equivalent) per liter of water preheated to 105° F. * * *

* * * * *

6. Section 1630.63 is amended by revising the first sentence in paragraph (a)(1) and adding four new sentences after the first sentence of paragraph (a)(1) to read as follows:

§ 1630.63 Suspension of washing requirements for carpets and rugs with alumina trihydrate in the backing.

(a)(1) The Standard for the Surface Flammability of Carpets and Rugs (FF 1–70) at § 1630.4(b)(1)(ii) provides that if a carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the sample or oversized specimens thereof selected for testing under the standard shall be washed prior to the cutting of test specimens either 10 times under the washing and drying procedure prescribed in Method 124–1996 of the American Association of Textile Chemists and Colorists or such number of times under such other washing and drying procedure as shall previously have been found to be equivalent by the Consumer Product Safety Commission. AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is

incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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. * * *

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PART 1631—STANDARD FOR THE SURFACE FLAMMABILITY OF SMALL CARPETS AND RUGS

1. The authority for subpart A of part 1631 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. Section 1631.4 is amended by revising paragraph (b)(1)(ii), removing footnote 3, redesignating footnotes 4 and 5 as footnotes 3 and 4 respectively, and adding new paragraph (b)(1)(iii) to read as follows:

§ 1631.4 Test procedure.

* * * * *

(b) Sampling—(1) * * *

(ii) If the carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the selected sample or oversized specimens thereof shall be washed, prior to cutting of test specimens after they have been washed and dried either 10 times in accordance with sections 8.2.2, 8.2.3, and 8.3.1(A) of AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' using wash temperature V (60°±3° C, 140°±5° F) specified in Table II of that method, and the water level, agitator speed, washing time, spin speed and final spin cycle specified for ''Normal/Cotton Sturdy'' in Table III, and drying shall be performed in accordance with section 8.3.1(A) of that test method, Tumble Dry, maximum load 3.64 Kg (8 pounds), using the exhaust temperature (66°±5° C, 150°±10° F) and cool down time of 10 minutes specified in the ''Durable Press'' conditions of Table IV; or such number of times by another washing and drying procedure which the Consumer Product Safety Commission has determined to be equivalent of AATCC Test Method 124–1996. Alternatively, the selected sample or oversized specimens thereof may be washed, drycleaned, or shampooed 10 times, prior to cutting of test specimens, in such manner as the manufacturer or other interested party shall previously have established to the satisfaction of the Consumer Product Safety Commission is normally used for that type of carpet or rug in service.

(iii) AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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.

* * * * *

3. The authority for subpart C of part 1631 continues to read as follows:

Authority: Secs. 4, 5, 67 Stat. 112, as amended, 81 Stat. 569–70; 15 U.S.C. 1193, 1194.

4. Section 1631.61 is amended by revising the first sentence of paragraph (a) and adding four new sentences after the first sentence of paragraph (a) to read as follows:

§ 1631.61 Hide carpets and rugs—alternative washing procedure.

(a) The Standard for the Surface Flammability of Carpets and Rugs (FF 1–70) at § 1630.4(b)(1)(ii) provides that if a carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the sample or oversized specimens thereof selected for testing under the standard shall be washed prior to the cutting of test specimens either 10 times under the washing and drying procedure prescribed in Method 124–1996 of the American Association of Textile Chemists and Colorists or such number of times under such other washing and drying procedure as shall previously have been found to be equivalent by the Consumer Product Safety Commission. AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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. * * *

* * * * *

5. Section 1631.62 is amended by revising the first sentences in paragraphs (a) and (d)(3) and adding four new sentences after the first sentence of paragraph (a) to read as follows:

§ 1631.62 Wool flokati carpets and rugs—alternative washing procedure.

(a) The Standard for the Surface Flammability of Carpets and Rugs (FF 1–70) at § 1630.4(b)(1)(ii) provides that if a carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the sample or oversized specimens thereof selected for testing under the standard shall be washed prior to the cutting of test specimens either 10 times under the washing and drying procedure prescribed in Method 124–1996 of the American Association of Textile Chemists and Colorists or such number of times under such other washing and drying procedure as shall previously have been found to be equivalent by the Consumer Product Safety Commission. AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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. * * *

* * * * *

(d) * * *

(3) Place individual specimen face down in a shallow pan which has been filled to a depth of 2'' with a wash solution of 1.1 grams of AATCC (American Association of Textile Chemists and Colorists) Standard Detergent as specified in AATCC Method 124–1996 (or equivalent) per liter of water preheated to 105° F. * * *

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Dated: March 2, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. American Association of Textile Chemists and Colorists, ''Appearance of Durable Press Fabrics After Repeated Home Launderings,'' AATCC Test Method 124–1969. AATCC Technical Manual, Vol. 46, 1970.

2. American Association of Textile Chemists and Colorists, ''Appearance of Fabrics After Repeated Home Laundering,'' AATCC Test Method 124–1996. AATCC Technical Manual, Vol. 73, 1997.

3. Briefing memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, ''Proposed Amendments to Flammable Fabrics Act Standards to Replace Obsolete Standard Detergent and Update Laundering Procedures Required for Tests,'' November 18, 1998.

4. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Amending the Laundering Provisions of the CPSC Flammability Regulations,'' August 18, 1998.

5. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Textile Laundering Standards,'' August 18, 1998.

6. Memorandum from Gail Stafford and Shing-Bong Chen, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Detergent Comparison Tests,'' August 19, 1998.

7. Log of Meeting on January 21, 1998 concerning Flammability Test of Pyrovatex-treated Flame Resistant Fabrics.

8. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Margaret Neily, Project Manager, ''Amendments to FFA Standards,'' August 10, 1998.

9. Memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, ''Briefing Package Supplement: Laundering/Detergent Update for Flammable Fabrics Act Standards—The Soap and Detergent Association (SDA) Laundering Procedures,'' January 11, 1999.

10. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Soap and Detergent Association Proposed Laundering Procedure,'' December 23, 1998.

11. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, including SDA Recommended Wash Conditions for CFR 1615.4, September 15, 1998.

12. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, follow-up comments to September 15, 1998, letter, November 12, 1998.

13. Memorandum from Margaret L. Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, ''Laundering/Detergent Updates—FR notice supplements,'' February 19, 1999.

14. Briefing Memorandum, from Ron Medford, AED, Office of Hazard Identification and Reduction and Margaret L. Neily, Project Manager, ESME, to the Commission, ''Final Rule Updating Standard Detergent and Laundering Procedures for Flammable Fabrics Act Standards,'' January 6, 2000.

15. Memorandum from Martha A. Kosh, OS, ''Comments on Children's Sleepwear Laundering Procedures, Mattress Pads Laundering Procedures, Carpet and Rugs Laundering Procedures,'' June 1, 1999.

16. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Response to Comments Received as a Result of the Notice of Proposed Rulemaking (NPR) for the Laundering/Detergent Update for the Flammable Fabrics Act Standards,'' October 25, 1999.

[FR Doc. 00–5530 Filed 3–9–00; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1632

Standard for the Flammability of Mattresses and Mattress Pads

AGENCY: Consumer Product Safety Commission.

ACTION: Final amendments.

SUMMARY: The Commission is amending the flammability standard for mattresses and mattress pads by revising the laundering procedure specified in that standard for mattress pads which contain a chemical fire retardant. These laundering procedures help assure that any chemical flame retardant is not removed or degraded by repeated washing and drying, thereby creating a flammability hazard. The Commission is issuing these amendments because the detergent specified by the existing laundering procedure is no longer available and the operating characteristics of the washing and drying machines required by that procedure are no longer representative of machines now used for home laundering.

DATES: The rule will become effective on April 10, 2000, and will apply to products manufactured or imported after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400, extension 1370.

SUPPLEMENTARY INFORMATION:

A. Background

The Flammable Fabrics Act (''FFA'') (15 U.S.C. 1191 *et seq.*) authorizes the Commission to issue and amend flammability standards and regulations to protect the public from unreasonable risks of death, injury, and property damage from fire associated with products of interior furnishing made from fabric and related materials.

In 1972, the Secretary of Commerce issued a flammability standard for mattresses and mattress pads to protect the public from death and serious burn injuries associated with ignition of mattresses and mattress pads by smoldering cigarettes. That standard became effective in 1973, and is codified at 16 CFR Part 1632. In 1973, authority to issue flammability standards under the FFA was transferred from the Department of Commerce to the Consumer Product Safety Commission by section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)).

B. Amending the Flammability Standard

As discussed below, laundering procedures are prescribed by the standard to help assure that any fire-retardant chemicals used in the production of mattress pads will not be removed or degraded by repeated washing and drying and create a flammability hazard. However, the current procedures are out of date in several respects.

1. Current Procedures

The mattress flammability standard describes the apparatus and procedure used to test mattress pads for compliance with the standard. See 16 CFR 1632.4 and 1632.5(a). Sections 1632.5 (a) and (b) of the standard require that any mattress pad manufactured with a fire retardant chemical shall be tested in the condition in which it is intended to be sold, and after it has been washed and dried ten times in accordance with a specified laundering procedure. That laundering procedure is AATCC Test Method 124–82, published by the American Association of Textile Chemists and Colorists (''AATCC'').(1) [1] The mattress

[1] Numbers in parentheses identify reference documents in the List of Relevant Documents at the end of this notice. Requests for inspection of any of these documents should be made at the Office of the Secretary, 4330 East-West Highway, room

Continued

standard incorporates that laundering procedure by reference. See 16 CFR 1632.5(b)(2)(iv).

AATCC Test Method 124–82 specifies operating characteristics of the washing machine and dryer to be used, wash water and rinse water temperatures, exhaust temperature of the dryer, and a particular detergent, AATCC Standard Detergent 124. AATCC Test Method 124–82 was originally developed in 1967 and subsequently revised. These specifications are representative of the equipment, wash, rinse, and drying temperatures, and the detergent used for home laundering in the 1960s. For example, AATCC Standard Detergent 124 is a high-phosphate powder with optical brightener, similar to the phosphate-based detergents sold to consumers between 1950 and 1970.(3)

Since 1970, environmental concerns about water pollution have resulted in the elimination of phosphate-based detergents for home laundering. Today, all laundry detergents sold to consumers are nonphosphate-based. Additionally, energy-efficient washing machines and dryers currently sold for consumer use have operating characteristics and temperature settings which differ from those specified by AATCC Test Method 124–82.(3)

2. Revised Laundering Test Method

In 1996, AATCC revised AATCC Test Method 124, ''Appearance of Fabrics After Repeated Home Laundering''.(2) The 1996 AATCC test method more closely resembles the equipment and practices currently used for household laundering of fabrics. The revised test method differs from AATCC Test Method 124–82 by specifying the use of 1993 AATCC detergent, a nonphosphate-based detergent. The 1996 test method also specifies use of a washing machine with different operating characteristics than those specified by AATCC Test Method 124–82, and rinse water temperatures which differ from those in the older test method.(3) Table 1, below, provides a summary comparison of the two test methods.

In 1996, AATCC also announced that when that organization's supply of Standard Detergent 124 is depleted, that detergent will no longer be available. AATCC is the only source for Standard Detergent 124. Additionally, washing machines now offered for sale do not have the settings and operating characteristics of the washing machine specified by AATCC Test Method 124–82.(3)

TABLE 1.—AATCC TEST METHOD 124

Wash/dry conditions	Version 1982	Version 1996	
Washing Machine:			
Cycle	Normal	Normal/Cotton Sturdy	
Wash Water Temp	60±3°C	60±3°C	
Rinse Water Temp	41±3°C	Less Than 29°C	
Water Level	Full	18±1 gal	
Agitator Speed	70±5 spm	179±2 spm	
Wash Time	12 minutes	12 minutes	
Spin Speed	500–510 rpm	630–660 rpm	
Final Spin Cycle	4 minutes	6 minutes	
Dryer:			
Cycle	Normal	Cotton Sturdy	Durable Press
Exhaust Temp	140–160°F	140–160°F	140–160°F
Cool Down Cycle	5 minutes	5 minutes	10 minutes

spm=strokes (or cycles) per minute; rpm=revolutions per minute.

3. Review of Other Existing Standards

As explained in the notice of proposed rulemaking, the Commission staff reviewed and analyzed twelve other international and technical association standards or test methods to determine if any were appropriate for consideration in this proceeding. All of the identified standards for fabric laundering have significant deficiencies. They are either based on earlier versions of AATCC Test Method 124 (with obsolete detergent and equipment), require equipment not available in the U.S., use only water in the laundering procedure, or specify significantly lower wash and rinse water temperatures than those still available for consumers.

4. Comparability of Test Results

The Commission intended to perform some testing of mattress pads manufactured with chemical fire retardants using AATCC Test Method 124–82 and AATCC Test Method 124–1996 to compare the two test methods. However, the staff has been unable to locate any flame retardant-treated mattress pads for this comparison. The Commission believes, however, it is appropriate to revise the laundering method so that it is consistent with actual consumer and industry laundering practices should cotton mattress pads (which might need flame retardant treatment) return to the market in the future.

5. Proposed Amendment

On March 17, 1999, the Commission proposed to revise the laundering procedures specified in 16 CFR 1632.5(b) to those of AATCC Test Method 124–1996. 64 FR 13137. As explained in the preamble to the proposed rule, the Commission determined that an advance notice of proposed rulemaking was not necessary to begin this proceeding. Id. at 13139. The amendments preserve the original intent and effect of the existing test method, modifying that method only as necessary to reflect the existence of modern equipment and detergent. Moreover, the existing regulations permit the Commission to employ a laundering test method different from AATCC Test Method 124 if it concludes that the test method is substantively as protective.

The Commission received comments on the proposed rule from the Soap and Detergent Association (''SDA''), American Textile Manufacturers Institute (''ATMI''), and the National Cotton Council (''NCC''). ATMI and

502, Bethesda, Md., or by calling that office at (301) 504–0800.

NCC both expressed their support for the proposed revision. SDA's comments are discussed below.

Wash and Rinse Water Temperatures

SDA suggested that the Commission consider a laundering protocol different than AATCC Test Method 124. SDA's suggested protocol calls for cooler wash and rinse temperatures, stating that they are more representative of today's laundering conditions.

The Commission declines to make this change. Many water heaters in use today are set at 60C/140F. Thus, consumers have hotter wash water available to them than the 32C/90F that SDA recommends. It is appropriate that the laundering requirements reflect not necessarily the average conditions, but the most rigorous that a consumer is likely to use. By specifying a hot water wash and a cold water rinse, the revised CPSC standard represents the most rigorous real, although not necessarily average, wash conditions.

Water Hardness

SDA also suggested that the revised standard should specify water hardness criteria. While water hardness is one factor that may affect the flammability performance of some fabrics, the Commission has no evidence that water hardness is a significant problem for flame retardant treated products currently marketed. At this time, the Commission is only correcting the outdated detergent and laundering conditions in the current FFA standards. It is not within the scope of this proceeding to consider additional criteria.

Ballast Load Weight

The SDA suggested changing the ballast load weight to 2.7±0.1 kg (6±0.2 lb). CPSC's current standard specifies 3.64 kg (8 lb) while the AATCC Test Method 124 only requires 1.8kg (4 lb). SDA may not have realized that CPSC is retaining the larger load requirement. As explained above, the Commission is only correcting the outdated aspects of the laundering standard. It is not altering other criteria.

Omit Reference to a Specific Date

Finally, SDA suggested that the Commission not refer to the specific year of the AATCC standard but simply refer to the most current method. This would alleviate the need to revise the standard every time the AATCC standard is revised.

The Commission cannot accept this suggestion. For any change by AATCC to have the force and effect of a Commission rule the Commission must formally adopt it through notice and comment rulemaking.

6. Final Rule

The amendments require a mattress pad containing a fire retardant chemical to be tested in the condition in which it is intended to be sold and after washing and drying 10 times using the procedure specified in AATCC Test Method 124–1996. The amendments incorporate that test method into the mattress standard by reference.

The mattress flammability standard and enforcement rules exempt any ''one-of-a-kind'' mattress or mattress pad manufactured to a physician's written prescription from all requirements of the standard. See §§ 1632.2(b)(4) and 1632.31(f). Those sections are not affected by the amendments.

Additionally, existing § 1632.5(b)(1)(i) exempts from the laundering requirements of the standard any mattress pad intended for ''one time use'' and any mattress pad which is not intended to be laundered. Existing § 1632.5(b)(1)(ii) states that mattress pads that cannot be laundered and are labeled ''dryclean only'' shall be drycleaned by a procedure which has been found to be acceptable by the Commission before testing. Existing § 1632.5(b)(2)(v) allows manufacturers of mattress pads manufactured with a chemical fire retardant to test specimens after laundering ''a different number of wash and dry cycles using another procedure * * * if that procedure has previously been found to be equivalent by the Consumer Product Safety Commission.'' These sections are not affected by the amendments.

7. Effective Date

The Commission proposed that the amendments become effective 30 days after publication of a final rule. 64 FR 13139. As discussed in the preamble to the proposed rule, the standard detergent specified by the existing laundering method in the standard is no longer available. Thus the Commission believes that an effective date 30 days after publication of final amendments will be in the public interest. The Commission is not withdrawing or limiting the exemption for products in inventory or with the trade as provided by section 4(b) of the FFA.

The Commission received no comments on the proposed effective date. The Commission continues to believe that an effective date of thirty days allows adequate notice to all interested persons of the change in laundering procedure, and at the same time assures that the Commission will be able to test for compliance with the standards without interruption. Those manufacturers who perform prototype testing in accordance with the laundering procedure specified in the standard will also benefit from a relatively short effective date.

C. Other Issues

1. Impact on Small Businesses

In accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certified that the proposed amendments to the mattress flammability standard would not have a significant economic impact on a substantial number of small entities, including small businesses, if issued on a final basis. 64 FR 13140. The Commission has no information that would alter this determination.

2. Environmental Considerations

As discussed in the preamble to the proposed rule, the amendments fall within the categories of Commission actions described at 16 CFR 1021.5(c) that have little or no potential for affecting the human environment. The Commission has no information indicating any special circumstances in which these amendments may affect the human environment. Accordingly, the Commission determined that neither an environmental assessment nor an environmental impact statement is required. 64 FR 13140.

3. Executive Orders

Executive Order 12988 (February 5, 1996), requires agencies to state in clear language the preemptive effect, if any, to be given to a new regulation. The amendments modify a flammability standard issued under the FFA. With certain exceptions which are not applicable here, no state or political subdivision of a state may enact or continue in effect ''a flammability standard or other regulation'' applicable to the same fabric or product covered by an FFA standard if the state or local flammability standard or regulation is ''designed to protect against the same risk of the occurrence of fire'' unless the state or local standard or regulation is ''identical'' to the FFA standard. See section 16 of the FFA (15 U.S.C. 1203). Consequently, the amendments will preempt nonidentical state or local flammability standards or regulations that are intended to address the unreasonable risk of fire from ignition of mattress pads.

The Commission has also evaluated this rule in light of the principles stated in Executive Order 13132 concerning federalism, even though that Order does

not apply to independent regulatory agencies such as CPSC. The Commission does not expect that the rule will have any substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 16 CFR Part 1632

Consumer protection, Flammable materials, Incorporation by reference, Labeling, Mattresses and mattress pads, Records, Textiles, Warranties.

Conclusion

Therefore, pursuant to the authority of section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)) and sections 4 and 5 of the Flammable Fabrics Act (15 U.S.C. 1193, 1194), the Commission hereby amends title 16 of the Code of Federal Regulations, Chapter II, Subchapter D, Part 1632 to read as follows:

PART 1632—STANDARD FOR THE FLAMMABILITY OF MATTRESSES AND MATTRESS PADS

1. The authority for part 1632 continues to read as follows:

Authority: 15 U.S.C. 1193, 1194; 15 U.S.C. 2079(b).

2. Section 1632.5 is amended by revising paragraphs (b)(2)(i) through (iv) and by removing the undesignated paragraph following (b)(2)(iv) to read as follows:

§ 1632.5 Mattress pad test procedure.

* * * * *

(b)* * *

(2) Laundering procedure. (i) Washing shall be performed in accordance with sections 8.2.2 and 8.2.3 of AATCC Test Method 124–1996, using wash temperature V (60°±3°C, 140°±5°F) specified in Table II of that method, and the water level, agitator speed, washing time, spin speed and final spin cycle specified for ''Normal/Cotton Sturdy'' in Table III.

(ii) Drying shall be performed in accordance with section 8.3.1(A) of AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' Tumble Dry, using the exhaust temperature (66°±5°C, 150°±10°F) and cool down time of 10 minutes specified in the ''Durable Press'' conditions of Table IV.

(iii) Maximum washer load shall be 3.64 Kg (8 pounds) and may consist of any combination of test samples and dummy pieces.

(iv) AATCC Test Method 124–1996 ''Appearance of Fabrics after Repeated Home Laundering,'' is found in Technical Manual of the American Association of Textile Chemists and Colorists, vol. 73, 1997, which is incorporated by reference. Copies of this document are available from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709. This document is also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. 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.

* * * * *

Dated: March 2, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. American Association of Textile Chemists and Colorists, ''Appearance of Durable Press Fabrics After Repeated Home Laun-derings,'' AATCC Test Method 124–1969. AATCC Technical Manual, Vol. 46, 1970.

2. American Association of Textile Chemists and Colorists, ''Appearance of Fabrics After Repeated Home Laundering,'' AATCC Test Method 124–1996. AATCC Technical Manual, Vol. 73, 1997.

3. Briefing memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, ''Proposed Amendments to Flammable Fabrics Act Standards to Replace Obsolete Standard Detergent and Update Laundering Procedures Required for Tests,'' November 18, 1998.

4. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Amending the Laundering Provisions of the CPSC Flammability Regulations,'' August 18, 1998.

5. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Textile Laundering Standards,'' August 18, 1998.

6. Memorandum from Gail Stafford and Shing-Bong Chen, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Detergent Comparison Tests,'' August 19, 1998.

7. Log of Meeting on January 21, 1998 concerning Flammability Test of Pyrovatex-treated Flame Resistant Fabrics.

8. Memorandum from Terrance R. Karels, Directorate for Economic Analysis, to Margaret Neily, Project Manager, ''Amendments to FFA Standards,'' August 10, 1998.

9. Memorandum from Margaret Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, ''Briefing Package Supplement: Laundering/Detergent Update for Flammable Fabrics Act Standards—The Soap and Detergent Association (SDA) Laundering Procedures,'' January 11, 1999.

10. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Soap and Detergent Association Proposed Laundering Procedure,'' December 23, 1998.

11. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, including SDA Recommended Wash Conditions for CFR 1615.4, September 15, 1998.

12. Letter from Jenan Al-Atrash, Director, Human Health & Safety, The Soap and Detergent Association, to Margaret Neily, Technical Program Coordinator, Office of the Executive Director, follow-up comments to September 15, 1998, letter, November 12, 1998.

13. Memorandum from Margaret L. Neily, Project Manager, Directorate for Engineering Sciences, to the Commission, ''Laundering/Detergent Updates—FR notice supplements,'' February 19, 1999.

14. Briefing Memorandum, from Ron Medford, AED, Office of Hazard Identificaiton and Reduction and Margaret L. Neily, Project Manager, ESME, to the Commission, ''Final Rule Updating Standard Detergent and Laundering Procedures for Flammable Fabrics Act Standards,'' January 6, 2000.

15. Memorandum from Martha A. Kosh, OS, ''Comments on Children's Sleepwear Laundering Procedures, Mattress Pads Laundering Procedures, Carpet and Rugs Laundering Procedures,'' June 1, 1999.

16. Memorandum from Gail Stafford, Directorate for Laboratory Sciences, to Margaret Neily, Project Manager, ''Response to Comments Received as a Result of the Notice of Proposed Rulemaking (NPR) for the Laundering/Detergent Update for the Flammable Fabrics Act Standards,'' October 25, 1999.

[FR Doc. 00–5529 Filed 3–9–00; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB48

Exemption From Registration as a Commodity Trading Advisor

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission has amended Commission Rule 4.14 to create an exemption from the Commodity Exchange Act's registration requirements for commodity trading advisors that provide standardized advice by means of media such as newsletters, prerecorded telephone newslines, Internet web sites, and non-customized computer software.

DATES: March 10, 2000.

FOR FURTHER INFORMATION CONTACT: J. Douglas Richards, Deputy General Counsel; Martin White, Attorney; or Michael J. Garawski, Attorney at (202) 418–5120.

SUPPLEMENTARY INFORMATION:

I. Background

The Commodity Futures Trading Commission (''Commission'') is adopting CFTC Rule 4.14(a)(9), which exempts certain commodity trading advisors (''CTAs'') from Section 4m(1) of the Commodity Exchange Act (''CEA'' or ''Act''), 7 U.S.C. 6m(1) (1994). Section 4m(1) requires CTAs to register with the Commission. The exemption adopted today is intended to apply to CTAs that provide standardized commodity trading advice by means of media such as newsletters, prerecorded telephone newslines, Internet web sites, and non-customized computer software.[1] For purposes of convenience, these CTAs will be referred to as ''Section 4.14(a)(9) CTAs.''[2]

Over the last several years, the Commission has been involved in several litigated cases that address whether CTAs that provide advice through newsletters, Internet web sites, or similar means can be required to register under Section 4m(1) of the CEA. In two of those cases, *Taucher* v. *Born,* 53 F. Supp. 2d 464 (D.D.C. 1999), *appeal pending,* No. 99–5293 (D.C. Cir.) and *Commodity Trend Service* v. *CFTC,* No. 97 C 2362 (N.D. III. Sept. 28, 1999), *appeals pending,* No. 99–4142 (7th Cir.), federal district courts held that the Section 4m(1) registration requirement constitutes an unconstitutional prior restraint in violation of the First Amendment as applied to the plaintiffs.[3] In both cases, the plaintiffs provided only standardized commodity trading advice through a variety of media, including Internet web sites, computer software, voice recordings accessible by telephone, e-mails, facsimiles, and periodicals. Moreover, the district courts found in these cases that the plaintiffs did not have discretionary control over their clients' accounts, did not provide advice tailored to the financial situation of any specific client, and had no personal contact with their clients. All of the information provided to each client was identical.

The Commission has not itself determined that applying Section 4m(1) to Section 4.14(a)(9) CTAs represent a complete and accurate statement of the constitutional limits of Congress's power with respect to the regulation of Section 4.14(a)(9) CTAs. The Commission has nevertheless determined that it is appropriate to exempt Section 4.14(a)(9) CTAs from registration.

An implicit purpose of the Act is to achieve a regulatory scheme that is consistent with the public interest and that promotes just and equitable principles of trade. This purpose is evident in provisions dealing with the CTA registration scheme, including Sections 41, 4n(1), 4p, 8a(8), as well as other provisions of the Act (*see, e.g.,* Sections 4(c), 4c, 4g, 4j(a)(5)(C), 5, 6(f), 15, 17). Consistent with that, the Act reflects a corollary purpose that the Commission continue to refine its regulatory framework, including its registration scheme, where appropriate in light of other purposes of the Act. *See, e.g.,* Sections 3, 4b, 4k, 4n, 4*o*. The rule adopted today advances these purposes.

Taucher and *CTS* have created legal uncertainty as to whether Section 4.14(a)(9) CTAs may be required to register with the Commission.[4] Absent a Supreme Court decision on the issue, continued litigation is unlikely to eliminate this uncertainty for a considerable period of time. Moreover, litigation of First Amendment issues has required the expenditure of considerable resources by the Commission and, in some instances, has complicated the Commission's investigation and prosecution of fraud by CTAs.

Furthermore, whatever the courts may determine to be the precise constitutional limits of Congressional authority in this area, the Commission believes that minimizing impact on speech, other than false, deceptive or misleading speech, is a relevant policy consideration in determining the Commission's regulatory approach toward CTAs whose relationship with their clients is limited to standardized advice through media such as newsletters, prerecorded telephone newslines, Internet web sites, and non-customized computer software.

On December 2, 1999, the Commission proposed to exempt from Section 4m1) of the CEA certain CTAs that are not engaged in the type of advisory activities specified in proposed Section 4.14(a)(9) and invited comments. 64 FR 68304 (Dec. 7, 1999). The Commission received eight comment letters on this proposal: One from a bar association committee on futures regulation; two from nonprofit legal advocacy groups; one from a trade association; three from clients of CTAs; and one from a member of the general public. All generally supported the adoption of a rule like CFTC Rule 4.14(a)(9). In light of comments received on that proposed rule, the Commission is adopting a modified version of the proposed rule.

II. CFTC Rule 4.14(a)(9)

CFTC Rule 4.14(a)(9) (to be codified at 17 CFR 4.14(a)(9)) adds a new paragraph to Commission Rule 4.14 to create an additional exemption from registration for certain CTAs. The new exemption is expressed in negative terms: the rule exempts CTAs that are *not* engaged in the types of advisory activities specified in the new paragraph. A CTA must meet both of the specified conditions to qualify for the proposed exemption.

Paragraph 4.14(a)(9)(i) provides that, to quality for the exemption, a CTA may not direct client accounts. As defined by Commission Rule 4.10(f), ''[*d]irect*, as used in the context of trading commodity interest accounts, refers to agreements whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization.'' The granting of such authority creates a business relationship between the CTA and the client that goes beyond speech. Registration of CTAs that direct client accounts thus raises no First Amendment issue.[5]

Paragraph 4.14(a)(9)(ii) also provides that, to qualify for the exemption, a CTA may not provide commodity trading

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[1] In this final rulemaking, the term ''commodity trading advice'' refers to advice with respect to trading in a ''commodity interest,'' as defined in Commission Rule 3.1(f), 17 CFR 3.1(f).

[2] ''Section 4.14(a)(9) is a reference to CFTC Rule 4.1(a)(9), to be codified at 17 CFR 4.14(a)(9).

A person that provides commodity trading advice by means of newsletters, Internet web sites, or similar means falls within the statutory definition of ''commodity trading advisor'' unless the person is a ''publisher or producer of print or electronic data of general and regular dissemination'' and the furnishing of commodity trading advice is ''solely incidental to the conduct of their business or profession.'' *See* Sections 1a(5)(B) and (C) of the Act, 7 U.S.C. 1a(5)(B) and (C) (1994); *In re R&W Technical Services, Ltd.,* [Current Transfer Binder] Comm. Fut. L. Rep.: (CCH) ¶ 27,582 (CFTC Mar. 16, 1999); *In re Armstrong,* [1992–1994 Transfer Binderl Comm. Fut. L. Rep. (CCH) ¶ 25,657 (CFTC Feb. 8, 1993).

[3] Both district courts relied on *Lowe* v. *SEC,* 472 U.S. 181 (1985), in which the Supreme Court held that the Investment Advisers Act of 1940, which regulates investment advisers in the securities industry, should be interpreted to apply only to persons who provide personalized advice. The district courts relied primarily on the concurring opinion in *Lowe,* which rested on constitutional grounds.

[4] Significantly, *CTS* and *Taucher* left the Commission's fraud jurisdiction intact.

[5] One commenter, expressed a similar opinion, stating that paragraph (a)(9)(i) does not raise First Amendment concerns.

advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients. A CTA that provides this kind of advice carries out a function comparable to that of a traditional professional. *See Lowe* v. *SEC*, 472 U.S. 181, 232–33 (1985) (White, J., concurring). This provision is intended to preserve the registration requirement for CTAs whose commodity trading advice depends on and reflects information concerning its advisee(s), such as information concerning a particular commodity interest account, particular commodity interest trading activity, and/or other similar types of information. Moreover, so long as the CTA's advice is based on or tailored to such information, the CTA remains required to register even if it gives the same advice to groups of similarly situated clients.

Retaining the registration scheme for those that engage in the activities described by Rule 4.14(a)(9) is justified because the nature of these activities creates a professional relationship. A client that provides a power of attorney to trade his or her account, or that receives commodity trading advice that is based on or tailored to his or her circumstances, will very likely substitute the CTA's expertise for his or her own judgment and use the advice as a direct basis for action.

The Commission received several comments concerning proposed paragraph 4.14(a)(9)(ii). One commenter suggested that the Commission adopt a proviso to the rule that would, in effect, narrow the activities described in paragraph (ii), thereby expanding the scope of the exemption. The commenter maintained that a CTA that provides advice via a web site that is interactive in nature and that requires a client to select among inquiry paths or categories of information should be exempt from the registration requirement. The commenter suggested that the Rule adopt a proviso that explains that nothing in paragraph (9) be construed to prohibit the use of electronic or other interactive exchanges between clients and advisors that do not include individualized investment advice.

A second commenter voiced a similar concern and suggested that proposed Rule 4.14(a)(9)(ii) be narrowed to maintain the registration requirement only for CTAs that provide commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients ''with whose circumstances or characteristics the CTA is directly acquainted.''

The Commission has determined not to adopt these proposals.[6] These commenters' suggestions fail to reflect that the medium through which advice is communicated is, for the most part, not relevant to whether the CTA can be said to be ''exercis[ing] judgment on behalf on the client in the light of the client's individual needs and circumstances.'' *See Lowe,* 472 U.S. at 232 (J. White, concurring). Instead, the Commission agrees with the statement of another commenter that ''the new rule * * * should emphasize that the exemption is based on the nature of the advice that is provided, *regardless of how it is communicated to the client.*'' [7] As explained by the district court in *Taucher,* ''[i]n today's technologically advanced society a professional can exercise judgment on behalf of another without ever having 'personal' [or direct] contact.'' [8]

Given the specific comments received on paragraph 4.14(a)(9)(ii), however, further clarity as to the scope of that paragraph may be desirable. Section III of this preamble provides examples of how Rule 4.14(a)(9)(ii) would be applied in specific situations. To the extent that the examples do not resolve how the Commission would apply the new rule to other specific situations, such situations are best addressed in response to specific facts and circumstances.[9]

The Commission has decided not to adopt proposed paragraph 4.14(a)(9)(iii), which provided that a CTA would qualify for the exemption only if it does not provide commodity trading advice through personally interactive communications with individual clients, such as face-to-face conversations, telephone conversations, or electronic mail exchanges between individuals. In the Notice of Proposed Rulemaking, the Commission explained that the use of such means of communications implies that the advisor is giving advice in the context of a relationship with the client that is more personal than the remote and standardized relationship between the publisher of a newsletter or non-customized software and its readers or users.

Several commenters opposed the adoption of proposed paragraph (a)(9)(iii). One commenter anticipated two serious problems in implementing proposed paragraph (a)(9)(iii). First, the rapid development of communications technology may require periodic reexamination of the language of paragraph (iii), and second, the emphasis in paragraph (iii) on the method of communication would complicate policing the terms of the exemption.

Other commenters questioned whether paragraph (a)(9)(iii) would be constitutionally permissible. One commenter opined that the references in proposed paragraph (a)(9)(iii) to the mode of communication are not appropriate given the recent judicial decisions in this area. Similarly, other commenters opposed proposed paragraph (a)(9)(iii) on the ground that it would be inconsistent with the First Amendment, except in cases where the advice is given in light of the client's individual needs and circumstances.

The Commission has not determined that the application of proposed paragraph (a)(9)(iii) would violate the Constitution under any particular circumstances. The Commission notes that none of the cases upon which the commentators rely for their constitutional positions involved the ''interactive communications'' situation involved in paragraph (a)(9)(iii). Rather, those cases involved only the provision of advice in a non-interactive setting,

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[6] The Commission notes that paragraph (a)(9)(ii), as interpreted in Example C below, substantially accomplishes the result intended by the proviso suggested by one commenter.

[7] In a borderline case as to whether advice is ''based on or tailored to'' within the meaning of Section (a)(9)(ii), however, the context of the advice might be taken into account. For example, in such a borderline case, if the advice is provided in a book or a periodical, that factor may weigh against a finding that the CTA is providing advice ''based on or tailored to'' the client's characteristics, since such modes of communication are ordinarily used as sources of information and ideas that the reader assimilates into his or her own thought process. On the other hand, if the advice is provided to a particular client in a face-to-face communication or over the telephone, that factor may weigh in favor of a finding that the CTA's advice is ''based on or tailored to'' the customer's characteristics, since such a context suggests that the CTA is being responsive to the client's particular needs.

[8] *Taucher* v. *Born,* No. 97–1711 (RMU) (Jan. 14, 1999) (denying plaintiff's motion for summary judgment). In its later decision finding that the plaintiff CTAs did not ''exercise judgment'' on behalf of their clients, the district court found that the plaintiffs had no personal contact with their customers. The court, however, did not rely exclusively on this factor, which was only one of several circumstances supporting the court's finding. *Taucher,* 53 F. Supp. 2d at 478. In light of the court's statement made in denying the motion for summary judgment, its position appear to be that lack of personal contacts is a factor, but not a dispositive one, in determining whether the CTA is exercising judgment on behalf of its clients.

[9] The Commission uses various means to assess the applicability of a rule in light of specific factual situations, such as determinations made in its adjudicated decisions. Commission staff also provides interpretative guidance, such as issuing interpretative letters or responding to requests for no-action relief.

such as through periodicals, books, newsletters, or software programs.[10]

Nevertheless, the Commission has decided not to adopt proposed paragraph 4.14(a)(9)(iii). By this rulemaking, the Commission intends to reduce the legal uncertainty created by the First Amendment decisions in this area and to curtail the impediments that such First Amendment litigation imposes on the Commission's enforcement of the antifraud provisions of the CEA. Considering the comments received, adoption of proposed paragraph (a)(9)(iii) might undermine the accomplishment of those purposes.[11]

As explained in the Notice of Proposed Rulemaking, the Commission intends that a CTA who manages a client's trading under some type of informal arrangement be required to register even if the CTA is not authorized to effect transactions without the client's specific authorization, and therefore does not ''direct'' the client's accounts. In the Notice of Proposed Rulemaking, the Commission solicited comments on whether a separate paragraph dealing with CTAs that manage their clients' trading under informal arrangements would be necessary to realize this intention.

One commenter supported clarifying the breadth of the proposed rule to retain the registration requirement for CTAs that have informal arrangements with clients and that perform any of the activities outlined in the rule. Although the commenter did not advocate defining the meaning of ''informal arrangements,'' it proposed that the introductory language of Section 4.14(a)(9) be expanded to add the words ''directly or indirectly'' after the word ''engage.'' [12] The Commission has decided not to adopt the commenter's suggested language in Rule 4.14(a)(9) and instead to rely on the language of paragraph 4.14(a)(9)(ii) to cover CTAs that informally manage their customers' trading.

Any CTA that meets the conditions of Rule 4.14(a)(9) is no longer required to register with the Commission as a requirement for doing business as a CTA. Such a CTA, unless it chooses to register voluntarily, also is now exempt from the various regulatory requirements set forth in the CEA and the Commission's rules that, by their terms, apply only to registrants or persons required to be registered. For example, an exempt CTA is not subject to the recordkeeping and production requirements of Section 4n(3)(A) of the CEA and Commission Rule 4.33, or the ethics training requirement of Section 4p(b) of the CEA. Moreover, an exempt CTA is not subject to the CFTC's reparations jurisdiction under Section 14 of the CEA.[13]

An exempt CTA is still subject to those provisions of the CEA and the Commission's rules that, by their terms, apply to CTAs without regard to registration. These include Section 4*o* of the CEA, which prohibits fraud by CTAs; Commission Rule 4.30, which, broadly speaking, prohibits CTAs from handling clients' funds; Commission Rule 4.41(a), which prohibits deceptive advertising by CTAs; and Commission Rule 4.41(b), which requires representations concerning simulated or hypothetical performance results by CTAs to be accompanied by disclosures describing the limitations of such results as an indicator of actual performance. Exempt CTAs also are subject to those provisions of the CEA that apply to any person, including, for example, Section 4b of the CEA, which is the Act's general anti-fraud provision. Similarly, the proposed exemption does not alter the duty of a Section 4.14(a)(9) CTA to register with the Commission in a capacity other than as a CTA, if the CTA, in addition to its advisory activities, engages in other business activities that require such registration.

A CTA exempt under rule 4.14(a)(9) that wishes to apply for registration or retain its current registration may do so. Pursuant to Rule 4.14(c), a CTA that registers voluntarily is subject to those provisions of the Act and the Commission's regulations that apply to registered CTAs (*i.e.,* the disclosure requirements of Rules 4.31, 4.35 and 4.36, and the recordkeeping requirements of Rule 4.33) as if it were not exempt from registration. The decision to register voluntarily also would subject the CTA to ethics training requirements and the Commission's reparations jurisdiction.

III. Examples [14]

In order to convey the intent of the exemption that we adopt today, the Commission offers the following illustrative examples: [15]

A. A CTA provides commodity trading advice only through newsletters, books and periodicals. The advice includes specific recommendations, such as recommendations to buy or sell specific futures contracts should a particular price level be reached. Recipients of publications all receive the same advice. Under Rule 4.14(a)(9), this CTA is exempt from the Section 4m registration requirement.

B. A CTA provides specific commodity trading advice through e-mails, facsimiles, an Internet web site, telephone calls and face-to-face meetings with customers. The advice is based on a computerized trading system, which also is available for purchase and use on a personal computer. Such advice is provided on a daily basis and is reactive to the latest market activity. The advice consists only of an instruction to buy or sell a futures contract and where, if at all, to place a stop order. The CTA's clients all receive the same advice. Under Rule 4.14(a)(9), this CTA is exempt from the Section 4m registration requirement.

C. A CTA provides commodity trading advice through an Internet web site. The web site requires the user to indicate whether he or she has a preference for trading agricultural futures contracts or financial futures contracts. Users who indicate that their preference is agricultural futures contracts receive different advice from those who indicate that financial futures contracts are their preference. The CTA's advice is not ''based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients,'' within the meaning of Rule 4.14(a)(9)(ii). Rather, the CTA is merely allowing its clients to select which advisory services they wish to

[10] These cases include *Lowe* v. *SEC,* 472 U.S. 181 (1985), and the *Taucher* and *CTS* district court decisions.

[11] In light of the decision not to adopt proposed paragraph (a)(9)(iii), the Commission need not address whether implementation problems would provide an independent reason not to adopt that paragraph.

[12] The commenter's proposed introductory language would read: ''A person is not required to register under the Act as a commodity trading advisor if * * * [i]t does not engage, *directly or indirectly,* in any of the following activities * * *''

[13] In response to a question posed in the Notice of Proposed Rulemaking, one commenter stated that exempt CTAs should not be subject to the recordkeeping, production or ethics training requirements because to do so would raise ''significant constitutional issues.'' The Commission has not determined that applying these requirements would violate the Constitution. The Commission, however, agrees that CTAs that are exempt from registration under Rule 4.14(a)(9) should not be subject to regulatory requirements like these, which apply only to registered CTAs.

[14] The following examples of the application of Rule 4.14(a)(9) supercede the examples provided in the Notice of Proposed Rulemaking. Examples are illustrative and not intended to be statements of law. As noted above, persons are free to seek advice regarding their specific activities.

[15] In each of the following examples, the CTA does not have powers of attorney from any of its clients to trade accounts. In addition, the CTA in each example remains subject to requirements of the Act and the Commission's regulations that apply to all CTAs without regard to registration, such as Section 4*o* of the Act and Commission Rules 4.30, 4.41(a) and 4.41(b), as well as to provisions that apply to any person, such as Section 4b of the Act.

purchase. Therefore, this CTA is exempt from the Section 4m registration requirement under Rule 4.14(a)(9).

D. A CTA conducts seminars at which it teaches attendees how to trade commodity futures contracts aided by a software program that the CTA sells. After the seminar, the CTA invites seminar attendees to participate in a question-and-answer session. In response to questions, the CTA provides commodity trading advice without asking or receiving information about the personal characteristics of the attendees. Such advice is not ''based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients,'' within the meaning of Rule 4.14(a)(9)(ii). Consequently, this CTA is exempt from the Section 4m registration requirement.

E. A CTA conducts seminars at which it teaches attendees how to trade commodity futures contracts aided by a software program that the CTA sells. Before each seminar commences, the CTA polls the attendees to discover their level of ability and knowledge. The CTA presents a more advanced seminar for classes that have a higher degree of experience. Because such advice is not ''based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients,'' within the meaning of Rule 4.14(a)(9)(ii), this CTA is exempt from the Section 4m registration requirement.

F. A CTA provides commodity trading advice only through facsimile messages, without further discussion with its clients. Before advising any client, the CTA gathers current information about the client, such as information about his or her net assets and liabilities, annual income, annual expenses, imminent large purchases, tolerance for risk, purposes for trading, investment goals and expectations, preferred contracts for trading, any existing futures positions, and other current investments. The CTA's advice is different for different clients, depending on their profile, but the CTA sends similar advice to groups of clients with similar profiles. Under Rule 4.14(a)(9)(ii), this CTA provides commodity trading advice ''based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients'' and, consequently, is not exempt from the registration requirement.

G. A CTA gives seminars on commodity interest trading. During the seminar, the CTA takes questions from the attendees concerning the trades that the CTA recommends for the upcoming week. Before responding to the question of an attendee, the CTA asks the attendee for specific information about him or herself, such as the types of information listed in Example F. The CTA provides different recommendations to different attendees, based on the information provided. Under Rule 4.14(a)(9)(ii), this CTA provides commodity trading advice ''based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients'' and therefore is not exempt from the registration requirement.

H. A CTA monitors a client's trading positions and amount of margin in the client's account. Based on that information, along with general technical and fundamental market information, the CTA gives the client commodity trading advice. Because he provides commodity trading advice ''based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients,'' this CTA is not exempt from the registration requirement under Rule 4.14(a)(9)(ii).

IV. Statutory Authority

Pursuant to Section 8a(5) of the CEA, 7 U.S.C. 12a(5), the Commission has statutory authority to promulgate the proposed rule. As explained above, this rule is consistent with the legislative purposes of the CEA.

In the Notice of Proposed Rulemaking, the Commission indicated that it also would rely on Section 4(c)(1) of the Act, 7 U.S.C. 6(c)(1), as authority to adopt Rule 4.14(a)(9). Upon further consideration, the Commission has determined that reliance on Section 4(c) is unnecessary. The Commission previously has relied upon its rulemaking power, as provided in Section 8a(5), to exempt CTAs from the registration requirement. The authority citation for Part 4 of the Commission's rules, therefore, is unchanged.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* requires that agencies, in proposing rules, consider the impact of those rules on small entities. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[16] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.

As the Commission noted when proposing the rule, some of the CTAs that would be affected by Rule 4.14(a)(9) could reasonably be considered to be small entities. The rule amendment adopted herein, however, will reduce or remove existing economic burdens. Moreover, the registration requirements that will be affected by the proposed rule involve only minimal economic burdens.

B. Paperwork Reduction Act

Rule 4.14(a)(9) affects information collection requirements. As required by the Paperwork Reduction Act of 1995, the Commission has submitted a copy of Rule 4.14(a)(9) to the Office of Management and Budget (OMB) for its review. 44 U.S.C. 3507(h). In response to the Commission's invitation in the notice of proposed rulemaking to comment on any potential paperwork burden associated with this regulation, no comments were received.

As described in detail above, the Commission received comments concerning the substance of the Rule 4.14(a)(9). In recognition of certain comments received, the Commission has decided not to adopt proposed paragraph 4.14(a)(9)(iii) as part of the final rule. This modification, however, is not expected to change the information collection burden information as described in the notice of proposed rulemaking.

C. Administrative Procedure Act

The Administrative Procedure Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d). Because Rule 4.14(a)(9) grants an exemption from registration, the Commission has determined to make the rule effective immediately.

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity Pool Operators, Commodity Trading Advisors, Consumer protection, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 4 as follows:

[16] 47 FR 18618–21 (Apr. 30, 1982).

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Section 4.14 is amended by removing the word ''or'' at the end of paragraph (a)(5), by removing the period at the end of paragraphs (a)(6), and (a)(7) and adding a semicolon in its place, by removing the period at the end of paragraph (a)(8)(v)(D) and adding ''; or'' in its place, and by adding paragraph (a)(9) to read as follows:

§ 4.14 Exemption from registration as a commodity trading advisor.

(a) * * *

(9) It does not engage in any of the following activities:

(i) Directing client accounts; or

(ii) Providing commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients.

* * * * *

Issued in Washington, D.C. on March 3, 2000, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–5823 Filed 3–9–00; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. 33–7728A, IC–23958A, IA–1815A; File No. S7–25–95]

RIN 3235–AG27

Personal Investment Activities of Investment Company Personnel

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final rule.

SUMMARY: This release contains a correction to the final amendments to rule 17j–1 under the Investment Company Act of 1940, which were published Friday, August 27, 1999 (64 FR 46821). Rule 17j–1 addresses conflicts of interest that rise from personal securities activities of investment company personnel.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Penelope W. Saltzman, Senior Counsel, (202) 942–0690, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The amendments to rule 17j–1 under the Investment Company Act of 1940 were designed to improve the regulation of conflicts of interest that arise when registered investment company (''fund'') personnel buy and sell securities for their own accounts. The amendments include a requirement that the board of directors of a fund approve the code of ethics of the fund, and any of its investment advisers and principal underwriters. Section 17j–1(c)(1(ii) also was intended to provide that before approving any of these codes, the fund's board must receive a certification from the fund and each of its investment advisers and principal underwriters that the organization providing the certification has adopted certain procedures.

As adopted, section 17j–1(c)(1)(ii) contains an error that may be misleading and should be clarified.

Accordingly, the publication on August 27, 1999 of the final regulation (33–7728), which was the subject of FR Doc. 99–22310, is corrected as follows:

§ 270.17J–1 [Corrected]

On page 46835, first column, fourteenth and fifteenth lines, the phrase ''the investment adviser's or principal underwriter's code of ethics'' is corrected to read ''the Fund's, investment adviser's, or principal underwriter's code of ethics.''

Dated: March 6, 200.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5914 Filed 3–9–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–00–003]

Drawbridge Operation Regulations; Darby Creek, Pennsylvania

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the CONRAIL Railroad Bridge across Darby Creek, mile 0.3, in Essington, Pennsylvania. Beginning at 7 a.m. on March 20, through 5 p.m. on April 3, 2000, the bridge may remain in the closed position. This closure is necessary to conduct the installation of a new bridge control house.

DATES: This deviation is effective from 7 a.m. on March 20 until 5 p.m. on April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Coast Guard received a letter from the Consolidated Rail Corporation (CONRAIL) on February 22, 2000, requesting a temporary deviation from the current operating schedule of the Darby Creek bridge set out in 33 CFR 117.903. CONRAIL intends to install a new bridge control house. To facilitate the installation, disassembly of the machinery including electrical and mechanical components of the bridge will be performed. This work requires completely immobilizing the operation of the bascule span. In the event of an emergency, openings of the span will be provided as quickly as possible, but may take two hours or longer to accomplish. Requests for emergency openings can be made by contacting Conrail's resident engineer at (609) 820–7784.

In accordance with 33 CFR 117.35, the District Commander approved Conrail's request for a temporary deviation from the governing regulations in a letter dated February 25, 2000.

The Coast Guard has informed the known commercial users of the waterway of the bridge closure so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

The temporary deviation allows the CONRAIL Railroad Bridge across Darby Creek, mile 0.3, in Essington, Pennsylvania to remain closed from 7 a.m. on March 20, until 5 p.m. on April 3, 2000.

Dated: March 3, 2000.

James W. Underwood,

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

[FR Doc. 00–5959 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[CGD 97–004]

RIN 2115–AF42

Traffic Separation Scheme in the Approaches to Delaware Bay

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is codifying the existing traffic separation scheme (TSS) in the approaches to Delaware Bay. The current scheme consists of an Eastern approach, a Southeastern approach, a two-way route for use by tug and tow traffic, and a precautionary area configured to exclude shoal areas too shallow for deep draft vessels. Its arrangement separates large inbound vessels from tug and barge traffic on traditional New Jersey coastal routes. The TSS reduces the number of near misses and the probability of an incident that could result in a major chemical or petroleum oil spill.

DATES: This final rule is effective April 10, 2000.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket CGD 97–004 and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact George Detweiler, Office of Vessel Traffic Management, Coast Guard, at 202–267–0574; e-mail: Gdetweiler@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 9, 1997, we published a notice of proposed rulemaking (NPRM) entitled ''Traffic Separation Scheme in the Approaches to Delaware Bay'' in the **Federal Register** (62 FR 25576). We did not receive any letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), require that a port access route study (PARS) be conducted before establishing or adjusting a traffic separation scheme (TSS). A TSS is an internationally recognized routing measure used to minimize the risk of collision by separating vessels, through traffic lanes, into opposing streams of traffic. To be internationally recognized, a TSS must be approved by the International Maritime Organization (IMO). The IMO approves a TSS only if the TSS complies with IMO principles and guidelines on ships routing. Rule 10 of the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 1972) prescribes the conduct of vessels within or near a TSS adopted by IMO.

The Traffic Separation Scheme in the Approaches to Delaware Bay was originally adopted and implemented by the Inter-Governmental Maritime Consultative Organization (as the IMO was formerly known) on October 28, 1969. A change to the Southeastern Approach lanes was implemented on March 15, 1976.

On March 22, 1994, a notice in the **Federal Register** (59 FR 14126) announced that we were conducting a PARS for the Approaches to Delaware Bay. We started the PARS because of concerns expressed by the maritime community about the many near misses between deep-draft vessels and tugs with tows at the Delaware Bay Entrance. A notice of study results for the Approaches to Delaware Bay was published in the **Federal Register** on September 22, 1995 (60 FR 49237).

The study showed that navigation safety, economic, and environmental considerations necessitated amending the TSS to better separate large inbound vessels from tug and barge traffic transiting easterly and northerly along their traditional New Jersey coastal route. In the old configuration near misses occurred frequently. The probability of a major chemical or petroleum oil spill was too great to ignore. Therefore, we proposed to IMO that the Eastern Approach TSS be adjusted; that a Two-Way Traffic Route for tug and barge traffic entering and departing Delaware Bay be established; and that the precautionary area be reconfigured. IMO adopted and implemented our recommendations in 1996.

We received no comments concerning our NPRM. Since the IMO adopted and implemented traffic separation scheme and precautionary area exist, and have been used since 1996, we are publishing this rule to update Subpart B of 33 CFR part 167 to include a description of the Off Delaware Bay Approach Traffic Separation Scheme and Precautionary Area. By codifying the existing TSS and precautionary area, we will make the Code of Federal Regulations consistent with IMO's Ships' Routeing Guide.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, l979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This rule will not impose any costs on industry nor will it impose any costs on the U.S. Coast Guard or Federal Government. The benefit of this rule is to assist in handling the increase of total tonnage in the region and to maintain what is considered to be an increased trend rate of 100 large capacity vessels per year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The rule has no costs to industry and we have received no comments from small entities regarding this rule. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. The traffic separation scheme is currently in use and has no economic impact on any small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(i) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects 33 CFR Part 167

Harbors, Marine safety, Navigation (water), and Waterways.

For reasons discussed in the preamble, the Coast Guard amends 33 CFR part 167 as follows:

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

1. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46.

2. Add § 167.5(f) to read as follows:

§ 167.5 Definitions.

* * * * *

(f) *Two-way route* means a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

3. Add § 167.170 to read as follows:

§ 167.170 Off Delaware Bay Approach Traffic Separation Scheme: General.

The Off Delaware Bay Approach Traffic Separation Scheme consists of four parts: an Eastern Approach, a Southeastern Approach, a Two-Way Traffic Route, and a Precautionary Area. The specific areas in the Off Delaware Bay Approach Traffic Separation Scheme and Precautionary Area are described in §§ 167.171 through 167.174.

4. Add § 167.171 to read as follows:

§ 167.171 Off Delaware Bay: Eastern approach.

(a) A separation zone is established bounded by a line connecting the following geographic positions:

Latitude	Longitude
38°46.30′N	74°34.45′W
38°46.33′N	74°55.75′W
38°47.45′N	74°55.40′W
38°47.35′N	74°34.50′W

(b) A traffic lane for westbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
38°48.32′N	74°55.30′W
38°49.80′N	74°34.60′W

(c) A traffic lane for eastbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
38°45.45′N	74°56.20′W
38°44.45′N	74°34.35′W

5. Add § 167.172 to read as follows:

§ 167.172 Off Delaware Bay: Southeastern approach.

(a) A separation zone is established bounded by a line connecting the following geographic positions:

Latitude	Longitude
38°27.00′N	74°42.30′W
38°43.40′N	74°58.00′W
38°44.20′N	74°57.20′W
38°27.60′N	74°41.30′W

(b) A traffic lane for north-westbound traffic is established between separation zone and a line connecting the following geographic positions:

Latitude	Longitude
38°28.80′N	74°39.30′W
38°45.10′N	74°56.60′W

(c) A traffic lane for south-eastbound traffic is established between the separation zone and a line connecting the following geographic positions:

Latitude	Longitude
38°42.80′N	74°58.90′W
38°27.00′N	74°45.40′W

6. Add § 167.173 to read as follows:

§ 167.173 Off Delaware Bay: Two-Way Traffic Route.

The Two-Way Traffic Route is recommended for use predominantly by tug and tow traffic transiting to and from the northeast in order to separate such traffic from large, inbound vessel traffic.

(a) The Two-Way Traffic Route is bounded on the west and south by a line connecting the following geographic positions:

Latitude	Longitude
38°50.75′N	75°03.40′W
38°47.50′N	75°01.80′W
38°48.32′N	74°55.30′W
38°50.20′N	74°49.73′W
39°00.00′N	74°40.23′W

(b) The two-way traffic route is bounded on the east and north by a line connecting the following geographic positions:

Latitude	Longitude
39°00.00′N	74°41.00′W
38°50.48′N	74°50.30′W
38°48.80′N	74°55.25′W

Latitude	Longitude
38°48.33′N	74°59.30′W
38°49.10′N	75°01.65′W
38°51.27′N	75°02.83′W

7. Add § 167.174 to read as follows:

§ 167.174 Off Delaware Bay: Precautionary area.

A precautionary area is established as follows: from 38°42.80′N, 74°58.90′W; then northerly by an arc of eight nautical miles centered at 38°48.90′N, 75°05.60′W to 38°48.32′N, 74°55.30′W; then westerly to 38°47.50′N, 75°01.80′W; then northerly to 38°50.75′N, 75°03.40′W; then northeasterly to 38°51.27′N, 75°02.83′W; then northerly to 38°54.80′N, 75°01.60′W; then westerly by an arc of 6.7 nautical miles centered at 38°48.90′N, 75°05.60′W to 38°55.53′N, 75°05.87′W; then southwesterly to 38°54.00′N, 75°08.00′W; then southerly to 38°46.60′N, 75°03.55′W; then southeasterly to 38°42.80′N, 74°58.90′W.

Datum: NAD 83.

Dated: February 18, 2000.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–5805 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Postage and Fees Refunds; Unused Adhesive Stamps and Stamps Affixed to Unmailed Matter

AGENCY: Postal Service.

ACTION: Final rule; comments acceptable.

SUMMARY: The Postal Service is amending a portion of its rule on postage and fees refunds, to clarify that payments may be made in some cases for unused adhesive stamps and adhesive stamps affixed to unmailed matter. The purpose of this change is to allow the Postal Service to test market programs that involve the use of postage stamps to pay for goods and services.

DATES: Effective March 9, 2000. Comments must be received on or before April 10, 2000.

ADDRESSES: Mail or deliver written comments to Manager, Advertising Mail, USPS Headquarters, Room 5413, 475 L'Enfant Plaza SW, Washington, DC 20260–2690. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Chris C. Conboy, (202) 268–3120.

SUPPLEMENTARY INFORMATION: Under section P014.2.7 of the Domestic Mail Manual (DMM), the Postal Service currently disallows refunds for unused adhesive stamps and adhesive stamps affixed to unmailed matter. While this policy is necessary to promote the efficiency of ordinary retail postal operations, the current DMM language hampers the testing and development of innovative marketing programs such as the Micropayment Program. Under this program, vendors would be allowed to receive payment for goods and services, priced between $1.00 and $10.00, in the form of postage stamps affixed to a postcard or a similar item. The vendors, in turn, would return the stamps to the Postal Service and receive payments in an amount less than the face value of the stamps. As amended, section P014.2.7 of the DMM will more clearly allow payment for unused adhesive stamps and stamps affixed to unmailed matter in connection with marketing programs approved by the Senior Vice President for Marketing, thus allowing tests of the Micro Payment Program and similar initiatives to proceed.

List of Subjects 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, the Postal Service hereby amends section P014.2.7 of the Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend section P014.2.7 of the Domestic Mail Manual (DMM) to read as follows:

P POSTAGE AND PAYMENT METHODS

P000 Basic Information

P010 General Standards

* * * * *

P014 Refunds and Exchanges

* * * * *

2.0 POSTAGE AND FEES REFUNDS

* * * * *

2.7 Unallowable Refunds

Refunds are not made for the following:

a. An application fee to use permit imprints.

b. Collect on delivery (COD), Express Mail insurance, insured, and registered fees after the USPS accepts the article, even if the article is later withdrawn from the mail.

c. Unused adhesive stamps (may be exchanged under 1.1 through 1.5).

d. Adhesive stamps affixed to unmailed matter.

These limits on refunds are not intended to prohibit payments for unused adhesive stamps and adhesive stamps affixed to unmailed matter in connection with an authorized marketing program.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–5960 Filed 3–9–00; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Changes in Procedures for Standard Mail Destination Entry Mailings

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service, after considering the written responses to its proposed rule published in the **Federal Register** on December 22, 1999 (64 FR 71702–71704), requesting public comment on proposed amendments to the Domestic Mail Manual, gives notice that it is implementing amendments to procedures for Standard Mail Destination Entry Mailings.

EFFECTIVE DATE: March 12, 2000.

FOR FURTHER INFORMATION CONTACT: RoseMarie Gay (202) 268–7810.

SUPPLEMENTARY INFORMATION: On December 22, 1999, the Postal Service published in the **Federal Register** (64 FR 71702–71704) a proposal to amend the Domestic Mail Manual procedures for setting appointments for mailings of Standard Mail (A) and Standard Mail (B) from once a month to once a week for recurring appointments.

In addition, the Postal Service proposed that if a mailer requests an appointment at a destination delivery unit (DDU) for a Standard Mail (A) or Standard Mail (B) mailing, then the 5-digit ZIP Codes of the mail being deposited must be provided at the time of request. Also, consistent with current standards for Standard Mail (A), a

change was proposed to provide for the redirection of Standard Mail (B).

Response to Comments

The Postal Service requested comments by January 21, 2000. Two comments were received from the mailing industry.

One mailer commented that there was no mention of how postage will be adjusted and calculated when mail is redirected by the Postal Service. The Postal Service will recalculate postage according to Domestic Mail Manual section E613.2.2.

The mailer also commented that there was no mention of destination delivery unit (DDU) appointments made by using the Drop Shipment Appointment System (DSAS). The commenter also questioned if mailers can make DDU appointments using DSAS and, if DSAS appointments are allowed, whether the procedures are different when contacting the DDU via DSAS.

In response, the Postal Service notes that this comment is beyond the scope of the **Federal Register** notice; however, the commenter should be aware that the procedures for making DDU appointments have not changed.

One other mailer agreed with the change of frequency from once a month to once a week. The mailer also suggested that DSAS be changed so that if a recurring appointment is made ''x'' days in advance, DSAS would require reconfirmation of the appointment two days prior to the appointment date. If the appointment is not reconfirmed within the assigned time period, then that time slot would be available for others. Currently, the DSAS system cannot perform this function, and adding this feature would require enhancements to this system. Due to considerable expense involved, the Postal Service has determined not to add this enhancement to the system at this time.

This mailer also commented on the error rate of DDU addresses and asked that DDU acceptance hours be expanded. An additional comment by this mailer was that DDU acceptance hours be expanded. These comments are beyond the scope of this **Federal Register** notice and need not be addressed.

The new amendments become effective on March 12, 2000. Until that date, mailers must follow current mailing standards.

Although exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553 (b), (c)) regarding rulemaking by 39 USC 410, the Postal Service hereby gives notice of the following revisions to the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations (see CFR Part 111).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a): 39 U.S.C 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the Domestic Mail Manual as set forth below:

E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E650 Destination Entry

E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail

* * * * *

3.0 DEPOSIT

* * * * *

(Redesignate 3.3 through 3.11 as 3.4 through 3.12 respectively; add new 3.3 to read as follows:)

3.3 Appointments

Appointments must be made for destination entry rate mail as follows:

a. Except for a local mailer under 4.0 and mailings of perishable commodities, appointments for deposit of destination entry rate mail at BMCs, ASFs, and SCFs must be scheduled through the appropriate appointment control center at least one business day in advance. Same-day appointments may be granted by a control center only through a telephone request. All appointments for BMC loads must be scheduled by the appropriate BMC control center. Appointments for SCFs and ASFs must be scheduled through the appropriate district control center. Appointments may be made up to 30 calendar days before a desired appointment date. The mailer must adhere to the scheduled mail deposit time and location. The mailer must cancel any appointment by notifying the appropriate control center at least 24 hours in advance of a scheduled appointment.

b. Electronic appointments may be made by a mailer or agent using a USPS-issued computer logon ID. Electronic appointments or cancellations must be made at least 12 hours before the desired time and date. All information required by the USPS appointment system regarding a mailing must be provided.

c. For deposit of DDU mailings, an appointment must be made by contacting the DDU at least 24 hours in advance. If the appointment must be canceled, the mailer must notify the DDU at least one business day in advance of a scheduled appointment. Recurring appointments are allowed if shipment frequency is once a week or more often.

d. When Periodicals are transported together with Standard Mail (A) or Standard Mail (B) as a mixed load (E250), an appointment must be obtained for deposit at a destination entry facility.

(Revise heading of redesignated 3.4 to read as follows:)

3.4 Advance Scheduling

(Amend 3.4 by revising 3.4a, b, c, and d to read as follows:)

Except under 4.0, a mailer must schedule deposit of destination rate mailings at least 24 hours in advance by contacting the proper district or BMC control center or destination delivery unit. Appointments at delivery units must be made by calling the delivery unit at least 24 hours in advance. Appointments for ASFs, SCFs, or for any multistop loads must be made through the USPS district control center. Appointments for BMC loads must be scheduled by the proper BMC control center. When making an appointment, or as soon as available, the mailer must provide the control center or DDU with the following information:

a. Mailer's name and address and, when applicable, the name and telephone number of the mailer's agent or local contact.

b. Description of what is being mailed, product name, number of mailings, volume of mail, how prepared, and whether containerized (e.g., pallets). For DDU entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

c. Where mailing was verified.

d. Postage payment method.

* * * * *

3.6 Redirection by USPS

(Revise redesignated 3.6 to read as follows:)

A mailer may be directed to transport destination entry rate mailings to a facility other than the designated DDU, SCF, or BMC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

* * * * *

(Amend heading of 3.8 by changing ''standing'' to ''recurring'' to read as follows:)

3.8 Recurring Appointments

(Revise redesignated 3.8 to read as follows:)

A mailer may request recurring appointments, renewable for a 6-month period, by writing to the BMC control center or the district control center that administers the service area in which the destination facility is located. The mailer must present comparable mailings (by product and volume) on a consistent frequency of at least once a week. Failure to adhere to scheduled appointment procedures can cause revocation of the recurring appointment.

* * * * *

E652 Parcel Post

* * * * *

4.0 DEPOSIT

* * * * *

(Redesignate current 4.6 through 4.11 as 4.7 through 4.12, respectively; add new 4.6 to read as follows:)

4.6 Redirection by USPS

With the exception of mail deposited under 1.3e, a mailer may be directed to transport destination entry rate mailings to a facility other than the designated DDU, SCF, or BMC due to facility restrictions, building expansions, peak season mail volumes, or emergency constraints.

(Revise heading of redesignated 4.7 to read as follows:)

4.7 Advance Scheduling

(Amend redesignated 4.7b by adding second sentence to read as follows:)

When making an appointment, or as soon as available, the mailer must provide the control center or DDU with the following information:

* * * * *

b. Description of what is being mailed, product name, number of mailings, volume of mail, how prepared, and whether containerized (e.g., pallets). For DDU entries, the mailer also must provide the 5-digit ZIP Code(s) of the mail being deposited.

* * * * *

4.8 Deposit Conditions

(Amend redesignated 4.8b by changing the frequency from ''once a month'' to ''once a week'' to read as follows:)

Deposit of mail also is subject to these conditions:

* * * * *

b. A mailer may request recurring appointments, renewable for a 6-month period, by writing to the BMC control center or the district control center that administers the service area in which the destination facility is located. The mailer must present comparable mailings (by product and volume) on a consistent frequency of at least once a week. Failure to adhere to scheduled appointment procedures can cause revocation of the recurring appointment.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–5962 Filed 3–9–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–105–9946a; FRL–6545–5]

Approval and Promulgation of Implementation Plans, Commonwealth of Kentucky: Approval of Revisions to the Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Commonwealth of Kentucky's State Implementation Plan (SIP) submitted through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) on April 29, 1998. This revision adds a new regulation 401 KAR 50:032, ''Prohibitory rule for hot mix asphalt plants,'' to establish an enforceable production limit for asphalt plants in Kentucky to limit their potential to emit (PTE).

DATES: This direct final rule is effective May 9, 2000 without further notice, unless EPA receives adverse comment by April 10, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION: The Commonwealth of Kentucky through the KNREPC submitted revisions to the Kentucky SIP on April 29, 1998. These revisions add new Kentucky regulations 401 KAR 50:032, ''Prohibitory rule for hot mix asphalt plants,'' 60:750, ''Standards of performance for municipal solid waste landfills,'' and 61:036, ''Emission guidelines and compliance times for municipal solid waste landfills.'' However, since regulations 401 KAR 60:750 and 61:036 are not SIP-related, Kentucky resubmitted these regulations on December 3, 1998, as required by section 111(d) of the Clean Air Act as amended in 1990 (CAA), and EPA approved these regulations on April 20, 1999, (64 FR 19290). Therefore, today EPA is only taking action on regulation 401 KAR 50:032 as a revision to the Kentucky SIP as described below.

401 KAR 50:032 Prohibitory Rule for Hot Mix Asphalt Plants

This regulation applies to hot mix asphalt plants that without the operational limits of this regulation would have a PTE that would exceed one or more of the major source thresholds and require these plants to obtain a permit as required under part 70 of Title 40 of the Code of Federal Regulations (40 CFR part 70). Compliance with this regulation would only exempt these sources from the 40 CFR part 70 requirement and would not exempt any source from any other applicable requirement. To be eligible for this exemption, sources must comply with maximum consecutive 12 month production and operation limits as well as fuel and recordkeeping requirements which are specific to the type of plant. These requirements are fully discussed in the submittal and the technical support document (TSD) at the Region 4 office listed in the addresses section of this notice.

Final Action

EPA is approving the aforementioned changes to the SIP without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 9, 2000 without further notice unless the agency

receives relevant adverse comments by April 10, 2000.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the rule. Only parties interested in commenting on the rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 9, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 13132

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

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. Thus, the requirements of section 6 of the E.O. do not apply to this rule.

C. Executive Order 13045

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

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. 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).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: January 14, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

2. In § 52.920(c) the table is amended by adding the entry for 401 KAR 50:032, under chapter 50 in numerical order to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED KENTUCKY REGULATIONS FOR KENTUCKY

Regulation	Title/subject	State effective date	EPA approval date	Federal Register Notice
*	*	*	*	*
Chapter 50 General Administrative Procedures				
*	*	*	*	*
401 KAR 50:032	Prohibitory rule for hot mix asphalt plants.	April 13, 1998	March 10, 2000	[Insert FR page citation].
*	*	*	*	*

* * * * *

[FR Doc. 00–5931 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

48 CFR Part 2409

[Docket No. FR–4291–C–03]

RIN 2535–AA25

HUD Acquisition Regulation; Technical Correction

AGENCY: Office of the Chief Procurement Officer (CPO).

ACTION: Final rule; correction.

SUMMARY: This document makes a technical correction to a final rule that amended the Department of Housing and Urban Development (HUD) Acquisition Regulation (HUDAR) by restoring language that had been inadvertently removed.

DATES: *Effective Date:* February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Frederick Graves, Policy and Field Operations Division, Office of Procurement and Contracts (Seattle Outstation), U.S. Department of Housing and Urban Development, Seattle Federal Office Building, 909 1st Avenue, Seattle, WA 98104–1000, telephone (206) 220–5122 extension 3450, FAX (206) 220–5406. Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On January 21, 2000, HUD published a final rule (65 FR 3576) that made several amendments to the HUDAR at 48 CFR chapter 24. In the revision of 48 CFR 2409.507–2 by this rule, HUD inadvertently replaced the existing paragraph with a new paragraph, rather than adding the new paragraph to the existing paragraph. This document corrects that error.

Accordingly, under the authority of 40 U.S.C. 486(c), 42 U.S.C. 3535(d), FR Doc. 00–531, the final rule amending the HUD Acquisition Regulation,

published in the **Federal Register** on January 21, 2000 (65 FR 3576), is amended as follows:

1. On page 3576, in column 3, section 2409.507–1 is corrected to read as follows:

2409.507–2 Contract clauses.

The Contracting Officer shall insert a clause substantially the same as the clause at 48 CFR 2452.209–71, Limitation on Future Contracts, in all contracts above the simplified acquisition threshold. The Contracting Officer shall describe in the clause the nature of the potential conflict, and the negotiated terms and the duration of the limitation. The Contracting Officer shall insert the clause at 2452.209–72, Organizational Conflicts of Interest, in all contracts.

Dated: March 3, 2000.

V. Stephen Carberry,

Chief Procurement Officer.

[FR Doc. 00–5812 Filed 3–9–00; 8:45 am]

BILLING CODE 4210–01–P

Proposed Rules

Federal Register
Vol. 65, No. 48
Friday, March 10, 2000

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

Agricultural Marketing Service

7 CFR Part 201

[Docket No. LS–00–05–610 REVIEW]

Federal Seed Act Regulations; Section 610 Review

AGENCY: Agricultural Marketing Service. USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This action announces the Agricultural Marketing Service (AMS) review of the Federal Seed Act Regulations, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this notice of review must be received by May 9, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review. Comments must be sent to Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, Room 209, Building 306, BARC–E., Beltsville, Maryland 20705–2325; Telephone (301) 504–9430; Fax (301) 504–8098; or E-mail Richard.Payne2@usda.gov. All comments should reference the docket number and date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Seed Regulatory and Testing Branch during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC-East, Beltsville, Maryland 20725–2325; telephone: (301) 504–9237; Fax: (301) 504–8098; E-mail: Richard.Payne2@usda.gov.

SUPPLEMENTARY INFORMATION: The Federal Seed Act Regulations (7 CFR part 201) regulate the labeling of agricultural and vegetable seed in interstate commerce. The regulations are effective under the Federal Seed Act of 1939 (FSA), as amended (7 U.S.C. 1551 *et seq.*). The regulations were last amended by a final rule published in the **Federal Register** on January 11, 2000 (64 FR 1704).

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including the Federal Seed Act Regulations, under criteria contained in section 610 of the Regulatory Flexibility Act (FRA; 5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. The February 18 notice stated that AMS would list the regulations to be reviewed in AMS? regulatory agenda which is published in the **Federal Register** as part of the Unified Agenda. However, after further consideration, AMS has decided to announce the reviews in the **Federal Register** separate from the Unified Agenda. Accordingly, this notice and request for comments is made for the Federal Seed Act Regulations.

The purpose of the review will be to determine whether the Federal Seed Act Regulations should be continued without change, amended, or rescinded (consistent with the objectives of the FSA) to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the regulations; (2) the nature of complaints or comments received from the public concerning the regulations; (3) the complexity of the regulations; (4) the extent to which the regulations overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the regulations has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

Written comments, view, opinions, and other information regarding the Federal Seed Act Regulations's impact on small businesses are invited.

Dated: March 7, 2000.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 00–5911 Filed 3–9–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1710, 1717, and 1718

RIN 0572–AB51

Reduction in Minimum TIER Requirements

AGENCY: Rural Utilities Service, Agriculture.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations, reducing the minimum Times Interest Earned Ratio (TIER) required to be met by distribution borrowers from 1.50 to 1.25. Reducing TIER to 1.25, while retaining the existing Debt Service Coverage (DSC), Operating Times Interest Earned Ratio (OTIER) and Operating Debt Service Coverage (ODSC) standards, will provide the borrowers with the flexibility to develop new and unique rate structures in an increasingly competitive retail marketplace, yet not jeopardize loan security. Conforming amendments relating to exemptions of RUS operational controls under section 306E of the Rural Electrification Act; consolidations and mergers; sale, lease or transfer of capital assets; advance approval— 100 percent private financing of distribution, subtransmission and headquarters facilities; and certain other community infrastructure, and mortgage and loan agreements, are also contained herein.

DATES: Written comments must be received by RUS on or before April 10, 2000.

ADDRESSES: Written comments should be addressed to Blaine D. Stockton, Jr., Assistant Administrator, Electric Program, U.S. Department of Agriculture, Rural Utilities Service, Room 4037 South Building, Stop 1560, 14th & Independence Ave., SW., Washington, DC 20250–1560. Telephone 202–720–95457. RUS requests a signed original and three

copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Robert O. Ellinger, Management/Industry Analyst, Rural Utilities Service, Electric Program, Room 4023 South Building, Stop 1560, 14th & Independence Ave., SW., Washington, DC 20250–1560, Telephone: 202–720–0424.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule and (3) in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912 (e)) administrative appeals procedure, if any are required must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in the proposed rule are approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 0572–0032.

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State, local, and tribal governments or the private sector. See the final rule related notice entitled ''Department Programs and Activities Excluded From Executive Order 12372'' (50 FR 47034).

Background

A Times Interest Earned Ratio (TIER) is a financial measurement relating to the borrower's ability, on an annual basis, to earn margins sufficient to cover the interest charges on its total outstanding indebtedness (long-term and short-term). As originally used in RUS loan documentation, the borrower was required to set rates designed to produce annual margins equal to one and one-half times its annual interest cost on total indebtedness for two of the previous three years. The TIER requirement was first established in RUS mortgages in 1971 to facilitate the ability of the then new National Rural Utilities Cooperative Finance Corporation (CFC) to raise lending capital by issuing bonds secured by the pledge of electric distribution system mortgages requiring a TIER of 1.5 or more. CFC no longer imposes this requirement. However, many older RUS mortgages on which CFC is a co-mortgagee still contain a TIER requirement substantially unchanged since 1971. As discussed below, most electric distribution mortgages used by RUS after 1995 require a 1.5 TIER only as a prerequisite to issuing additional secured indebtedness under such mortgages without the need for obtaining the consent of the mortgagees.

As part of the 1995 revision to 7 CFR Part 1718, Loan Security Documents for Electric Borrowers (July 18, 1995), RUS shifted the covenant to design rates to achieve TIER from the mortgage to the new RUS loan contract for distribution borrowers. RUS also retained the existing standard TIER and DSC ratios set at the existing minimum levels of 1.5 and 1.25 respectively, while adding an Operating Times Interest Earned Ratio (OTIER) and Operating Debt Service Coverage (ODSC), both set at a minimum of 1.1 for the borrower's electric utility operations. Adding OTIER and ODSC achieved the RUS objective of excluding major ''non-cash'' margins from the coverage tests, requiring that borrowers at least break even, with a small margin for error, on their primary business. The borrower's electric utility business accounts for most of the financing assistance provided by RUS, is the main source of revenue for repaying the loans and provides the primary security for the loans. Therefore, RUS believes it is reasonable to expect the core business to be financially viable and not dependent on other sources of income to cover expenses. The addition of OTIER and ODSC as coverage ratios has made TIER (specifically at the 1.5 level) less critical in determining financial stability.

As the electric utility industry continues to move toward a more competitive retail marketplace, RUS is reviewing and updating its policies and procedures relating to electric borrowers. This new competitive environment brings with it the need to provide borrowers greater flexibility in establishing competitive rates. To this end, RUS believes that a reduction in reducing the minimum TIER level to 1.25 is now appropriate. Such a reduction will provide borrowers with additional flexibility to structure competitive rates in the marketplace without jeopardizing loan security. RUS believes that a thorough review of the TIER (as reduced), DSC, OTIER and ODSC ratios, combined with an in-depth study of a borrower's Annual Financial and Statistical Report, provides sufficient information to evaluate a borrower's credit worthiness and to judge loan repayment ability.

In reducing the minimum TIER requirement RUS does not expect a rush

by borrowers to implement this minimum in their financial planning. RUS recognizes that most borrowers manage their systems in such a fashion as to provide for a financial cushion with respect to operating ratios. In many cases this makes good business sense. However, RUS does expect that such a reduction will provide the flexibility required by borrowers facing severe competitive pressure on retail rates to act accordingly.

With respect to the TIER reduction proposal and its relationship to § 1710.7—Exemptions of RUS operational controls under section 306E of the RE Act; § 1717.615—Consolidations and mergers; § 1717.616—Sale, lease or transfer of capital assets; and § 1717.854—Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure; RUS is also proposing to reduce the TIER ratio level to 1.25 in an effort to maintain uniformity throughout the regulations. RUS believes it would be unwise to propose a TIER level different than 1.25. Establishing different TIER levels for different borrower actions and RUS approvals will only serve to add confusion causing administrative and communication problems. RUS believes that a borrower's strong financial condition can be supported by the reduced TIER and current DSC, OTIER and ODSC operation ratios will support the waivers granted in these provisions.

The proposed rule affects existing loan documents. Most electrical distribution borrower mortgages used by RUS contain the provision found in Section 2.03 of the model mortgage (RUS Information Publication 1718B). Generally speaking, Section 2.03 allows the mortgagor to issue additional secured notes under the mortgage even if it does not satisfy the requirements for issuing additional secured debt specified in section 2.01, *provided that the prior written consent of each mortgagee is obtained.* RUS is proposing that the final rule serve as its written consent to the issuance of additional secured notes under Section 2.03 of such mortgage in cases where the borrower would otherwise satisfy all requirements of section 2.01 of its mortgage if the minimum TIER as contained in section 2.01(1) of the mortgage were 1.25, instead of 1.5. Similarly, mortgages following the model mortgage contain a section 3.10 that imposes limitations on the borrower's ability to merge or consolidate without the prior written consent of the mortgagees. RUS is proposing that the final rule serve as its written consent to such mergers or consolidations under section 3.10 of such a mortgage in cases where the borrower would otherwise satisfy all the requirements of section 3.10(6)(B) of its mortgage if the minimum TIER as contained in such section were 1.25 instead of 1.5.

In other words, in most instances it would not be necessary for borrowers who have already used mortgages following the model mortgage to go through the expense and burden of issuing new mortgages or mortgage supplements to take advantage of the proposed change in TIER. Of course, the written consent of any other mortgagees would still have to be obtained and all requirements in the RUS loan contract would need to be observed. RUS is also proposing that future mortgages use the 1.25 TIER instead of the 1.5 TIER contained in sections 2.01 and 3.10 of the model mortgage and it invites the comments of supplemental lenders on such an approach. RUS expects that RUS Information Publication 1718B (the model mortgage) will be conformed to the proposed 1.25 TIER whenever the rule becomes effective.

Similarly, RUS is proposing to substitute a 1.25 TIER for the 1.5 TIER wherever it appears in the model loan contract 7 CFR part 1718, subpart C, appendix A). Loan contracts entered into after the effective date of the proposed rule will use the new standard. In order to eliminate the expense and burden of amending existing loan contracts to implement the change, RUS is proposing that the final rule operate as a self executing amendment to all provisions contained in any existing electric distribution loan contract with RUS that uses a 1.5 TIER provision. It is not expected that any borrower will object to such an amendment of its existing loan contract but any borrower who does should promptly notify RUS to that effect and RUS will maintain the existing provision as to any such objecting borrower.

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1718

Administrative practice and procedure, Electric power, Electric utilities, Loan programs—energy, Loan security documents, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, is proposed to be amended to read as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

2. Revise § 1710.7(c)(13)(vi)(B) and § 1710.7(c)(14)(ii) to read as follows:

§ 1710.7 Exemptions of RUS operational controls under section 306E of the RE Act.

* * * * *

(c) * * *

(13) * * *

(vi) * * *

(B) Having a pro forma TIER of not less than 1.25 and a pro forma DSC of not less than 1.25 for each of the two proceeding calendar years; and

* * * * *

(14) * * *

(ii) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.25, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1, in each case based on the average or the best 2 out of the 3 most recent years.

* * * * *

3. Revise § 1710.114(b)(1) to read as follows:

§ 1710.114 TIER, DSC, OTIER and ODSC requirements.

* * * * *

(b) *Coverage Ratios.* (1) Distribution borrowers. The minimum coverage ratios required of distribution borrowers whether applied on an annual or average basis, are a TIER of 1.25, DSC of 1.25, OTIER of 1.1, and ODSC of 1.1. OTIER and ODSC shall apply to distribution borrowers that receive a loan approved on or after January 29, 1996.

* * * * *

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

4. The authority citation for part 1717 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

5. Revise § 1717.615(f)(2) to read as follows:

§ 1717.615 Consolidations and mergers.

* * * * *

(f) * * *

(2) A pro forma TIER of not less than 1.25 and a pro forma DSC of not less than for each of the two preceding calendar years; and

* * * * *

6. Revise § 1717.616(b) to read as follows:

§ 1717.616 Sale, lease, or transfer of capital assets.

* * * * *

(b) In the most recent year for which data are available, the borrower achieved a TIER of at least 1.25, DSC of at least 1.25, OTIER of at least 1.1, and ODSC of at least 1.1 in each case based on the average or the best 2 out of the 3 most recent years.

* * * * *

7. Revise § 1717.854(c)(1) to read as follows:

§ 1717.854 Advance approval—100 percent private financing of distribution, subtransmission and headquarters facilities, and certain other community infrastructure.

* * * * *

(c) * * *

(1) The borrower has achieved a TIER of at least 1.25 and a DSC of at least 1.25 for each of 2 calendar years immediately preceding, or any 2 consecutive 12 month periods ending within 180 days immediately preceding, the issuance of the debt;

* * * * *

PART 1718—LOAN SECURITY DOCUMENTS FOR ELECTRIC BORROWERS

8. The authority citation for Part 1718 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart B—Mortgage for Distribution Borrowers

9. Article II, section 2.01(a)(1)(i) and Article III, section 3.10(6)(B) of Appendix A to Subpart B to Part 1718 are revised to read as follows:

Appendix A to Subpart B to Part 1718—Model Form of Mortgage for Electric Distribution Borrowers

* * * * *

Article II—Additional Notes

Section 2.01 * * *

(a) * * *

(1) * * *

(i) The Mortgagor shall have achieved for each of the two calendar years immediately preceding the issuance of such Additional Notes, a TIER of not less than 1.25 and a DSC of not less than 1.25;

* * * * *

Article III—Particular Covenants of the Mortgagor

* * * * *

Section 3.10 * * *

(6) * * *

(B) having a *pro forma* TIER of not less than 1.25 and a *pro forma* DSC of not less than 1.25 for each of the two preceding calendar years, and

* * * * *

Subpart C—Loan Contracts With Distribution Borrowers

10. The definition of ''Coverage Ratios'' in Article I, Definitions, and Article V, section 5.4(b) of Appendix A to Subpart C to Part 1718 are revised to read as follows:

Appendix A to Subpart C to Part 1718—Model Form of Loan Contract for Electric Distribution Borrowers

* * * * *

Article I—Definitions

* * * * *

''Coverage Ratios'' shall mean, collectively, the following financial ratios: (i) TIER of 1.25; (ii) Operating TIER of 1.1; (iii) DSC of 1.25; and Operating DSC of 1.1.

* * * * *

Article V—Affirmative Covenants

* * * * *

Section 5.4 * * *

(b) The average Coverage Ratios achieved by the Borrower in the 2 best years out of the 3 most recent calendar years must be not less than any of the following:

TIER=1.25

DSC=1.25

OTIER=1.1

ODSC=1.1

* * * * *

Date: March 3, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–5852 Filed 3–9–00; 8:45 am]

BILLING CODE 3410–15–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

8(a) Business Development/Small Disadvantaged Business Status Determinations

AGENCY: Small Business Administration (SBA).

ACTION: Notice of proposed rulemaking.

SUMMARY: SBA proposes to amend its regulations governing the Small Disadvantaged Business (SDB) program. This proposed rule would grant applicants seeking certification as an SDB a 45-day period to request that SBA reconsider its decision finding the applicant ineligible for SDB certification.

DATES: Submit comments on or before April 10, 2000.

ADDRESSES: Written comments should be addressed to Linda Williams, Deputy Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Terri Dickerson, Acting Associate Administrator, Office of Small Disadvantaged Business Certification and Eligibility, at (202) 619–1727.

SUPPLEMENTARY INFORMATION: On June 30, 1998, in response to and in conjunction with the Department of Justice and the Federal Acquisition Regulation reform proposals to implement a government-wide SDB program, SBA issued a final rule establishing the procedural framework for certifying firms as SDBs and for processing protests challenging the disadvantaged status of a firm claiming to be an SDB. *See* 63 FR 35767. Under existing regulations, firms seeking SDB certification must meet certain citizenship, size, ownership, control and social and economic disadvantaged status requirements. Although SBA is responsible for determining an applicant's eligibility for SDB certification, the Agency has approved certain organizations or business concerns (called Private Certifiers) to perform ownership and control determinations.

When an applicant submits an SDB application to SBA, however, SBA's Assistant Administrator for Small Disadvantaged Business Certification and Eligibility (AA/SDBCE) determines whether the applicant satisfies all of the requirements for certification, and issues a single written decision as to whether the applicant qualifies as an

SDB. The current regulations do not grant SDB applicants a right to request that the AA/SDBCE reconsider his or her negative determination of SDB eligibility. Instead, existing regulations afford applicants declined SDB certification on certain grounds the right to appeal the denial to OHA. Further, the regulations provide that once SBA issues a final decision finding the applicant ineligible, the applicant is precluded from reapplying for 12 months after the date of the final SBA decision to decline the application.

SBA has determined that the absence of an opportunity for firms to obtain a reconsideration, coupled with the one year bar on reapplications for SDB certification following a final SBA decision, deprives applicants of a formal mechanism to immediately correct deficiencies in their applications.

This proposed rule would amend SBA's existing regulations, codified at Title 13 Code of Federal Regulation (CFR) part 124, to: (1) Grant applicants the opportunity to request reconsideration and (2) Establish a reconsideration process. This proposed rule would redesignate 13 CFR § 124.1008(f)(3) as 13 CFR § 124.1008(f)(4) and would add a new 13 CFR § 124.1008(f)(3). The new paragraph (3) Would grant applicants denied SDB certification a 45-day period from the date of the AA/SDBCE's written decision to request that the AA/SDBCE reconsider that decision.

As part of the request for reconsideration, this proposed rule would allow applicants to submit additional evidence to show that they have overcome the reason(s) for the AA/SDBCE's denial. If the AA/SDBCE once again declines the application solely on grounds that were not included in the original denial letter, the AA/SDBCE would be required to grant the applicant an additional 45-day period to request that SBA reconsider the new basis for denial. If, however, the AA/SDBCE determines that the applicant is ineligible for SDB certification for one or more of the same reason(s) as addressed in the original decline, the applicant would not be entitled to a second reconsideration.

This proposed rule would not affect an applicant's right under the current 13 CFR 124.1008(f)(3) to appeal the AA/SDBCE's decision denying eligibility. An applicant denied SDB certification based solely on reasons of social disadvantage, economic disadvantage, or disadvantaged ownership or control, would continue to have the right to appeal to OHA. Under this proposed rule, the applicant would have the option to forego the reconsideration process and appeal the AA/SDBCE's initial decision to OHA, or to request reconsideration and if declined a second time solely on those grounds, to appeal the AA/SDBCE's reconsideration decision.

This proposed rule also does not affect an applicant's right with respect to ownership and control determinations of Private Certifiers. Unlike determinations by SBA, the current regulations allow applicants to reapply at any time following a Private Certifier's negative ownership and control determination and therefore obviate the need for a formal reconsideration process.

The proposed reconsideration process under this rule constitutes a procedural amendment that is designed to improve the efficiency and effectiveness of the certification process. This proposed rule also benefits SDB applicants by granting them the right to request that the AA/SDBC&E reconsider his or her denial of SDB eligibility. The proposed rule in no way deprives the public of any existing rights under SBA regulations, nor does it impose any additional burdens on SDB applicants or any other member of the public. For those reasons, SBA is providing a 30-day comment period to avoid unnecessarily delaying the implementation of this rule and to avoid unnecessarily impeding the efficient administration of the SDB certification program.

Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA has determined that this rule is not a significant regulatory action as defined by Executive Order 12866 in that it is not likely to have an annual economic effect of $100 million or more on the economy, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. SBA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq,* since it would be a procedural amendment to the SDB certification process that would not impose any mandatory requirements on SDB applicants or deprive them of any existing rights under governing SBA regulations.

For purposes of the Paperwork Reduction Act of 1995 (Public Law 104–13), SBA certifies that this interim rule imposes no new reporting or recordkeeping requirements on firms applying to be certified as an SDB. The rule grants certain SDB applicants the right to submit evidence to SBA that they are socially and economically disadvantaged, that they are citizens of the United States, and that they own and control the applicant concern. Once certified as an SDB, this rule does not require an SDB to report any other information to SBA or to maintain additional records.

For purposes of Executive Order 13132, SBA has determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

List of Subjects 13 CFR Part 124

Government procurement, Hawaiian natives, Minority businesses, Reporting and recordkeeping requirements, Technical assistance.

Accordingly, for the reasons set forth above, SBA proposes to amend Title 13, CFR as follows:

PART 124—[AMENDED]

1. The authority citation for 13 CFR part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

2. Section 124.1008 is amended by redesignating paragraphs (f)(3) and (4) as paragraphs (f)(4) and (5), respectively, and adding a new paragraph (f)(3) to read as follows:

§ 124.1008 How does a firm become certified as an SDB?

* * * * *

(f) * * *

(3)(i) If the AA/SDBCE declines the firm's application for SDB certification, the firm may request that the AA/SDBCE reconsider his or her initial decline by submitting a written request to the AA/SDBCE within 45 days of the date of the AA/SDBCE's decision. The applicant may provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline.

(ii) The AA/SDBCE will issue a written decision within 30 days of receiving the applicant's request for reconsideration, if practicable. The AA/SDBCE may either approve the application, deny it on one or more of the same grounds as the initial decision, or deny it on other grounds. If the application is denied, the AA/SDBCE

will explain why the applicant is not eligible for SDB certification and give specific reasons for the decline. If the AA/SDBCE declines the application solely on issues not raised in the initial decline, the applicant may request another reconsideration as if it were an initial decline. If the AA/SDBCE declines the application for one or more of the same reasons as addressed in the initial decline, the applicant is not entitled to a second reconsideration.

* * * * *

Dated: March 1, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–5600 Filed 3–9–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–96–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300 B2–1C, B2K–3C, and B2–203 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 series airplanes. That action would have required a supersedure of an existing AD that currently requires a one-time visual inspection and ultrasonic inspection to detect cracks in the wing front spar webs, and repair, if necessary. The NPRM would have required a visual inspection and repetitive ultrasonic inspections to detect cracks in the front face of the front spar on both wings between ribs 10 and 11, and repair, if necessary. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has issued separate rulemaking to require these same actions. Accordingly, the proposed rule is withdrawn.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on June 10, 1991 (56 FR 26621). The proposed rule would have superseded an existing airworthiness directive (AD) that requires a one-time visual and ultrasonic inspection to detect cracks in the wing spar webs, and repair, if necessary. The proposed rule would have required a visual inspection and repetitive ultrasonic inspections to detect cracks in the front face of the front spar of both wings between ribs 10 and 11, and repair, if necessary. The proposed rule was prompted by a report of a crack found on an in-service airplane in the wing front spar web between ribs 10 and 11. The proposed actions were intended to detect and correct cracking, which could result in reduced structural integrity of the wing front spar.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of the NPRM, the FAA issued an immediately adopted rule, AD 91–18–01, amendment 39–8004 (56 FR 40771, August 16, 1991), which requires repetitive high frequency eddy current inspections to detect cracks in the vertical web of the wing front spar between ribs 10 and 11, and repair, if necessary. Accomplishment of those actions adequately addresses the unsafe condition identified in this NPRM.

FAA's Conclusions

Since issuance of AD 91–18–01, the FAA has determined that the proposed actions of the NPRM (Docket 91–NM–96–AD) are unnecessary.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 13132, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 91–NM–96–AD, published in the **Federal Register** on June 10, 1991 (56 FR 26621), is withdrawn.

Issued in Renton, Washington, on March 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–5892 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–6]

Establishment of Class E Airspace; Salem, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace area at Salem Memorial Airport, Salem, MO. The Federal Aviation Administration has developed Area Navigation (RNAV) runway (RWY) 17, RNAV RWY 35 and VHF Omnidirectional Range (VOR)–A Standard Instrument Approach Procedures (SIAPs) to serve Salem Memorial Airport, Salem, MO. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate aircraft executing the SIAPs. This proposal would create controlled airspace at Salem Memorial Airport. The intended effect of this rule is to provide controlled airspace for aircraft executing the SIAPs at the Salem Memorial Airport.

DATES: Comments must be received on or before April 14, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–6, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace

Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–ACE–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Salem Memorial Airport, Salem, MO. The FAA has developed RNAV RWY 17, RNAV RWY 35 and VOR–A SIAPs to serve the Salem Memorial Airport, Salem, MO. Controlled airspace extending upward from 700 feet AGL is needed to contain aircraft executing these SIAPs. The intended effect of this action is to provide segregation of aircraft operating under Instrument Flight Rules (IFR) from aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Salem, MO [NEW]

Salem Memorial Airport, MO
(Lat. 37°36′55″ N., long. 91°36′16″ W.)
Maples VORTAC
(Lat. 37°35′27″ N., long. 91°47′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Salem Memorial Airport, and within 1.1 miles each side of the Maples VORTAC 080° radial extending from the 6.3-mile radius of the Salem Memorial Airport to .2 miles east of the Maples VORTAC.

* * * * *

Issued in Kansas City, MO, on Feburary 28, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–5952 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–105–9946b; FRL—6545–4]

Approval and Promulgation of Implementation Plans Commonwealth of Kentucky: Approval of Revisions to the Kentucky State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Commonwealth of Kentucky's State Implementation Plan (SIP) submitted through the Kentucky Natural Resources and Environmental Protection Cabinet (KNREPC) on April 29, 1998. This revision adds a new

regulation 401 KAR 50:032, ''Prohibitory rule for hot mix asphalt plants,'' to establish an enforceable production limit for asphalt plants in Kentucky to limit their potential to emit.

In the final rules section of this **Federal Register**, the EPA is approving Kentucky's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by April 10, 2000.

ADDRESSES: All comments should be addressed to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104.

Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: January 14, 2000.

A. Stanely Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–5932 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 000303059–0059–01; I.D. No.021700B]

RIN No. 0648–XA49

Endangered and Threatened Wildlife and Plants; 90-Day Findings for a Petition to List North American Populations of Smalltooth Sawfish and Largetooth Sawfish as Endangered Under the Endangered Species Act

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

ACTION: Notice of petition findings; request for information and comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces 90-day findings for a petition to add North American populations of smalltooth sawfish and largetooth sawfish to the List of Threatened and Endangered Wildlife. NMFS finds that the petition and information available in NMFS records indicate that listing North American populations of smalltooth sawfish as endangered under the Endangered Species Act (ESA) may be warranted; and do not indicate that listing North American populations of largetooth sawfish as endangered may also be warranted. NMFS is now initiating a status review of smalltooth sawfish to determine if the petitioned action for that species is warranted. NMFS will maintain the largetooth sawfish as a candidate species, and continue to solicit more information regarding this species to resolve doubts regarding its range and taxonomy.

DATES: The findings announced in this document were made on March 6, 2000. Comments and information related to this petition finding must be received by May 9, 2000.

ADDRESSES: Information and comments concerning these petition findings should be submitted to Charles A. Oravetz, Assistant Regional Administrator, Protected Resources Division, National Marine Fisheries Service, Southeast Regional Office, 9721 Executive Center Drive North, St. Peterburg, Florida 33702–2432. The petition, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Jennifer Lee, NMFS Southeast Region, (727)570–5312; or Marta Nammack, NMFS Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

NMFS designated smalltooth sawfish (*Pristis pectinata*) and largetooth sawfish (*P. perotteti*) as candidate species under the ESA on June 23, 1999. The candidate species list serves to notify the public that NMFS has concerns regarding these species/vertebrate populations that may warrant listing in the future, and it facilitates voluntary conservation efforts. On November 30, 1999, NMFS received a petition from the Center for Marine Conservation requesting NMFS to list North American populations of those two species of sawfish as endangered. The petitioner submitted biological, distributional, and historical information on sawfish and identified potential threats including (1) destruction, modification or curtailment of habitat or range; (2) overutilization for commercial, recreational or scientific purposes; (3) inadequacy of existing regulatory mechanisms; and (4) other natural or manmade factors affecting the species existence. Also, the petitioner cited references in support of the petition.

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to add a species or to remove a species from the List of Endangered and Threatened Wildlife and designate critical habitat. Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding on whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding must be promptly published in the **Federal Register**. In determining whether substantial information exists for a petition to list a species, NMFS takes into account information submitted with and referenced in the petition and all other information readily available in NMFS files. NMFS' ESA implementing regulations define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. 50 CFR 424.14(b). If the petition is found to present such information, the Secretary must conduct

a status review of the involved species and make a determination whether the petitioned action is warranted within 12 months of receipt of the petition (1-year determination).

Under the ESA, a listing determination can address a species, subspecies, or distinct population segment (DPS) of a species (16 U.S.C. 1532(15)). A DPS is a vertebrate population that is discrete in relation to the remainder of the species to which it belongs, and significant in relation to the species to which it belongs (61 FR 4722; February 7, 1996). The petition states that populations of smalltooth sawfish occur in the Atlantic, Pacific and Indian Oceans, and largetooth sawfish in the Atlantic and Pacific Oceans. The petition further states that while the species is widely distributed, smalltooth sawfish exists as ''distinct population units...with little chance of recruitment from other stocks''. Since the petitioner requested listings for largetooth and smalltooth sawfish in U.S. waters, NMFS considers the petition in the context of DPSs with ranges that lie entirely or partially in U.S. waters.

Analysis of Petition

The sawfish family is characterized by a toothy snout projecting well forward of the head. Approximately 2 ft (0.6m) or greater in length at birth, sawfish commonly grow to 16 ft (4.9m), some reaching lengths of up to 18 ft (5.5m). Sawfish are restricted to shallow coastal, estuarine, and fresh waters. They are often found in brackish water near river mouths and large embayments, preferring partially enclosed waters, lying in deeper holes on bottoms of mud or muddy sand. Sawfish are long lived species that grow slowly, mature late and are ovoviviparous, producing a small number of young, resulting in a very low intrinsic rate of population increase for these species. Such animals are usually successful at maintaining relatively small population sizes in relatively constant environments, but are not able to respond rapidly to additional and new sources of mortality resulting from changes in their environment, such as overexploitation and habitat degradation (Musick, 1999).

Smalltooth sawfish and largetooth sawfish may be morphologically distinguished from each other by the number of pairs of rostral teeth, the placement of their pectoral fins relative to their pelvic fins, and the shape of their caudal fin. Despite these differences in morphology, early literature indicates there were some problem with identification of these species in early records.

Smalltooth sawfish—Smalltooth sawfish historically inhabited marine habitats in selected parts of the eastern Pacific Ocean, western and eastern Atlantic Ocean, Mediterranean Sea, Indo-Pacific, and Red Sea, and freshwater habitats in North, Central and South America, Africa, and India. In North America, historical records indicate that during the 19th century, smalltooth sawfish were abundant along both coasts of Florida and in the summer north to North Carolina, in estuaries and lower reaches of rivers, as well as out to depths of about 25m along open coasts fronted by mud flats of the Atlantic and Gulf of Mexico coastal waters of the southeastern United States. Smalltooth sawfish migrated north along the coast during summer months but was probably not a permanent resident in western Atlantic waters north of Florida.

There are no quantitative data available to conduct a formal stock assessment for smalltooth sawfish species, however, the decline of this species is well documented by anecdotal reports. Historical record of field observations indicates that smalltooth sawfish were abundant as recent as the 1950's. Reports of smalltooth sawfish becoming entangled in fishing nets are common in early literature and indicate smalltooth sawfish were considered a nuisance by fishermen, doing considerable damage to their nets when entangled and capable of inflicting serious wounds with their saw. As a result, these fish were usually killed on the spot by fishermen when captured or released only after removal of their saw.

During the 20th century, smalltooth sawfish have been recorded with declining frequency. An independent assessment of smalltooth sawfish was performed by Adams and Wilson in 1995, by contacting all state fisheries management agencies from New York south and west to Texas and asking for any records of recent landings. In addition, research institutions and museums with marine holdings were contacted. From the responses received, it appears that the species no longer occurs along the eastern seaboard and that by the 1970's the species was confined in the Gulf of Mexico to a few restricted locales in Florida, Louisiana and Texas waters. Today, official records of smalltooth sawfish landings are rare throughout their range in North America. Incidental commercial catch was likely the most significant factor in the population's decline. Snelson and Williams (1981) attribute the loss of the species from the Indian River directly to the activities of commercial fishing for other species (Snelson and Williams, 1981). Sawfish are extremely vulnerable to overexploitation due to their exceptional propensity for entanglement in net gear, their restricted habitat, and their low intrinsic rate of increase.

Largetooth sawfish—Largetooth sawfish historically inhabited warm-temperate to tropical marine waters in the Atlantic and eastern Pacific, possibly in the eastern Mediterranean, and freshwater habitats in Central and South America and Africa. It is represented by a closely allied form, *P. microdon* (or forms) along the Pacific Coast of Central America, off northern Australia, off Indo-China, among the East Indies, and in the tropical-subtropical belt of the Indian Ocean. Largetooth sawfish are very similar to *P. microdon* but their exact relationship remains to be determined.

Historical occurrences of largetooth sawfish in North America were much more limited than those of smalltooth sawfish and were strictly confined to shallow (<10 m) warm-temperate and tropical waters (>18° to at least 30°C) in the immediate vicinity of the shore and to estuarine localities, partly enclosed lagoons, and similar situations. In the United States, largetooth sawfish were reported along the Texas coast from the Mexican border (Brownsville) to the Louisiana border (Port Arthur). Evidence to support its historical abundance in this area stems from one literature source, ''Notes on Sawfish, *Pristis perotteti* Muller and Henle, not Previously Reported from the Waters of the United States'' (Baughman, 1943), that includes a report of seven large largetooth sawfish taken by one fishermen near Galveston, Texas. Oddly, the same scientist indicates in a 1952 publication that West Indian sawfish (*P. microdon*) were sometimes caught in Texas waters and does not mention the largetooth sawfish.

Compared to occurrences of smalltooth sawfish, largetooth and/or West Indian sawfish were relatively rare. Bigelow and Schroeder (1953) noted the fact that all specimens reported from the coast of Texas have been large, in contrast with the abundance of smaller ones further south, suggesting that the production of young is confined chiefly to regions where the temperature of the water is at least as high as 25–26°C. They believed that most of the large specimens taken from the northern, cooler waters had migrated from a tropical nursery, (Bigelow and Schroeder, 1953).

While historic record of field observations indicate there may have

been largetooth sawfish present in North American waters at one time, there are no data to support that there is presently, or ever was, a resident North American population of largetooth sawfish. All of the information included in the petition on the population status of largetooth sawfish pertains to Lake Nicaraguan populations in Central America. NMFS feels applying this information to other stocks is inappropriate because in Lake Nicaragua, historical conditions permitted residence of a large number of sawfish, which reproduced in the lake and constituted a discrete stock, with limited genetic mixing with other stocks (Thorson 1982). Additionally, this Central American population was subjected to a heavy directed commercial fishery in the 1970's and suffered severe declines. In the United States, there are no directed commercial fisheries for sawfish.

Petition Findings

Given the decline in recorded abundance, limited reproductive capacity and documented take by commercial and recreational fishermen, NMFS finds that the petitioner presents substantial scientific and commercial information indicating that a listing of smalltooth sawfish may be warranted based on the criteria specified in 50 CFR 424.14(b)(2). Under section 4(b)(3)(A) of the ESA, this finding requires that a status review of the status of smalltooth sawfish be completed within 1 year of the receipt of the petition (by November 29, 2000) to determine whether the petitioned action to list smalltooth sawfish as endangered is warranted.

NMFS also finds that there is not substantial evidence to warrant initiation of a status review of North American populations of largetooth sawfish, on the basis that the petition did not contain substantial scientific and commercial information to indicate the present existence of such a population eligible for listing. While the petition presented evidence that largetooth sawfish did occur at one time in Texas waters, based on NMFS' review of the petition and on other available information, we believe that the largetooth species is most likely a tropical species, only rarely straying to North American waters.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species can be determined to be threatened or endangered for any one of the following reasons: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by the State and foreign nations to protect such species.

Within 1 year from the date the petition was received, a finding will be made as to whether listing the North American population of the smalltooth sawfish as endangered is warranted, as required by section 4(b)(3)(B) of the ESA.

Information Solicited

To ensure that the status review is complete and based on the best available scientific and commercial data, NMFS is soliciting information about smalltooth sawfish concerning the following: (1) Historical and current abundance and distribution; (2) the existence of reproducing populations; (3) biological or other relevant data to determine the existence or lack of distinct population segments in U.S. waters; (4) information on any current or planned activities that may adversely impact North American sawfish, especially related to the five listing factors identified here; and (5) ongoing efforts to protect sawfish and their habitat. NMFS requests that data, information, and comments be accompanied by supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and the person's name, address, and any association, institution, or business that the person represents. Such information may be submitted to the address given previously.

NMFS is also soliciting data on largetooth sawfish. Even though NMFS has determined that a formal initiation of a status review of largetooth sawfish under the ESA is not warranted at this time, some concerns about its status still remain. If NMFS becomes aware of new information that would warrant a formal initiation of a status review of the largetooth sawfish, NMFS would announce this in the **Federal Register**.

NMFS also requests quantitative evaluations describing the quality and extent of habitats for both species, as well as information on areas that may qualify as critical habitat. Areas that include the physical and biological features essential to the species should be identified. Essential features include, but are not limited to, the following (1) Habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

For areas potentially qualifying as critical habitat, NMFS requests information describing the activities that affect the area or could be affected by the designation; and the economic costs and benefits of additional requirements of management measures likely to result from the designation. The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact ''of the [critical habitat] designation upon proposed or ongoing activities'' (50 CFR 424.19). NMFS must consider the incremental costs resulting specifically from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 or 4(d) of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

References Cited

Bigelow, H.B. and W.C. Schroeder. 1953. Sawfishes, guitarfishes, skates, rays, and chimaeroids. Fishes of Western North Atlantic. Sears Foundation for Marine Research 1 (2): 1–514.

Baughman, J. L. 1943. Notes on Sawfish, *Pristis perotteti* Muller and Henle, not Previously Reported from the Waters of the United States. Copeia 1: 43–48.

Musick, J.A. 1999. Life in the slow lane: ecology and conservation of long-lived marine animals. American Fisheries Society Symposium 23, Bethesda, Maryland.

Snelson, F.F., Jr. and SE. Williams. 1981. Notes on the occurrence, distribution and biology of elasmobranch fishes in the Indian River Lagoon System, Florida. Estuaries 4(2):110–120.

Thorson, T.B. 1982. Life history implications of a tagging study of the largetooth sawfish, *Pristis perotteti*, in the Lake Nicaragua-Rio San Juan system. Environmental Biology of Fishes 7(3): 207–228

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 6, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5907 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 48
Friday, March 10, 2000

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

Submission for OMB Review; Comment Request

March 6, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: New Crop Insurance Programs (pilot and private crop insurance policies).

OMB Control Number: 0563–0057.

Summary of Collection: The Federal Crop Insurance Act (ACT), as amended in 1994 and 1996, further expanded the role of the crop insurance program to be the principal tool for risk management by producers of farm products. The expansion mission of the Risk Management Agency (RMA) is to meet the obligation of mandatory program development and to expand the current program to provide risk management products to the greatest number of people covering the greatest dollar value of commodities. Extensive research is completed prior to the development and implementation of a new pilot program of insurance. The development phase of a pilot program includes gathering, analyzing, and evaluating the agronomic suitability and cultural practices of a crop in each specific area. During the pilot crop insurance coverage development process, RMA prepares the crop insurance policy provisions, underwriting guidelines, actuarial documents, and loss adjustment standards. RMA will collect information using several forms.

Need and Use of the Information: RMA will collect information indicating the crop, type, variety, and practice that will be insured in the state and county along with the premium rates and crop price elections that will be available. The information is used to determine liability and premium. The information collected on the forms will be used by Federal Agencies, RMA, crop insurance companies reinsured by FCIC, and other agencies that require such information in the performance of their duties.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 80,889.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 73,228.

Office of Outreach

Title: USDA Minority Farm Register.

OMB Control Number: 0508–NEW.

Summary of Collection: The 1990 Farm Bill, Section 2501 provides the authority for ''The Secretary of Agriculture * * * to provide outreach and technical assistance to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches and to participate in agricultural programs.'' A team of USDA leaders in early 1997 was appointed to examine civil rights issues in the USDA. A number of civil rights forums were held around the country to hear program delivery comments and complaints. The Secretary appointed a Civil Rights Implementation Team and ordered that all recommendations be implemented. Establishment of a baseline for the number of minority farms by supporting a voluntary register of minority farms, which will help USDA set goals to halt land loss and to monitor the loss of minority-owned farms, was one of the primary recommendations.

Need and Use of the Information: The Office of Outreach will collect information from minorities and socially disadvantaged farmers to document the amount of farmland owned by race/ethnicity. The Register will establish a baseline of minority farmland ownership, which can be monitored over time. The Office of Outreach will provide names and addresses to approved organizations assisting minorities with land retention and acquisition initiatives.

Description of Respondents: Farms.

Number of Respondents: 120,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10,000.

Agricultural Marketing Service

Title: 7 CFR Part 37—Program to Accredit Organic Certifying Agencies.

OMB Control Number: 0581–0183.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946, as amended, authorizes the Secretary of Agriculture to provide consumers with voluntary services that facilitate the marketing of meat and meat products. A voluntary program to accredit organic certifying agencies would help ensure that U.S. organic products can be exported to European Union countries that require accreditation by a government body under the International Organization for Standardization Guide 65, entitled General Requirements for Bodies Operating Product Certification Programs.'' The Agricultural Marketing Service (AMS) will collect information using form LS–314, Quality System

Certification Program Application for Service.

Need and Use of the Information: AMS will collect information to identify the responsible authorities in establishments requesting services and initiate billing and collection accounts. Without a properly signed and approved form LS–314, AMS officials would not have the authority to accredit organic certifying agencies nor would users of the service be legally obligated to abide by the regulations or to remit payment for services rendered.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 44.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly.

Total Burden Hours: 3,531.

Agricultural Marketing Service

Title: Fruit and Vegetable Market News Reports.

OMB Control Number: 0581–0006.

Summary of Collection: Section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621) directs and authorizes the collection of information and disseminating of marketing information including adequate outlook information on a market-area basis for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and bring about balance between production and utilization of agriculture products. Market News provides all interested segments of the market chain with market information tends to equalize the competitive position of all market participants. The fruit and vegetable industries, through their organizations, or government agencies present formal requests that the Department of Agriculture issue daily, weekly, semi-monthly, or monthly market news reports on various aspects of the industry. The Agricultural Marketing Service (AMS) will collect information in person and by phone.

Need and Use of the Information: AMS will collect information for the production of Market News reports that are then available to the industry and other interested parties in various formats.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 18,361.

Frequency of Responses: Reporting: Weekly; Monthly; Other (Daily).

Total Burden Hours: 121,010.

Agricultural Marketing Service

Title: Application for Plant Variety Protection Certificate and Objective Description of Variety.

OMB Control Number: 0581–0055.

Summary of Collection: The Plant Variety Protection Act (PVPA, was approved December 24, 1970; 84 Stat. 1542, 7 U.S.C. 2321 *et seq.*) was established to encourage the development of novel varieties of sexually-reproduced plants and make them available to the public, providing intellectual property rights (IPR) protected to those who breed, develop, or discover such novel varieties, and thereby promote progress in agriculture in the public interest. The PVPA is a voluntary user funded program which grants intellectual property ownership rights to breeders of new and novel seed- and tuber-reproduced plant varieties. To obtain these rights the applicant must provide information which shows the variety of eligible for protection and that it is indeed new, distinct, uniform, and stable as the law requires. The Agricultural Marketing Service (AMS) will collect information using forms ST–470, ST–470–E and ST Series Forms.

Need and Use of the Information: AMS will collect information from the applicant to determine if the variety is eligible for protection under the PVPA. If this information is not collected there would be no basis for issuing certificates of protection, and no way for applicants to request protection.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 116.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,691.

Agricultural Marketing Service

Title: Generic OMB Fruit Crops, Marketing Order Administration Branch.

OMB Control Number: 0581–NEW.

Summary of Collection: Marketing Orders (Orders) and Agreements (Agreements) covering the respective commodities emanate from the Agricultural Marketing Agreement Act of 1937, Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674. This regulation, hereinafter referred to as the Act, was designated to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to producers. The Act provides in section 608(d)(1) that information necessary to determine the extent to which an order has effectuated the declared policy of the Act shall be furnished at the request of the Secretary of Agriculture (Secretary). Orders/Agreements are administered by committees/boards that consist of producer/growers, handlers, and, in some cases, a member representing the public. Producers who voluntarily apply to participate in certain programs are required to submit certain information, pursuant to the specified sections in the order/agreement. AMS will collect information using several forms.

Need and Use of the Information: AMS will collect information relating to supplies, shipments, and dispositions of their respective commodities and other information needed to effectively carry out the purpose of the AMAA and their respective orders.

Descriptive of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 4,052.

Frequency of Response: Recordkeeping; Reporting: On occasion; Quarterly; Biennially; Weekly; Semi-annually; Monthly; Annually.

Total Burden Hours: 2,978.

Agricultural Marketing Service

Title: Regulations for Inspection of Eggs.

OMB Control Number: 0581–0113.

Summary of Collection: Congress enacted the Egg Products Inspection Act (21 U.S.C. 1031–1056) (EPIA) to provide a mandatory inspection program to assure egg products are processed under sanitary conditions, are wholesome, unadulterated, and properly labeled; to control the disposition of dirty and checked shell eggs; to control unwholesome, adulterated, and inedible egg products and shell eggs that are unfit for human consumption; and to control the movement and disposition of imported shell eggs and egg products that are unwholesome and inedible. The Agricultural Marketing Service (AMS) will collect information using several forms.

Need and Use of the Information: AMS will collect information to serve the Agency mission, program objectives and management needs in providing information on the efficiency and effectiveness of the program—whether the program meets the needs of the users and consumers; workload; area where the workload may be increasing or decreasing, requiring needed changes in field and supervisory staffing and travel; program and cost analyses; changes that may be needed in the program; evaluating the goals of the Agency; and review and evaluation of information collection. The information will be used to assure compliance with the Act and regulations and to take administrative and regulatory action. The information will also be used to

develop and revise cooperative agreements with the States, which conduct surveillance inspections of shell egg handlers and processors. If the information is not collected AMS would not be able to carry out the intent of Congress; *i.e.,* enforce the Act to control the processing, movement, and disposition of restricted shell eggs, unwholesome, adulterated, and inedible eggs and egg products; to prevent their use as human food; to control imports of such eggs and egg products; and to take regulatory action in case of noncompliance.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,134.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 1,922.

Agricultural Marketing Service

Title: Pricing Pilot Program.

OMB Control Number: 0581–NEW.

Summary of Collection: The pilot program was included in the Consolidated Appropriations Act 2000 (Section 3 of H.R. 3428 of the 106th Congress, as enacted by Section 1001(a)(8) of Public Law 106–113 (113 Stat. 1536), signed into law on November 29, 1999. A disclosure statement is to be completed by dairy farmers who choose to participate in a Congressionally—mandated pilot program. The statement contains guidelines to help the farmer understand the forward contract process. The pilot project is to enable the Agricultural Marketing Service (AMS) to conduct a study of forward contracting to determine the impact of milk prices paid to producers in the U.S.

Need and Use of the Information: AMS will collect information to review the contract to ensure it has been signed before exempting a handler from paying a contractor producer the minimum order price for that portion of his or her milk that is covered by the contract. AMS will also determine the impact on milk prices paid to producers in the United States. If the information is not collected the forward pricing pilot program that was mandated by Congress will not be able to be conducted and forward pricing contractors would not be recognized under the Federal Order program.

Description of Respondents: Farms.

Number of Respondents: 8,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,000.

Agency has requested emergency approval by March 24, 2000.

Food and Nutrition Service

Title: Operating Guidelines, Forms and Waivers.

OMB Control Number: 0584–0083.

Summary of Collection: Section 11(d) of the Food Stamp Act of 1977, as amended, provides that the State agency of each participating State shall submit to the Secretary for approval a plan of operation specifying the manner in which the Food Stamp Program will be conducted within the State in every political subdivision. Section 11(e) of the Act provides that the State plan of operation shall provide for State agency verification of household eligibility prior to certification, completion of certification within 30 days of filing of the application, fair hearing, and submission of reports as required by the Secretary. The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Projection Statement, and the program Activity Statement (272.2(a)(2). Under part 272.2(c), the State agency shall submit to the Food and Nutrition Service (FNS) for approval a Budget Projection Statement (which projects total Federal administration costs for the upcoming fiscal year) and a Program Activity Statement (which provides program activity data for the preceding fiscal year). FNS will collect information using Forms FNS 366A and FNS 366B.

Need and Use of the Information: FNS will collect information to estimate funding needs and also provide data on the number of applications processed, number of fair hearings, and fraud control activity. FNS uses the data to monitor State agency activity levels and performance. If the information was not collected it would disrupt budget planning and delay appropriation distributions.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Annually.

Total Burden Hours: 3,768.

William McAndrew,

Departmental Clearance Officer.

[FR Doc. 00–5853 Filed 3–9–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Special Forest Products Resource Management in the Alaska Region

AGENCY: Forest Service, USDA.

ACTION: Notice of interim policy.

SUMMARY: In October 1997 the Regional Forester appointed a Special Forest Products Task Group for the purpose of formulating recommendations on how the Alaska Region should manage commercial use of special forest product resources. This initiated a process of defining and clarifying a practical method for managing the commercial harvest of special forest product resources in the Alaska Region. The Interim Special Forest Products Resource Management Policy incorporates agency, tribal, and public input.

The interim policy presents a region-wide strategy for management of special forest product resources in National Forests in Alaska. This policy applies only on National Forest system lands. It does not affect use of special forest product resources on state, private, or Native corporation lands. Because the policy is region-wide, it must be broad enough to encompass situations throughout the Alaska Region, from the Anchorage area to Hydaburg. It therefore focuses primarily on consistency with the process of special forest product resource management. Forest-related issues and the applicable Forest Plan will be addressed through forest-level policy development. Site-specific issues will be resolved at the local level by the district ranger, with tribal and community involvement, including the use of appropriate National Environmental Policy Act analysis.

DATES: Comments concerning this interim policy should be received in writing by April 24, 2000.

ADDRESSES: Submit written comments to Phyllis Woolwine, Juneau Ranger District, 8465 Old Dairy Road, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Write Phyllis Woolwine, Juneau Ranger District, 8465 Old Dairy Road, Juneau Alaska 99801 or send e-mail to *sfp/r10 ketchikan@fs.fed.us.* Copies of the policy can be obtained at any Forest Service District Ranger or Forest Supervisor office in Alaska. The policy can also be read on the internet at www.fs.fed.us/r10.

SUPPLEMENTARY INFORMATION: The following is the Interim Special Forest Product Resource Management Policy.

Definitions

Special Forest Products are products derived from non-timber biological resources that are used for personal, educational, commercial, and scientific use. Special forest product resources include, but are not limited to: Mushrooms, boughs, Christmas trees, bark, ferns, moss, burls, berries, cones,

conks, herbs, roots, and wildflowers. Also included are cuttings (such as of willow used for restoration) and transplants (as for landscaping purposes). Special forest product resources exclude saw-timber, pulpwood, cull logs, small round-wood, house logs, utility poles, minerals, animals, animal parts, rocks, water and soil.

Non-Commercial Use

(1) *Subsistence Use*—Customary and traditional uses by rural residents, as defined in the Alaska National Interest Lands and Conservation Act (ANILCA); Title VIII, for direct personal or family use or consumption, barter, sharing, or customary trade that does not constitute a significant commercial enterprise.

(2) *Personal Use*—Gathering of small quantities of materials for personal or family use or consumption; not intended for selling or resale. This includes cultural and traditional use by non-rural residents.

(3) *Other Non-Commercial Use*—This includes collections of plants by non-commercial entities for research not directed toward development of a commercial product. Educational use is also considered non-commercial when the class or workshop is affiliated with a college, university, tribe or other recognized organization. The class instructor may be compensated for his/her time in gathering and preparing the materials for the classroom, either by the organization or by the students.

Commerical Use—Materials harvested for the primary purpose of sale, resale, or use in a manufacturing process resulting in a product that will be sold or used for business activities. Research collections directed at development of a commercial product are also treated as commercial use.

In compliance with national and regional direction on special forest product resource management, forests and districts shall develop commercial special forest product resource management guidelines. Forests and districts shall outreach to tribes and local interested parties to ensure local involvement with the development of local special forest product resource management guidelines. These guidelines will be consistent in process but may vary in approach to specific species.

Permitting Requirements

Permits are required for commercial harvest of any special forest product resource. Research collections directed primarily at developing a commercial product also require a commercial use permit, and are subject to current national terms and conditions.

Collections that qualify as non-commercial research or educational use can be authorized through an administrative use permit or a free use permit.

In the majority of cases, non-commercial gathering of special forest product resources for subsistence and personal use in the Alaska Region do not require a special forest product permit. People collecting special forest product resources on the National Forest System lands in Alaska are expected to exercise reasonable care in protecting the resource from damage. Exercise control where necessary to prevent destructive gathering, over-harvesting, or damage to resource values. The authorized officer may require a free-use permit in order to mitigate site or species-specific concerns.

The Forest Service reserves the right to unilaterally revoke any permit for the permittee's noncompliance with its terms and conditions or when revocation is in the public's interest.

Special forest product resource use is prioritized according to: (1) Subsistence use (highest priority); (2) personal use, including customary and traditional gathering; (3) non-commercial research and educational uses; (4) commercial use. Priority uses may be sustained by not issuing commercial permits for areas where subsistence, personal, or cultural/traditional users gather, or by restricting commercial permits for certain special forest product resources that these users rely on, and which may be in limited supply.

As part of a community-based development of local guidelines, special forest product resource managers will consult with tribal officials in a government-to-government relationship to identify local areas and species of culturally significant plant resources and possible management practices that may enhance those resources. Special forest product resource managers will also outreach to include involvement by other locally interested parties.

Commercial Harvest Guidelines

Areas of primary consideration for commercial special forest product resource harvest are locations where planned management activities would otherwise damage or destroy the product. Under these circumstances, certain harvest restrictions (*e.g.,* quantity limits, certain restricted species, etc.) for special forest product resources may be modified. Areas scheduled for timber harvest, road and trail construction and maintenance, and any vegetation management that will impact the special forest product resources in the area should be given top priority for commercial special forest product resource harvest. Where such areas are not available, commercial special forest product resource harvest may be allowed in other areas. However, commercial use of special forest product resources shall not conflict with standards and guidelines for management prescriptions in the applicable forest plan. Areas of known traditional subsistence and personal use should be prioritized for subsistence and personal use.

Frequency of commercial harvest is based at a minimum on the ability of a species to return to its pre-harvest condition. Other consideration may apply.

Devil's club (*Oplopanax horridus*) is not available for commercial harvest on the Tongass National Forest, based on Forest-wide cultural sensitivity. The availability of devil's club on the Chugach National Forest will be addressed at the Forest and District levels.

Permits for Commercial Harvest of Special Forest Products: Environmental Analysis

Commercial harvest of special forest product resources on National Forest System lands is subject to the National Environmental Policy Act (NEPA). Different proposed harvest activities require different levels of NEPA analysis, including the environmental impact statement (EIS), environmental analysis (EA), and categorical exclusion (CE).

The NEPA process is the appropriate vehicle for including input from all interested parties when there is a request for commercial harvest of special forest product resources.

As part of NEPA analysis for other disturbance activities, consider existing and future potentials for special forest product resource uses.

Civil rights impact analyses and social impact analyses are accomplished through the NEPA process.

In accordance with national and regional direction and the applicable forest plan, the NEPA analysis should identify and address, as appropriate, disproportionately high and adverse human health and environmental effects of any activity on minority populations and low-income populations.

Coordinate with the State and Private Forestry Forest Health Protection program if there are any recognized concerns regarding insect pests and diseases associated with special forest product resources, as harvest of special forest product resources can contribute to their spread.

Project Level Process

Permits are in all cases required for commercial harvest of special forest product resources, as well as for research collections directed at development of a commercial product. For commercial harvest, the permit must regulate the manner in which special forest product resources are harvested, provide information for monitoring the amount harvested, cover the government's administration cost, and to ensure the agency receives a fair market price for the sale of public resources to individuals receiving benefits beyond those received by the general public.

The following procedures for commercial special forest product permitting shall be followed at the district level, ensuring compliance with national, regional, forest and district direction, as well as adequate review by tribes and interested groups or individuals.

Persons wishing to harvest special forest product for commercial or research uses for the Alaska Region must fill out a special forest product permit application, supplied by the district, detailing requested plants/plant parts, quantities, proposed harvest methods, proposed harvest areas (indicated on a map), dates of harvest, number of people involved in harvest and transport, means of access and transportation, and intended use for the product(s). The application form will include summarized instruction on Alaska Region Policy. This application must be reviewed by district resource managers and the district ranger for consistency with national and regional directive, and with district special forest product guidelines. Any proposal at variance with these directives and guidelines shall be brought to the attention of the applicant for revision or exclusion from the application before further consideration is made.

Allowable harvest areas must be consistent with allowable uses designated in the forest plan. The appropriate line officer has the responsibility to restrict harvest areas or plants as necessary to accommodate local subsistence use, traditional use, and personal use priorities, as well as to mitigate for ecological or sustainability concerns. The line officer may limit allowable harvest quantities by each permittee for a number of reasons, including sound land management practices and diversifying economic opportunities among local residents.

All permit applications shall be made available at the district office for access and review by any member of the public. In addition, any groups or individuals interested in specific plants or areas may receive copes of pertinent applications for review as requested.

Local tribes shall be directly notified of any proposed commercial special forest product resource harvest activities within their use area in the interest of government-to-government relations. Through the consultation process, tribal officials may identify any possible area of conflict with cultural and traditional uses such as traditional gathering areas or traditional-use plants associated with the intended harvest. Confidentiality with regard to culturally sensitive information shall be exercised to the greatest extent possible when consulting with tribes. Accessing traditional knowledge should be done in such a way as to maintain tribal ownership of tribally contributed information wherever possible.

The appropriate line officer shall consider the physical and cultural needs of the tribe when making the final decision on permitting, in keeping with applicable federal laws, regulations, and policies relating to government-to-government relations.

All proposed commercial harvest activities shall be reviewed by the district or forest plant specialist in order to identify potential regeneration or sustainability concerns for individual plant species or groups, such as mosses and lichens. The district shall maintain a list of species having ecological, cultural, or sustainability concerns; harvest for those species may be restricted or prohibited. This list will be updated annually or as necessary to include information gained through monitoring, research, or tribal and community input.

All proposed commercial special forest product harvest activities will be subject to the appropriate level of NEPA analysis. Small amounts of non-controversial special forest products may only need review by the district, Tribe and identified interest groups. A categorical exclusion may be appropriate for such permits, if no concerns are raised during the initial review. Larger amounts or potentially controversial species will require further public scoping process.

If a district receives a significant number of special forest product permit applications, NEPA analysis may be done to identify in advance appropriate commercial use areas and harvest limits for specified special forest product resources, for a given period of time. The purpose would be to minimize community benefits while minimizing impacts to subsistence and personal use. However, this type of analysis shall not be done for areas or species until a significant number of permit applications have been received.

As a result of appropriate NEPA analysis, including review by district personnel, tribal government, and interested parties, as well as public scoping as appropriate, the proposed activity on the permit application may be revised before a permit is issued. The permit will be issued on either form FS–2400–1 or FS–2400–4, depending on the quantity and value of the proposed sale. Permits indicate the type of permitted action, the species involved, the amount permitted for harvest method, the area approved for the permitted action, time frames for removal, terms and conditions, local guidelines, and any specialized instructions deemed necessary for such use. The minimum charge for a commercial special forest product permit is $10, in accordance with national direction.

A blanket commercial use permit may be issued to a tribe for the purpose of allowing tribal administration of non-subsistence commercial use by tribal members. This commercial use permit would be issued to the tribe and, like all other commercial use permits, is subject to national, regional and forest special forest product policy and regulations governing commercial use of special forest product resources. Under the terms and conditions of the permit, the tribe may then issue sub-permits allowing members of that tribe to conduct harvest activities. The tribe will have jurisdiction over its members with regard to compliance.

Valuation of Special Forest Products

Rates for commercial harvest of special forest product resources should reflect local conditions such as distance from the market, difficulty of harvest, quality of the product and market factors.

The Alaska Region shall develop a minimum rates table for sale of specific special forest product resources. Development of minimum rates shall be the responsibility of the Director of Forest Management.

Standard rates shall be established and updated for each forest and shall be the responsibility of the forest timber staff officer. Standard rates should be more reflective of fair market value, should be adjusted annually, and should generally be based on 10 percent of the price paid to harvesters.

Product availability is subject to many factors, including abundance, ecological concerns, and use priorities. Some products will not be available on a forest or district based on management decisions at the forest and district level.

Special forest product requests with an appraised value of $2,000 or greater, or those for which competition exists, shall be advertised for 30 days and made available through a bidding process.

Selling units (bushels, pounds, each, etc.) for specific special forest product resources shall be consistent across the Alaska Region to make record keeping, reporting, and monitoring more accurate and efficient.

Inventory and Monitoring Strategies:

Inventory

In order to determine availability of special forest product resources for the Alaska Region, an inventory must be established to assess the range, distribution and abundance of species. Initially, the inventory may rely on using existing data (*e.g.,* stand exams, botany and ecology surveys, research, etc.) and traditional knowledge. The level of inventory should be determined partly by the level of demand and the scope of harvest. Inventory should be developed at the district level. District inventories shall be integrated at the forest level and regional level. The inventory should encompass the following objectives:

(1) Develop a list of species for which inventory information is needed.

(2) Information derived from the NEPA process should be fed into the inventory.

(3) Such Natural Resource Information System (NRIS) tools as the TERRA (Terrestrial) and FSVEG (Field Sampled Vegetation) databases, and the ECOMAP and Existing Vegetation classification and mapping modules, shall be used to track and integrate the inventories at the forest and regional level.

(4) This species presence and abundance information becomes part of a foundation for district-specific determination of available species for commercial harvest. This information does not replace project-specific NEPA analysis.

Monitoring/Administration

As commercial special forest product resource harvest becomes established in the Alaska Region, it is necessary to monitor the ecological impacts of harvest methods and intensities permitted. Results from monitoring activities should be used to adjust special forest product resource harvest parameters. District managers may share monitoring efforts with their cooperative partners to encourage local investment in the program and benefits to the community. The appropriate level of monitoring is determined through NEPA analysis. Suggested monitoring activities include:

(1) Allow yearly budget, inventories and permit demand to establish a special forest products program that ensures adequate monitoring controls while meeting public demand to the best extent possible.

(2) Establish a monitoring program that involves at a minimum the establishment of pre-harvest baseline conditions and periodic visits after harvest to assess species response to harvest and the associated habitat for impacts.

(3) Incorporate monitoring results into the permitting process (*e.g.* adjustment of harvest limits).

(4) Incorporate monitoring activities into ongoing fieldwork (*e.g.* regeneration surveys, harvest evaluations, etc.) wherever possible.

(5) Tie monitoring into the national corporate data base structure (TIM, FACS).

(6) Track monitoring results in the appropriate NRIS database (TERRA, FSVEG).

(7) Permittees shall report the total amount of each special forest product resource harvested from each location at the end of the permitted period.

(8) The special forest products program should not exceed the ability of the Region to adequately monitor its effects. To do otherwise is to violate NEPA and Forest Service sustained yield requirements.

(9) As the program grows, standard rates should be adjusted to reflect current market conditions as well as inventory, monitoring and administration costs. At that time protocol should be intensified to include permit-specific site visits, including permanent plots, on a scheduled basis.

Accountability

It is imperative that accountability be built into the special forest products program or management will be impossible. In order to ensure that permit conditions are being met, the following steps shall be taken:

(1) A written permit shall be issued to each commercial permittee, identifying at a minimum:

(A) Designated harvest area

(B) Termination date of the permit

(C) Product(s) being harvested

(D) Amount of product authorized for harvest (in standardized unit of measure)

(E) Method by which permittee can track the volume harvested

(F) Allowable damage to residual plants/product

(G) Penalties for violation

(2) Commercial harvest permits shall be carried on the permittee at all times while harvesting and transporting the product(s).

(3) Permittee shall keep a running tally of the amount of each product harvested on the back of the permit.

(4) Visit a monitored site once during harvest activity and once at closure to ensure compliance.

(5) If monitoring/administration of the program identifies that unacceptable impacts are occurring, then such areas shall be closed to allow for the recovery of the products.

Violations

Violators may be cited in accordance with the applicable Code of Federal Regulations (CFR), including:

(1) 36 CFR 261.6(a) Cutting or otherwise damaging a forest product except as authorized by a permit or federal law.

(2) 36 CFR 261.6(e) Loading, removing, or hauling a forest product acquired under any permit unless such product is identified as required in such permit.

(3) 36 CFR 261.10(c) Selling or offering for sale any merchandise or conducting any kind of work activity or service unless authorized by a federal law, regulation, or permit.

(4) 36 CFR 261.10(l) Violating any condition or term of a permit.

Dated: February 29, 2000.

James A. Caplan,

Deputy Regional Forester, Natural Resources.

[FR Doc. 00–5581 Filed 3–9–00; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 10, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Grounds Maintenance

Fort Meade, Maryland
NPA: Baltimore Association for Retarded Citizens, Inc., Baltimore, Maryland

Janitorial/Custodial

U.S. Army Reserve Center, 4655 N. Lexington Avenue, Arden Hills, Minnesota
NPA: Accessability, Inc., Minneapolis, Minnesota

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–5920 Filed 3–9–00; 8:45 am]

BILLING CODE 6353–01–U

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 2:00 p.m. on Thursday, March 30, 2000, at the Ala Moana Hotel, Gardenia Room, 410 Atkinson Drive, Honolulu, Hawaii 96814. The purpose of the meeting is to discuss civil rights issues in the State, and plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 6, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–5849 Filed 3–9–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 4:00 p.m. on Thursday, March 30, 2000, at the United Way of St. Joseph County, 3517 East Jefferson Boulevard, South Bend, Indiana 46660. The purpose of the meeting is to review and act on the Committee's report, ''A Study of Decisions to Prosecute Homicides and Drug Offenses in Marion County, Indiana,'' and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Hollis E. Hughes, 219–232–8201, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 3, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–5848 Filed 3–9–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5–2000]

Foreign-Trade Zone 15—Kansas City, MO; Expansion of Manufacturing Authority—Subzone 15E, Kawasaki Motors Manufacturing Corp., U.S.A., Plant (Internal-Combustion Engines, Parts of Industrial Robots), Maryville, MO

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, requesting, on behalf of the Kawasaki Motors Manufacturing Corp., U.S.A. (KMM), operator of FTZ Subzone 15E, KMM plant, Maryville, Missouri, an expansion of the scope of manufacturing authority to include new manufacturing capacity under FTZ procedures within Subzone 15E. It was formally filed on March 1, 2000.

Subzone 15E was approved by the Board in 1989 with authority granted for the manufacture of small internal-combustion engines and transmissions for motorcycles, personal water craft, all-terrain vehicles, subject to certain conditions (Board Order 454, 54 FR 50257, 12–5–89). The Board authorized KMM's request for removal of the conditions in 1992 (Board Order 560, 57 FR 4862, 2–10–92), and an expansion of the scope of manufacturing authority under FTZ procedures (engines for lawn/garden equipment and additional small engine production capacity to 500,000 units/year) was approved in 1999 (Board Order 1014, 64 FR 5765, 2–5–99).

KMM is now requesting that its current scope of FTZ manufacturing authority be extended to include small industrial diesel engines and parts of industrial robots. Subzone 15E at the KMM plant (600 employees, 113 acres) would be expanded by some 525,360 square feet from the current 607,080 to a total of 1.13 million square feet of FTZ manufacturing space. Most of the finished engines and industrial robot components are shipped to KMM's Lincoln, Nebraska, plant to equip vehicles and industrial robots

assembled there. The application states that the additional production activity at the Maryville plant will supplant similar activity currently conducted abroad. The new manufacturing activity will involve casting, machining, finishing, and assembly using domestic and foreign materials and components.

The expanded operations will involve a continuation of KMM's utilization of foreign-sourced materials and components (up to 81% of the finished engines' ex-plant value at the outset). Components that will be sourced from abroad include: belts, electrical components, fuel pumps, housings, fasteners, gaskets, flywheels, rocker arms, pistons, crankshafts, connecting rods, cylinder heads, balancer shafts, manifolds, crankcases, intake/exhaust valves, flanges/spacers/grommets, starter motors, breathers, pulleys, exhaust components, carburetors, turbojets/props/turbines and parts, pumps, parts of transmissions, gauges, bearings, hoses, o-rings, resins, cements, adhesives, ballotini, rubber belts, paper packaging, base metal mountings, netting, articles of plastic/rubber, articles of aluminum and zinc, fabricated steel and copper tube/wire/chain/springs, and electric motors/generators (duty rate range: free—12.5%). The application indicates that the extent of domestic sourcing of materials and components will increase in the future.

FTZ procedures would exempt KMM from Customs duty payments on the foreign components used in export activity (about 13% of shipments). On its domestic sales, the company would be able to elect the duty rate that applies to finished engines and industrial robot parts (duty free—2.8%) for the foreign components noted above. The finished engines and industrial robot parts shipped in-bond to Subzone 59A at KMM's plant in Nebraska would be processed for Customs entry after final assembly of robots and vehicles (duty free—2.8%). The application indicates that the savings from FTZ procedures help improve KMM's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 9, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 24, 2000.

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: March 3, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–5937 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–2000]

Proposed Foreign-Trade Zone—City of Erie (County of Erie), Pennsylvania; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Erie-Western Pennsylvania Port Authority, to establish a general-purpose foreign-trade zone in the City of Erie (County of Erie), Pennsylvania, within the Erie Customs port of entry (within the Cleveland Customs Service port area). The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 1, 2000. The applicant is authorized to make the proposal under Pennsylvania Revised Code, Chapter 31 of Act 116 of 1978.

The proposed zone (26 acres) would be located at the Erie International Marine Terminal facility at the International Port of Erie, on the shore of Presque Isle Bay at East Bay Drive, City of Erie, Pennsylvania. The site is owned by the applicant and is currently under the management of Mountfort Terminal, Ltd., which intends to act as operator of some portion of the zone.

The application indicates a need for foreign-trade zone services in the Erie port region to serve the plastic products industry and commodities such as locomotives (GE), boilers, engines, meters, turbines, castings, forgings, pipe equipment, motors, diesel engines and paper. Several firms have indicated using zone procedures for warehousing/distribution activity. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on April 5, 2000, 9 am, Erie County Public Library, Raymond M. Blasco, M.D., Memorial Library, H.O. Hirt Auditorium, 160 East Front Street, Erie, Pennsylvania 16507.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 9, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 24, 2000).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

Erie County Public Library, Raymond M. Blasco, M.D., Memorial Library, 160 East Front Street, Erie, PA 16507.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: March 6, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–5938 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 7–2000]

Foreign-Trade Zone 94—Laredo, Texas; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Laredo, Texas, grantee of FTZ 94, requesting authority to expand the zone to include an additional site in Laredo, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 3, 2000.

FTZ 94 was approved on November 22, 1983 (Board Order 235, 48 FR 53737, 11/29/83) and expanded on March 26, 1990 (Board Order 468, 55 FR 12696, 4/5/90); on December 29, 1992 (Board Order 620, 58 FR 3533, 1/11/93); and, on January 17, 1997 (Board Order 866, 62 FR 4028, 1/28/97). The zone project currently consists of five sites in the Laredo area: *Site 1* (500 acres)—within the 1,600-acre city-owned Laredo

International Airport Industrial Park; *Site 2* (20 acres)—industrial park owned by the Texas-Mexican Railway, along Highway 359 in Webb County; *Site 3* (550 acres)—within the 1,400-acre Killiam industrial area, owned by Killiam Oil Co., at 12800 Old Mines Road; *Site 4* (1,500 acres)—within 7,000-acre International Commerce Center, Laredo Northwest business and residential development; and *Site 5* (930 acres)—La Barranca Ranch Industrial Park, owned by Librado Pina, Inc., Interstate Highway 35, adjacent to the Union Pacific rail line, in northern Webb County.

The applicant is now requesting authority to expand the zone to include a site in Laredo: *Proposed Site 6* (682 acres)—Unitec Industrial Center, Interstate Highway 35, 12 miles northwest of Laredo International Airport. The privately-owned industrial park/distribution center is served by rail and has 1.5 million square feet of existing warehouse space. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 9, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to May 24, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, Lincoln Juarez Bridge, Administrative Building #2, Laredo, TX 78040.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: March 3, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–5939 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–851–802]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From the Czech Republic

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Dennis McClure at (202) 482–0984; AD/CVD Enforcement, Office VI, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

Amendment of Preliminary Determination

The Department of Commerce (the Department) is amending the preliminary determination in the antidumping duty investigation of certain small diameter carbon and alloy seamless standard, line, and pressure pipe from the Czech Republic. This amended preliminary determination results in revised antidumping rates.

On January 28, 2000, the Department issued its affirmative preliminary determination in this proceeding. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from the Czech Republic*, 65 FR 5599 (February 4, 2000).

On February 10, 2000, the petitioners [1] submitted allegations of certain ministerial errors. The petitioners alleged that the Department applied an incorrect conversion to U.S. packing costs, and, that the Department's margin calculation program language incorrectly matched U.S. sales to constructed value when appropriate identical or similar sales matches were available. On February 10, 2000, Nova Hut, the respondent, submitted a ministerial error allegation regarding our product matching criteria alleging that the Department did not match certain U.S. sales to the most similar home market product.

The Department has reviewed its preliminary calculations and agrees with the petitioners that it made certain ministerial errors within the meaning of 19 CFR 351.224(f) and (g). However, we disagree with Nova Hut that our criteria for matching U.S. and home market products contained a ministerial error. *See* ''Ministerial Error Allegations for the Preliminary Determination'' memorandum to Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, Group II, February 24, 2000, on file in room B–099 of the Main Commerce building.

As a result of our analysis of the petitioners' allegations, we are amending our preliminary determination to revise the antidumping rate for Nova Hut in accordance with 19 CFR 351.224(e), along with the corresponding correction to the ''all others'' rate, as listed below. Suspension of liquidation will be revised accordingly and parties shall be notified of this determination, in accordance with sections 733(d) and (f) of the Act.

The revised weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin percentage
Nova Hut	32.26
All Others	32.26

This determination is issued and published pursuant to sections 733(d) and 777(i)(1) of the Act.

Dated: March 6, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–5936 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] The petitioners in this investigation are Gulf States Tube, a Division of Vision Metals, Inc.; Koppel Steel Corporation; Sharon Tube Corporation; USS/Kobe Steel Corporation; U.S. Steel Group, a unit of USX Corporation; and the United Steelworkers of America.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030700A]

Submission for OMB Review; Proposed Information Collection; Request for Comments

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: Application Instructions for a Permit for Scientific Purposes or to Enhance the

Propagation or Survival of Threatened or Endangered Species.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden Hours: 4,400.

Number of Respondents: 240.

Average Hours Per Response: Ranges between 10 to 40 hours depending on the requirement.

Needs and Uses: The National Marine Fisheries Services (NMFS) is responsible for the conservation and recovery of marine and anadromous species listed as threatened or endangered under the Endangered Species Act (ESA) of 1973. Section 10 of the ESA allows for certain exceptions, such as a taking that would be incidental to an otherwise lawful activity. NOAA has issued regulations to provide for application and reporting for such exceptions. The information is used to evaluate the proposed activity (permits) and on-going activities (reports) and is necessary for NMFS to ensure the conservation of the species under the ESA.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DoC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at Lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent with 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: March 3, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–5905 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030600C]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Recreational Fisheries Data Task Force (RFDTF) will hold a meeting.

DATES: The meeting will be held March 22, 2000, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: This will be the fourth meeting of the RFDTF which will discuss the following topics: review of minutes from third Task Force meeting, report of Task Force working group meeting on developing materials and strategies for obtaining recreational fishery data from fishing and boat clubs, Chairman's report on Task Force presentations to Council and Scientific and Statistical Committee, reports on recent international meetings on sharks, tagging of fishes with satellite and archival tags, upcoming meetings including the international management of tuna in the Central-Western Pacific and managing marine recreational fisheries in the 21st century, and other business as required.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 7, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–5928 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021000B]

Marine Mammals; File No. 758–1459–01

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Dr. Kimberlee Beckmen, Institute of Arctic Biology, University of Alaska Fairbanks, P.O. Box 757000, Fairbanks, AK 99775–7000, has been issued an amendment to scientific research Permit No.758–1459.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On May 11, 1999, notice was published in the **Federal Register** (64 FR 25294) that an amendment of Permit No. 758–1459, issued August 21, 1998 (63 FR 46417), had been requested by the above-named individual. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Permit authorizes the Holder to conduct a variety of capture/release research activities on northern fur seal pups. Research will be carried out in conjunction with the NMFS, National Marine Mammal Laboratory.

Dated: March 3, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–5906 Filed 3–9–00; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Omnidirectional Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of December 15, 1999 (64 FR 69992), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of the collection of information required in the Safety Standard for Omnidirectional Citizens Band Base Station (16 CFR part 1204). No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information without change through April 30, 2003.

The Safety Standard for Omnidirectional Citizens Band Base Station Antennas establishes performance requirements for omnidirectional citizens band base station antennas to reduce unreasonable risks of death and injury which may result if an antenna contacts overhead power lines while being erected or removed from its site. Certification regulations implementing the standard require manufacturers, importers, and private labelers of antennas subject to the standard to test antennas for compliance with the standard, and to maintain records of that testing.

The records of testing and other information required by the certification regulations allow the Commission to determine that antennas subject to the standard comply with its requirements. This information would also enable the Commission to obtain corrective actions if omnidirectional citizens band base station antennas failed to comply with the standard in a manner which creates a substantial risk of injury to the public.

Additional Information About the Request for Extension Of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Omnidirectional Citizens Band Base Station Antennas, 16 CFR Part 1204.

Type of Request: Extension of approval without change.

General description of respondents: Manufacturers, importers, and private labelers of omnidirectional citizens band base station antennas.

Estimated number of respondents: 5.

Estimated number of hours per respondent: 220 per year.

Estimated number of hours for all respondents: 1,100 per year.

Estimated cost of collection for all respondents: $15,000 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by April 10, 2000, to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, ext. 2226.

Dated: March 7, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–5963 Filed 3–9–00; 8:45 am]

BILLING CODE 6355–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting To Discuss the Future of the Office of the Special Assistant for Gulf War Illnesses (OSAGWI)

AGENCY: Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents, Department of Defense.

ACTION: Notice.

SUMMARY: The Board will conduct a public meeting to obtain information from veterans service organizations and the Departments of Defense, Veterans Affairs, and Health and Human Services regarding the design of a successor organization to OSAGWI. The meeting will begin at 9:00 a.m. EDT.

DATES: April 4, 2000.

ADDRESSES: Truman Room, White House Conference Center, 726 Jackson Place, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Contact Mr. David Edman, Special Oversight Board, 1401 Wilson Blvd, Suite 401, Arlington, VA 22209, phone (703) 696–9468, fax (703) 696–4062, or via Email at *Gulfsyn@osd.pentagon.mil.* Requests to present oral comments regarding an OSAGWI successor organization must be sent to Mr. Edman and received no later than noon Friday, March 24, 2000 for consideration. Written comments must be received no later than noon Thursday, March 30, 2000 to ensure their availability to board members prior to the hearing. Copies of the draft meeting agenda can be obtained by contacting Ms. Sandra Simpson at (703) 696–9464 or at the above fax number or above email.

SUPPLEMENTARY INFORMATION: Seating in the Truman Room is limited, and spaces will be reserved only for scheduled speakers. The remaining seats will be available on a first-come, first-served basis beginning at 8:30 a.m. No teleconference lines will be available. The Special Oversight Board expects that statements presented at this meeting will deal only with the design of a successor organization to OSAGWI and its affiliation, if any, with the Departments of Defense, Veterans Affairs, and Health and Human Services. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments will be provided to Board members if at least 10 copies are received in the Special Oversight Board Staff Office no later than noon March 30, 2000. Written comments received after that date will be mailed to Board members after the adjournment of the April 2000 meeting and will also be included in the official records of that meeting. The White House Conference Center, 726 Jackson, Place, NW, is located on the west side of Lafayette Park. Lafayette Park is on the north side of the White House and bounded by Pennsylvania Avenue on the south, H Street on the north and centered at 16th Street Lafayette Park is within easy walking distance of the Farragut West (two city blocks) or McPherson Square (three city blocks)

MetroRail subway stops (Blue and Orange lines). There is no vehicular access to Jackson Place. Taxicabs should be directed to the Decatur House, 1600 H Street, NW.

Dated: March 6, 2000.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–5902 Filed 3–9–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Records Declassification Advisory Panel of the Department of Defense Historical Advisory Committee

ACTION: Notice of partially closed meeting.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Historical Records Declassification Advisory Panel. The purpose of this meeting is to discuss recommendations to the Department of Defense on topical areas of interest that, from a historical perspective, would be of the greatest benefit if declassified. This is the first session held in 2000. The transcripts of the open to the public session will be published on the HRDAP Webpage as they become available. The OSD Historian will chair this meeting.

DATES: Friday, March 24, 2000; 9:00 a.m.–3:00 p.m.

TIME: The March 24th morning HRDAP session will be open to the public from 9:00 a.m. until 11:45 a.m. The March 24th afternoon HRDAP session will be closed to the public from 1:00 p.m. to 3:00 p.m.

ADDRESSES: The National Archives Building, Room 505, 7th and Pennsylvania Avenue, NW, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Ross, Room 1D760, Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence), 6000 Defense Pentagon, Washington, DC 20301–6000, telephone (703) 614–5995.

Dated: March 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 00–5901 Filed 3–9–00; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Draft Environmental Impact Statement for the Raritan Bay and Sandy Hook Bay, Hurricane and Storm Damage Reduction Study, Port Monmouth, New Jersey

AGENCY: U.S Army Amry Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: The New York District of the U.S. Army Corps of Engineers has prepared a Draft Environmental Impact Statement (DESI) for the Raritan Bay and Sandy Hook Bay, Hurricane and Storm Damage Reduction Study, Port Monmouth, New Jersey. The purpose of the study is to identify a plan that would protect the Port Monmouth community from damages caused by hurricanes and storm. The DEIS was prepared to evaluate those alternative identified in the Feasibility Report. Additional information on the study is provided the **SUPPLEMENTARY INFORMATION** section as indicated below.

DATES: The DEIS will be available for public review on or about March 10, 2000. The review period of the document will be for forty five days from the publication date of the DEIS. To request a copy of the DEIS please call (212) 264–4663.

FOR FURTHER INFORMATION CONTACT: For further information regarding the DEIS, please contact Mark Burlas, Project Wildlife Biologist, telephone (212) 264–4663, Planning Division, ATTN: CENAN–PL–EA, Corps of Engineers, New York District, 26 Federal Plaza, New York, New York 10278–0090.

SUPPLEMENTARY INFORMATION:

1. The Raritan Bay and Sandy Hook Bay (RBSHB), Hurricane and Storm Damage Reduction Study, Port Monmouth, New Jersey was authorized by the U.S. House of Representatives, Committee on Public Works and Transportation, adopted August 1, 1990, which states ''Resolved by the Committee on Public Works and Transportation of the United States House of Representatives, that the Board of Engineers for Rivers and Harbors is requested to review the report of Chief of Engineers on RBSHB, New Jersey, published as House Document 464, Eighty-seventh Congress, Second Session, and other pertinent reports, to determine the advisability of modifications to the recommendations contained therein to provide erosion control and storm damage prevention for the RBSHB.''

2. The 1.8-square-mile Project area is located in Port Monmouth, Middletown Township, Monmouth County, New Jersey, along the RBSHB, bounded by Compton Creek to the east, Pews Creek to the west, and New Jersey State Highway 36 to the south. The Project was divided into three study area for plan formulation and impact assessment purposes: the Bay Shoreline Study Area (BSSA), the Pews Creek Study Area (PCSA), and the Compton Creek Study Area (CCSA). The BSSA is located along the RBSHB, and comprises the shorefront, beach, and dune complex that has historically experienced significant erosion, and consequently provides limited tidal surge and flood protection to the adjacent Port Monmounth community. The PCSA is located in the western portion of the Project area, and is situated in a highly developed, residential portion of Middletown Township. The PCSA includes the Pews Creek channel, a tidal creek that drains to the north into the RBSHB, and is mostly tidal wetlands. The CCSA is located in the eastern portion of the Project area, and is associated with a high developed, residential portion of Middletown Township. The CCSA includes the Compton Creek channel, a tidal creek that drains to the north into RBSHB, and is mostly tidal wetlands.

3. The selected plan is comprised of levees, floodwalls, a storm gate, road closure gates, fortification of an existing dune, pump stations, stormwater retention basins, beach nourishment, periodic beach renourishment, environmental mitigation, and an offshore borrow area. The selected plan, which is the environmentally preferred plan, was determined to be the National Economic Development (NED) Plan. A NED Plan is one that is consistent with the objectives of contributing to NED through the reduction of flood hazards and associated flood damages while protecting the Nation's natural, cultural, biological, historic, and social resources.

a. The District determined that interior drainage facilities were required to safely store and discharge storm water runoff that would collect on the protected side of the CCSA levee. Specifically, these facilities were planned and evaluated separately from the line of protection (levees and floodwalls) and would provide adequate drainage at least equal to that of the existing infrastructure.

b. Throughout the planning process, the District formulated alternative plans to meet general and specific planning objectives while considering the preferences of various interested parties with regard to plan selection and

design. The District has consulted and coordinated its planning efforts with the New Jersey Department of Environmental Protection (JNDEP), the non-Federal sponsor, and representatives of the Middletown Township and various Monmouth County agencies. The plan formulation process emphasized the avoidance and minimization of environmental impacts, especially to wetlands, and then mitigation was included to compensate for unavoidable habitat loss.

c. The selected plan consists of approximately: 7,000 linear feet (ft) of earthen levees average +14 ft National Geodetic Vertical Datum (NGVD); 3,600 ft of concrete floodwalls averaging about +8 ft NGVD; a 40-ft wide storm gate across Pews Creek with a flood water pump house; initial beach nourishment of about 378,500 cubic yards of sand, with periodic renourishment of approximately 125,000 cubic yards of sand at 10-year intervals; and , three interior drainage ponding areas each with primary and secondary drainage outlets.

2. The selected plan without mitigation would directly and indirectly impact approximately 14.89 acres (ac) of wetland and upland areas. The majority of these impacts would involve the conversion of native habitat types to maintained (grass-covered) levees, permanent floodwalls, and storm gate. Specifically, the selected plan would permanently impact several vegetation cover types. Finally, the selected plan would temporarily impact herbaceous, scrub/shrub, Phragmites wetlands, and high salt marsh habitats due to clearing and equipment operation in temporary work areas.

a. Less mobile aquatic and terrestrial wildlife species within the footprint of the selected plan would experience mortality due to construction. Furthermore, a short-term decrease in reproductive success of these species could occur due to construction activities. In the long-term, following habitat conversion, wildlife species would lose or gain habitat resources based on their habitat requirements. No rare, threatened, or endangered species or their critical habitats would be adversely affected by the implementation of the selected plan.

b. The District conducted a Habitat Evaluation Procedures (HEP) analysis to assess the impacts of the selected plan. This HEP analysis concluded that impacts associated with the construction of the selected plan (without mitigation) will result in the loss of 2.04 black duck (Anas rubripes) and 3.14 marsh ren (Cistothorus palustris) habitat units (HUs) at the year of construction (Year 2002). At the year of 2052, black duck and marsh wren habitat quality would be reduced by 49.94 and 136.71 cumulative habitat units (CHUs). Similarly, the AAHU of the black duck and marsh wren decrease by 1.00 and 2.73 over the 50-year design life of the Project. In addition, the HEP analysis determined that 2.13 acres of upland habitat would be impacted, 7.13 acres of wetlands would be converted to upland, and additional 5.63 acres of wetland habitat would be indirectly impacted by the selected plan. Indirect impacts to wetlands involve the conversion, not the loss of non-Phragmites wetlands to Phragmites-dominated wetlands.

c. The selected plan is expected to have a direct, short-term impact on benthic resources. Beach nourishment is expected to smother benthic organisms causing their mortality. However, once buried, some mobile shellfish species and polycheate worms have the ability to burrow upwards and survive. The recovery of benthic resources to preconstruction conditions should occur shortly after construction. A benthic-monitoring plan will be conducted to quantify benthic recovery rates and the composition of the recolonized benthic community.

d. The District developed a tidal hydrodynamic model to compare the effects of a storm gate in Pews Creek to the existing conditions. The model projected that the selected 40-ft storm gate in the open position would lower the mean spring high tide by only 0.72 inches and all other normal tidal events would be unaffected. Accordingly, the effects to the daily tidal exchange are expected to be minute. A monitoring plan is proposed to support the prediction of the model. In addition, the storm gate is anticipated to increase peak ebb tidal velocities potentially allowing more suspended sediments to be transported out of the salt marsh into the RBSHB. As a result, the sedimentation rate of the salt marsh may be reduced.

e. In addition, the implementation of the selected plan can provide benefits to horseshoe crabs (Limulus polyphemus), migratory birds, and the federally threatened piping plover (Charadrius melodus). A wider sandy beach and improved intertidal habitat conditions may provide more suitable spawning habitat for the horseshoe crab, thus potentially increasing prey resources available for consumption by migratory birds. It is well documented that the timing of the spring migration for many species is linked to the spawning activity of the horseshoe crab. Furthermore, a much larger and wider sandy beach created by the construction of the selected plan should provide more roosting space for wintering waterfowl and increase the amount of potential nesting habitat for shorebirds, such as the piping plover.

f. No areas were identified as containing potential environmental contamination, or were considered to pose a great risk to human health. Subsurface testing was performed and evidence of Native American occupation was found in the vicinity of the selected plan's footprint. Further evaluation will be conducted and coordinated with the New Jersey Historic Preservation Office, as part of Section 106 of the National Historic Preservation Act compliance. Short-term negligible impacts to air quality and traffic are expected only during construction.

3. The District, in consultation with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and NJDEP, developed an array of mitigation plans using HEP protocols. The selected mitigation plan proposes to restore approximately 12.80 acres of wetland Phragmites-dominated habitat to salt marsh habitat. As compared to the No-Action alternative, implementation of the selected plan and selected mitigation plan would increase black duck habitat quality by 0.78 HUs and marsh wren habitat quality by 0.96 HUs at the year of construction. At the year of 2052, black duck and marsh wren habitat quality would increase by 157.83 and 106.55 CHUs. In addition, the AAHU of the black duck and marsh wren would increase by 3.16 and 2.13 over the Project's 50-year design life when compared to the No-Action alternative.

a. Based upon a Phragmites Encroachment Model (PEM) developed by the District specifically for the assessment of future conditions and impacts, the construction of the selected plan and selected mitigation plan would prevent the loss of about 15.27 acres of salt marsh habitat when compared to the No-Action alternative for the 50-year design-life of the Project. In summary, the comparison of the selected plan to the No-Action alternative suggests that implementation of the selected plan will provide long-term benefits to wildlife resources of the intertidal zone and the coastal marsh ecosystem at Port Monmouth.

b. Mitigation measures for cultural resources will be developed in conjunction with the New Jersey Historic Preservation Office, the Advisory Council on Historic Preservation (ACHP), and interested parties.

4. Based on coordination with other federal and state agencies, an unresolved issue has been identified. A consensus to determine the appropriate level of compensatory mitigation to offset environmental impacts has not been reached. The District plans to continue its ongoing coordination effort with other federal and state agencies to secure an agreement concerning the amount of mitigation that is needed to appropriately compensate for environmental impacts. No other unresolved issues are known at this time, pending review of this DEIS.

Frank Santomauro,

Chief, Planning Division.

[FR Doc. 00–5839 Filed 3–9–00; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement (EIS) for the DeLong Mountain Terminal Navigation Improvements, Northwest Arctic Borough, Alaska

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Alaska District, U.S. Army Corps of Engineers, intends to prepare an EIS for navigation improvements for the DeLong Mountain Terminal in northwestern Alaska. The terminal loads ore concentrate from the world's largest zinc mine onto bulk carrier ships and imports fuels and supplies for the mine. Based on the results of a reconnaissance study, the Corps has determined there is a Federal interest in developing access for larger ships to the terminal to increase ore handling capacity for existing and future mining interests and to develop capability for a regional transportation hub. The Corps also has determined that the proposed action may have a significant effect on the quality of the human and natural environment. To comply with the requirements of the National Environmental Policy Act of 1969, as amended, the Corps will prepare an EIS. The Corps will also prepare a feasibility report.

FOR FURTHER INFORMATION CONTACT: For information about the project, alternatives, or the scoping process, contact Guy McConnell at (907) 753–2614 Fax (907) 753–2625, U.S. Army Engineer District, Alaska Attn: EN–CW–ER, P.O. Box 898, Anchorage AK 99506–0898. E-mail: *guy.r.mcconnell@poa02.usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Authority

The feasibility study is authorized by a resolution adopted on December 2, 1970, by the Committee on Public Works of the U.S. House of Representatives. A reconnaissance study of navigation needs at DeLong Mountain Terminal and the region around it was completed in November 1999 and determined a Federal interest in a navigation improvement project.

2. Alternatives

A full range of alternatives addressing regional navigation needs will be identified during the scoping process and evaluated in the EIS and feasibility study. Principal project components and alternatives associated with them may include: mooring and loading facilities, which may be lengthened or expanded to increase capacity; a dredged channel to allow deep-draft ships to load ore concentrate directly and to unload directly without using lightering barges; an onshore airstrip and associated facilities to support transportation of fuel and goods to regional villages; and, a disposal area for dredged material. Additional alternatives identified during scoping, and the no-action alternative also will be evaluated.

3. Scoping Meetings and Opportunities to Comment

Public scoping meetings will be held in Kivalina, Noatak, and Kotzebue, Alaska. Additional scoping meetings may be held in Fairbanks and Anchorage, Alaska, if there is sufficient interest. Meetings will be scheduled for times and places to best fit local needs and will be announced in newspapers, on television and radio, and by mailed public notices, and other appropriate means. Interested parties are invited to comment at the meetings or in writing or by e-mail to the contact address listed earlier in this notice. The public scoping comment period will remain open for at lest 60 days after publication of this notice in the **Federal Register**. Scoping comments received more than 60 days after publication this notice will be given all possible consideration.

4. Issues To Be Considered

Issues and concerns will be identified during the scoping process and will become the basis for the analysis of alternatives and environmental consequences in the EIS. Initial coordination and review of other actions in the area indicate that the following will be of concern and will be subjects of the EIS: Potential effects of the project on marine mammals (seals, whales, walrus, and polar bears), including their movements, feeding, other behavior, and their availability to the people of the region who kill them for food and other uses; potential effects of dredging and dredged material disposal on currents, ice movement, and marine organisms; potential effects of increased power generation, moored ships, and fugitive dust on air quality; and potential for the Federal action to induce additional mining and other regional development.

5. Availability

The draft EIS is scheduled to be completed and released for public review in the spring of 2001.

Dated: February 23, 2000.

Guy R. McConnell,

Chief, Environmental Resources Section.

[FR Doc. 00–5838 Filed 3–9–00; 8:45 am]

BILLING CODE 3710–NL–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; Comment request.

SUMMARY: The Leader, Information Management Group, 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 April 10, 2000.

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 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

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 Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 6, 2000.

William Burrow,

Leader Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Targeting Teacher Deferment/ Teacher Shortage Area Collection (JS).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary); Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 4748.

Burden Hours: 1077.

Abstract: Collection of State proposals for Targeted Teacher Deferment/Teacher Shortage Areas, of the Higher Education Act of 1986.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO IMG Issues@ed.gov or faxed to 202–708–9346. *Please specify the complete title of the information collection when making your request.*

Questions regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5859 Filed 3–9–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION.

Submission for OMB Review; Comment Request

AGENCY: Department of Education

SUMMARY: The Leader, Information Management Group, 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 April 10, 2000.

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, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

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 Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 7, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Application for the Safe and Drug-Free Schools and Communities National Programs Federal Activities Grants—Counseling Demonstration Program.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 400; Burden Hours: 11,200.

Abstract: The Department of Education's Safe and Drug-Free Schools Program supports efforts to promote safe and disciplined schools for all students. In order to establish or expand counseling programs in elementary schools, the Department is providing $20 million to LEAs that demonstrate the greatest need for counseling services in the schools to be served, propose the most innovative and promising approaches, and show the greatest potential for replication and dissemination. The Department will use the information to make grant awards.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO IMG Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–5949 Filed 3–9–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of restricted eligibility of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–00NT40767 entitled ''Recovery and Utilization of Coal Mine Methane: Pilot Scale Demonstration Phase. Pursuant to 10 CFR 600.6(b), DOE has determined that issuance of this financial assistance solicitation on a restricted eligibility basis is necessary and appropriate. Accordingly, the eligibility of recipients for DOE financial assistance awards under this solicitation is limited to the following firms:

Jim Walter Resources, Inc., PO Box 133, Brookwood, AL 35444, Contact: Randall Mills. FuelCell Energy, Inc., 3 Great Pasture Road, PO Box 1305, Danbury, CT 06813–1305, Contact: Michelle Reichert.

West Virginia University Research Corporation On Behalf of West Virginia University/Appalachian Pacific, PO Box 6845, 886 Chestnut Ridge Road, Morgantown, WV 26506–6845, Contact: William W. Reeves.

Noumenon Corporation, 95 Ringold Lane, Morgantown, WV 26508, Contact: Linda Rizer. Northwest Fuel Development, Inc., 4064 Orchard Drive, Lake Oswego OR 97035, Contact: Peet Soot.

Industry partners will be required to cost share a minimum of 50 percent of the project activities.

FOR FURTHER INFORMATION CONTACT: Crystal A. Sharp, U.S. Department of Energy, National Energy Technology Laboratory, PO Box 880,3610 Collins Ferry Road, Morgantown, WV 26507–0880, E-mail Address: crystal.sharp@netl.doe.gov, Telephone Number: (304) 285–4442

SUPPLEMENTARY INFORMATION: In 1995, a competitive solicitation was issued requesting feasibility studies to determine existing, evolving, and novel technologies which may be applicable for capturing and utilizing coal mine methane emissions generated from active and inactive coal mining operations in the U.S. Ten offerors were selected for the Phase I feasibility effort. Based on the results reported from the Phase I effort, DOE down selected from the initial 10 awardees to the five awardees identified above to continue with Phase II, engineering design preparation. Phase II required each awardee to provide at a minimum 20 percent cost share. These five DOE-industry sponsored projects (which are partnerships with industry: coal, gas, electric, and engine companies) are the only efforts which are ongoing under this specific aspect of DOE's Climate Challenge Program which began in 1993 as a result of the Energy Policy Act of 1992. Since the initial issuance of the fully competitive solicitation in 1995 focused on recovering coal mine methane emissions, the remaining five DOE-industry sponsored partnerships (following prior down selects) are in a singularly unique position, from both a technical and government cost effectiveness basis, to continue with the follow-on detailed engineering designs of those technologies solicited under this procurement action which can be reliably demonstrated in the field for timely verification of the cost-effective recovery and utilization of coal mine methane emissions.

Randolph L. Kesling,

Director, Acquisition and Assistance Division.

[FR Doc. 00–5946 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL). Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, March 21, 2000, 8 a.m.–5:30 p.m.; Wednesday, March 22, 2000, 8 a.m.–5 p.m.

ADDRESSES: Ameritel Inn 645 Lindsay Boulevard, Idaho Falls, Idaho

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, INEEL SSAB Facilitator Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, (208–522–1662) or visit the Board's Internet homepage at *http://www.ida.net/users/cab;* or contact Mr. Charles Rice, INEEL SSAB Chair, c/o Jason Associates Corporation

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda

Presentations and discussions on the following:

- Finalize a recommendation on the Draft Idaho High-Level Waste and Facilities Disposition Environmental Impact Statement.
- Receive a presentation and finalize a recommendation on the INEEL Institutional plan.
- Finalize a recommendation on the future of the Waste Experimental Reduction Facility.
- Receive a presentation on the status of DOE's efforts regarding Pit 9 and the other pits and trenches at the Radioactive Waste Management Complex.
- Finalize a recommendation on how DOE should evaluate impacts on ecological health at the INEEL.
- Finalize a recommendation on stakeholder involvement in long-term stewardship planning.
- Receive a briefing on the INEEL Technical Library.

(Agenda topics may change up to the day of the meeting; please call the **FOR FURTHER INFORMATION CONTACT** in this notice for the current agenda or visit the Internet site.)

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. This notice is being less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Charles M. Rice, INEEL CAB Chair, 477 Shoup Ave., Suite 205, Idaho Falls, Idaho 83402 or by calling the Board's facilitator at (208) 522–1662.

Issued at Washington, DC on March 6, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5941 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management (EM) Site-Specific Advisory Board (SSAB), Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, March 18, 2000: 8:30 a.m.–12 p.m.

ADDRESSES: DOE-Fernald Site, Large Laboratory Conference Room, 7400 Willey Road, Hamilton, OH 45013.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, Phoenix Environmental, 6186 Old Franconia Road, Alexandria, VA 22310, at (513) 648–6478.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

8:30 a.m. Call to order
8:30–8:45 a.m. Chairs Remarks and Announcements
8:45–9 a.m.
Results of February SSAB Chairs Meeting
Results of Land Use Controls Conference
9–9:15 a.m. Silos Decision Update
9:15–10 a.m. Discussion of 2001 Budget and Impacts on Recommendation Schedule
10–10:15 a.m. Break
10:15–11 a.m. Review Plan for Public Access Decisions at Fernald
11–11:45 p.m. Barbara Crandall, Native American Alliance of Ohio
11:45–12 p.m. Public Comment
12 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, C/O Phoenix Environmental Corporation, MS 76, Post Office Box 538704, Cincinnati, Ohio 45253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on March 2, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5942 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 22, 2000; 6 p.m.–9 p.m.

ADDRESSES: White Rock Town Hall, 139 Longview Drive, White Rock, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov;* or Internet http:www.nmcab.org

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Opening Activities, 6 p.m.–6:30 p.m.

Public Comment, 6 p.m.–7 p.m.

Committee Reports:

Environmental Restoration,

Monitoring and Surveillance,

Waste Management,

Community Outreach,

Budget

Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on March 6, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5943 Filed 3–9–00; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, March 28, 2000: 8 a.m.–3:30 p.m.

ADDRESSES: Carson County Square House Museum, TX HWY 207 & 5th Street, Panhandle, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

8:00—Welcome/Goal of Groundwater Seminar
8:30—Issues from July 27, 1999, Groundwater 101 Seminar
9:30—State of Texas Regulatory Authority at Pantex
10:30—Role of Bureau of Economic Geology
11:30—Path Forward
12:00—Lunch (on your own)
1:00—Agenda Review/Approval of Minutes
1:15—Co-Chair Comments
1:30—Co-Chair Nomination/Elections
1:45—Updates/Occurrence Reports/DOE
2:00—Task Force/Subcommittee Reports
2:30—Ex-Officio Reports
3:00—Public Comments
3:15—Closing Comments
3:30—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10 p.m. Monday through Thursday; 7:45 am to 5 p.m. on Friday; 8:30 am to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9 am to 7 pm on Monday; 9 am to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on March 2, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5944 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, March 27, 2000: 3:30 p.m–8:00 p.m.;Tuesday, March 28, 1999: 8:30 a.m.–4:00 p.m.

ADDRESSES: All meetings will be held at: Houndlake Country Club, 1900 Houndlake Drive, Aiken, SC 29803.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of Environmental Quality, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, March 27, 2000

3:30 p.m. Executive Committee
4:30 p.m. Focus Group Guideline Session
6 p.m. Public Comment Session
6:30 p.m. Committee Meetings
8 p.m. Adjourn

Tuesday, March 28, 2000:

8:30 a.m.
Approval of Minutes, Agency Updates
Public Comment Session
Facilitator Update
Nuclear Materials Committee Report
Public Comment
Public Comment (approximately 10 minutes)
12 p.m. Lunch Break
1 p.m.
Waste Management Committee Report
Long Term and Strategic Issues Committee Report
SSAB Chairs Trip Report
Administrative Subcommittee Report
Membership Elections
Administrative Items
Public Comments
4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling (803)–725–5374.

Issued at Washington, DC on March 2, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5945 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Subcommittee on Accelerator Transmutation of Waste of the Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Subcommittee on Accelerator Transmutation of Waste of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: March 30, 2000, 9 AM–Noon.

ADDRESSES: Rotunda Conference Room, University of New Mexico Science and Technology Park, 801 University Boulevard, SE, Albuquerque, New Mexico 87106.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy (DOE), NE–1, 1000 Independence Avenue, SW, Washington DC 20585, Telephone Number 202–586–0126, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The Subcommittee on the Accelerator Transmutation of Waste of the Nuclear Energy Research Advisory Committees has been requested to provide the Director of the Office of Nuclear Energy, Science and Technology with recommendations on the future course of the Accelerator Transmutation of Waste program. The program, as currently constituted, is proceeding according to the guidelines laid down in DOE/RW–0519, ''A Roadmap for Developing Accelerator Transmutation of Waste (ATW) Technology.'' The subcommittee will consider the views of individuals and corporations that have positions on the structure and content of the Accelerator Transmutation of Waste program.

Tentative Agenda

Thursday, March 30, 2000

The agenda for this meeting will be dependent on the responses to this Notice.

Public Participation: The meeting is open to the public on a first-come, first-serve basis. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements should contact Norton Haberman at the address or telephone listed above. Such statements should be limited to 15 minutes. Requests to make oral statements must be made and received five days prior to the meeting. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room. 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington DC on March 6, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–5940 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–59–000, et al.]

Lake Benton Power Partners II LLC, et al.; Electric Rate and Corporate Regulation Filings

March 2, 2000.

Take notice that the following filings have been made with the Commission:

1. Lake Benton Power Partners II LLC

[Docket No. EC00–59–000]

Take notice that on February 25, 2000, Lake Benton Power Partners II LLC (Lake Benton II) filed an application under Section 203 of the Federal Power Act for approval of the purchase of Lake Benton II by a subsidiary of FPL Energy, LLC. Lake Benton II owns a wind power generation project located in southern Minnesota. All of the power from the project is sold to Northern States Power Company.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Energy, Inc.

[Docket No. ER00–664–001]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Energy, Inc.

[Docket No. ER00–665–001]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER00–666–002]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Energy, Inc.

[Docket No. ER00–667–002]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER00–668–001]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Short-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Energy, Inc.

[Docket No. ER00–669–001]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Energy, Inc.

[Docket No. ER00–670–001]

Take notice that on February 25, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long-Term Firm Point-To-Point Transmission Service with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer.

A copy of the filing was served upon Bonneville.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PPL Electric Utilities Corporation d/b/a/ PPL Utilities

[Docket No. ER00–1712–000]

Take notice that on February 25, 2000, PPL Electric Utilities Corporation, d/b/a PPL Utilities, filed a Notice of Change in Corporate Name to notify the Federal Energy Regulatory Commission that the corporate name of PP&L, Inc. has been changed to PPL Electric Utilities Corporation, d/b/a PPL Utilities, effective February 14, 2000.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER00–1713–000]

Take notice that on February 28, 2000, 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 the First Amendment (Amendment) to the Interconnection and Power Agreement (Interconnection Agreement) between Entergy Services and Hodge Utility Operating Company, acting as agent for the Village of Hodge, Louisiana.

Comment date: March 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Minnesota Power, Inc.

[Docket No. ER00–1714–000]

Take notice that on February 28, 2000, Minnesota Power, Inc. (Minnesota Power) submitted for filing a Service Agreement under which Great River Energy will take network integration transmission service under Minnesota Power's open access transmission tariff. Minnesota Power also filed, pursuant to Section 35.15(a) of the Commission's regulations, a notice of termination for the Integrated Transmission Agreement with the Cooperative Power Association, designated as Minnesota Power FERC Electric Rate Schedule No. 89.

Comment date: March 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Columbus Southern Power Company

[Docket No. ER00–1716–000]

Take notice that on February 28, 2000, American Electric Power Service Corporation (AEP), on behalf of Columbus Southern Power Company (CSP), tendered for filing with the Commission a Facilities, Operations, Maintenance and Repair Agreement (Agreement) dated December 1, 1999, between CSP and South Central Power Company (SCP) and Buckeye Power, Inc. (Buckeye).

Buckeye has requested CSP provide a delivery point, pursuant to provisions of the Power Delivery Agreement between CSP, Buckeye Power, Inc. (Buckeye), The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Ohio Power Company and Toledo Edison Company, dated January 1, 1968.

CSP requests an effective date of April 15, 2000, for the tendered agreements.

CSP states that copies of its filing were served upon South Central Power Company and the Public Utilities Commission of Ohio.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Reliant Energy Shelby County, LP

[Docket No. ER00–1717–000]

Take notice that on February 28, 2000, Reliant Energy Shelby County, LP (Reliant Shelby County), tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 authorizing Reliant Shelby County to make sales at market-based rates.

Reliant Shelby County intends to sell electric power at wholesale. In transactions where Reliant Shelby County sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Reliant Shelby County's Rate Schedule provides for the sale of energy and capacity at agreed prices.

Reliant Shelby County has requested this rate schedule become effective on the in service date Reliant Shelby County of its Shelby County, Illinois generating facility.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Maine Public Service Company

[Docket No. ER00–1718–000]

Take notice that on February 28, 2000, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for Network Integration Transmission Service under Maine Public's open access transmission tariff with Houlton Water Company.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Deseret Generation and Transmission Co-operative, Inc.

[Docket No. ER00–1720–000]

Take notice that on February 28, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed Confirmation Agreement between Deseret and AEP

Service Corporation regarding a long-term power purchase and sale transaction under the Western Systems Power Pool Agreement.

Comment date: March 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5854 Filed 3–9–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–103–000, et al.]

Madison Windpower, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 3, 2000.

Take notice that the following filings have been made with the Commission:

1. Madison Windpower, LLC

[Docket No. EG00–103–000]

Take notice that on February 29, 2000, Madison Windpower, LLC (Madison), a limited liability company with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, 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.

Madison proposes to construct, own or lease and operate a nominally rated 11.55 MW wind-power generating facility in the Town of Madison, Madison County, New York. The proposed power plant is expected to commence commercial operation in the 3rd quarter of 2000. All output from the plant will be sold by Madison exclusively at wholesale.

Comment date: March 24, 2000, 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. Reliant Energy Shelby County, LP

[Docket No. EG00–104–000]

Take notice that on February 28, 2000, Reliant Energy Shelby County, LP, (Reliant Shelby County) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to Section 32 (a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a (1994), and Subchapter T, Part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 365.

Reliant Shelby County is a Delaware limited partnership and proposes to construct, own and operate a generation facility in Shelby County, Illinois.

Comment date: March 24, 2000, 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. The Montana Power Trading and Marketing Company and The Montana Power Company

[Docket No. ER97–399–014 and ER97–449–003]

Take notice that on February 29, 2000, The Montana Power Company and Montana Power Trading and Marketing tendered for filing an updated market analysis and change of status report in connection with their market-based rate authority.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Engage Energy US, L.P.

[Docket No. ER97–654–014]

Take notice that on February 28, 2000, Engage Energy US, L.P. (Engage), tendered for filing a three-year update to its market power study in compliance with the Commission's Order in Docket No. ER97–654–000, granting Newco US, L.P., whose name subsequently was changed to Engage, market rate authority.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. California Power Exchange Corporation

[Docket No. ER00–951–001]

Take notice that on February 29, 2000, the California Power Exchange Corporation, on behalf of its CalPX Trading Services Division (CTS), on February 29, 2000, made a filing to comply with the Commission's February 24, 2000 order in this proceeding.

Copies of the filing were served upon the CTS'' jurisdictional customers and the California Public Utilities Commission.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Energy Service Corporation on behalf of West Penn Power Company

[Docket No. ER00–1127–000

Take notice that on February 28, 2000, Allegheny Energy Service Corporation, on behalf of West Penn Power Company (WP), tendered for filing a Power Service Agreement and an Addendum thereto dated February 24, 2000, under which WP will provide full requirements service to the Letterkenny Industrial Development Authority in Franklin County, Pennsylvania.

The parties request a May 3, 1999, effective date. The filing is an amendment of the filing made under cover letter dated January 14, 2000.

Copies of the filing have been provided to the Pennsylvania Public Utility Commission and all parties of record.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Reliant Energy Services, Inc.

[Docket No. ER00–1526–000]

Take notice that on February 28, 2000, Reliant Energy Services, Inc. (RES), tendered for filing at the direction of Commission Staff and pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d (1994), and Part 35 of the Commission's Regulations, 18 CFR 35, an amendment to its February 4, 2000, Petition in the above-captioned docket.

RES requests waiver of the prior notice requirements of Section 35.3 of the Commission's Regulations, 18 CFR 35.3, to permit its amended filing to become effective as of February 4, 2000, the date of its initial filing in this docket.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. New Century Services, Inc.

[Docket No. ER00–1707–000]

Take notice that on February 28, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and American Electric Power Service Corporation.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. New Century Services, Inc.

[Docket No. ER00–1708–000]

Take notice that on February 28, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and American Electric Power Service Corporation.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. FirstEnergy System

[Docket No. ER00–1706–000]

Take notice that on February 28, 1999, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Borough of Zelienople, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is March 1, 2000, for the above mentioned Service Agreement in this filing.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PECO Energy Company

[Docket No. ER00–1705–000]

Take notice that on February 28, 2000, PECO Energy Company (PECO), tendered for filing an Interconnection Agreement between PECO and Bio-Energy Partners for Generation Interconnection and Parallel Operation.

Copies of this filing were served on Bio-Energy Partners and the Pennsylvania Public Utility Commission.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Sierra Pacific Power Company

[Docket No. ER00–1709–000]

Take notice that on February 28, 2000, Sierra Pacific Power Company (Sierra), tendered for filing Service Agreements (Service Agreements) with the following entities for Point-to-Point Transmission Service under Sierra Pacific Resources Operating Companies FERC Electric Tariff Original Volume No. 1, Open Access Transmission Tariff (Tariff), for Non-Firm Point-to-Point Transmission Service to Sierra Pacific Energy Company, American Electric Power Company, Inc., and PP&L Montana, LLC., and also Short-Term Firm Point-to-Point Transmission Service to Sierra Pacific Energy Company, American Electric Power Company, Inc., PP&L Montana, LLC.

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission Regulations.

Sierra also submitted revised Sheet No. 173 (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit and effective date of March 1, 2000, for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. FirstEnergy System

[Docket No. ER00–1710–000]

Take notice that on February 28, 2000, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for Borough of Zelienople, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff.

The proposed effective date under this Service Agreement is March 1, 2000, for the above mentioned Service Agreement in this filing.

Comment date: March 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of New Mexico

[Docket No. ER00–1711–000]

Take notice that on February 28, 2000, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement, dated February 4, 2000, for firm point-to-point transmission service and ancillary services, between PNM Transmission Development and Contracts (Transmission Provider) and PNM International Business Development (Transmission Customer), under the terms of PNM's Open Access Transmission Service Tariff. This service agreement supersedes an existing service agreement between the Transmission Provider and the Transmission Customer which expired by its own terms on December 31, 1999.

Under the Service Agreement, Transmission Provider continues to provide to Transmission Customer reserved capacity from PNM's San Juan Generating Station 345 kV Switchyard (point of receipt) to PNM's Luna 345kV Switching Station (point of Delivery) for the period beginning January 1, 2000 and ending December 31, 2001.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–1715–000]

Take notice that on February 28, 2000, Alliant Energy Corporate Services, Inc., tendered for filing an executed Service Agreement for short-term firm point-to-point transmission service, establishing Great River Energy as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of February 4, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Midwest Energy, Inc.

[Docket No. ER00–1719–000]

Take notice that on February 28, 2000, Midwest Energy, Inc. filed a quarterly report for the fourth quarter of 1999.

Comment date: March 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Pool Participants Pool

[Docket No. ER00–1723–000]

Take notice that on February 29, 2000, the New England Power Pool Participants Committee submitted changes to Appendix 11–D of Market Rule 11, with a requested effective date of May 1, 2000.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER00–1721–000]

Take notice that on February 29, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing proposed modifications to its Open Access Transmission Tariff.

The purpose of these proposed modifications is to accommodate Virginia Power's Retail Access Pilot Program. Virginia Power requests an effective date of May 1, 2000.

Copies of the filing were served upon the public utility's jurisdictional customers, and the U.S. Department of Energy, Virginia State Corporation Commission, Public Service Commission of D.C., South Carolina Public Service Commission, Tennessee Public Service Commission, Texas Public Utility Commission, New Jersey Board of Public Utilities, Illinois Commerce Commission, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Maine Public Utilities Commission, Maryland Public Service Commission, Missouri Public Service Commission, Alabama Public Service Commission, Arkansas Public Service Commission, Delaware Public Service Commission, New York Public Service Commission, Pennsylvania Public Utility Commission, and the Vermont Public Service Board.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1722–000]

Take notice that on February 29, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 1 to Supplement No. 9 to the Market Rate Tariff to incorporate a Netting Agreement with Virginia Electric and Power Company into the tariff provisions.

Allegheny Energy Supply Company requests a waiver of notice requirements to make the Amendment effective as of February 28, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. New England Power Pool

[Docket No. ER00–1724–000]

Take notice that on February 29, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing three (3) Service Agreements for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.12 of the Commission's Regulations.

Acceptance of these Service Agreements will recognize the provision of Firm In Service transmission to Northeast Utilities Service Company, in conjunction with Regional Network Service, in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented. In each case, an effective date of March 1, 2000 for commencement of transmission service has been requested.

Copies of this filing were sent to all NEPOOL Participants, the New England public utility commissioners and all parties to the transaction.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Pool

[Docket No. ER00–1725–000]

Take notice that on February 29, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by The Energy Consortium (TEC). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of TEC's signature page would permit NEPOOL to expand its membership to include TEC. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make TEC a member in NEPOOL.

The Participants Committee requests an effective date of March 1, 2000, for commencement of participation in NEPOOL by TEC.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. New England Power Pool Participants Committee

[Docket No. ER00–1726–000]

Take notice that on February 29, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Rumford Power Associates Limited Partnership (Rumford). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Rumford's signature page would permit NEPOOL to expand its membership to include Rumford. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Rumford a member in NEPOOL.

The Participants Committee requests an effective date of March 1, 2000, for commencement of participation in NEPOOL by Rumford.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. American Electric Power Service Corporation

[Docket No. ER00–1727–000]

Take notice that on February 29, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an amendment to the subject docket to include the Specifications for Long-Term Firm Point-to-Point Transmission Service Reservations to be attached as addenda to the previously filed Firm Point-to-Point Transmission Service Agreements with American Municipal Power—Ohio, Inc., Cleveland Public Power, Commonwealth Edison Company, and PECO Energy Power Team. All of these agreements are pursuant to 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 January 1, 2000.

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: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Arizona Public Service Company

[Docket No. ER00–1728–000]

Take notice that on February 29, 2000, Arizona Public Service Company (APS), tendered for filing umbrella Service Agreements to provide Short-Term Firm and Non-Firm Point-to-Point Transmission Service to Coral Power, L.L.C., PP&L Montana, L.L.C., and Tri-State Generation and Transmission Association, Inc., under APS' Open Access Transmission Tariff.

A copy of this filing has been served on Coral Power, L.L.C., PP&L Montana, L.L.C., and Tri-State Generation and Transmission Association, Inc., and the Arizona Corporation Commission.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1729–000]

Take notice that on February 29, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 26 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply Company offers generation services; and also files Amendment No. 1 to Supplement No. 26 to incorporate a Netting Agreement with Western Resources, Inc., into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make service available to Western Resources, Inc., and make the Netting Agreement effective as of February 28, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Dayton Power and Light Company

[Docket No. ER00–1730–000]

Take notice that on February 29, 2000, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing Statoil Energy Services, Inc., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Statoil Energy Services, Inc. and the Public Utilities Commission of Ohio.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Southwestern Electric Power Company

[Docket No. ER00–1731–000]

Take notice that on February 29, 2000, Southwestern Electric Power Company (SWEPCO), tendered for filing as Assignment and Consent Agreement reflecting SWEPCO's consent to the assignment of certain rights and obligations under SWEPCO's contract with Cajun Electric Cooperative, Inc. (Cajun Electric). Specifically, the Assignment and Consent Agreement reflects Louisiana Generating LLC's (Louisiana Gen) commitment and SWEPCO's consent for Louisiana Gen to assume the rights, duties and obligations of Cajun Electric to purchase power from SWEPCO under an Electric System Interconnection Agreement dated January 1, 1988, as amended, between Cajun Electric and SWEPCO, and an As-Available Energy Transmission Service Letter Agreement dated May 31, 1989, as amended, between Cajun Electric and SWEPCO.

SWEPCO seeks an effective date for the Assignment and Consent Agreement coincident with the closing date of the Asset Purchase Agreement, which is expected to occur by late March 2000.

Accordingly, to the extent necessary, SWEPCO requests waiver of the Commission's notice requirements. SWEPCO also requests expedited consideration of the filing, including a shortened notice and comment period.

A copy of the filing was served on each of Ralph R. Mabey as Chapter 11 Trustee for Cajun Electric, Louisiana Gen and the Louisiana Public Service Commission.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Company

[Docket No. ER00–1733–000]

Take notice that on February 29, 2000, New England Power Company (NEP), tendered for filing an Agreement for Preliminary Engineering and Design Support Services with AES Londonderry, L.L.C.

NEP requests an effective date of March 1, 2000, for the agreement.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. New England Power Pool Participants Committee

[Docket No. ER00–1734–000]

Take notice that on February 29, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by NYSEG Solutions, Inc. (NYSEG). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of NYSEG's signature page would permit NEPOOL to expand its membership to include NYSEG. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make NYSEG a member in NEPOOL. The Participants Committee requests an effective date of May 1, 2000, for commencement of participation in NEPOOL by NYSEG.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. New England Power Pool Participants Committee

[Docket No. ER00–1735–000]

Take notice that on February 29, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by XENERGY Inc., (XENERGY). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of XENERGY's signature page would permit NEPOOL to expand its membership to include XENERGY. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make XENERGY a member in NEPOOL.

The Participants Committee requests an effective date of May 1, 2000, for

commencement of participation in NEPOOL by XENERGY.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Soyland Power Cooperative, Inc.

[Docket No. ER00–1736–000]

Take notice that on February 29, 2000, Soyland Power Cooperative, Inc. (Soyland), tendered for filing with the Federal Energy Regulatory Commission (the Commission) proposed changes to its Rate Schedule A, designated as Supplement No. 2 to its Rate Schedules.

Soyland requests an effective date of February 1, 2000, for the proposed change to its Rate Schedule A. Accordingly, Soyland requests waiver of the Commission's regulations. Rate Schedule A is the formulary rate under which Soyland recovers the costs associated with its service to its Members pursuant to the Wholesale Power Contract that Soyland has with each Member.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Virginia Electric and Power Company

[Docket No. ER00–1737–000]

Take notice that on February 29, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing an Amended and Restated Market-Based Sale Tariff.

Virginia Power requests authorization to sell power at market-based rates at wholesale entities for resale outside the Company's service territory; and to both affiliated and non-affiliated energy service providers who are participating in Virginia's Retail Access Pilot Program. Virginia Power also purposes to correct two errors which it has identified in its currently filed tariff.

Copies of the filing were served upon the public utility's jurisdictional customers and Virginia State Corporation Commission.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Bangor Hydro-Electric Company

[Docket No. ER00–1738–000]

Take notice that on February 29, 2000, Bangor Hydro-Electric Company (Bangor Hydro), tendered pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, revisions to its Open Access Transmission Tariff (OATT) to clarify its retail rate schedules.

Bangor Hydro proposes that the filing become effective March 1, 2000.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Phelps Dodge Energy Services, LLC

[Docket No. ER00–1739–000]

Take notice that on February 29, 2000, Phelps Dodge Energy Services, LLC (PDES), tendered for filing an ''umbrella'' Service Agreement between PDES and Tucson Electric Power Company (TEP) under which PDES will make short-term sales of capacity and energy to TEP, pursuant to PDES' market-based rate tariff, which was approved by the Commission in Green Power Partners I, LLC, *et al.*, 88 FERC ¶ 61,005 (1999).

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Southwest Power Pool, Inc.

[Docket No. ER00–1740–000]

Take notice that on February 29, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing an executed service agreement for firm point-to-point transmission service under the SPP Tariff with Southwestern Public Service Company (SPS).

SPP requests an effective date of January 1, 2002 for this agreement.

Copies of this filing were served upon SPS.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. FirstEnergy Operating Companies and Duquesne Light Company

[Docket No. ER00–1741–000]

Take notice that on February 29, 2000, the FirstEnergy Operating Companies and Duquesne Light Company (collectively, Parties), tendered for filing under Section 205 of the Federal Power Act an Ancillary Services Service Agreement under which Duquesne Light Company may purchase certain ancillary services from the FirstEnergy Operating Companies.

The Parties request an effective date of May 1, 2000, for the agreement.

A copy of the filing was served upon the Pennsylvania Public Utility Commission and the Public Utilities Commission of Ohio.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Madison Windpower, LLC

[Docket No. ER00–1742–000]

Take notice that on February 29, 2000, Madison Windpower, LLC (Madison), tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates and to reassign transmission capacity. Madison is constructing a nominally rated 11.55 MW wind-powered generating facility located in the Town of Madison in Madison County, New York.

Comment date: March 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–5855 Filed 3–9–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2004 Resource Pool-Loveland Area Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed allocation procedures and call for applications.

SUMMARY: Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy, is publishing this notice of proposed procedures to implement Subpart C—Power Marketing Initiative of the Energy Planning and Management Program Final Rule, 10 CFR part 905. The Energy Planning and Management Program (Program), which was developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20,

1995. Subpart C of the Program provides for establishing project-specific resource pools and allocating power from these pools to new preference customers. These proposed procedures, in conjunction with the Loveland Area Projects Final Post-1989 Marketing Plan (Post-1989 Marketing Plan) will establish the framework for allocating power from the resource pool to be established for the Loveland Area Projects (LAP).

DATES: The comment period on the proposed procedures begins today and ends June 8, 2000. To be assured of consideration, Western must receive all written comments by the end of the comment period. Western will hold public information forums and public comment forums on the proposed procedures on March 14, 21, and 23, 2000, at the following locations and times:

1. March 14, 2000, information forum begins at 10 a.m. Comment forum immediately following in Northglenn, Colorado.

2. March 21, 2000, information forum begins at 10 a.m. Comment forum immediately following in Casper, Wyoming.

3. March 23, 2000, information forum begins at 10 a.m. Comment forum immediately following in Topeka, Kansas.

ADDRESSES: Send written comments regarding these proposed procedures to: Mr. Joel K. Bladow, Regional Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003. All documentation developed or retained by Western for the purpose of developing these procedures will be available for inspection and copying at the Rocky Mountain Customer Service Region Office, at 5555 East Crossroads Boulevard., Loveland, CO 80538–8986.

Public information and comment forums will be held at:

1. Holiday Inn Denver-Northglenn, 10 East 120th Avenue, Northglenn, Colorado.

2. The Events Center, 1 Events Drive, Casper, Wyoming.

3. Holiday Inn Topeka West, 605 Fairlawn Road, Topeka, Kansas.

FOR FURTHER INFORMATION CONTACT: Ron Steinbach, Power Marketing Manager, 970–490–7322; David Holland, Contracts and Energy Services Manager, 970–490–7259; or Susan Steshyn, Public Utilities Specialist, 970–490–7237. Written requests for information should be sent to Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003. After all public comments have been thoroughly considered, Western will prepare and publish Final Post-2004 Resource Pool Allocation Procedures in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Western published the Final Rule for the Program, 60 FR 54151, October 20, 1995. The rule became effective on November 20, 1995. The goal of the Program is to require planning and efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments. One aspect of the Program is to establish project-specific power resource pools when existing resource commitments expire and allocate power from these pools to new preference customers. Existing resource commitments for LAP expire on September 30, 2004. In accordance with the Program, 96 percent of the firm power resources available in 2004 was extended to existing customers. The remaining 4 percent will be placed in a resource pool from which power allocations to new customers will be made following these proposed procedures and the Post-1989 Marketing Plan, 48 FR 38279, August 23, 1983. The Proposed Post-2004 Resource Pool Allocation Procedures for LAP address (1) eligibility criteria; (2) how Western plans to allocate the pool resources to new customers as provided for in the Program; and (3) the terms and conditions under which Western will sell the allocated power.

I. Amount of Pool Resources

Western proposes to allocate up to 4 percent of the LAP long-term firm hydroelectric resource available as of October 1, 2004, as firm power (firm power). Present hydrologic studies indicate that about 28 MW will be available for the summer season and about 24 MW will be available for the winter season. Firm power means firm capacity and associated energy allocated by Western and subject to the terms and conditions specified in Western's long term firm power electric service contracts.

II. General Eligibility Criteria

Western proposes to apply the following general eligibility criteria to applicants seeking an allocation of firm power under the proposed Post-2004 Resource Pool Allocation Procedures.

A. Eligible applicants must be preference entities as defined by section 9c of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. Eligible applicants must be located within the currently established LAP marketing area.

C. Eligible applicants must not be currently receiving benefits from a current LAP firm power allocation. Eligible Native American applicants are not subject to this requirement.

D. Eligible utility and nonutility applicants must be able to use the firm power directly or be able to sell it directly to retail customers.

E. Eligible applicants that are municipalities, cooperatives, public utility districts, and public power districts, must have utility status by September 30, 2000. Utility status means that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis.

F. Eligible Native American applicants must be Native American Tribes as defined in the Indian Self Determination Act of 1975, 25 U.S.C. 450b, as amended.

III. General Allocation Criteria

Western proposes to apply the following general allocation criteria to applicants seeking an allocation of firm power under the proposed Post-2004 Resource Pool Allocation Procedures.

A. Allocations of firm power will be made in amounts as determined solely by Western in exercising its discretion under Reclamation Law.

B. An allottee will have the right to purchase such firm power only after executing an electric service contract between Western and the allottee.

C. Firm power allocated under these procedures will be available only to new eligible applicants in LAP's existing marketing area. This marketing area includes parts of Colorado, Kansas, Nebraska, and Wyoming. LAP's marketing area is specifically defined as the portion of Colorado east of the Continental Divide, Mountain Parks Rural Electric Association's service territory in Colorado west of the Continental Divide, the portion of Kansas located in the Missouri River Basin, and the portion of Kansas west of the eastern borders of the counties intersected by the 100th Meridian, the portion of Nebraska west of the 101st Meridian, and Wyoming east of the Continental Divide.

D. Allocations made to Native American Tribes will be based on estimated or actual load developed by the Native American Tribes. Western will adjust inconsistent estimates during the allocation process. Western is

willing to assist tribes in developing load estimating methods assuring consistent Native American Tribe load estimates across the region.

E. Allocations made to qualified utility and nonutility applicants will be based on 1998–99 winter season and 1999 summer season loads. Western will apply the Post-1989 Marketing Plan criteria to these loads.

F. Firm capacity and energy will be based upon the applicant's seasonal system load factor.

G. Any electric service contract offered by Western to an applicant shall be executed by the applicant within six (6) months from the date of offer, unless otherwise agreed to in writing by Western.

H. The initial resource pool will be dissolved subsequent to the closing date for executing firm power contracts. Firm power not under contract will be used as Western determines.

I. The minimum allocation shall be 100 kilowatts (kW).

J. The maximum allocation for qualified utility and nonutility applicants shall be 5,000 kilowatts (kW).

K. Contract rates of delivery shall be subject to adjustment in the future as provided for in the Program.

L. Western retains the right to provide the economic benefits of its resources directly to tribes, if unanticipated obstacles to delivering hydropower benefits to Native American Tribes arise.

IV. General Contract Principles

Western proposes to apply the following general contract principles to all applicants receiving an allocation of firm power under the proposed Post-2004 Resource Pool Allocation Procedures.

A. Western, at its discretion and sole determination, reserves the right to adjust the contract rate of delivery on 5 years' notice in response to changes in hydrology and river operations. Any such adjustments shall only take place after a public process.

B. Western shall assist allottees to obtain third-party transmission arrangements to deliver firm power allocated under these proposed procedures; nonetheless, each allottee is ultimately responsible for obtaining its own delivery arrangements.

C. Contracts entered into under the proposed Post-2004 Resource Pool Allocation Procedures shall provide for Western to furnish firm electric service effective from the October 2004 billing period, through the September 2024 billing period.

D. The contracts entered into as a result of these proposed procedures shall incorporate Western's standard provisions for power sales contracts, integrated resource planning, and the general power contract provisions.

V. Applications for Firm Power

Applications for an allocation of firm power under these proposed procedures must be submitted in writing to the Regional Manager, Rocky Mountain Customer Service Region. The application consists of two parts, a Letter of Interest and Applicant Profile Data (APD), which must be received in Western's Rocky Mountain Customer Service Region at P.O. Box 3700, Loveland, Colorado 80539–3003, in accordance with the requirements listed here.

A. Letter of Interest

Each applicant should submit to the Regional Manager, Rocky Mountain Customer Service Region, a Letter of Interest in receiving firm power no later than close of business on June 9, 2000. A Letter of Interest does not obligate an applicant in any way. If an applicant is eligible for an allocation under these proposed procedures, an electric service contract between Western and the allottee will be the binding document.

B. Applicant Profile Data

To remain eligible for an allocation, each applicant must submit two typed copies of the APD to Western's Rocky Mountain Customer Service Region no later than close of business on September 6, 2000. The content and format of the APD follows. Requested information should be submitted in the sequence listed. The applicant must provide all requested information or the most reasonable available estimate. The applicant should note any requested information that does not apply. Western is not responsible for errors in data, missing data, or missing pages. All items in the APD should be answered as if prepared by the organization seeking the allocation.

1. Applicant:

a. Applicant's name and address.

b. Person(s) representing applicant: Please provide the name, address, title, and telephone number of such person(s).

c. Type of organization: For example, municipality, rural electric cooperative, Native American Tribe, state agency, or Federal agency. Please provide a brief description of the organization that will interact with Western contract and billing matters and whether the organization owns and operates its own electric utility system.

d. Applicable law under which the organization was established.

2. Loads:

a. Utility and Nonutility Applicants:

i. If applicable, number and type of customers served; *i.e.,* residential, commercial, industry, military base, agricultural.

ii. The actual monthly maximum demand in (kilowatts) and energy use (in kilowatthours) during the 1998–99 winter season (October 1998 through March 1999) and the 1999 summer season (April 1999 through September 1999).

b. Native American Tribe Applicants:

Estimated maximum demand in kilowatts with a description of the method and basis for this estimated demand.

3. Resources:

a. A list of current power supplies, including the applicant's own generation and purchases from others. For each supply, provide capacity and location.

b. Status of power supply contracts, including contract termination date. Indicate whether power supply is on a firm basis or some other type of arrangement.

4. Transmission:

a. Points of delivery: Provide the preferred point(s) of delivery on Western's system or a third party's system and the required service voltage.

b. Transmission arrangements: Describe the transmission arrangements necessary to deliver firm power to the requested points of delivery.

5. Other Information:

The applicant may provide any other information pertinent to receiving an allocation.

6. Signature:

The signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for allocation.

C. Western's Consideration of Applications

1. When Western receives the APD, Western will verify that the general eligibility criteria set forth in section II have been met, and that all items requested in the APD have been provided.

a. Western will request in writing additional information from any applicant whose APD is determined to be deficient. The applicant shall have 15 days from the date on Western's letter of request to provide the needed information in writing.

b. If Western determines that the applicant does not meet the general eligibility criteria, Western will send a letter explaining why the applicant did not qualify.

c. If the applicant has met the eligibility criteria, Western will determine the amount of firm power to be allocated pursuant to the general allocation criteria set forth in section III. Western will send a draft contract to the applicant for review which identifies the terms and conditions of the offer and the amount of firm power allocated to the applicant.

2. All firm power shall be allocated according to the procedures in the general allocation criteria set forth in section III.

3. Western reserves the right to determine the amount of firm power to allocate to an applicant, as justified by the applicant in its APD.

VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (Act), requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western has determined that (1) this rulemaking relates to services offered by Western, and, therefore, is not a rule within the purview of the Act, and (2) the impacts of an allocation from Western would not cause an adverse economic impact on a substantial number of such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By his execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

VII. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from the Office of Management and Budget (OMB) to collect customer information in this rule, under control number 1910–1200.

VIII. Review Under the National Environmental Policy Act

Western has completed an environmental impact statement on the Program, pursuant to the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in the **Federal Register** on October 12, 1995 (60 FR 53181). Western's NEPA review will assure all environmental effects related to these procedures have been analyzed.

IX. Determination Under Executive Order 12866

DOE has determined that this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by OMB is required.

Dated: February 25, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–5948 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project-Firm Power Services Base Charge and Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposal to extend rate setting formula.

SUMMARY: Western Area Power Administration's (Western) Desert Southwest Customer Service Region is initiating a rate adjustment process for the Boulder Canyon Project (BCP). Western proposes to extend the existing rate setting formula, and approve the proposed base charge and rates for FY 2001. This **Federal Register** notice begins the formal rate adjustment process for the proposed base charge and rates.

DATES: The consultation and comment period begins today and ends June 8, 2000. Western will hold a public information forum on April 13, 2000, beginning at 10 a.m. MST, at the Desert Southwest Customer Service Regional Office to explain the proposed base charge and rates. Western will receive oral and written comments at a public comment forum on May 9, 2000, beginning at 10 a.m. MST, also to be held at the Desert Southwest Customer Service Regional Office.

ADDRESSES: Send written comments to: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, or by e-mail: carlson@wapa.gov. Western must receive written comments by the end of the consultation and comment period to be assured consideration. The Desert Southwest Customer Service Regional Office is located at 615 South 43rd Avenue, Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Maher A. Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2768, or by e-mail: nasir@wapa.gov.

SUPPLEMENTARY INFORMATION: Annual base charge and rates adjustments are required by the existing rate setting formula approved by the Federal Energy Regulatory Commission (FERC) on April 19, 1996. The existing rate schedule was placed into effect on November 1, 1995. Western proposes to extend the existing rate setting formula through September 30, 2005, and approve the proposed base charge and rates for FY 2001. The proposed base charge for FY 2001 is $49,460,974. The proposed forecasted energy rate is 5.70 mills per kilowatthour (kWh), and the proposed forecasted capacity rate is $1.02 per kilowattmonth (kWmonth). The existing base charge is $46,145,334. The existing forecasted energy rate is 4.59 mills per kWh, and the existing forecasted capacity rate is $0.95 per kWmonth. The projected base charge and rates adjustments are due to increases in the annual operating expenses and will be explained during the rate adjustment process. All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western in developing the proposed base charge and rates will be made available to all power customers and interested parties. The extension of the existing rate schedule and proposed firm power services base charge and rates are scheduled to become effective October 1, 2000.

Under Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator; and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary. Existing DOE procedures for public participation in power rate adjustments are located at 10 CFR part 903, effective on September 18, 1985 (50 FR 37835).

The proposed firm power services base charge and rates for BCP are being established pursuant to the Department of Energy Organization Act (42 U.S.C.

7101, *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 371, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c) and section 8 of the Act of August 31, 1964, 16 U.S.C. 837g, the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501, *et seq.*), the Colorado River Storage Project Act (43 U.S.C. 620, *et seq.*), the Boulder Canyon Project Act (43 U.S.C. 617, *et seq.*), the Boulder Canyon Project Adjustment Act (43 U.S.C. 618, *et seq.*), the Hoover Power Plant Act of 1984 (43 U.S.C. 619, *et seq.*), the General Regulations for Power Generation, Operation, Maintenance, and Replacement at the BCP, Arizona/Nevada (43 CFR part 431) published in the **Federal Register** (51 FR 23960) on July 1, 1986, and the General Regulations for the Charges for the Sale of Power from the BCP, Final Rule (10 CFR part 904) published in the **Federal Register** (50 FR 37837) on September 18, 1985, and the DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2, dated September 20, 1979).

Both a public information forum and a public comment forum will be held. After considering public comments, Western will recommend a proposed base charge and rates to be approved on an interim basis by the Deputy Secretary.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it applies to rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council On Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: February 25, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–5947 Filed 3–9–00; 8:45 am]

BILLING CODE 6450–01–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6251–9]

Environmental Impact Statements and Regulations; Availability of EPA

Comments Availability of EPA comments prepared February 21, 2000 through February 25, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (63 FR 17856).

Draft EISs

ERP No. D–COE–F39039–00 Rating EO2, John T. Myers and Greenup Lock Improvements, To Alleviate Commerical Navigation Traffic Congestion, Ohio River Mainstem Systems Study, (ORMSS), Interim Feasibility Report, Indiana, Kentucky and Ohio.

Summary: EPA expressed environmental objections based on issues with how the project purpose and need was formulated, the apparent phased approach to NEPA compliance, the lack of cumulative impact analysis, inadequate mitigation and the need for additional analysis of the sediment quality.

ERP No. D–SFW–L65334–WA Rating LO, Simpson Washington Timberlands Forest Management and Timber Harvesting Project, Proposed Issuing of a Multiple Species Incidental Take Permit, Mason, Thurston and Gray Harbor Counties, WA.

Summary: EPA had no objections to the proposed action.

Final EISs

ERP No. F–FRC–E03008–00 Florida Gas Transmission Phase IV Expansion Project (Docket No. CP99–94–000), To Deliver Natural Gas to Electric Generator, FL and MS.

Summary: EPA expressed concerns over the proposed conversion of forested wetlands to herbaceous wetlands and other impacts associated with pipeline placement, including induced growth associated with the project. EPA also expressed concerns over the lack of information regarding potential environmental justice issues.

ERP No. RF–OSM–A01102–00 Valid Existing Rights—Proposed Revisions to the Permanent Program Regulations Implementing Section 522(E) of the Surface Mining Control and Reclamation Act of 1977 and Proposed Rulemaking Clarifying the Applicability of Section 522(E) to Subsidence from Underground Mining.

Summary: The final EIS and rule have adequately addressed EPA's concerns on the air quality analysis, impacts to water quality and environmental justice.

Regulations

ERP No. R–AFS–A65166–00 National Forest Service System Land and Resource Management Planning: Proposed Rule 36 CFR Parts 217 and 219.

Summary: EPA was pleased to see that the Forest Service used the recommendations given by the Committee of Scientists as a corner stone of the planning process, especially ecological sustainability, the principles of ecosystem management and requirements for implementation, monitoring and evaluation. EPA also believes that the proposed rule attempts to simplify planning process; reduce burdensome and costly procedural requirements and strengthen relationships with the public, States, Tribes and other government agencies. EPA requests that the final rule supply additional information on issues related to implementation of pre-decisional appeals, monitoring, terms and definitions sustainability and species viability.

Dated: March 6, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–5929 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6251–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements filed February 29, 2000 through March 03, 2000 pursuant to 40 CFR 1506.9.

EIS No. 000063, Final EIS, AFS, ID, Sloan-Kennally Timber Sale, Proposal to Harvest and Regenerate Timber Strands, Implementation, Payette National Forest, McCall Ranger District, Valley County, ID, Due: April 10, 2000, Contact: Dan Anderson (208) 347–0349.

EIS No. 000064, Draft EIS, BOP, CA, Lassen County Federal Correctional Institution (FCI), Construction and Operation, To House Median-Security Inmates and Federal Prison Camp, Possible Site is Southwest Site, Lassen County, CA, Due: April 24, 2000, Contact: David J. Dorworth (202) 514–6470.

EIS No. 000065, Final EIS, AFS, MT, Flathead National Forest, Swan Lake Ranger District, Meadow Smith Project, Vegetative Treatments and Other Activities to Maintain and Restore Large-Tree Old Grow Forest Characteristics, Lake and Missoula Counties, MT, Due: April 10, 2000, Contact: Keith Soderstrom (406) 837–7510.

EIS No. 000066, Draft EIS, AFS, PA, Allegheny National Forest, To Address the Maintenance and Enhancement of Threatened and Enchangered Species, Elk, Forest, McKean and Warren Counties, PA, Due: April 24, 2000, Contact: Gary W.Kell (814) 723–5150.

EIS No. 000067, Final EIS, NPS, NB, SD, Missouri National Recreational River, General Management Plan, Implementation, Cedar and Dixon Counties, NB and Yakton, Clay and Union Counties, SD, Due: April 10, 2000, Contact: Michael Madell (608) 264–5257.

EIS No. 000068, Draft EIS, AFS, OR, Triangle Land Exchange Project, Between Clearwater Land Exchange Oregon (Clearwater) an Oregon Partnership, Implementation, Malheur, Umatilla and Wallowa-Whitman National Forests, Baker, Grant, Harney and Wallowa Counties, OR, Due: April 24, 2000, Contact: Bob Miles (541) 575–3000.

EIS No. 000069, Final EIS, AFS, MT, Clancy-Unionville Vegetation Manipulation and Travel Management Project, Implementation, Helena National Forest, Helena Ranger District, Lewis and Clark and Jefferson Counties, MT, Due: April 10, 2000, Contact: Dan Mainwaring (406) 449–5490.

EIS No. 000070, Draft EIS, AFS, MN, Gunflint Corridor Fuel Reduction, Implementation, Superior National Forest, Gunflint Ranger District, Cook County, MN, Due: April 24, 2000, Contact: Becky Bartol (218) 387–1750.

Amended Notices

EIS No. 000051, Draft EIS, FTA, OH, Bera/I–X Center Red Line Extension Project, Southwest Corridor Major Investment, Transit Improvements, Funding, Cuyahoga County, OH, Due April 17, 2000, Contact Carlos Pena (312) 353–2865. Revision of FR notice published on 02/25/2000: Completion of Distribution was not completed until 02/25/2000 EIS should not have appeared in the FR until 03/03/2000. The 45-day comment period is calculated from 03/03/2000.

Dated: March 6, 2000

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–5930 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34165B; FRL–6495–2]

Organophosphate Pesticide; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, disulfoton. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34165B, must be received by EPA on or before May 9, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34165B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on disulfoton, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically*. You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In person*. The Agency has established an official record for this action under docket control number OPP–34165B. The official record consists of the documents specifically

referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34165B in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34165B. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate pesticide, disulfoton. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the disulfoton preliminary risk assessments, which was released to the public January 8, 1999 (64 FR 5) (FRL–6055–9) through a notice in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for disulfoton. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific disulfoton use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest (''pre-harvest intervals''), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate pesticide tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before May 9, 2000, at the addresses given under the ''ADDRESSES'' section. Comments and proposals will become part of the Agency record for the organophosphate pesticide specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 2, 2000.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–5927 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6550–2]

Proposed Cost Recovery Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as Amended (CERCLA), 42 U.S.C. 9622(h)(1)

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed cost recovery settlement pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(h)(1).

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into a cost recovery administrative settlement to resolve a claim under the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(h)(1). This settlement is intended to resolve the liability of the Estate of Jeanette Faye Burris for response costs incurred by EPA in connection with a removal action conducted by EPA at 5310 Broadway Avenue, N.E., Altoona, Polk County, Iowa.

The proposed settlement agreement was signed by the Director of EPA Region VII's Superfund Division on February 10, 2000. Because EPA's total response costs did not exceed $500,000, the Attorney General's concurrence is not required for this settlement.

DATES: Written comments must be provided on or before April 10, 2000.

ADDRESSES: Comments should be sent to David A. Hoefer, Office of Regional Counsel, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101 and should refer to: *In the of Matter of 5310 Broadway Avenue, N.E., Altoona, Polk County, Iowa*, EPA Docket No. CERCLA–7–2000-0012.

The proposed administrative settlement may be examined in person at EPA's offices at 901 North 5th Street, Kansas City, Kansas 66101. To arrange to examine the administrative settlement in person please contact Mr. Hoefer at 913–551–7503. To request a copy by mail please refer to the matter name and the docket number set forth above and enclose a check in the amount of $3.00 for reproduction costs (25 cents multiplied by 12 pages), payable to the United States Environmental Protection Agency, and send your request to Kathy Robinson, Regional Hearing Clerk, 901 North 5th Street, Kansas City, KS 66101.

FOR FURTHER INFORMATION CONTACT: David Hoefer at 913–551–7503.

SUPPLEMENTARY INFORMATION: The proposed administrative settlement concerns property located at 5310 Broadway, N.E., Altoona, Polk County, Iowa (the ''Site'') where EPA had conducted a removal action pursuant to CERCLA in 1997. Mrs. Burris (who died on April 25, 1999) was the owner of the Site and the Site is now part of her probate estate (Iowa District Court for Warren County, Probate No. 05911 ESPR017406).

The removal action performed by EPA involved the excavation and disposal of approximately 1,434 tons of soil contaminated with lead and polychlorinated biphenyls (PCBs), as well as the disposal of PCB capacitors and containerized waste oil which was contaminated with PCBs. EPA incurred costs of $189,523.79 (through July 31, 1998) in connection with this removal action.

Pursuant to this proposed administrative settlement, the Estate of Jeanette Faye Burris has agreed to pay to EPA 20% of the net proceeds from the sale of the Site, or $37,904.76 (which amount represents 20% of EPA's response costs of $189,523.79), whichever is less, in partial reimbursement of EPA's response costs.

Dated: February 17, 2000.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 00–5934 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6550–3]

Proposed Administrative Penalty Assessments and Opportunity to Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed assessment of Clean Water Act Class I Administrative Penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty for an alleged violation of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who has violated the conditions of a National Pollutant Discharge Elimination System permit may be assessed a penalty in a ''Class I'' administrative penalty proceeding. Class I proceedings under section 309(g) are conducted in accordance with consolidated rules of practice governing the administrative assessment of civil penalties, 40 CFR part 22.

EPA is providing notice of the following Class I penalty proceeding:

In the Matter of Albert Goyenetche, Docket No. CWA–9–2000–0002; Complainant, Thomas Huetteman, Chief, Clean Water Act Compliance Office (WTR–7), Water Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105; Respondent, Mr. Albert Goyenetche, Goyenetche Dairy, 16130 S. Euclid Avenue, Chino, CA 91710; filed February 11, 2000; seeking a penalty of up to $11,000 for discharge from Goyenetche Dairy on April 14, 1999, to a manmade ditch which flows to Prado Flood Control Basin, in violation of ''General Discharge Requirements for Concentrated Animal Feeding Operations, including Dairies, within the Santa Ana Region'', NPDES No. CAG018001.

Procedures by which the public may comment on a proposed Class I penalty or participate in a Class I penalty proceeding are set forth in the consolidated rules. A commenter may present written comments for the record at any time prior to the close of the record.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of the consolidated rules, review the complaint or other documents filed in the proceeding, or comment or participate in the proceeding, should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in the proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

Dated: March 1, 2000.

Thomas Huetteman,

Chief, Clean Water Act Compliance Office, Water Division.

[FR Doc. 00–5933 Filed 3–9–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 6, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 9, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0906.

Title: Annual DTV Report.

Form Number: FCC 317.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Time per Response: 2.5 hours (2 hour respondent; 0.5 hours contract attorney).

Frequency of Response: Reporting, annually.

Total Annual Burden: 200.

Total Annual Costs: $10,000.

Needs and Uses: The Commission has established a program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television licensees in compliance with Section 336(e)(1) of the Telecommunications Act of 1996. Licensees are required to report, using FCC 317, whether they provided ancillary or supplementary services, which services were provided, the services provided which are subject to a fee, gross revenues received from all feeable ancillary and supplementary services, and the amount of bitstream used to provide ancillary or supplementary service. This data is collected annually from commercial digital television licensees. Licensees providing services subject to a fee will additionally be required annually to file FCC Form 159 (3060–0589) to remit the required fee. Each licensee will be required to retain the records supporting the calculation of the fees due for three years from the date of remittance of fees. The data is used by FCC staff to ensure that DTV licensees comply with the requirements of Section 336(e) of the Communications Act.

OMB Control Number: 3060–0909.

Title: 2000 Central Office Code Utilization Survey (COCUS).

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 3750.

Estimated Time Per Response: 6.9 hours.

Total Annual Burden: 25,875.

Estimated Annual Reporting and Record Keeping Cost Burden: $0.

Frequency of Response: On occasion; Annually.

Needs and Uses: The North American Numbering Plan (NANP) is experiencing an unprecedented amount of growth of area codes. Information obtained from the Central Office Code Utilization Survey (COCUS) will assist Commission staff in determining the scope of the number exhaust problem and identifying methods to help alleviate some of the costs associated with the addition of new area codes and which solutions may provide the greatest impact in different areas of the country.

OMB Control Number: 3060–0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 1400.

Estimated Time Per Response: 10.71 (Avg.).

Total Annual Burden: 15,000 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: 0.

Frequency of Response: On occasion.

Needs and Uses: In CC Docket No. 98–147and CC Docket No. 96–98, the Commission seeks to implement Congress' goal of promoting innovation and investment by all participating in the telecommunications marketplace, order to stimulate competition for all services, including advanced services. In the Third Report and Order and Fourth Report and Order (Order) the Commission also adopted measures to promote the availability of competitive broadband xDSL-based services, especially to residential and small business customers. The Commission amended its unbundling rules to require incumbent LECs to provide unbundled access to a new network element, the high frequency portion of the local loop. The purpose of this is to enable competitive LECs to compete with incumbent LECs to provide to consumers xDSL-based through telephone lines that the competitive LECs share with incumbent LECs. The Commission also adopted spectrum management policies and rules to facilitate the competitive deployment of advanced services.

Collections of information adopted in the proceeding include the following: Incumbent LECs who refuse a competitive carrier's request to condition a loop must make an affirmative showing to the relevant state commission. Incumbent LECs must provide requesting carriers with access to the loop facility for testing, maintenance, and repair. Under certain circumstances an Incumbent LEC must provide test of equipment. All of the collections required are to facilitate the deployment of advanced data services and to implement section 706 of the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5851 Filed 3–9–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the first meeting of the Network Reliability and Interoperability Council (Council) under its charter renewed as of January 6, 2000. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: Monday, March 20, 2000 at 10 a.m. to 12:30 p.m. Publication of this notice was delayed due to the unforeseen urgency of setting the earliest possible meeting date so that necessary participants could be present.

ADDRESSES: Federal Communications Commission, 445 12th St. S.W. Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Kimball at 202–418–2339 or TTY 202–418–2989.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that would enhance network reliability.

The Council will consider a report on the success of its efforts to ameliorate the possible effects of the year 2000 date change on communications networks, and will also consider reports from the network reliability working groups. In addition, the Council will discuss the modifications that have been made to the Council's charter and how those modifications should be addressed, and any additional issues that may come before it.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Kent Nilsson, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by email (*KNILSSON@FCC.GOV*) or U.S. mail (7–B452, 445 12th St. SW, Washington, DC. 20554). Real Audio and streaming video Access to the meeting will be available at http://www.fcc.gov/.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 00–5900 Filed 3–9–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2392]

Petition for Reconsideration of Action in Rulemaking Proceeding

March 2, 2000.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by March 27, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Application by New York Telephone Company (d/b/a Bell Atlantic—New York), Bell Atlantic Communications, Inc., Nynex Long Distance Company and Bell Atlantic Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in New York.

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–5850 Filed 3–9–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 65 FR 12010, March 7, 2000.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Friday, March 10, 2000.

CHANGES IN THE MEETING: Addition of the following open item to the meeting:

Summary Agenda:

1. Consideration of rules to permit state member banks to acquire financial subsidiaries under the Gramm-Leach-Bliley Act.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: March 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6026 Filed 3–8–00; 10:54 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Joint meeting of the Subcommittee on Standards and Security and the Working Group on Computer-based Patient Records.

Times and Dates: 9 a.m.–5 p.m., March 30, 2000; 9 a.m.–5 p.m., March 31, 2000

Place: Conference Room 703A, Hubert H. Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201.

Status: Open.

Purpose: Under the Administrative Simplification provisions of P.L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the National Committee on Vital and Health Statistics (NCVHS) is required to study the issues related to the adoption of uniform data standards for patient medical record information and the electronic interchange of such information, and report to the Secretary of Health and Human Services not later then August 2000 on recommendations and legislative proposals for such standards and electronic interchange. The NCVHS is the Department's federal advisory committee on health data, privacy and health information policy.

At this joint meeting, the Subcommittee and Working Group will review, discuss and revise the draft report to the Secretary under development relating to standards for patient medical record information and its electronic transmission, based on the comments from the full committee. The tentative agenda for the meeting will be posted on the NCVHS website: http://ncvhs.hhs.gov, when available.

Contact Person for More Information: Substantive program information about the meeting may be obtained for Michael Fitzmaurice (AHCPR, 301 594–3938) or Bob

Mayes (HCFA, 410 786–6872), lead staff for the Computer-based Patient Record Working Group. Information about the NCVHS is available on the NCVHS home page of the HHS website, or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245.

Dated: March, 3, 2000.

James Scanlon,

Director, Division of Data Policy, Office of Program Systems, Office of the Assistant Secretary for Planning and Evaluation, and HHS Executive Staff Director NCVHS.

[FR Doc. 00–5841 Filed 3–9–00; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Clinical Laboratory Improvement Advisory Committee, of the Centers for Disease Control and Prevention (CDC), of the Department of Health and Human Services, has been renewed for a 2-year period beginning February 19, 2000, through February 19, 2002.

For further information, contact Edward L. Baker, M.D., Executive Secretary, Clinical Laboratory Improvement Advisory Committee, CDC, 1600 Clifton Road, NE, m/s G–25, Atlanta, Georgia 30333. Telephone 770/488–2402, fax 770/488–2420, e-mail elb1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 6, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–5889 Filed 3–9–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Advisory Committee for Energy-Related Epidemiologic Research, Department of Health and Human Services (HHS)

The Public Health Service is soliciting nominations for possible membership on the Advisory Committee for Energy-Related Epidemiologic Research. The Advisory Committee for Energy-Related Epidemiologic Research provides advice and makes recommendations to the Secretary, HHS; the Director, Centers for Disease Control and Prevention; and the Administrator, Agency for Toxic Substances and Disease Registry, on establishment of a research agenda and the conduct of a research program pertaining to energy-related epidemiologic studies. Advice and recommendations cover a number of important areas, including the appropriate interaction between the Committee and Department of Energy (DOE) regarding the direction HHS should take in establishing a research agenda, development of a research plan, and the respective roles of HHS and DOE in energy-related health research.

Nominations are being sought for the fields of energy-related epidemiologic research and public health, including occupational and environmental health; representatives of public interest groups; and representatives of affected parties (*e.g.,* workers and community residents). Federal Employees will not be considered for membership. Members may be invited to serve a one, two, three, or four-year term. Close attention will be given to minority and female representation; therefore, nominations from these groups are encouraged.

The following information must be submitted: Name of nominee, affiliation, address, telephone and fax number and a current curriculum vitae or resume. Nominations should be sent, in writing, and be postmarked by April 1, 2000, to: Kitty Armstrong, Committee Management Specialist, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Road, NE (MS E–39), Atlanta, Georgia 30333. Telephone or fax submissions cannot be accepted.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: March 6, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–5888 Filed 3–9–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Procedures for Requests to use Child Care and Development Funds for Construction of Major Renovation of Child Care Facilities.

OMB No.: 0970–0160.

Description: The Child Care and Development Block Grant Act, as amended, allows Indian Tribes to use Child Care and Development Fund (CCDF) grant awards for construction and renovation of child care facilities. A tribal grantee must first request and receive approval from the Administration for Children and Families (ACF) before using CCDF funds for construction or major renovation. This information collection contains the statutorily-mandated uniform procedures for the solicitation and consideration of requests, including instructions for preparation of environmental assessments in conjunction with the National Environmental Policy Act. The proposed draft procedures update and clarify the original procedures that were issued in August 1997. Respondents will be CCDF tribal grantees requesting to use CCDF funds for construction or major renovation.

Respondents: State, Local or Tribal Government

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Construction and Renovation	25	1	20	500
Estimated Total Annual Burden Hours				500

Additional Information: In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 6, 2000.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 00–5904 Filed 3–9–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

South Carolina's State Child Support Enforcement Plan; Appeal

AGENCY: Department of Health and Human Services, Administration for Children and Families

ACTION: Notice of appeal.

SUMMARY: By designation of the Administration for Children and Families, a member of the Departmental Appeals Board has been appointed as the presiding officer for an appeal of the Administration for Children and Families' (ACF) proposed disapproval of South Carolina's State Child Support Enforcement Plan submitted pursuant to the Social Security Act. ACF asserts that there are no facts in dispute, and has requested that South Carolina's request for a hearing be denied and a decision be made on the existing record. The purpose of this notice is to give interested parties an opportunity to participate.

REQUESTS TO PARTICIPATE: Requests to participate as a party or as amicus curiae must be submitted to the Departmental Appeals Board in the form specified at 45 CFR § 213.15 by March 27, 2000. Within that time, those persons or organizations seeking participation as parties or amici may file petitions or request extensions of time for submitting petitions to participate, and may also contact the Board to obtain copies of the briefs that the parties have filed.

FOR FURTHER INFORMATION CONTACT: Jeffrey Sacks, Staff Attorney, Departmental Appeals Board, Department of Health and Human Services, Room 635–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Telephone Number (202) 690–8011, jsacks@os.dhhs.gov.

SUPPLEMENTARY INFORMATION: Notice of appeal is hereby given as set forth in the following letter, which has been sent to the State of South Carolina.

Washington, DC, (date)

Virginia Williamson, General Counsel, South Carolina Department of Social Services, P.O. Box 1520, Columbia, South Carolina 29202–1520

and

Robert E. Keith, Associate General Counsel

Linda Grabel, Assistant General Counsel, Children, Families and Aging Division, Room 411–D, HHH Building, 200 Independence Avenue, SW., Washington, DC 20201

Counsel: This letter is in response to the State of South Carolina's (State) request for a hearing to contest the Administration for Children and Families' (ACF) proposed disapproval of the State's plan for implementing Title IV–D of the Social Security Act (Child Support and Establishment of Paternity).

The basis for the proposed disapproval is South Carolina's failure to submit by October 1, 1997 a state IV–D plan certifying that it is operating an automated data processing and information retrieval system for child support, as required by section 454(24)(A) of the Social Security Act (Act).

I have designated M. Terry Johnson, a Departmental Appeals Board Member, as the presiding officer pursuant to 45 CFR 213.21. ACF and the State are now parties in this matter. 45 CFR 213.15(a). South Carolina has conceded that it does not have an approvable automated data processing and information retrieval system for child support. The parties therefore agreed that prior to any factual presentation, they would brief the threshold legal questions of whether ACF has the authority to grant South Carolina relief for noncompliance short of disapproval of its state plan, and what the applicable standard for such relief would be. If the presiding officer rules that relief other than disapproval of the state plan is authorized by statute or regulation, an evidentiary hearing would be provided at which South Carolina could present evidence regarding the circumstances that prevented its compliance with the requirement that it have a statewide automated child support enforcement system.

The parties have briefed this threshold issue before the presiding officer. South Carolina argued that ACF has the discretion to grant relief short of disapproving its IV–D plan. South Carolina argued that federal agencies such as ACF generally have inherent, equitable authority to create exemptions from statutory requirements, such as the requirement of plan approval, on a case-by-case basis, and that South Carolina's

reasonable good-faith efforts to comply with the Act, and mitigating circumstances concerning its failure to operate an approvable automated system, were sufficient to permit ACF to use its inherent discretion to grant some relief short of state plan disapproval. South Carolina also argued that ACF must concede that it has discretion in so much as it grants conditional certification to states that are not fully compliant even though there is no explicit congressional authorization for such action. South Carolina further argued that regulations governing the administration of grants at 45 CFR Part 92 provide federal agencies with greater flexibility to address noncompliance than state plan disapproval, and that failure to consider the reasons for noncompliance would be fundamentally unfair and would amount to poor public policy by failing to consider South Carolina's actual performance in achieving the overall goals of the IV–D program.

ACF argued that the statutory language at section 454(24)(A) of the Act requires that a state operate an automated system which meets the specified requirements as a condition of plan approval, and affords ACF no discretion to excuse noncompliance. ACF argued that it has consistently stated in its program issuances that it is not authorized to provide federal IV–D funds to a state that does not have an approved IV–D state plan and that it is required to disapprove a state's plan where the state is not operating an automated system. ACF argued that court decisions that South Carolina cited in its brief are not applicable to the facts and the statutory requirements at issue here, and that 45 CFR Part 92 applies only where not inconsistent with the more specific statutory provisions addressing IV–D plan approval and the requirement of an operating automated system. ACF further argued that South Carolina presented no standards for granting relief from noncompliance short of plan disapproval, and that the presiding officer's authority is limited to recommending a decision as to whether or not a state plan meets federal requirements.

ACF's and South Carolina's briefs are available for inspection by the public, including persons and organizations who file timely requests to participate as parties or amici.

A ruling in ACF's favor on this threshold issue would limit the appeal to the sole question of whether or not South Carolina's state plan is in compliance with federal requirements. Given South Carolina's concession that it does not have an approvable automated data processing and information retrieval system for child support, such a ruling in ACF's favor would end the reconsideration process without an evidentiary hearing. Consequently, the presiding officer is affording interested parties the opportunity to participate prior to the issuance of a ruling.

A copy of this letter will appear as a Notice in the **Federal Register** and any person wishing to request recognition as a party will be entitled to file a petition pursuant to 45 CFR 213.15(b) with the Departmental Appeals Board within 15 days after that notice has been published. A copy of the petition should be served on each party of record at that time. The petition must explain how the issues to be considered have caused them injury and how their interest is within the zone of interests to be protected by the governing Federal statute. 45 CFR 213.15(b)(1). In addition, the petition must concisely state petitioner's interest in the proceeding, who will represent petitioner, and the issues on which petitioner wishes to participate. 45 CFR 213.15(b)(2). Additionally, if petitioner believes that there are disputed issues of fact which require an in-person evidentiary hearing, petitioner should concisely specify the disputed issues of fact in the petition, and also state whether petitioner intends to present witnesses. Petitioners may also, within 15 days after this notice has been published, request extensions of the time for requesting participation for the purpose of obtaining and reviewing copies of the parties' briefs.

Any party may, within 5 days of receipt of such petition, file comments thereon; the presiding officer will subsequently issue a ruling on whether and on what basis participation will be permitted.

Any interested person or organization wishing to participate as amicus curiae may also file a petition with the Board, which shall conform to the requirements at 45 CFR 213.15(c)(2). This petition, or a request for an extension of time to review the briefs, must be filed within 15 days after this notice, in time to permit the presiding officer an adequate opportunity to consider and rule upon it.

If the presiding officer denies ACF's request for a decision on the written record and rules that a hearing should be held, South Carolina shall be provided a notice of hearing, which shall be held not less than 30 days nor more than 60 days after the date that notice of the hearing is furnished to South Carolina. The notice of the hearing shall also be published in the **Federal Register** to afford notice to interested parties.

Any further inquiries, submissions, or correspondence regarding this matter should be filed in an original and two copies with Ms. Johnson at the Departmental Appeals Board, Room 637–D, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201, where the record in this matter will be kept.

That record is available for public inspection; interested persons or organizations seeking participation as parties or amici may contact Jeffrey Sacks, Board Staff Attorney, at 202–69–8011 (or at jsacks@os.dhhs.gov) to arrange for inspection and copying of the record. Each submission must include a statement that a copy of the submission has been sent to the other parties, identifying when and to whom the copy was sent. For convenience please refer to Board Docket No. A–99–80.

Dated: March 7, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

[FR Doc. 00–5921 Filed 3–9–00; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0553]

Positron Emission Tomography Drug Products; Safety and Effectiveness of Certain PET Drugs for Specific Indications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Commissioner of Food and Drugs (the Commissioner) has concluded that certain commonly used positron emission tomography (PET) drugs, when produced under conditions specified in approved applications, can be found to be safe and effective for certain indications specified in this document. FDA announces the approval procedures for these PET drugs and indications and invites manufacturers of these drugs to submit applications for approval under this document. The agency is taking this action in accordance with provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). Elsewhere in this issue of the **Federal**

Register, FDA is issuing a draft guidance for industry entitled ''PET Drug Applications—Content and Format for NDA's and ANDA's,'' which is intended to assist manufacturers that submit applications for approval as specified in this document.

ADDRESSES: Submit applications for approval to the Center for Drug Evaluation and Research, Food and Drug Administration, 12229 Wilkins Ave., Central Document Room, Rockville, MD 20852. Copies of the published literature listed in the appendix to this document, FDA reviews of the literature, product labeling referenced in section IV of this document, and the transcript of the June 28 and 29, 1999, meeting of the Medical Imaging Drugs Advisory Committee (the Advisory Committee) will be on display at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Electronic versions of these documents are available on the Internet at http://www.fda.gov/cder/regulatory/pet/default.htm.

FOR FURTHER INFORMATION CONTACT: John A. Friel, Center for Drug Evaluation and Research (HFD–200), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1651, FAX 301–827–3056, e-mail: frielj@cder.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

PET is a medical imaging modality that uses a unique type of radiopharmaceutical drug. PET drugs contain an atom that disintegrates principally by emission of a positron, which provides dual photons that are used for imaging, primarily for diagnostic purposes. Most PET drugs are produced using cyclotrons at locations (sometimes called ''PET centers'') that usually are in close proximity to the patients to whom the drugs are administered (e.g., in hospitals or academic institutions). Each PET drug ordinarily is produced under a physician's prescription and, due to the short half-lives of PET drugs, is injected intravenously into the patient within a few minutes or hours of production.

FDA has approved new drug applications (NDA's) for three PET drug products: Sodium fluoride F 18 injection, rubidium chloride 82 injection, and fludeoxyglucose (FDG) F 18 injection. In 1972, FDA approved NDA 17–042 for sodium fluoride F 18 injection as a bone imaging agent to define areas of altered osteogenic activity. The NDA holder ceased marketing this drug product in 1975. Rubidium chloride 82 injection (NDA 19–414), approved in 1989, is indicated for assessing regional myocardial perfusion in the diagnosis and localization of myocardial infarction. In 1994, FDA approved NDA 20–306, submitted by The Methodist Medical Center of Illinois (Methodist Medical), for FDG F 18 injection for the identification of regions of abnormal glucose metabolism associated with foci of epileptic seizures.

On November 21, 1997, President Clinton signed into law the Modernization Act (Public Law 105–115). Section 121(c)(1)(A) of the Modernization Act directs FDA to establish appropriate procedures for the approval of PET drugs in accordance with section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and to establish current good manufacturing practice (CGMP) requirements for PET drugs. Prior to establishing these procedures and requirements, FDA must consult with patient advocacy groups, professional associations, manufacturers, and persons licensed to make or use PET drugs.

Under section 121(c)(2) of the Modernization Act, FDA cannot require the submission of NDA's or abbreviated new drug applications (ANDA's) for compounded PET drugs that are not adulterated under section 501(a)(2)(C) of the act (21 U.S.C. 351(a)(2)(C)) (i.e., that comply with United States Pharmacopeia (USP) PET compounding standards and monographs) for a period of 4 years after the date of enactment or 2 years after the date that the agency adopts special approval procedures and CGMP requirements for PET drugs, whichever is longer. However, the act does not prohibit the voluntary submission and FDA review of applications before these time periods expire.

In accordance with the Modernization Act, FDA has conducted several public meetings with a PET industry working group and other interested persons to discuss proposals for PET drug approval procedures and CGMP requirements. The industry working group, assembled by the Institute for Clinical PET (ICP), an industry trade association, includes representatives from academic centers, clinical sites, and manufacturers, and it was supported by the Society for Nuclear Medicine, the American College of Nuclear Physicians, and the Council on Radionuclides and Radiopharmaceuticals. After consulting with this working group and other interested persons, FDA decided to conduct its own reviews of the published literature on the safety and effectiveness of some of the most commonly used PET drugs for certain indications. The agency believed that this would be the most efficient way to develop new approval procedures for these drugs. Under current FDA policy, the agency may rely on published literature alone to support the approval of a new drug product under section 505 of the act (see FDA's guidance for industry entitled ''Providing Clinical Evidence of Effectiveness for Human Drugs and Biological Products'' (May 1998) and its draft guidance entitled ''Applications Covered by Section 505(b)(2)'' (December 1999)).

FDA reviewed the following PET drugs and indications for safety and effectiveness: (1) FDG F 18 injection for use in oncology and for assessment of myocardial hibernation, (2) ammonia N 13 injection for evaluation of myocardial blood flow, and (3) water O 15 injection for assessment of cerebral perfusion. FDA presented its preliminary findings on the safety and effectiveness of these drugs for certain indications to the ICP and others at public meetings. On June 28 and 29, 1999, FDA presented its findings on these drugs to the Advisory Committee. The Advisory Committee concluded that FDG F 18 injection and ammonia N 13 injection can be safe and effective for certain indications, although it recommended some revisions to the indications proposed by the agency. The Advisory Committee determined that, on the basis of the literature presented for its review, it was unable to conclude that water O 15 injection can be safe and effective for the proposed use of measuring cerebral blood flow in patients with cerebral vascular disorders associated with ischemia, hemodynamic abnormalities, occlusion, and other vascular abnormalities. FDA stated that it would conduct a more comprehensive review of the literature on the safety and effectiveness of water O 15 injection for this use and then ask the Advisory Committee to reconsider this drug at a subsequent meeting.

II. Highlights of This Document

As discussed in section III of this document, FDA concludes that FDG F 18 injection and ammonia N 13 injection, when produced under conditions specified in approved applications, can be found to be safe and effective for certain indications specified in that section and invites manufacturers of these drugs to submit applications for marketing approval [1].

[1] Section 121(c)(1) of the Modernization Act directs FDA to establish approval procedures and

This document states the approval procedures for these PET drugs for the particular indications identified. Depending on the circumstances discussed below, applications for approval of these drugs and indications may be either NDA's of the type described in section 505(b)(2) of the act or ANDA's submitted under section 505(j) of the act.

A 505(b)(2) application is an NDA for which at least one of the investigations that the applicant relies on to demonstrate the drug's safety and effectiveness was not conducted by or for the applicant, and the applicant has not obtained a right of reference or use from the person by or for whom the investigation was conducted.[2] A 505(b)(2) applicant can rely for approval on published literature or on FDA's findings of safety and/or effectiveness for an approved drug.

An ANDA is an application for approval of a ''generic'' version of an approved drug. An ANDA must include information to show that the drug has the same active ingredient(s), route of administration, dosage form, strength, and conditions of use recommended in the labeling of an approved drug. It must also contain information generally showing that the labeling of the generic drug is the same as that of the approved drug, that the generic drug is bioequivalent to the approved drug, and that the composition, manufacturing, and controls of the generic drug are sufficient to ensure its safety and effectiveness (section 505(j)(2)(A) of the act).

To aid manufacturers in submitting 505(b)(2) applications or ANDA's for FDG F 18 injection and ammonia N 13 injection for the indications reviewed by FDA, the agency is making available a draft guidance document, published elsewhere in this issue of the **Federal Register**, that provides specific instructions for each drug.

In addition, PET drug manufacturers may seek approval of applications for FDG F 18 injection for epilepsy and sodium fluoride F 18 injection for bone imaging by relying on the findings of safety and effectiveness made by the agency in approving the original NDA's for these drugs. Again, such applications may be either NDA's or ANDA's, depending on whether a manufacturer's proposed drug product is the same as an approved drug product.

If, after reviewing the relevant literature and consulting with the Advisory Committee, FDA concludes that water O 15 injection is safe and effective for a cerebral perfusion indication, the agency intends to issue a **Federal Register** notice announcing this conclusion and inviting manufacturers of this drug to submit applications for approval in accordance with the procedures discussed in this document.

In a future issue of the **Federal Register**, FDA intends to state its approach to applications for approval of other PET drugs and new indications for approved products in accordance with the Modernization Act.

III. PET Drugs for Which FDA Has Reviewed Published Literature

As discussed below, FDA generally agrees with and adopts the Advisory Committee's conclusions on the safety and effectiveness of FDG F 18 injection and ammonia N 13 injection, when produced under conditions specified in approved applications, for the indications stated in this document. In determining the safety and effectiveness of these drugs, FDA relied on the published literature and, where appropriate, previous agency determinations of safety or effectiveness. FDA obtained relevant articles in the published literature from the PET community and through the agency's own search of current, peer-reviewed literature. In evaluating a drug's effectiveness, FDA reviewed only those articles meeting the following criteria: (1) The studies involved prospective, controlled trials with an appropriate standard of truth (i.e., ''gold standard''); and (2) the article contained sufficient information to evaluate the study protocol, endpoints, statistical plan and methodology, sample size, accounting of enrolled patients, imaging protocol, blinding procedures, and image handling methodology.

FDA reviewed the literature to document the safety and effectiveness of these PET drugs on the basis of clinical pharmacology and biopharmaceutics, pharmacology and toxicology, and clinical and statistical information. The agency sought evidence that the reviewed drugs can provide useful clinical information related to their intended indications for use. The appendix to this document contains a list of published articles reviewed by FDA establishing that FDG F 18 injection and ammonia N 13 injection can be found to be safe and effective for specific indications when produced under conditions specified in approved applications. Copies of FDA's reviews of the published literature can be obtained in accordance with the **ADDRESSES** section of this document.

A. FDG F 18 Injection for Use in Myocardial Hibernation and Oncology

1. Safety

In evaluating the safety of FDG F 18 injection for both the oncology and myocardial hibernation indications, FDA considered the approximately two decades of clinical use of the drug and the conclusions the agency reached in approving NDA 20–306 for this drug. The currently labeled intravenous doses of FDG F 18 injection for epilepsy are 5 to 10 millicuries (mCi) in adults and 2.6 mCi in pediatrics. No significant adverse reactions have been reported for FDG F 18 injection. In addition, FDA found no reports of adverse reactions in the published literature on the effectiveness of FDG F 18 injection or in a recent article by Silberstein and others (1996) reporting the results of a 5-year prospective study on drugs used in nuclear medicine at 18 collaborating institutions.

The literature and FDA's finding on the safety of FDG F 18 injection in NDA 20–306 indicate that for an intravenous dose of 10 mCi of the drug, the critical target organ (the bladder) absorbs only 6.29 rems based on a fixed bladder content over a 3-hour period. For higher doses, the level and extent of radiation absorbed by the bladder walls can be manipulated with hydration and shorter voiding intervals to decrease radiation exposure. On the basis of this information, a 10-mCi dose of FDG F 18 injection appears to pose a relatively low risk to adult patients.

2. Safety and Effectiveness for Identifying Hibernating Myocardium

FDA's search of the recent published literature on FDG F 18 injection yielded 632 articles, from which the agency identified 10 articles that: (1) Met the review criteria; (2) evaluated patients with coronary artery disease (CAD) and left ventricular dysfunction; and (3) considered whether FDG F 18 image findings before coronary revascularization could predict the functional outcome of regions of the left ventricle after revascularization. All of these articles involved adequate and well-controlled clinical trials. FDA also reviewed several other articles in support of the potential clinical usefulness of FDG F 18 for such cardiac evaluations.

CGMP's for all PET drugs, without any exclusion for compounded PET drugs. Consequently, references in this document to PET drugs that are ''produced'' or ''manufactured'' include compounded PET drugs.

[2] A right of reference is the authority to rely upon an investigation for approval of an application and includes the ability to make the underlying raw data available for FDA audit, if necessary (21 CFR 314.3(b)).

The use of FDG F 18 injection for this purpose is based on the premise that reversibly injured myocytes can metabolize glucose but irreversibly injured myocytes cannot. Based on its review of the literature, FDA concludes that a 10-mCi dose (for adults) of FDG F 18 injection produced under conditions specified in an approved application can be found to be safe and effective in PET imaging of patients with CAD and left ventricular dysfunction, when used together with myocardial perfusion imaging, for the identification of left ventricular myocardium with residual glucose metabolism and reversible loss of systolic function.

3. Safety and Effectiveness for Evaluating Glucose Metabolism in Oncology

Published articles on the use of FDG F 18 for oncology imaging first appeared in the 1980's. The use of FDG F 18 injection in oncology is based on different rates of glucose metabolism that are expected to occur in benign and malignant tissues.

FDA's search of the published literature revealed about 150 articles involving clinical trials with FDG F 18 injection in oncology. Of these, the agency identified 16 articles that met the review criteria and had both a study population of greater than 50 and histopathologic confirmation of the type of malignancy. Two of the articles involved adequate and well-controlled trials. On the basis of these and other supportive studies, FDA concludes that a 10-mCi dose (for adults) of FDG F 18 injection produced under conditions specified in an approved application can be found to be safe and effective in PET imaging for assessing abnormal glucose metabolism to assist in evaluating malignancy in patients with known or suspected abnormalities found by other testing modalities or in patients with an existing diagnosis of cancer.

B. Ammonia N 13 Injection for Assessing Myocardial Perfusion

The published literature contains reports of clinical investigations involving ammonia N 13 dating back to the 1970's. A principal focus of these studies has been the use of ammonia N 13 injection to evaluate myocardial blood flow.

1. Safety

Ammonia is a ubiquitous substance in the body, and its metabolism and excretion are well understood. The maximum amount of ammonia in a typical dose of ammonia N 13 injection is extremely small compared to the amount of ammonia produced by the body. The reviewed published literature does not identify any adverse events following the administration of ammonia N 13 injection.

The literature indicates that after a total intravenous dose of approximately 25 mCi of ammonia N 13 injection, the critical target organ (bladder wall) absorbs only 1.28 rems. Therefore, a 10-mCi dose of ammonia N 13 injection appears to pose a relatively low risk to adult patients.

2. Safety and Effectiveness for Assessing Myocardial Perfusion

FDA's search of the published literature revealed 76 articles on the use of ammonia N 13 injection for assessing myocardial perfusion. Of these, 17 articles met the review criteria and provided a comparison of myocardial perfusion results of ammonia N 13 injection to a recognized standard of myocardial perfusion or to other appropriate comparators. Two articles discussed the results of adequate and well-controlled studies evaluating the effectiveness of ammonia N 13 injection in assessing myocardial perfusion. On the basis of these studies, FDA concludes that a 10-mCi dose (for adults) of ammonia N 13 injection produced under conditions specified in an approved application can be found to be safe and effective in PET imaging of the myocardium under rest or pharmacological stress conditions to evaluate myocardial perfusion in patients with suspected or existing CAD.

IV. Applications for Approval of Reviewed PET Drugs and Sodium Fluoride F 18 Injection

A. Types of Applications Required for Reviewed PET Drugs

Based on its review of the published literature and the recommendations of the Advisory Committee, FDA has determined that FDG F 18 injection and ammonia N 13 injection, when produced under conditions specified in an approved application, can be found to be safe and effective for the specified indications. Approved applications are required because these drugs cannot be deemed generally recognized as safe and effective under section 201(p)(1) and (p)(2) of the act (21 U.S.C. 321(p)(1) and (p)(2)), making them new drugs subject to regulation under section 505 of the act. Congress recognized that PET drugs are new drugs when it directed FDA, in section 121(c)(1)(A)(i) of the Modernization Act, to establish appropriate approval procedures for these drugs ''pursuant to section 505'' of the act.

A principal reason why PET drugs are new drugs and not generally recognized as safe and effective is that the approximately 70 PET centers differ considerably in the way they formulate and manufacture these drugs. Such variations in drug constituents and in manufacturing procedures can significantly affect the identity, strength, quality, and purity of the drugs in a manner that may well adversely affect their safety and effectiveness. For example, these PET drugs are injectable products that cannot be safe unless they are at least sterile and pyrogen-free. Therefore, FDA must verify that appropriate conditions and procedures regarding sterility and pyrogenicity exist at each manufacturing site.

Stability concerns are another example of why formulation and manufacturing techniques must be considered in evaluating safety and effectiveness. Without adequate controls, PET drugs may be unstable when produced in high radioconcentrations (as occur at some PET centers) due to radiolytic degradation of the drug substance. Such degradation can result in a subpotent drug as well as administration of radioactive moieties other than the intended drug substance. Depending on their specific localization, such moieties can cause excessive radiation of nontargeted tissues or interfere with imaging. This can make a drug product unsafe in a susceptible population or result in misdiagnosis.

Another aspect of PET drug production that can adversely affect safety is the potential for the development of impurities in the finished product. Some of these impurities would pose a threat to the health of patients.

For these and other reasons, the agency cannot conclude that these PET drugs are generally recognized as safe and effective for the above-noted indications and therefore needs to review information on how each drug product is formulated and produced at each manufacturing site. Because these PET drugs are not generally recognized as safe and effective, they are new drugs for which approved NDA's or ANDA's are required for marketing under section 505(a) of the act and part 314 (21 CFR part 314).

As previously noted, if a PET drug fully complies with all USP standards and monographs pertaining to PET drugs, an application for approval of such drug is not required until 2 years after FDA establishes approval procedures and CGMP requirements for

PET drugs. Although submission of applications is not required at this time, FDA encourages the manufacturers of FDG F 18 injection and ammonia N 13 injection to submit applications for approval under section 505(b)(2) or (j) of the act, as discussed below in sections IV.A.1 and IV.A.2, as soon as possible.

1. Applications for FDG F 18 Injection

As noted above, there is already an approved application (NDA 20–306, held by Methodist Medical) for FDG F 18 injection for the identification of regions of abnormal glucose metabolism associated with foci of epileptic seizures. To obtain approval to market their FDG F 18 injection products for the new (myocardial and oncological) indications discussed in section III.A of this document, initially all applicants except Methodist Medical should submit 505(b)(2) applications. FDA anticipates that such applicants will seek approval for all three indications for FDG F 18 injection. In that case, applicants should reference the safety and effectiveness data in the published literature listed in the appendix to this document for the myocardial and oncological indications for FDG F 18 injection and the findings of safety and effectiveness regarding NDA 20–306 for the epilepsy-related indication in accordance with § 314.54. Methodist Medical may, if it chooses, submit a supplemental NDA for each of the two new indications in accordance with section 506A of the act (21 U.S.C. 356a) and this document. The supplemental applications need only reference the information in the appendix to this document. Applicants need not conduct their own clinical trials or submit copies of the articles listed in the appendix.

The drug product that is the subject of the first approved NDA for FDG F 18 injection for the indications stated in section III.A of this document (myocardial hibernation and oncology) most likely will be the reference listed drug for these indications under section 505(j)(2)(A) of the act and § 314.3. FDA will continue to review as 505(b)(2) applications those applications for FDG F 18 injection that have already been filed at the time of approval of the first application. After FDA approves the first application for FDG F 18 injection submitted in response to this document, subsequent applications for approval of the same drug for the same indications should generally be submitted as ANDA's under section 505(j) of the act and § 314.92(a)(1), rather than as 505(b)(2) applications.[3] FDA anticipates that in many cases, NDA 20–306 will be the appropriate reference listed drug for such ANDA's.[4] However, as 505(b)(2) applications are approved, the agency may identify additional products as reference listed drugs.

If a PET drug manufacturer's FDG F 18 injection product has an active ingredient, route of administration, dosage form, or strength that differs from that of a listed drug, the applicant would probably submit a 505(b)(2) application. Alternatively, the applicant could submit an ANDA after obtaining approval of a ''suitability petition'' for such a drug, although this would likely be a less efficient means of obtaining marketing approval.[5] (Because FDA has already approved a suitability petition granting permission to submit an ANDA for FDG F 18 injection with a different strength (i.e., 1.6 to 58.4 mCi/mL at the end of bombardment) than that of the reference listed drug, an ANDA applicant could, if it desired, make reference in its own application to the strength in the approved suitability petition.)

2. Applications for Ammonia N 13 Injection

Because there is no approved ammonia N 13 injection product for any indication, initially all manufacturers of this drug should submit 505(b)(2) applications. Applicants should reference the published literature on the safety and effectiveness of ammonia N 13 injection for assessment of myocardial perfusion listed in the appendix to this document.

After FDA approves the first application for ammonia N 13 injection for assessing myocardial perfusion, subsequent applications for approval of the same drug for the same indication could be submitted as ANDA's. However, a 505(b)(2) application (or a suitability petition) should be submitted if the active ingredient, route of administration, dosage form, or strength of the applicant's ammonia N 13 injection product differs from that of a listed drug.

B. Types of Applications Required for Sodium Fluoride F 18 for Bone Imaging

FDA approved sodium fluoride F 18 injection (NDA 17–042) in 1972 as a bone imaging agent to define areas of altered osteogenic activity. The current NDA holder, Nycomed Amersham, stopped marketing the drug in March 1975.

As an approved drug, sodium fluoride F 18 injection would normally be listed in the ''Approved Drug Products with Therapeutic Equivalence Evaluations'' (generally known as the ''Orange Book''), in accordance with section 505(j)(7) of the act. However, certain drug products, including sodium fluoride F 18 injection, that were approved for safety and effectiveness but were no longer marketed on September 24, 1984, are not included in the Orange Book. In implementing section 505(j)(7) of the act, FDA decided not to retrospectively review products withdrawn from the market prior to that date. Rather, the agency determines on a case-by-case basis whether such drugs were withdrawn from the market for safety or effectiveness reasons. FDA must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before it may approve an ANDA that refers to the listed drug (§ 314.161(a)(1)).

FDA reviewed its records and, under § 314.161, determined that sodium fluoride F 18 injection was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will list sodium fluoride F 18 injection in the Orange Book's ''Discontinued Drug Product List'' section, which delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. Because sodium fluoride F 18 injection was not withdrawn from sale for reasons of safety or effectiveness, it is still a listed drug, and FDA can approve ANDA's that refer to it. FDA therefore invites those PET centers whose sodium fluoride F 18 injection product is the

[3] Under § 314.101(d)(9), FDA may refuse to file a 505(b)(2) application for a drug that is a duplicate of a listed drug and is eligible for approval under section 505(j) of the act.

[4] For the existing reference listed drug for FDG F 18 injection (NDA 20–306), the active ingredient is FDG F 18, the route of administration is intravenous, the dosage form is injection, and the strength is 4.0 to 40 mCi/milliliters (mL) at the end of synthesis.

[5] Under section 505(j)(2)(C) of the act, FDA will approve a petition seeking permission to file an ANDA for a drug that has an active ingredient, route of administration, dosage form, or strength that differs from that of a listed drug unless the agency finds that: (1) Investigations must be conducted to show the safety and effectiveness of the drug or of any of its active ingredients, the route of administration, the dosage from, or strength that differ from the listed drug; or (2) a drug with a different active ingredient may not be evaluated for approval as safe and effective on the basis of the information required to be submitted in an ANDA. If FDA approves a suitability petition for a drug product, the applicant may then submit an ANDA. However, if FDA concludes that additional studies are necessary to show the safety and/or effectiveness of the drug proposed in the petition, the applicant would need to submit a 505(b)(2) application to obtain marketing approval.

same as the reference listed drug to submit ANDA's.[6]

If a sponsor's sodium fluoride F 18 injection product is not the same as the listed drug, the sponsor should submit a 505(b)(2) application (or a suitability petition) rather than an ANDA. FDA anticipates that this will be the case with most manufacturers of sodium fluoride F 18 injection because the strength of their product is likely to differ from that of the listed drug.

C. Additional Guidance on Submission of Applications and Labeling

FDA is issuing a draft guidance document, published elsewhere in this issue of the **Federal Register**, to assist PET drug manufacturers in submitting NDA's and ANDA's for FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection in accordance with this document. Among other things, the draft guidance addresses the chemistry, manufacturing, and controls information that should be provided in applications for these drugs.

FDA has developed suggested labeling for FDG F 18 injection and ammonia N 13 injection products for the indications discussed above. The suggested labeling for FDG F 18 injection also includes the previously approved indication of identification of regions of abnormal glucose metabolism associated with foci of epileptic seizures. A manufacturer seeking approval of FDG F 18 injection, ammonia N 13 injection, or sodium fluoride F 18 injection in accordance with this document should submit product labeling that is consistent with the recommended labeling. This labeling is available on the Internet at http://www.fda.gov/cder/regulatory/pet and is on display in FDA's Dockets Management Branch (address above). The labeling also will be included in the forthcoming draft guidance document on the submission of applications in accordance with this document.

D. Pediatric Assessments

Under § 314.55(a), each application for a new active ingredient or new indication must contain data that are adequate to assess the safety and effectiveness of the drug for the claimed indications in all relevant pediatric subpopulations and to support specific dosing and administration for the drug. When the course of a disease and the effects of a drug are sufficiently similar in adults and pediatric patients, FDA may conclude that pediatric effectiveness can be extrapolated from adequate and well-controlled studies in adults, usually supplemented with other information obtained in pediatric patients. In addition, FDA may defer submission of some or all pediatric assessments until after approval of a drug product for use in adults, including when the agency determines that pediatric studies should be delayed until additional safety or effectiveness data have been collected (§ 314.55(b)).

The original application for FDG F 18 injection (NDA 20–306) is approved for epilepsy in pediatric patients. Based on available radiation dosimetry data for different ages and information on the use of glucose during pediatric development, FDA concludes that sufficient data are available to support the statements on the pediatric use of FDG F 18 injection found in the labeling referenced in section IV.C of this document.

Regarding ammonia N 13 injection, information exists on the known effects of ammonia on the human body, the normal blood levels of ammonia for different ages, the amount of ammonia N 13 injection typically administered to patients, and the radiation dosimetry of the drug for different ages. Therefore, FDA concludes that sufficient data are available to support the statements on the pediatric use of ammonia N 13 injection found in the labeling referenced in section IV.C of this document.

Limited data are available that are relevant to the pediatric use of sodium fluoride F 18 injection for use in defining areas of altered osteogenic activity. Therefore, FDA is deferring the pediatric assessments required under § 314.55(a) for sodium fluoride F 18 injection for this indication until 5 years after the date that the agency adopts approval procedures and CGMP requirements for PET drugs. This deferral will allow the agency to obtain additional safety and effectiveness information on the use of sodium fluoride F 18 injection before determining what pediatric studies may be necessary.

E. User Fees

Under section 736(a)(1)(A)(ii) of the act (21 U.S.C. 379h(a)(1)(A)(ii)), FDA assesses an application fee for any human drug application as defined in the statute. No application fee is required for an ANDA or for a supplement for which clinical data are not required.

An application fee normally would be assessed for a 505(b)(2) application for FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection submitted in accordance with this document. However, FDA intends to grant a waiver of application fees for these drugs. Under section 736(d)(1) of the act, FDA can grant a waiver or reduction in fees for several reasons, including when assessment of a fee would present a significant barrier to innovation because of limited resources available to the applicant or other circumstances (section 736(d)(1)(B) of the act).

FDA finds that, because of the unique circumstances surrounding the regulation of PET drugs, assessment of an application fee on the PET drugs noted above would present a significant barrier to innovation. FDA is aware that Congress directed the agency to develop appropriate approval procedures and CGMP requirements for PET drugs to ''take account of the special characteristics of positron emission tomography drugs and the special techniques and processes required to produce these drugs'' (section 121(c)(1)(A) of the Modernization Act). One of Congress' goals in enacting section 121 of the Modernization Act is to promote the availability of FDA-approved PET drug products for the patients who need them. As noted in the Senate report on the Modernization Act, most of the approximately 70 PET centers in the United States are part of academic medical centers (S. Rept. No. 43, 105th Cong., 1st Sess., at 53 (1997)). The report states that these academic medical centers are facing unprecedented cost pressures, suggesting that many PET centers would likely close without some kind of regulatory relief. The report emphasizes that if PET centers close, the benefits of PET would be unavailable to patients who need this diagnostic technology.

FDA finds that Congress intended for the agency to ease the regulatory burden on PET centers, including by providing waivers of user fees in appropriate circumstances. FDA further concludes that a waiver of the application fees for applications seeking approval of FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection products submitted in response to this document is consistent with the congressional goal of promoting the availability of FDA-approved PET drugs. Without a fee waiver, there may be a disincentive for manufacturers of these PET drugs to submit NDA's under section 505(b)(2) of the act because an application fee normally would be assessed on each application submitted only until FDA approves the first NDA for a particular drug and indication. Once FDA approves such a product, subsequently submitted 505(b)(2)

[6] For the reference listed drug, the active ingredient is sodium fluoride F 18, the route of administration is intravenous, the dosage form is injection, and the strength is 2.0 mCi/mL at the time of calibration.

applications for the particular drug and indication will not be assessed an application fee.

On the other hand, if an applicant hoped to obtain market exclusivity (as discussed in section IV.F of this document), it would have an incentive to be the first to submit and obtain approval of an NDA for one of these PET drugs. Therefore, for the reasons noted above, FDA will waive the application fee for NDA's for FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection products submitted in accordance with this document, but only if the applicant submits with its NDA a statement that it waives any right to market exclusivity to which it may be entitled under the act.

F. Patent Protection and Market Exclusivity

PET drug products approved by FDA may be protected from competition by patents issued by the U.S. Patent and Trademark Office or by periods of market exclusivity granted by FDA at the time of approval. Patent and exclusivity protections may affect the approval of competing 505(b)(2) applications and ANDA's.

Applicants submitting NDA's under section 505(b) of the act, including 505(b)(2) applications, must file with the application, in accordance with § 314.53, a list of the patent numbers and expiration dates for each patent that claims the drug substance, drug product (formulation and composition), or method of using the drug that is the subject of the application. No other patents may be submitted, including process patents covering the manufacture of the drug. Additional patent information must be submitted within 30 days of approval of an application or, in the case of newly issued patents, within 30 days of issuance of the patent. If an application is approved, FDA will publish the patent information in the Orange Book.

Certain PET drugs may also be eligible for patent term extensions under 35 U.S.C. 156. Patent term extensions are issued by the U.S. Patent and Trademark Office.

Sponsors submitting NDA's for PET drug products may be eligible for market exclusivity under the act. There are four types of exclusivity available: (1) 5-year new chemical entity exclusivity, (2) 3-year exclusivity for applications that require new clinical trials, (3) 6-month pediatric exclusivity, and (4) 7-year exclusivity for drugs intended to treat rare diseases or conditions (i.e., ''orphan drugs''). Eligibility for exclusivity depends on, among other things, the characteristics of the drug product and the type of studies conducted by the applicant. A sponsor who believes its drug product is entitled to exclusivity must submit supporting information in its NDA (§ 314.50(j)). Applicants interested in determining whether a PET drug product may be eligible for exclusivity are encouraged to discuss the issue with the Center for Drug Evaluation and Research's Division of Medical Imaging and Radiopharmaceutical Drug Products.

A drug product that contains a new chemical entity may be eligible for 5 years of market exclusivity under sections 505(c)(3)(D)(ii) and (j)(5)(D)(ii) of the act and the regulations at § 314.108. Whether a drug qualifies for new chemical entity exclusivity depends on whether the active moiety has been approved in another application submitted under section 505(b) of the act. The ''active moiety'' is, in general terms, ''the molecule or ion * * * responsible for the physiological or pharmacological action of the drug substance'' (§ 314.108(a)). A drug product containing a new chemical entity may be eligible for 5 years of exclusivity even if the drug product is submitted in a 505(b)(2) application that relies for approval on literature reviewed by FDA supporting the safety and effectiveness of the drug. For new chemical entity exclusivity, there is no requirement that the sponsor conduct clinical trials to obtain the approval.

New chemical entity exclusivity generally bars submission of any 505(b)(2) application or ANDA for a drug containing the same active moiety for 5 years from the date the new chemical entity is approved.[7] If at the time the first NDA for an active moiety is approved and given exclusivity, other applicants have already submitted 505(b)(2) applications for products with the same active moiety, the agency may review and approve those applications, notwithstanding the exclusivity the first drug product obtained at the time of approval (54 FR 28872 at 28901, July 10, 1989). The first drug product's exclusivity will only bar submission of new 505(b)(2) applications or ANDA's. Therefore, if applications are submitted relatively close in time, new chemical entity exclusivity may not block approval of multiple 505(b)(2) applications for PET drugs with the same active moiety.

Certain PET drug products may also be eligible for 3 years of market exclusivity under section 505(c)(3)(D)(iii) and (c)(3)(D)(iv) and (j)(5)(D)(iii) and (j)(5)(D)(iv) of the act and § 314.108(b)(4). Three-year exclusivity is granted when an NDA contains reports from new clinical studies conducted or sponsored by the applicant and those studies are essential to approval of the application. Bioequivalence and bioavailability studies are not clinical studies that qualify for exclusivity. A 505(b)(2) application may be eligible for 3-year exclusivity if it relies in part on published literature or on FDA's findings on the safety or effectiveness of a PET drug, but also contains reports of new clinical studies conducted by the sponsor that are essential to the approval of, for example, a new use for the drug.

If a drug product is given 3 years of exclusivity, FDA is barred from approving any 505(b)(2) application or ANDA for the same drug product, or change to the product, as that for which the exclusivity was granted. For example, if an applicant obtains 3 years of exclusivity for a new indication for a PET drug, FDA may not approve an ANDA for that indication for 3 years. However, the agency may approve an ANDA for any previously approved indications not protected by the exclusivity.

Sponsors of PET drug products may also obtain pediatric exclusivity in accordance with section 505A of the act (21 U.S.C. 355a). To be eligible to obtain 6 months of pediatric exclusivity, a drug product must have patent or exclusivity protection to which the pediatric exclusivity period can attach. A drug product that has no patents listed in the Orange Book or other market exclusivity will not be eligible for pediatric exclusivity. To obtain pediatric exclusivity, a sponsor must conduct studies as described in a written request issued by FDA and must submit those studies within the timeframe described in the written request and in accordance with the filing requirements. Detailed information on qualifying for pediatric exclusivity is available in FDA's guidance for industry entitled ''Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act'' (64 FR 54903, October 8, 1999).

A PET drug product intended for the diagnosis of a rare disease or condition (one that affects fewer than 200,000 people in the United States) may be eligible for 7 years of orphan drug exclusivity under sections 526 and 527 of the act (21 U.S.C. 360bb-360cc). Obtaining orphan drug exclusivity is a two-step process. An applicant must

[7] An exception to this 5-year bar permits an applicant to submit a 505(b)(2) application or ANDA after 4 years if it contains a certification of invalidity or noninfringement for a patent listed for the approved drug.

seek orphan drug designation for its drug prior to submitting an NDA. If FDA designates the drug as an orphan drug and then approves it for the designated indication, the drug will receive orphan drug exclusivity. Orphan drug exclusivity bars FDA from approving another application from a different sponsor for the same drug for the same indication for a 7-year period.

A sponsor who is entitled to any type of exclusivity for a PET drug product may waive such exclusivity to allow one or more applicants to submit applications for the product. For example, if the sponsor of a 505(b)(2) application for a PET drug were to obtain 5-year exclusivity, a complete waiver of such exclusivity would enable other applicants to immediately submit 505(b)(2) applications and ANDA's for a drug containing the same active moiety.

Information regarding patents and exclusivity periods for approved drug products is published in the Orange Book. This information is important for applicants considering submitting ANDA's or 505(b)(2) applications for PET drugs. If a reference listed drug for an ANDA or a listed drug for a 505(b)(2) application has listed patents, the ANDA or 505(b)(2) application will be required to contain certifications regarding those patents (see § 314.94(a)(12) for ANDA's, § 314.50(i) for 505(b)(2) applications).

G. CGMP

As noted in section I of this document, the Modernization Act directs FDA to develop appropriate CGMP requirements for PET drugs. At a public meeting held on February 19, 1999, FDA discussed its preliminary approach to CGMP's for PET drugs with the PET industry working group and other attendees. In response to comments from the PET community, FDA revised its CGMP preliminary draft regulations. These preliminary draft provisions were discussed at a public meeting held on September 28, 1999. FDA intends to propose regulations on CGMP's for PET drugs in a forthcoming issue of the **Federal Register**, after obtaining additional public input.

H. Preapproval Inspections

FDA is authorized under the act to inspect the facilities to be used in the manufacture of a drug product prior to granting approval of an application to ensure that the facilities and controls used to manufacture the drug are adequate to preserve its identity, strength, quality, and purity (sections 505(d)(3) and (k)(2) and 704(a)(1) of the act (21 U.S.C. 374(a)(1)); see also § 314.125(b)(12)). FDA will not inspect PET drug manufacturing facilities for compliance with CGMP's until 2 years after the date that the agency establishes CGMP requirements for such drugs. However, until such time, if an application for approval of a PET drug is submitted, FDA will conduct an inspection to determine whether the facilities and controls used to manufacture the proposed drug product conform to the USP's PET compounding standards and monographs, in accordance with section 501(a)(2)(C) of the act (21 U.S.C. 351(a)(2)(C)),[8] and to verify other aspects of an NDA or ANDA submission.

V. Approval Procedures for Other PET Drugs and Indications

FDA has not yet addressed the procedures for approval of other PET drugs and of new indications for approved PET drugs. In FDA's proposed rule on the evaluation and approval of in vivo radiopharmaceuticals used for diagnosis and monitoring, published in the **Federal Register** of May 22, 1998 (63 FR 28301 at 28303), the agency stated that it expected the standards for determining safety and effectiveness set forth in the proposed rule to apply to PET drugs, which are one type of radiopharmaceutical.

FDA published its final rule on diagnostic radiopharmaceuticals in the **Federal Register** of May 17, 1999 (64 FR 26657). The final rule adds part 315 (21 CFR part 315), which addresses how FDA will interpret and apply certain provisions in part 314 to evaluate the safety and effectiveness of diagnostic radiopharmaceuticals. The agency also issued a draft guidance for industry entitled ''Developing Medical Imaging Drugs and Biologics,'' which, when finalized, will provide information on how the agency will interpret and apply the provisions of the final rule. In a future issue of the **Federal Register**, FDA intends to address whether and, if so, how new part 315 and the medical imaging guidance should be modified in their application to PET drugs.

VI. Conclusions

The Commissioner has concluded that FDG F 18 injection, when produced under the conditions specified in an approved application, can be found to be safe and effective in PET imaging in patients with CAD and left ventricular dysfunction, when used together with myocardial perfusion imaging, for the identification of left ventricular myocardium with residual glucose metabolism and reversible loss of systolic function, as discussed in section III.A.1 and III.A.2 of this document. The Commissioner also has concluded that FDG F 18 injection, when produced under the conditions specified in an approved application, can be found to be safe and effective in PET imaging for assessment of abnormal glucose metabolism to assist in the evaluation of malignancy in patients with known or suspected abnormalities found by other testing modalities or in patients with an existing diagnosis of cancer, as discussed in section III.A.1 and III.A.3 of this document. In addition, the Commissioner has concluded that ammonia N 13 injection, when produced under the conditions specified in an approved application, can be found to be safe and effective in PET imaging of the myocardium under rest or pharmacological stress conditions to evaluate myocardial perfusion in patients with suspected or existing CAD, as discussed in section III.B of this document. The Commissioner bases these conclusions on FDA's review of the published literature on these uses and on the recommendation by the agency's Medical Imaging Drugs Advisory Committee that FDA find these drugs to be safe and effective for these indications.

In addition, manufacturers of FDG F 18 injection and sodium fluoride F 18 injection may rely on prior agency determinations of the safety and effectiveness of these drugs for certain epilepsy-related and bone imaging indications, respectively, in submitting either 505(b)(2) applications or ANDA's for these drugs and indications.

Applications for approval of these PET drug products should be submitted in accordance with sections III and IV of this document as well as the guidance documents and product labeling referenced in section IV of this document.

VII. Assistance for Applicants

If you have questions about this document or need help in preparing an application for approval of one of the PET drugs discussed above, contact John A. Friel (address above); also, application forms are available from Friel's office. For further information and assistance visit the Internet on PET drugs at http//www.fda.gov/cder/regulatory/pet/default.htm.

[8] Section 501(a)(2)(C) of the act, established by the Modernization Act, requires that PET drugs be produced in conformity with the USP's PET drug compounding standards and monographs. This provision will expire 2 years after the date on which FDA establishes approval procedures and CGMP requirements for PET drugs.

VIII. Availability of Published Literature and Other Resources

The published literature referenced in section III of this document is listed in the appendix to this document. Copies of the published literature, FDA reviews of the literature, product labeling referenced in section IV of this document, and the transcript of the June 28 and 29, 1999, Advisory Committee meeting will be on display in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Appendix: Published Literature on the Safety and Effectiveness of Reviewed PET Drugs

I. Published Literature on FDG F 18 Injection:

A. Pharmacology, Toxicology, and Biopharmaceutics

1. Altehoefer, C., ''LBBB: Challenging Our Concept of Metabolic Heart Imaging With Fluorine-18-FDG and PET,'' *Journal of Nuclear Medicine*, 39:263–265, 1998.

2. Baer, F. M. et al., ''Predictive Value of Low Dose Dobutamine Transesophageal Echocardiography and Fluorine-18 Fluorodeoxyglucose Positron Emission Tomography for Recovery of Regional Left Ventricular Function After Successful Revascularization,'' *Journal of the American College of Cardiology*, 28:60–69, 1996.

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5. Camici, P. et al., ''Increased Uptake of F-18 Fluoro-deoxyglucose in Post-Ischemic Myocardium of Patients With Exercise-Induced Angina,'' *Circulation*, 74:281–282, 1986.

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16. Gough, A. L., and N. C. Keddie, ''An Assessment of the Reproducibility and Safety of 2-deoxy-D-glucose as a Gastric Acid Stimulant in Duodenal Ulcer Patients,'' *Gut*, 16:171–176, 1975.

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18. Gould, K. L., ''PET Perfusion Imaging and Nuclear Cardiology,'' *Journal of Nuclear Medicine*, 32:579–606, 1991.

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Dated: March 6, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5865 Filed 3–7–00; 11:42 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration/Industry Exchange Workshop on Medical Device Quality Systems Inspection Technique (QSIT); Public Workshops; Addendum

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an additional workshop in the series of FDA/Industry Exchange Workshops that were conducted in 1999. The original list of workshops was published in the **Federal Register** of September 10, 1999. Topics for discussion include: Development of Quality Systems Inspection Technique (QSIT), Compliance Program and Warning Letter (Pilot), Management Controls, Corrective and Preventive Action, Design Controls, and Industry Perspective QSIT. This additional workshop will enhance the medical device community's understanding of QSIT, and the device industry's establishment of effective quality systems, thereby preventing regulatory problems during inspections.

Date and Time: The meeting will be held on Wednesday, March 29, 2000, 8:30 a.m. to 4:30 p.m.

Location: The meeting will be held at Carlsbad: Four Seasons Resort—Aviara, 7100 Four Seasons Point, Carlsbad, CA 92009, 760–603–6800.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) along with $140 to the registrar by Monday, March 20, 2000. Fees cover refreshments, organization and site cost, and materials. Space is limited, therefore interested parties are encouraged to register early. Please arrive early to ensure prompt registration. If you need special accommodations due to a disability, please inform the registrar at least 7 days in advance of the workshop. A sample registration form is provided at http://www.fda.gov/cdrh/meetings/qsitmeetca.html.

Contact: Marcia Madrigal, FDA, Pacific Region (HFR PA–150), 1301 Clay St., suite 1180–N, Oakland, CA 94612–5217, 510–637–3980.

Registrar and cosponsor: Joyce W. Williams, San Diego Regulatory Affairs Network (SDRAN), c/o Arena Pharmaceuticals, Inc., 6166 Nancy Ridge Dr., San Diego, CA 92121, 858–453–7200, ext. 227, FAX 858–453–7210, e-mail: jwilliams@arenapharm.com.

SUPPLEMENTARY INFORMATION: In the fall of 1999, FDA field offices began using the QSIT nationwide as the tool for medical device inspections. QSIT was developed using a collaborative effort with stakeholders and tested in the three districts. The original list of workshops was published in the **Federal Register** of September 10, 1999 (64 FR 49192).

This additional workshop further implements the FDA Plan for Statutory Compliance (developed under section 406 of the FDA Modernization Act (21 U.S.C. 393)) through working more closely with stakeholders and ensuring access to needed scientific and technical expertise. It also implements a Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) goal of providing outreach activities by Government agencies directed to small businesses.

Dated: March 6, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–5835 Filed 3–9–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0892]

Draft Guidance for Industry on the Content and Format of New Drug Applications and Abbreviated New Drug Applications for Certain Positron Emission Tomography Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''PET Drug Applications —Content and Format for NDA's and ANDA's.'' The draft guidance is intended to assist manufacturers of certain positron emission tomography (PET) drugs in submitting new drug applications (NDA's) or abbreviated new drug applications (ANDA's) in accordance with a notice entitled ''Positron Emission Tomography Drug Products; Safety and Effectiveness of Certain PET Drugs for Specific Indications'' published elsewhere in this issue of the **Federal Register**.

DATES: Submit written comments on the draft guidance and the collection of information provisions by June 8, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http:/www.fda.gov/cder/guidance/index.htm and at http:/www.fda.gov/cder/regulatory/pet. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Robert K. Leedham, Jr., Center for Drug Evaluation and Research (HFD–160), 5600 Fishers Lane, Rockville, MD 20857, 301–827–7510.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''PET Drug Applications—Content and Format for NDA's and ANDA's.'' The draft guidance is intended to assist the manufacturers of certain PET drugs—fludeoxyglucose (FDG) F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection—in submitting NDA's and ANDA's in accordance with a notice entitled ''Positron Emission Tomography Drug Products; Safety and Effectiveness of Certain PET Drugs for Specific Indications'' published elsewhere in this issue of the **Federal Register**. The notice invites the manufacturers of these PET drugs to submit NDA's of the type described in section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(b)(2)) or ANDA's under section 505(j) of the act. The draft guidance states when submission of a 505(b)(2) application or ANDA is appropriate, and it describes the information that manufacturers of these PET drugs should include in each type of application.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on the submission of 505(b)(2) applications and ANDA's in accordance with a notice published elsewhere in this issue of the **Federal Register**. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. 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. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment 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 on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry: PET Drug Applications—Content and Format for NDA's and ANDA's.

Description: The draft guidance is intended to assist manufacturers of certain PET drugs in submitting NDA's or ANDA's in accordance with the notice entitled ''Positron Emission Tomography Drug Products; Safety and Effectiveness of Certain PET Drugs for Specific Indications.''

Description of Respondents: Manufacturers submitting NDA's or ANDA's for certain PET drugs.

Burden Estimate: The draft guidance is intended to assist manufacturers in preparing NDA's or ANDA's for FDG F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection submitted in accordance with a notice entitled ''Positron Emission Tomography Drug Products; Safety and Effectiveness of Certain PET Drugs for Specific Indications'' published elsewhere in this issue of the **Federal Register**. Most of the collection of information resulting from this draft guidance is contained in current regulations for submitting NDA's and ANDA's to FDA under part 314 (21 CFR part 314), and has already been reviewed and approved by OMB as follows: (1) Information collection required under part 314 is approved by OMB until November 30, 2001, under OMB control number 0910–0001; (2) information collection required on Form FDA–356h (Application to Market a New Drug, Biologic, or Antibiotic Drug for Human Use) is approved by OMB until April 30, 2000, under OMB control number 0910–0338; and (3) information collection required on Form FDA–3397 (User Fee Cover Sheet) is approved by OMB until April 30, 2001, under OMB control number 0910–0297.

There are three types of submissions requested under the draft guidance that are not specifically required under part 314 or Form FDA–356h or Form FDA–3397 and, therefore, need to be approved by OMB under the PRA:

1. Cover letter—Manufacturers should include with each NDA or ANDA a signed and dated cover letter with a clear, brief introductory statement. The draft guidance specifies the information that should be contained in the cover letter: (1) Purpose of the application; (2) type of submission; (3) name, title, signature, and address of the applicant; (4) established name and proprietary name for the proposed drug product; and (5) number of volumes submitted.

2. Letter of authorization—Manufacturers using an agent or consultant to act on their behalf should include with each NDA or ANDA a letter of authorization, signed and attached to the cover letter, that identifies the authorized agent or consultant.

3. Sample statement—Manufacturers should include a sample statement when responding to an FDA request for a representative sample of the drug product proposed for marketing, the drug substance or components used in the manufacture of the drug product, or the reference standards. The draft guidance provides an example of a sample statement notifying FDA that the applicant is supplying a representative sample of the drug product, the drug substance or components, or the reference standards.

Based on FDA's experience with reviewing NDA's and ANDA's and on its knowledge of the PET drug manufacturing community, FDA has estimated, in table 1 of this document: (1) The number of respondents expected to submit cover letters, letters of authorization, and sample statements with their NDA's or ANDA's as set forth in the draft guidance; (2) the number of cover letters, letters of authorization, and sample statements that respondents will submit with their NDA's or ANDA's as set forth in the draft guidance; and (3)

the amount of time it will take respondents to submit cover letters, letters of authorization, and sample statements with their NDA's or ANDA's as set forth in the draft guidance.

TABLE1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

NDA's and ANDA's	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Cover letters	50	1	50	1/2	25
Letters of authorization	20	1	20	1/2	10
Sample statements	1	1	1	1/2	.5
Total					35.5

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

Dated: March 6, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–5866 Filed 3–7–00; 11:42 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1130–N]

Medicare Program; March 27, 2000, Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for March 27, 2000, from 8 a.m. until 5 p.m., e.s.t.

ADDRESSES: The meeting will be held in the Multipurpose Room 800, Penthouse, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Paul Rudolf, M.D., J.D., Executive Director, Practicing Physicians Advisory Council, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–7874. News media representatives should contact the HCFA Press Office, (202) 690–6145. Please refer to the HCFA Advisory Committees Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (http://www.hcfa.gov/fac) for additional information and updates on committee activities.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term. The Council held its first meeting on May 11, 1992.

The current members are: Jerold M. Aronson, M.D.; Richard Bronfman, D.P.M.; Wayne R. Carlsen, D.O.; Mary T. Herald, M.D.(pending re-appointment); Sandral Hullett, M.D.; Stephen A. Imbeau, M.D.; Jerilynn S. Kaibel, D.C.; Marie G. Kuffner, M.D.; Derrick K. Latos, M.D.; Dale Lervick, O.D.; Sandra B. Reed, M.D.; Susan Schooley, M.D.; Maisie Tam, M.D.; Victor Vela, M.D.; and Kenneth M. Viste, Jr., M.D. The Council Chairperson is Marie G. Kuffner, M.D.; a new chair is to be appointed.

New Council members and a new Chairperson will be sworn in during the meeting (schedule to be determined). A brief introduction and training program to familiarize the new members with their responsibilities and expectations as Council members will be conducted starting at 8 a.m. and ending at 10 a.m.

Following this orientation session, the agenda will provide for discussion and comment on the following topics:

- Collection of outpatient encounter data for risk adjustment in Medicare+Choice;
  - — Implementation issues for physicians; and
  - — Educating physicians on data collection requirements;
- Changing roles of Carrier Advisory Committees:

Issues concerning education of physicians;

- The design of Advance Beneficiary Notices; and
- Practicing physicians' issues concerning the Medicare Provider Enrollment Form.

For additional information and clarification on the topics listed, call the contact person listed above.

Individual physicians or medical organizations that represent physicians that wish to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, March 13, 2000, to be scheduled. Testimony is limited to listed agenda issues only. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks should be submitted to the Executive Director no later than 12 noon, March 20, 2000, for distribution to Council members for review prior to the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members. The meeting is open

to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact John Lanigan at (202) 690–7418 at least 10 days before the meeting.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 6, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–5863 Filed 3–9–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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.

Proposed Project: The Black Lung Clinic Program Guidelines (42 CFR 55a) (OMB No. 0915–0081) Extension

The purpose of the Black Lung Clinic Program (BLCP) is to stimulate and encourage local public and private agencies to improve the health status of coalworkers and to increase coordination with other programs to assist the coalworkers population. The goal of the BLCP is to provide services to minimize the effects of respiratory and pulmonary impairments of coal miners. Grantees provide specific diagnostic and treatment procedures required in the management of problems associated with black lung disease which improve the functional status, *i.e.,* ''quality of life'', of the miner and reduces economic costs associated with morbidity and mortality arising from pulmonary diseases.

This request is for approval of the application requirements which are included in the program guidelines and the program regulation (42 CFR 55a.201 and 55a.301). Grantees must submit applications annually for continued grant support. The regulations outline the requirements for grant applications for States (55a.201) and the entities other than States (55a.301). The program guidelines further elaborate on these requirements.

The grant application form is cleared under another OMB approval (OMB No. 0920–0428). The burden for completing the application is not reflected in the Black Lung clearance request because the burden is reported in the clearance of the application form. The current request for clearance includes on hour of burden, to keep the clearance of the program-specific application requirements on the OMB database.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 3, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–5836 Filed 3–9–00; 8:45 am]

BILLING CODE 4160–15–P

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 April 2000.

NAME: National Advisory Council on Nurse Education and Practice (NACNEP).

DATE AND TIME: April 6, 2000; 8:30 a.m.–5 p.m.; April 7, 2000; 8:30 a.m.–3 p.m.

PLACE: Doubletree Hotel Rockville, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting is open to the public.

Agenda: Updates on and discussion of Department, Agency, Bureau, and Division activities, and the legislative and budget status of programs; report of COGME/NACNEP joint planning workgroup; discussion of final draft of the National Agenda for Nursing Workforce Diversity report; update on funding allocation methodology; MedPAC; report on medical errors; and Council strategic planning workgroups on Workforce and Practice.

Anyone interested in obtaining a roster of members, minutes of the meeting, or other relevant information should write or contact Ms. Elaine G. Cohen, Executive Secretary, National Advisory Council on Nurse Education and Practice, Parklawn Building, Room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5786.

Dated: March 3, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–5837 Filed 3–9–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of Thymosin β4 for Wound Healing Applications; Correction

The notice published in the February 28, 2000 **Federal Register**—announcing the prospective grant of an exclusive license for use of thymosin β4 for wound healing applications (65 FR 10505)—incorrectly listed one of the serial numbers for the subject invention as ''60/094,960'' under the **SUMMARY** section. NIH is publishing this notice to correct this serial number to read ''60/094,690.'' In view of this correction, to allow interested parties adequate time to respond, the **DATES** section is also amended to read ''Only written comments and/or license applications

which are received by the National Institutes of Health on or before June 8, 2000 will be considered.''

Dated: March 6, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–5785 Filed 3–9–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

American Samoa Economic Advisory Commission

AGENCY: Office of Insular Affairs, Interior.

ACTION: Notice.

SUMMARY: The American Samoa Economic Advisory Commission (ASEAC) will conduct hearings in American Samoa from Monday, March 27 to Thursday, March 30, 2000. The purpose of the hearings is to gather relevant information from the American Samoa Government and community-at-large regarding the future economic development of the territory.

The following is the schedule of dates, time and location of the hearings: Monday, March 27 from 2 p.m. to 5 p.m. at the Fono buildings to hear testimonies of the Governor, Senate President, Speaker, and other members of the local legislature; Tuesday, March 28 from 9 a.m. to 11 a.m. at the American Samoa Community College to hear testimonies of selected local government officials. From 5 p.m. to 9 p.m. to hear testimonies from the community; Wednesday, March 29, from 9 a.m. to 12 noon at Pago Bay Restaurant to hear testimonies from businesses and the community; Thursday, March 30 from 9:30 a.m. to 11:30 a.m. at the Rainmaker Hotel to hear testimonies from other officials. All parties interested in participating in the hearings must submit written testimony by March 15, 2000, to the American Samoa Economic Advisory Commission, 745 Fort Street, Suite 600, Honolulu, Hawaii, 96814; Fax: (808) 538–8705 or E-mail: *DOIASEAC@lava.net.*

FOR FURTHER INFORMATION CONTACT: Gail Mukaihata-Hanneman, 745 Fort Street, Suite 600, Honolulu, Hawaii 96814, (808) 535–4117; or Nikolao I. Pula, Office of Insular Affairs, Department of the Interior, 1849 C Street, N.W., MS 4328, Washington, DC 20240, (202) 208–6816.

Dated: March 6, 2000.

Ferdinand Aranza,

Director, Office of Insular Affairs.

[FR Doc. 00–5840 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–93–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of this meeting are to hear technical reports, to discuss and develop Klamath fall chinook salmon harvest management options for the 2000 season, and to make recommendations to the Pacific Fishery Management Council and other agencies. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 2 p.m. to 5 p.m. on Sunday, April 2, 2000.

PLACE: The meeting will be held at the Columbia River Doubletree Hotel, 1401 N. Hayden Island Drive, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: At the April 2, 2000 meeting, the Klamath Fishery Management Council may schedule short follow-up meetings to be held between Monday, April 3, 2000 and Thursday, April 6, 2000 at the Columbia River Doubletree Hotel, 1401 N. Hayden Island Drive, Portland, Oregon, where the Pacific Fishery Management Council will be meeting.

For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639)

Dated: February 28, 2000.

John Engbring,

Manager, California/Nevada Operations.

[FR Doc. 00–5730 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW140718]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW140718 for lands in Niobrara County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW140718 effective October 1, 1999, subject to the original terms and conditions of the lease and increased rental and royalty rates cited above.

Mavis Love,

Acting Chief, Leasable Minerals Section.

[FR Doc. 00–5912 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW141501]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW141501 for lands in Niobrara County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at

rates $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW141501 effective October 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Mavis Love,

Acting Chief, Leasable Minerals Section.

[FR Doc. 00–5913 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request continued approval for the collections of information for 30 CFR parts 733 and 876.

DATES: Comments on the proposed information collection must be received by May 9, 2000, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 120–SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at the address listed in **ADDRESSES.**

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement 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 collections that OSM will be submitting to OMB for renewed approval. These collections are contained in 30 CFR part 733, Maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs, and part 876, Acid mine drainage treatment and abatement program.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels of adjustments based on reestimates of burden on respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs, 30 CFR 733.

OMB Control Number: 1029–0025.

Summary: This part provides that any interested person may request the Director of OSM to evaluate a State program by setting forth in the request a concise statement of facts which the person believes establishes the need for the evaluation.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Any interested person (individuals, businesses, institutions, organizations).

Total Annual Responses: 2.

Total Annual Burden Hours: 200 hours.

Title: Acid mine drainage treatment and abatement program, 30 CFR 876.

OMB Control Number: 1029–0104.

Summary: This part establishes the requirements and procedures allowing State and Indian Tribes to establish acid mine drainage abatement and treatment programs under the Abandoned Mine Land fund as directed through Public Law 101–508.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments and Indian Tribes.

Total Annual Responses: 1.

Total Annual Burden Hours: 350.

Dated: March 6, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–5847 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–05–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

March 21, 2000 Board of Directors Meeting; Sunshine Act Meeting

TIME AND DATE: Tuesday, March 21, 2000, 1:00 p.m. (Open Portion) 1:30 p.m. (Closed Portion)

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting Open to the Public from 1:00 p.m. to 1:30 p.m. Closed portion will commence at 1:30 p.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report.
2. OPIC Africa Investment Council.
3. Appointment—Robert B. Drumheller.
4. Approval of December 14, 1999 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.)

1. Finance Project in Equatorial Guinea.
2. Insurance Project in Venezuela.
3. Insurance Project in Brazil.
4. Finance Project in Guatemala.
5. Finance Project in Papua New Guinea.
6. Approval of December 14, 1999 Minutes (Closed Portion).
7. Pending Major Projects.
8. Pending Reports.

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: March 8, 2000.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 00–6025 Filed 3–8–00; 10:47 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1263]

Announcement of the Juvenile Mentoring Program Discretionary Competitive Assistance Program

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is announcing the availability of a program announcement soliciting applications for the Juvenile Mentoring Program (JUMP).

DATES: Applications must be received by 5:00 p.m., ET, on Tuesday, May 23, 2000.

ADDRESSES: All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301'519'5535. The application should be submitted on 8½–by 11–inch paper, double-spaced on one side of the paper in a standard 12-point font with each page numbered sequentially. Interested applicants can obtain a copy of the program announcement and the *OJJDP Application Kit* from the Juvenile Justice Clearinghouse by calling 800–638–8736 or sending a request via Fax-on-Demand (800–638–8736) or e-mail (askncjrs.org). The program announcement and *Application Kit* are also available at OJJDP's Web site at www.ojjdp.ncjrs.org/grants/current.html.

FOR FURTHER INFORMATION CONTACT: Travis A. Cain or Susan Brunson, Program Managers, Office of Juvenile Justice and Delinquency Prevention, 202–307–5914. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: This action is authorized under Part G of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (Pub. L. 93–415; 42 U.S.C. 5667e *et seq.*). The JUMP program provides funding for one-to-one mentoring projects for youth at risk of educational failure, dropping out of school, or involvement in delinquent activities, including gangs and substance abuse. The JUMP program strategy is to fund collaborative efforts between local educational agencies and public/private nonprofit organizations or tribal nations to support development of effective mentoring programs for at-risk youth. Applicants should target at-risk youth in high crime areas where 60 percent or more of youth in the participating school are approved to receive Chapter I funds (Free and Reduced Lunch Program) under the Elementary and Secondary Education Act of 1965 and where a considerable number of youth are truant or drop out of school each year. OJJDP encourages applications from both new programs and those programs with proven track records that want to expand their mentoring activities in accordance with this solicitation's program goals and objectives. National organizations are not eligible to compete for funding available through this effort. Awards of up to $210,000 for 3-year budget and project periods will be available.

Dated: March 7, 2000.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–5908 Filed 3–9–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP(NIJ)–1264]

National Institute of Justice Announcement of the Ninth Meeting of the National Commission on the Future of DNA Evidence

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the ninth meeting of the National Commission on the Future of DNA Evidence.

DATES: The ninth meeting of the National Commission on the Future of DNA Evidence will take place on Sunday, April 9, 2000 from 1:00 p.m. to 5:00 p.m.,CDT, and on Monday, April 10, 2000 from 9:00 a.m. to 5:00 p.m., CDT.

ADDRESSES: The meeting will take place at the Regal Knickerbocker Hotel, 163 East Walton Place, Chicago, Illinois, 60611. Phone: (312) 751–9205.

FOR FURTHER INFORMATION CONTACT: Christopher H. Asplen, AUSA, Executive Director. Phone: (202) 616–8123. [This is not a toll-free number].

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Commission on the Future of DNA Evidence, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, will meet to carry out its advisory functions under Sections 201–202 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. This meeting will be open to the public.

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

The Commission will address issues in five specific areas: (1) The use of DNA in postconviction relief cases, (2) legal concerns including *Daubert* challenges and the scope of discovery in DNA cases, (3) criteria for training and technical assistance for criminal justice professionals involved in the identification, collection and preservation of DNA evidence at the crime scene, (4) essential laboratory capabilities in the face of emerging technologies, and (5) the impact of future technological developments in the use of DNA in the criminal justice system. Each topic will be the focus of the in-depth analysis by separate working groups comprised of prominent professionals who will report back to the Commission.

Dated: March 6, 2000.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 00–5893 Filed 3–9–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The U.S. Department of Labor (USDOL), 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 Employment and Training Administration (ETA), Office of Workforce Security (OWS), is soliciting comments concerning a proposed new collection of survey data necessary to perform a benefit-cost analysis of the self-employment assistance (SEA) program.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 9, 2000.

ADDRESSES: Wayne Gordon, USDOL, 200 Constitution Avenue, N.W., Room S–4231, Washington, DC 20210, Phone: (202) 208–5915 x200 (this is not a toll-free number), fax: (202) 219–8506 (this is not a toll-free number), e-mail: wgordon@doleta.gov.

FOR FURTHER INFORMATION CONTACT: Wayne Gordon, USDOL, 200 Constitution Avenue, N.W., Room S–4231, Washington, DC 20210, Phone: (202) 208–5915 x200 (this is not a toll-free number), fax: (202) 219–8506 (this is not a toll-free number), e-mail: wgordon@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background:

As part of its mandate under Section 906 of the Social Security Act to establish a continuing and comprehensive program of research to evaluate the unemployment compensation system, the USDOL, ETA, OWS, is conducting a study of benefits and costs of Unemployment Insurance (UI) SEA programs that are currently operating in a small number of States. This requires conducting a telephone survey to gather information regarding the programs' impacts on society, employers, participants, nonparticipants and the government sectors. As a complement to the benefit-cost analysis, DOL wishes to assemble an inventory of knowledge of current SEA programs to assist States wishing to implement a SEA program.

The study is following through on recommendations included in a report to Congress on implementation of the prior Unemployment Insurance (UI) Self-Employment Assistance Demonstration. That report, which recommended that the program be made permanent, identified a need for follow up on program participants and the desirability of benefit-cost analysis.

In accomplishing this overall purpose, the study will do the following: (1) Determine the net benefits of SEA programs; (2) obtain the necessary SESA and SEA participant cost information associated with these programs; (3) perform an analysis of program-to-program variation in service provision and other program variables; (4) develop a complete demographic profile of current SEA participants and identify the impacts of this relatively new reemployment strategy on labor market outcomes for these participants with regard to their total employment in wage and salary and self-employment (weeks worked), total earnings, and any subsequent claims for unemployment benefits; and (5) inventory the different administrative configurations and service packages offered within the participating States to provide information to other participating States on cost-effective strategies and to assist States wishing to implement a SEA program.

II. Current Actions

To examine these issues, ETA is planning to collect survey data from random samples of present and past SEA participants in three designated States. The survey will collect data unavailable from administrative records. These data include detailed information on background characteristics of sample members, including characteristics of their pre-layoff jobs; information on their employment and earnings and job characteristics following receipt of UI; and information on their participation in any reemployment services, more specifically, the SEA program.

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 clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Type of Review: New.

Agency: U.S. DOL, ETA, Office of Workforce Security.

Title: Benefit-cost Analysis of the Self-Employment Assistance program.

Agency Number: 1205.

Affected Public: Present and past participants in (SEA) programs in Maine, New York and New Jersey.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (minutes)	Burden (hours)
Participant survey	1200	One time	1200	10	200
Totals			1200		200

Total Burden Cost: $35,000.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 6, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 00–5843 Filed 3–9–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506 (C)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed 24 month extension, with change, of the Employment Service Program Reporting System from the current end date of June 30, 2000 to a new end date of June 30, 2002.

A copy of the previously approved information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 9, 2000.

ADDRESSES: Timothy F. Sullivan, Office of Workforce Security, U.S. Employment Service, 200 Constitution Avenue NW., Room N–4464, Washington, DC 20210, (202–219–5257—not a toll free number) and internet address: *tsullivan@doleta.gov* and/or FAX: (202)–208–5844).

SUPPLEMENTARY INFORMATION:

I. Background

Information on basic labor exchange services is necessary to assure that the States are complying with legal requirements of the Wagner-Peyser Act, as amended by the Workforce Investment Act (WIA) of 1998. Program data items are required from States reporting to the Department of Labor as part of other information in order to determine if the States are complying with the basic labor exchange requirements.

Information regarding employment and training services provided to veterans by State public employment services agencies must be collected by the Department of Labor to satisfy legislative requirements, as follows: (a) To report annually to Congress on specific services (38 U.S.C. 2007(c) and 2012(c)); (b) to establish administrative controls (38 U.S.C. 2007 (b)); and (c) for administrative purposes. These data are reported on the VETS 200 A and B, the VETS 300, and the Manager's Report.

II. Review Focus

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 clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department is requesting an extension of the Employment Service Program Reporting System with changes to data elements, definitions, reporting instructions and/or reporting requirements from the current end date of June 30, 2000 to a new end date of June 30, 2002.

The Veterans' Employment and Training Service is requesting the collection of data for Campaign Veterans which are veterans who served on active duty in the United States armed forces during a war on in a campaign or expedition for which a campaign badge or expeditionary medal has been authorized. The Secretary of Labor is required under WIA to collect this information. This data collection will replace information currently collected on the ETA–9002A under the Service Members Occupation Conversion and Training Act (SMOCTA) (P.L. 102–484).

In light of WIA and in response to the requirements of the Government Performance and Results Act (GPRA) of 1993, the national call for government programs to be more accountable and results oriented, the Department of Labor (DOL), Employment and Training Administration (ETA), Office of Workforce Security, United States Employment Service (USES) will begin steps to establish performance measures for the public labor exchange program in conjunction with WIA activities and One-Stop delivery system implementation.

The United States Employment Service will work cooperatively with States and other stakeholders to develop program specific performance measures which will be released for comment at a later date.

The proposed measures are a starting point for development of comprehensive measures for the labor exchange function of the One-Stop delivery system. It is the Department's intent to use the comments received to develop performance measures for implementation on July 1, 2001.

The effort to finalize the performance measures, to identify the data elements needed to produce the performance measures and to define specific changes to the ETA reporting requirements will take several months to accomplish.

In consideration of these issues, the Department is requesting an extension, with change, of the Employment Service Program Reporting System from the current end date of June 30, 2000 to a new end date of June 30, 2002.

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A) to extend collection of the Employment Service Program Reporting System data previously approved and assigned OMB Control No. 1205–0240 and the data reporting for the ETA–9002A,B and C including the data reporting for the VETS 200 A and B, the VETS 300, and the Manager's Report on services to veterans and record keeping.

Type of Review: Extension with change.

Agency: Employment and Training Administration.

Title: Employment Service Program Reporting System.

OMB Number: 1205–0240.

Total Respondents: 54 States and territories.

Estimated Burden Hours: 7213.

Reports	Respondents	Frequency	Total responses	Average time per response (hours)	Burden (hours)
USES Rpt.	54	Quarterly	216	2.75	594
VETS Rpt.	54	Quarterly	216	.25	54
USES Rec.	54	Annually	54	12.00	648
VETS 200A	54	Quarterly	216	.85	184
VETS 200B	54	Quarterly	216	.85	184
VETS 300	54	Quarterly	216	1.00	216
Mgt. Report	1600	Quarterly	6400	.83	5333
Totals			7534		7213

Total Burden Cost (capital/startup: 0.
Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 6, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 00–5845 Filed 3–9–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Final Finding of No Significant Impact (FONSI) for the New Job Corps Center Located on Schoolland Woods Road (the Former Ladd Center) in Exeter, RI

AGENCY: Employment and Training Administration, Labor.

ACTION: Final Finding of No Significant Impact (FONSI) for the New Job Corps Center to be located on Schoolland Woods Road (the former Ladd Center) in Exeter, Rhode Island.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps gives final notice of the proposed construction of a new Job Corps Center on Schoolland Woods Road (the former Ladd Center), Exeter, Rhode Island, and that this construction will not have a significant adverse impact on the environment. In accordance with 29 CFR 11.11(d) and 40 CFR 1501.4(e)(2), a preliminary FONSI for the new Exeter Job Corps Center was published in the October 14, 1999 **Federal Register** (64 FR 55754–55755). Copies of the environmental assessment (EA) were made available to all interested parties, and two organizations submitted comments on the EA and FONSI. ETA has reviewed all comments submitted, and has issued an addendum to the EA correcting factual errors identified during the public review and comment period. ETA has determined that the issues and concerns raised during the public comment period do not affect the conclusions of the EA or the finding of no significant impact. This notice serves as the Final Finding of No Significant Impact for construction of the new Exeter Job Corps Center to be located on Schoolland Woods Road (the former Ladd Center) in Exeter, Rhode Island.

EFFECTIVE DATE: March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Copies of the EA, the addendum to the EA, or comments submitted by interested parties can be obtained by contacting Michael O'Malley, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW, Room N–4659, Washington, DC, 20210, (202) 219–5468 ext 115 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 14, 1999, the ETA published an environmental assessment (EA) and a preliminary finding of no significant impact (FONSI) for construction of a new Job Corps Center on approximately 19.65 acres located on Schoolland Woods Road in Exeter, Rhode Island. The proposed project parcel is located within the former Ladd Center, an approximately 270 acre facility which served as an institution for the care and rehabilitation of the developmentally disabled. The project includes renovation of two existing buildings and construction of three new buildings on the proposed property parcel, which will be leased by the Department of Labor from the State of Rhode Island for a term of 50 years. The Exeter Job Corps Center will provide training and support for 200 resident students. The EA prepared by the ETA concluded that the construction of a new Job Corps Center at the proposed property parcel would have no significant negative impacts on the natural, cultural, or social environment in the surrounding community. Due to the adaptability of the existing structures on the site, the lack of alternative construction sites, and the absence of any identified adverse environmental impacts from locating a Job Corps Center at the subject property, the ''Continue Construction as Proposed'' alternative was selected, and a finding of no significant impact was made. Although the Department of Labor's NEPA compliance procedures do not require a public comment period for an environmental assessment that results in a finding of no significant impact, the ETA voluntarily published the FONSI for the Exeter Job Corps Center as a preliminary finding, and provided a 30-day public comment period.

Discussion of Public Comments and Interagency Review

The ETA received written comments from three public agencies: (1) the Town Council for the Town of Exeter, Rhode Island; (2) the Planning Board for the Town of Exeter, Rhode Island; and (3) the United States Environmental Protection Agency, Region I, Rhode Island Program. All three agencies disagreed with the ETA's finding of no significant impact, and offered comments on the EA.

Comments From the Town of Exeter Town Council

The Town of Exeter Town Council provided twelve specific comments and/or questions regarding the EA prepared by the DOL. The first comment was that the format of the EA appeared to be based on the ASTM standard for Phase I environmental site assessments (ESA), and the Town Council questioned whether the EA was prepared primarily to relieve the ETA of CERCLA liability and to provide a boilerplate for a finding of no significant

impact (Section 1.1—Purpose and Scope and Section 4.1—Facility Characteristics). The EA was prepared by a contractor to the ETA under a specific scope of work that included both (1) an ASTM phase I environmental site assessment to identify potential CERCLA liabilities associated with the proposed project parcel; and (2) an evaluation of potential environmental impacts associated with the project, in accordance with the NEPA implementation regulations promulgated by the DOL. Combining these two environmentally related tasks in a single scope of work complies with the Council on Environmental Quality NEPA regulations on paperwork reduction (40 CFR 1500.4). The EA was designed to provide a format for publication of a FONSI if no significant impact was identified, or for development of an environmental impact statement (EIS) if a potentially significant impact was identified. The DOL believes that the scope of work and format for this EA satisfy the intent and specific requirements of the NEPA.

The second comment expressed concern that the Rhode Island Department of Mental Health, Retardation, and Hospitals (DMHRH) had not been consulted regarding the past uses of the property (Section 1.2—Sources of Information and Section 4.3.5.5—Standard Historical Sources). During preparation of the EA, several interviews were conducted with representatives of the Rhode Island Economic Development Corporation (EDC) who had personal knowledge of the site and of the past uses of the property, and written records concerning the past uses of the property were also reviewed. Based on the available information, there are no indications that additional information from the DMHRH would have any affect on the determination of either the potential CERCLA liability of the property or the potential environmental impacts from the proposed Job Corps Center. The finding of no significant impact is therefore reasonable, and the EA has not been edited in response to this comment.

The third comment from the Town Council suggested that, because the specific vocational curriculum at the proposed Job Corps Center has not yet been finalized, environmental concerns from Job Corps training operations (Section 3.1—Proposed Job Corps Center) cannot be thoroughly evaluated at this time. Although the specific vocational curriculum has not yet been finalized, the proposed vocations include carpentry and masonry. Both of these trades are included in vocational programs at Job Corps centers throughout the nation, and neither of these trades is associated with significant air, water, noise, hazardous waste, or solid waste pollution at any of the centers in which they are taught. The finding of no significant impact is therefore reasonable, and the EA has not been edited in response to this comment.

The fourth comment pointed out that the proposed student population listed in the EA (Section 3.2—Facility Characteristics) was 200 residential students and 100 non-resident students, whereas the final project proposal was for 200 residential students only. The removal of non-resident students from the proposed Job Corps Center has no effect on the finding of no significant impact, however, except possibly to reduce even further the anticipated impacts on vehicular traffic, noise, and non-source air pollution. Although this error has no bearing on the finding of no significant impact, the proposed student population was corrected in an addendum to the EA published on January 14, 2000.

The fifth comment stated that the review of the United States Geological Survey (USGS) 7.5 minute topographic map (Section 4.3.5.4) conducted as part of the Phase I ESA was inadequate, and suggested that further evaluation of the Queen's River aquifer should have been included in this section. This section of the ESA was intended only to provide an evaluation of recognized environmental conditions and potential liabilities that could be identified through an evaluation of the USGS 7.5 minute topographic map, and was not intended to include an in-depth discussion of existing groundwater conditions. The EA report has not been edited in response to this comment.

The sixth and seventh comments correctly pointed out that the Town of Exeter is incorrectly identified as the ''City of Exeter'in several sections of the EA, and that the EA (Section 5.2.1—Land Use) incorrectly identifies a downtown area of Exeter. Although they have no bearing on the finding of no significant impact, both of these errors have been corrected in an addendum to the EA published on January 14, 2000.

The eighth comment from the Town Council referenced the EA's description of adjoining property land use (Section 5.2.1). The town council stated that, due to the presence of wetlands, farmland, and undeveloped property parcels surrounding the former Ladd Center, impacts to groundwater from the project may have ''unforeseeable and irreparable consequences, and * * * justifies the need for further assessment.'' The DOL recognizes the concern for protection of groundwater in this area, and all buildings, surface improvements, sewage disposal systems, and storm water control systems will be constructed in accordance with Rhode Island Department of Environmental Management (RIDEM) guidelines and regulations to minimize impacts to groundwater. The nature of surrounding land use will not effect the DOL's ability to protect groundwater resources, and therefore does not affect the finding of no significant impact. The EA correctly describes adjoining property use, and has not been edited in response to this comment.

The ninth comment from the Town Council identified an incorrect spelling of a Town Council representative (Section 5.2.2—Demographics and Socio-Economic). Although the error has no bearing on the finding of no significant impact, the spelling was corrected in an addendum to the EA published on January 14, 2000.

The tenth comment referenced the EA's description of historical land use (Section 5.2.3), which stated that an archaeological assessment of the Ladd Center property was warranted ''due to the parcel's favorable environmental characteristics such as well-drained soils * * *, level topography and abundance of nearby freshwater wetlands.'' The town council stated that these conditions created the potential for ''unforeseeable and irreparable consequences, and * * * justifies the need for further assessment.'' As indicated above, the DOL recognizes the concern for protection of groundwater in this area. This section of the EA, however, is intended only to focus on the potential for historic and/or archaeological resources on the proposed project parcel. Since the EA (and a subsequent archaeological assessment of the entire Ladd Center by the Rhode Island Economic Development Corporation) did not identify any historically significant or archaeologically sensitive areas on or immediately adjacent to the proposed Job Corps parcel, the finding of no significant impact is reasonable. The EA has not been edited in response to this comment.

The eleventh comment from the Town Council stated that the EA's description of the Exeter Fire Department (Section 5.2.7.3—Fire/Rescue/Emergency) as a full time department providing 24 hour service was incorrect; the Exeter Fire and Rescue Departments are part-time volunteer agencies. This error was corrected in an addendum to the EA published on January 14, 2000, but the

error has no bearing on the finding of no significant impact.

The final comment stated that insufficient information was researched in order to support the EA's statement that ''wastewater flows and resultant demand on the regional infrastructure will not increase significantly'' (Section 6.1.1—Hydrogeology). The term ''regional infrastructure'', as applied to wastewater disposal, generally refers to municipal sewer lines, wastewater pumping stations, and publicly owned treatment facilities. Wastewater disposal for the proposed project will be managed through an individual sewage disposal system (ISDS) in accordance with RIDEM guidelines and regulations, and therefore will have no impact either on groundwater on the regional wastewater infrastructure. The DOL believes that the finding of no significant impact is justified, and the EA has not been edited in response to this comment.

Comments From the Town of Exeter Planning Board

The Exeter Planning Board submitted a letter objecting to the finding of no significant impact, stating that they felt an EIS was required. The Planning Board included twenty-one specific comments on the EA.

Their first comment criticized the database information used by the DOL in preparation of the ESA portion of the report (Section 4.3—Environmental Records Review), suggesting that the site specific information contained in the database should have been verified. The use of environmental databases to identify known environmental concerns is standard practice in the preparation of an ESA. Field verification of the database information is not required or recommended in the ASTM Standard Practice for Environmental Site Assessments. The DOL believes that the information used in preparing the ESA was reliable, and this comment has no bearing on the finding of no significant impact.

The second comment requested that the impacts of leaking underground storage tanks (UST) at the Exeter Mall site should be included in the ESA portion of the report (Section 4.3.2.2—Leaking Underground Storage Tank Sites). This section of the EA report was generated from a RIDEM database of leaking UST sites, which reported no leaking UST sites within a 0.5 mile radius of the proposed Job Corps property parcel. A database search of 0.5 mile radius is specified in the ASTM Standard Practice for Environmental Site Assessments. The proposed project will not have any impact on the site referenced by the Planning Board, and this comment has no bearing on the finding of no significant impact.

The third comment from the planning board suggested that insufficient information was obtained through consultation with interested parties (Section 4.4.2—Interviews with Knowledgeable Parties) for assessment of known environmental conditions. The Board suggested that additional assessment of the 6 USTs on the Ladd Center property should be conducted, and they suggested that the DOL should have consulted with the RIDEM, former property managers, town officials, the Nature Conservatory, and the Audubon Society. The DOL believes that additional assessment of the 6 USTs identified on the Ladd Center is not necessary for satisfactory completion of the EA, since these tanks are not located on or immediately adjacent to the proposed Job Corps property parcel, and the proposed project will not have any impact on surface or subsurface soils in the vicinity of the USTs. With respect to the adequacy of the interviews conducted, the DOL believes that sufficient interviews were conducted to satisfy the informational requirements of both the phase I ESA and the requirements for an EA under the DOL NEPA implementation regulations.

The fourth comment suggested possible environmental impacts due to the presence of mercury in fluorescent light bulbs throughout the buildings to be renovated under this project. The fluorescent light bulbs were identified as a recognized environmental condition in the ESA section of the EA (Section 4.5—Findings and Conclusions). As discussed in Section 6.3.5 of the EA, any fluorescent light fixtures removed during renovation activities will be disposed of in accordance with applicable State and Federal regulations. Although the fluorescent light bulbs represent a potential environmental liability associated with the property, there are no significant impacts associated with the proper removal, handling, and disposal of these fixtures for the proposed Job Corps renovations.

The fifth comment from the Planning Board suggested that a description and diagram of the existing groundwater reservoir and well fields should be included in the EA, and suggested that the USGS report on the Queens River Aquifer should have been reviewed in evaluating the impact of the project (Section 5.1.5—Natural Environment and Resources). The DOL did not include a detailed description of the groundwater aquifer in the EA report, since the EA is intended to be only a brief evaluation and discussion of potential environmental impacts. As indicated previously, the RIDEM has informed the DOL that an individual sewage disposal system (ISDS) for the proposed Job Corps project, with appropriate pretreatment, will meet RIDEM regulations for the protection of ground and surface waters. The estimated groundwater withdrawal for the proposed Job Corps project is also well below the current yield for existing groundwater wells, and will not add significantly to the overall withdrawal from the Queens River Aquifer. The DOL believes that the discussion of natural environment and resources presented in the EA is sufficient, and supports the finding of no significant impact.

The sixth comment from the Planning Board suggested that the EA did not sufficiently address potential impacts to rare species living at the Queens River, and suggested that the DOL should more clearly delineate the wetlands surrounding the Ladd Center (Section 5.1.5—Natural Environment and Resources). Both the U.S. Fish and Wildlife Service and the RIDEM Natural Heritage Program were consulted during preparation of the EA, and no known endangered or threatened plant or animal species were identified on the proposed Job Corps property parcel. The EA indicates that no jurisdictional wetlands are located on or immediately adjacent to the proposed property parcel, although there are protected wetlands to the Southeast, Northwest, and West of the proposed property parcel. As indicated in the EA, all storm water will be managed on-site so as to minimize run-off to wetlands areas and other surface water receptors, in accordance with RIDEM storm water guidelines and regulations.

The Planning Board disagreed with the DOL's conclusion that noise from the proposed Job Corps center will not create a significant impact (Section 5.1.8—Noise), suggesting that construction and operation of the Job Corps center will negatively impact residential communities in the vicinity of the project. As indicated in the EA, construction and operation of the Job Corps center will comply with all applicable noise standards. Due to the remoteness of the center location and its confinement within the boundaries of the 300 acre Ladd Center property, noise impacts from the proposed Job Corps center are anticipated to be minimal. The DOL believes that the discussion of noise levels presented in the EA is reasonable, and supports the finding of no significant impact.

The Planning Board also raised concern over the proposed center's compliance with the Town of Exeter lighting regulations (Section 5.1.9—Lighting). As indicated in the EA, the Job Corps center will comply with all applicable lighting regulations, including those of the Town of Exeter. Due to the remoteness of the center location and its confinement within the Ladd Center boundaries, no significant impacts from the center's lighting system are anticipated.

The ninth comment from the Planning Board supported the conduct of an archaeological assessment for the former Ladd Center, as recommended by the State of Rhode Island Historical Preservation & Heritage Commission and reported in the EA (Section 5.2.3—History and Archaeology). This recommendation was made in reference to the Ladd Center as a whole, and not in reference to the Job Corps property parcel. As reported in the EA, no known or suspected archaeological sites have been identified on the proposed Job Corps property parcel. The findings presented in the EA have been confirmed by an archaeological assessment recently performed by the Rhode Island EDC, which concluded that there is little potential for culturally significant findings on the proposed Job Corps center property parcel. The DOL believes that the discussion of historical and archaeological impacts presented in the EA is reasonable, and supports the finding of no significant impact.

The tenth comment from the Planning Board stated that the EA's statements relating to the impacts of the proposed project on water and sewer resources are inadequate (Section 5.2.6.2—Water and Section 5.2.6.3—Sewer). As discussed in the EA and reiterated above, the estimated water withdrawal for the proposed Job Corps center is well below the current pumping rate for existing on-site wells, and will create a minimal impact on the overall water withdrawal from the Queens River Aquifer. The DOL has consulted with the RIDEM regarding the impacts to groundwater from sewage disposal, and RIDEM informed the DOL that an ISDS can be designed for the proposed project, with appropriate wastewater pre-treatment, to meet all RIDEM regulations and ensure protection of groundwater resources. The DOL believes that the discussions of water use and wastewater treatment presented in the EA are sufficient, and support the finding of no significant impact.

Comment eleven from the Planning Board repeated the concern raised by the Town Council criticizing the finding that wastewater flows will not have significant impact on regional infrastructure (Section 6.1.1—Hydrogeology). This comment has been addressed above, and does not affect the DOL's finding of no significant impact for the proposed Job Corps center.

The twelfth comment stated that the Planning Board does not accept the DOL's statement that the project site has been selected to avoid negative impacts on rare, threatened, or endangered species or wetland habitats (Section 6.1.2—Natural Environment and Resources), and stated that they will independently assess the impact of the project during the Planning Board's site review process. The DOL is aware that many local jurisdictions have established procedures for site plan review, and the DOL will continue to work closely with the Planning Board and other interested parties throughout the design and construction of the proposed project. The Planning Board's site review is separate from the DOL's internal NEPA review, however, and does not impact the finding of no significant impact.

Comment thirteen restated the Planning Board's objection to the finding of no impact from noise at the center (Section 6.1.5—Noise), stipulating that the Job Corps center will inevitably increase traffic flow over the current level, since the Ladd Center is currently vacant. Although vehicular traffic will increase over current levels, the increase will not have any significant effects on air quality, noise levels, or traffic patterns in the vicinity. The traffic associated with construction and operation of the Job Corps center will be well below the traffic levels that previously occurred at the Ladd Center, and the existing road systems and transportation infrastructure is more than adequate to handle the Job Corps traffic load. The DOL believes that the discussion of traffic patterns and noise levels presented in the EA is reasonable, and supports the finding of no significant impact.

The Planning Board challenged the statement in the EA identifying a proposal to establish an educational/residential land use classification for the proposed Job Corps property parcel (Section 6.2.1—Land Use). The Planning Board correctly pointed out that the proposed re-zoning has been withdrawn, and the subject property currently retains a special zoning classification. Although the proposed re-zoning has been withdrawn, there are no restrictions associated with the current special zoning classification that would prevent construction of the proposed Job Corps center. The correct zoning status of the property was included in an addendum to the EA published on January 14, 2000.

The Planning Board also questioned who would pay for fire, police, and rescue services (Section 6.2.2—Demographics and Socio-Economics). As discussed in the EA, the Job Corps center will have on-site security staff and limited medical services. The Job Corps center will rely on the Town of Exeter and the State of Rhode Island for emergency services, as did the Ladd Center during its operation. The demand for emergency services is anticipated to be minimal. A review of fire, police, and rescue service capabilities for the Town of Exeter and the State of Rhode Island indicates that the existing emergency services are sufficient to meet the anticipated needs of the Job Corps Center, and will not result in a significant increased service demand. The issue of compensation for services provided is not relevant to the EA, and has no bearing on the finding of no significant impact.

Comment number sixteen from the Planning Board reiterated their concern over possible impacts from wastewater treatment at the proposed Job Corps center (Section 6.2.6.3—Sewer), stating that the project must take into account the need for nitrogen removal in accordance with the Town of Exeter wastewater regulations. As stated in the EA, the RIDEM has indicated that an ISDS is an appropriate wastewater treatment technology for the proposed Job Corps center. The DOL will continue to consult with the RIDEM, the Town of Exeter, and other interested parties during the design of the ISDS to ensure that the design conforms with all applicable wastewater treatment guidelines and regulations. The ISDS will be maintained and operated by appropriately trained and/or licensed operators, either by a center staff member or through an outside contractor. The DOL believes that the discussion of wastewater impacts in the EA is reasonable, and supports the finding of no significant impact.

The Planning Board also commented that a private contractor will be necessary to transport solid waste from the center to the landfill (Section 6.2.6.4—Solid Waste). The EA indicates that solid waste transport will be handled either by the Town of Exeter or a private solid waste transporter; the proposed Job Corps center will contract with a private transporter to provide solid waste removal.

Comment number eighteen from the Planning Board stated their disagreement with the findings of the EA with respect to storm water drainage patterns at the proposed Job Corps

center. (Section 6.2.6.5—Storm water Management). As stated in the EA, the interior renovation of existing buildings will not affect storm water drainage patterns on the site, and new buildings will be designed and constructed in accordance with applicable storm water regulations so as to minimize soil erosion and storm water run-off from the property. The DOL believes that the discussion of storm water management in the EA is reasonable and sufficient, and supports the finding of no significant impact.

Comment number nineteen repeated the Planning Board's belief that traffic will be increased as a result of the proposed Job Corps center. As discussed above, the increase in traffic is well within the designed capacity of the existing road system, and will not result in any significant impacts to air quality, noise levels, or traffic patterns in the vicinity.

The twentieth comment from the Planning Board indicated that the Town of Exeter will not provide government services without compensation (Section 6.2.7—Government Services). As stated above, the issue of compensation for services provided is not relevant to the EA, and has no bearing on the finding of no significant impact.

The final comment from the Planning Board stated their belief that the information in the EA does not support a finding of no significant impact, and they stated that the Planning Board would require an EIS in accordance with the Exeter Land Development and Subdivision Regulations. The DOL does not believe that any of the comments submitted by the Town of Exeter Planning Board justify the need for an EIS. The DOL has committed to meet all applicable environmental guidelines and regulations during construction and operation, and the EA identifies no significant impacts which will result from the construction and operation of a Job Corps center at the proposed site. The need for an EIS is typically based on the evaluation criteria contained in the DOL NEPA Compliance Procedures (29 CFR part 11) and the Council on Environmental Quality NEPA Regulations (40 CFR part 1500 *et seq.*), not based upon local ordinances. Although the DOL is rejecting the Planning Board's request for an EIS, the DOL will continue to consult with the Town of Exeter, the RIDEM, and other interested parties throughout the design and construction of the proposed Job Corps center.

Comments From the Environmental Protection Agency, Region 1, Rhode Island Program

The Environmental Protection Agency, Region 1, Rhode Island Program challenged the FONSI based on five deficiencies or errors contained in the EA. The first deficiency cited by the EPA was that the EA does not include ''clear and accurate descriptions of natural resources down gradient and in proximity to'' the proposed Job Corps center. The DOL does not agree with the EPA's assessment. The EA identified no jurisdictional wetlands on or immediately adjacent to the proposed Job Corps property. The EA did identify protected wetlands to the southeast, northwest, and west of the subject property. Since the proposed project will not include any point source discharges to surface water, and buildings and other surface improvements will be designed to minimize storm water run-off, the DOL believes that there will be no significant impacts to these down-gradient resources. As such, a more detailed description of the down gradient wetlands is not necessary.

The EPA's second comment focused on the discussion of endangered or threatened plant and animal species included in the EA. The EPA stated that the Ladd Center is ''bordered by some of the most pristine cold water riverine habitat in * * * Rhode Island. The Nature Conservancy and Audubon have acquired hundreds of acres of critical habitat bordering * * * the Ladd property * * *'' The EPA goes on to state that the EA has incorrectly reported that there are no protected species in these habitats, suggesting that the wetlands surrounding the Ladd Center support habitat for three protected species: two odonates (dragonfly species) and one fresh water mussel. The DOL disagrees with the EPA's criticism of the EA in this regard, and believes that the EPA's comments are misleading. The description of the wetlands surrounding the Ladd Center suggests that these areas are federally designated critical habitat areas; however, there are no critical habitat areas listed by the U.S. Fish and Wildlife Service within the State of Rhode Island. Also, contrary to the EPA's assertion, the EA correctly states that there are no known threatened or endangered species on or in close proximity to the subject property; the species identified by the EPA are not listed as threatened or endangered species by either the Rhode Island Natural Heritage Program or the U.S. Fish and Wildlife Service, but are listed by the State of Rhode Island as ''species of concern''. This designation is defined by the Natural Heritage Program as ''native species not considered to be State Endangered or State Threatened at the present time, but are listed due to various factors of rarity and/or vulnerability.'' Although the Natural Heritage Program did not identify any known populations of these species surrounding the Ladd Center during preparation of the EA, the DOL recognizes that the surrounding wetland areas provide habitat that can support these and other species of concern. The DOL has therefore proposed construction of the Job Corps center so as to prevent any surface water discharges to the wetlands.

The EPA's third comment stated that the EA should ''have a more factual groundwater quality discussion and surface water quality discussion.'' The DOL disagrees that a more detailed discussion of ground and surface water impacts is needed. As stated in the EA and above, the project will be designed to prevent surface water discharges and storm water run-off from the site, so no significant impacts to surface waters are anticipated. With respect to groundwater impacts, the DOL has consulted with the RIDEM regarding the selection of an ISDS with associated pre-treatment for the proposed Job Corps center, and the RIDEM does not anticipate any significant impacts on the Queen's River Aquifer from the proposed project. As referenced in the EA, the Job Corps facility will be designed, constructed, and operated in compliance with all applicable wastewater and storm water regulations.

The EPA also stated that the EA should include a ''short factual discussion on the volume of water to be withdrawn from the aquifer * * *'' The EA reports that drinking water will be drawn from the existing well system at the Ladd Center, and that the current well yield is more than adequate for the proposed usage. Although the DOL does not feel that more detailed analysis is required for the EA, a brief review of the proposed center usage clearly demonstrates that the proposed Job Corps center will not have any significant impacts to the Queens River Aquifer. With an estimated center population of 245 equivalent persons and a consumption rate of 80 gallons per person per day, the estimated withdrawal rate for the Job Corps center is 19,600 gallons per day (gpd). The USGS estimated groundwater withdrawal rate for the Pawcatuck Watershed was 10.54 million gpd in 1990 (the Queens River is a sub-watershed within the Pawcatuck

watershed). The proposed Job Corps center will increase groundwater withdrawal rates within the Pawcatuck watershed by less than 0.2%. Since the use of an on-site ISDS will result in an estimated 85% water return rate, the net withdrawal from the aquifer will be even lower. The DOL believes that the information presented in the EA is accurate, and supports the finding of no significant impact.

The final comment from the EPA states that the EA ''does not include an assessment of potential cumulative effects from the training center [Job Corps] and from other future development at Ladd.'' The EDC is currently preparing a proposal for development of a portion of the remaining Ladd Center property, but no specific development plans have been finalized. The DOL is not involved in the EDC's overall development plan. Although NEPA requires the DOL to consider the cumulative impact on the environment from the proposed federal action, it does not require the DOL to evaluate the impacts from other proposed development projects. The EA has demonstrated that the proposed Job Corps center will not result in a significant impact on the environment, regardless of the future use of the remaining property. If future development of the Ladd Center presents a significant impact on the environment, it will be due to the specific proposed usage of the property, not to any contributions from the proposed Job Corps center.

Conclusions

The DOL appreciates all of the comments submitted by interested parties on the EA for the proposed Job Corps center in Exeter, Rhode Island. An addendum to the EA has been published to correct factual errors in the EA identified by commenting agencies, and copies of the addendum are available from the above address. After reviewing all comments submitted during the review, the DOL believes that the EA satisfactorily addresses the potential impacts from the proposed project, and that the EA supports a finding of no significant impact. This notice serves as the DOL's final notice of their intent to establish a Job Corps center at the former Ladd Center in Exeter, Rhode Island, and that this proposed project will have no significant impacts on the environment.

Dated at Washington, DC, this 2nd day of March, 2000.

Mary Silva,

Director of Job Corps.

[FR Doc. 00–5844 Filed 3–9–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I

New Jersey
NJ000002 (Feb. 11, 2000)
New Jersey
NJ000003 (Feb. 11, 2000)

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Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 2nd day of March 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–5595 Filed 3–9–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Pension and Welfare Benefits Administration (PWBA) is announcing that a collection of information has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 for the Interim Final Rule for Reporting by Multiple Employer Welfare Arrangements and Certain Other Entities That Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers (Interim Final Reporting Rule). This notice announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT: Copies of the Form M–1 and instructions (as well as filer's guides) may be obtained by calling PWBA's Publication Hotline at 1–800–998–7542 and via the Internet at: www.dol.gov/dol/pwba. Individuals with questions

about the Form M–1, and individuals who would like assistance in completing the Form M–1, should call the PWBA help desk at (202) 219–8818.

Address requests for copies of the information collection request (ICR) to Gerald B. Lindrew, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, N.W. Room N–5647, Washington, D.C. 20210. Telephone: (202) 219–4782. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On February 11, 2000, PWBA published an Interim Final Reporting Rule and the Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception (Form M–1)(65 FR 7152). On that day, PWBA also published an Interim Final Rule for the Assessment of Civil Penalties under Section 502(c)(5) of ERISA and an Interim Rule Governing Procedures for Administrative Hearings Regarding the Assessment of Civil Penalties under Section 502(c)(5) of ERISA (Interim Final Penalty Rules, 65 FR 7181). Although written comments on the Interim Final Reporting Rule and Interim Final Penalty Rules may be submitted through March 13, 2000, the Department submitted the information collection request (ICR) included in the Interim Final Reporting Rule to OMB using emergency procedures, and requested approval by March 6, 2000.

On March 2, 2000, OMB approved the ICR under emergency provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*) and 5 CFR 1320. The approval will expire on August 31, 2000. The control number assigned to this ICR by OMB is 1210–0116. Although the ICR has been approved on an emergency basis, interested persons may still submit comments on the ICR through April 11, 2000 to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for Pension and Welfare Benefits Administration. PWBA will take these comments into consideration in finalizing the form and in preparing the application for continuing approval of the ICR that will be submitted to OMB prior to the expiration of the emergency approval.

The Form M–1 that was formerly available from PWBA's Publication Hotline and Internet website has now been revised to include the OMB control number, which was not available at the time of publication on February 11, 2000. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless the collection displays a valid control number. Accordingly, persons required to file the Form M–1 may wish to obtain and file a copy of the Form M–1 displaying the OMB control number.

Dated: March 7, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–5910 Filed 3–9–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Job Training Partnership Act, Title IV, Part C, Program Year 1999—Native American Competitive Grants

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training.

ACTION: Notice of availability of funds and solicitation for grant applications for Job Training Partnership Act, Title IV, Part C, Program Year 1999—Native American Competitive Grants (SGA 00–02).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS) announces a grant competition for Job Training Partnership Act, Title IV, Part C, Program Year 1999—Native American Competitive Grants. Such projects will assist eligible veterans who are Vietnam-era, service-connected disabled and recently separated Native American veterans by providing employment, training, and supportive service assistance. Under this solicitation, VETS expects to award up to three grants in Program Year (PY) 1999.

This notice describes the background, the application process, description of program activities, evaluation criteria, and reporting requirements for Solicitation of Grant Applications (SGA) 00–02. VETS anticipates that up to $450,000 will be available for grant awards under this SGA.

The information and forms contained in the Supplementary Information Section of this announcement constitute the official application package for this Solicitation. In order to receive any amendments to this Solicitation which may be subsequently issued, *all applicants must register their name and address with the Procurement Services Center.* Please send this information as soon as possible, Attention: Grant Officer, to the following address: U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210. Please reference SGA 00–02.

DATES: One (1) blue ink-signed original, complete grant application plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210, not later than 4:45 p.m., Eastern Standard Time, April 10, 2000. Hand delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Procurement Services Center, Attention: Lisa Harvey, Reference SGA 00–02, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 219–6445 [not a toll free number].

SUPPLEMENTARY INFORMATION:

Job Training Partnership Act, Title IV, Part C, Program Year 1999—Native American Competitive Grants Solicitation

I. Purpose

The U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS) is requesting grant applications for the provision of employment and training services for Native American Veterans who meet the eligibility criteria set forth in accordance with the Job Training Partnership Act, Title IV, Part C (JTPA IV–C). These instructions contain general program information, requirements and forms for application for funds to operate a Native American veterans' employment and training program.

II. Background

The Job Training Partnership Act, Title IV, Part C provides that ''The Secretary shall conduct, directly or through grant or contract, such employment and training programs as the Secretary determines appropriate to assist Vietnam-era, service-connected disabled and recently separated veterans to obtain gainful employment.

In accordance therewith, the Assistant Secretary for Veterans' Employment and

Training (ASVET) is making $450,000 of the funds available to award grants for unique and innovative Employment and Training programs. Programs should maximize the eligible veterans' military skills, training and experience, by effectively exploring the transitional or transferable occupational opportunities in the geographical area that the grant would be awarded. Programs may develop Licensing and Certification employment and training programs that target occupations that are essential and have a direct impact within the economic environment that the eligible veteran resides in.

III. Application Process

A. Potential Jurisdictions To Be Served

Due to the limited amount of funds available, an emphasis for selection will be placed on in-kind match/contribution, and the establishing or strengthening of existing linkages with other service providers.

B. Eligible Applicants

Applications for funds will be accepted from State and local public agencies, Private Industry Councils, and nonprofit organizations as follows:

1. Private Industry Councils (PICS) and/or Workforce Investment Boards (WIBS) as defined in Title I, Section 102 of the Job Training Partnership Act (JTPA), Public Law 97–300, are eligible applicants, as well as State and local public agencies. ''Local public agency'' refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through subgrants, experienced public agencies, private nonprofit organizations, and private businesses which have an understanding of the unemployment and the barriers to employment unique to Native American veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

B. Also eligible to apply are nonprofit organizations who have operated an employment and training program for Native American veterans; have proven capacity to manage Federal grants; and have or will provide the necessary linkages with other service providers. Nonprofit organizations will be required to submit with their application recent (within one year) financial audit statements that attest to the financial responsibility and integrity of the organization. Entities described in Section 501(c)4 of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this announcement. The Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities if they engage in lobbying activities.

C. Funding Levels

The total amount of funds available for this solicitation is $450,000. It is anticipated that 3 awards will be made under this solicitation. Awards will not exceed $150,000. The Federal government reserves the right to negotiate the amounts to be awarded under this competition. *Please be advised that requests exceeding this range by 15% or more will be considered non-responsive.*

D. Period of Performance

The period of performance will be for twelve months from date of award. It is expected that successful applicants will commence program operations under this solicitation on or before June 1, 2000. Actual start dates will be negotiated with each successful applicant. Because JTPA funds will no longer be obligated by the U.S. Department of Labor after June 30, 2000, second year funds/funding will in no instance be available from this funding source.

E. Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 pm EST, April 10, 2000 will not be considered unless it is received before the award is made and:

1. it was sent by registered or certified mail not later than the fifth calendar day before April 10, 2000;

2. it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. it was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to April 10, 2000.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. ''Postmark'' means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the ''Express Mail Next Day Service-Post Office to Addressee'' label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation ''bull's-eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will *not* be accepted.

F. Submission of Proposal

A cover letter, and an original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts:

Part I—Technical Proposal shall consist of a narrative proposal that demonstrates the applicant's knowledge of the need for this particular grant program, its understanding of the services and activities proposed to alleviate the need and its capabilities to accomplish the expected outcomes of the proposed project design. The technical proposal shall consist of a narrative not to exceed fifteen (15) pages double-spaced, typewritten on one side of the paper only. Charts and exhibits are not counted toward the page limit. Applicants should be responsive to the Rating Criteria contained in Section VI and address all of the rating factors noted as thoroughly as possible in the

narrative. The following format is strongly recommended:

1. Need for the project: The applicant should identify the geographical area to be served and provide an estimate of the number of Native American veterans and their needs, poverty and unemployment rates in the area, and gaps in the local community infrastructure the project would fulfill in addressing the employment and other barriers of the targeted veterans. Include the outlook for job opportunities in the service area.

2. Approach or strategy to increase employment and job retention: The applicant must show how the training will enhance the eligible veterans employment opportunities within that geographical area. The applicant should describe the specific supportive services and employment and training services to be provided under this grant and the sequence or flow of such services. Participant flow charts may be provided. Include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP) and the Local Veterans' Employment Representative (LVER) program and programs operated under the Job Training Partnership or Workforce Investment Act. Please include a plan for follow up after 90 days with participants who entered employment. (See discussion on results in Section V. D.) Include the chart of proposed performance goals and planned expenditures listed in Appendix D. Although the form itself is not mandatory, the information in Appendix D must be provided by the applicant.

3. Linkages with other providers of employment and training services to the Native Americans and to veterans: Describe the linkages this program will have with other providers of services to veterans and to the Native Americans outside of the grant. List the types of services provided by each. Note the type of agreement in place if applicable. Linkages with the workforce development system [inclusive of JTPA and State Employment Security Agencies (SESAs)] should be delineated. Describe any linkages with Department of Housing and Urban Development (HUD) and Department of Veterans Affairs (VA) resources and other programs for Native Americans. Indicate how the applicant will coordinate with any ''continuum of care'' efforts for the Native American among agencies in the community.

4. Organizational capability in providing required program activities: The applicant's relevant current or prior experience in operating employment and training programs should be delineated. (For consideration by panel members, the government reserves the right to have a representative of the Veterans' Employment and Training Service within your state provide programmatic and fiscal information about applicants and forward those findings to the National Office during the review of applications.) Provide information denoting outcomes of past programs in terms of enrollments and placements. Applicants who have operated a Native American program or a JTPA IV–C program, should include final or most recent technical performance reports. (This information is also subject to verification by the Veterans' Employment and Training Service.) Provide evidence of key staff capability. Non-profit organizations should submit evidence of satisfactory financial management capability including recent financial and/or audit statements.

5. Proposed supportive service strategy for Native American veterans: Describe how supportive service resources for Native American veterans will be utilized, obtained or accessed. These resources may be from linkages or sources other than the grant such as HUD, community resources, VA or other programs. The applicant should explain whether grant resources will be used and why this is necessary.

Note: Resumes, charts, and standard forms, transmittal letters, letters of support are not included in the page count. If provided include these documents as attachments to the technical proposal.

Part II—Cost Proposal shall contain the Standard Form (SF) 424, ''Application for Federal Assistance,'' and the Budget Information Sheet in Appendix B. In addition the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Please label this page or pages the ''Budget Narrative.'' Also to be included in this Part is the Assurance and Certification Page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this solicitation. The Catalog of Federal Domestic Assistance number for this program is 17.802, which should be entered on the SF 424, Block 10. Please show leveraged resources/matching funds and/or the value of in-kind contributions in Section B of the Budget Information Sheet.

Budget Narrative Information

As an attachment to the Budget Information Sheet, the applicant must provide at a minimum, and on separate sheet(s), the following information:

(a) A breakout of all personnel costs by position, title, salary rates and percent of time of each position to be devoted to the proposed project (including subgrantees);

(b) An explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.,* rates exceeding 35% of salaries and wages);

(c) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, subgrants/contracts and any other costs. The applicant should include costs of any required travel described in this Solicitation. Mileage charges shall not exceed 32.5 cents per mile;

(d) Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

(e) Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind Services.

IV. Participant Eligibility

To be eligible for participation under this Native American program, an individual must be a Vietnam-era, service-connected disabled or recently separated veteran defined as follows:

A. The term ''veteran'' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 USC 101(2)]

B. The term ''Vietnam-era veteran''—refers to an eligible veteran for which any part of his or her active military service was during the Vietnam-era (*i.e.,* August 5, 1964 through May 7, 1975). See 29 U.S.C. § 1503(27)(D). In addition, ''the period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.''see PL. 104—275, Section 505, enacted October 9, 1996.

C. The term ''service-connected disabled''—refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs (VA), or (2) an individual who was discharged or released from active duty because of a service-connected disability. (29 U.S.C. § 1503(27)(B)).

D. The term ''recently-separated veteran''—refers to any veteran who applies for participation in a JTPA IV–C funded activity within 48 months

after separation from military service. (29 U.S.C., 1503(27)(C))

V. Project Summary

A. Program Concept and Emphasis

The Native American grants under this SGA are intended to address dual objectives: Provide services to assist in reintegrating Native American veterans into meaningful employment within the labor force; and stimulate the development of effective service delivery systems that will seek to address the complex problems facing Native American veterans.

These programs are designed to be flexible in addressing the universal as well as local or regional problems barring Native American veterans from the workforce. The program in PY 1999 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of supportive service resources for veterans entering the labor force, and strategies for employment and retention.

B. Required Features

1. The Native American program should feature an outreach component consisting of veterans who have experienced working and serving the Native American Veteran population. This requirement can be modified to allow the projects to utilize Native Americans, preferably Native American Veterans in other positions where there is direct client contact if outreach was not needed extensively, such as intake, counseling, peer coaching and follow up. This requirement applies to projects funded under this solicitation.

2. Projects will be required to show linkages with other programs and services which provide support to Native American veterans. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists in the jurisdiction is required.

3. Projects will be ''employment focused.'' That is, they will be directed towards (a) increasing the employability of Native American veterans through providing for or arranging for the provision of services which will enable them to work; and (b) matching Native American veterans with potential employers.

C. Scope of Program Design

The project design should provide or arrange for the following services:

—Outreach, intake, assessment, counseling and employment services. Outreach should, to the degree practical, be provided at Tribal centers, day centers, and other programs or events frequented by Native American veterans. Program staff providing outreach services are to be veterans.

Coordination with veterans' services programs and organizations such as:

—Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the newly instituted workforce development system's One-Stop Centers, or other JTPA Title IV, Part C (JTPA IV–C) Veterans' Employment Programs.
—Department of Veterans' Affairs (VA) services, including its Health Care for Veterans, Domiciliary and other programs, including those offering transitional housing.
—Veterans' service organizations such as The American Legion, Disabled American Veterans, and the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS).

Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

—Alcohol and drug;
—Medical;
—Post Traumatic Stress Disorder;
—Mental Health;
—Coordinating with programs for health care for Native Americans.

If applicable, Referral to housing assistance provided by:

—Local shelters;
—Federal Emergency Management Administration (FEMA) food and shelter programs;
—Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV;
—Department of Veterans' Affairs Transitional housing programs or Domiciliary programs;
—Transitional housing leased by JTPA funds (JTPA IV–C funds cannot be used to purchase housing).

Employment and training services such as:

—Basic skills instruction;
—Basic literacy instruction;
—Remedial education activities;
—Job search activities;
—Job counseling;
—Job preparatory training, including resume writing and interviewing skills;
—Subsidized trial employment (Work Experience).
—On-the-Job Training.
—Classroom Training.
—Job placement in unsubsidized employment.
—Placement follow up services.
—Services provided under JTPA Program Titles.

D. Results-Oriented Model

Based on the past experiences of grantees working with this target group, a workable program model evolved which is presented for consideration by prospective applicants. No model is mandatory, and the applicant should design a program that is responsive to local needs, but will carry out the objectives of the Native American veteran to successfully reintegrate eligible veterans into the workforce.

With the advent of implementing the Government Performance and Results Act (GPRA), Congress and the public are looking for program results rather than just program processes. While entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of programs. The following program discussion emphasizes that followup is an integral program component.

The first phase of activity consists of the level of outreach that is necessary in the community to reach Native American veterans. This may also include establishing contact with other agencies that encounter Native Americans veterans such as Tribal Centers, and other facilities. An assessment should be made of the supportive and social rehabilitation needs of the client and referral may take place to services such as drug or alcohol treatment or temporary shelter. When the individual is stabilized, the assessment should focus on the employability of the individual and they are enrolled into the program if they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff. Entry into full-time employment or a specific job training program should follow in keeping with the objective of Native American program to bring the participant closer to self-sufficiency. Supportive Services may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. Wherever possible, DVOP and LVER staff will be utilized for job development and placement activities for veterans who are ready to enter employment *or* who are in need of intensive case

management services. Many of these staff have received training in case management at the National Veterans' Training Institute and have as a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources.

Follow up to determine whether the veteran is in the same or similar job at the 90 day period after entering employment is required and important in keeping contact with the veterans and so that assistance in keeping or retaining the job (job retention) may be provided. The 90 day follow up is fundamental to assessing the results of the program interventions. Grantees should be careful to budget for this activity so that follow up can and will occur for those placed at or near the end of the grant period. Such results will be reported in the final technical performance report.

Retention of records will be reflected in the Special Grant Provisions to be provided at the time of any award.

E. Related Native American Program Development Activities

1. Community Awareness Activities

In order to promote linkages between the Native American program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by the grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, to outstation staff, to develop individual service contracts, and to involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

a. *Providers of hands-on services to the Native American veteran,* such as Tribal Council Elders, to make them fully aware of services available to Native American veterans to make them job-ready and place them in jobs.

b. *Federal, State and local entitlement services* such as the Social Security Administration, Department of Veterans' Affairs (VA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate JTPA, labor exchange and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of Native American veterans.

c. *Civic and private sector groups,* and especially veterans' service organizations, to describe Native American veterans and their needs.

VI. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify 3 applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, demonstration models, and geographical service areas. The Grant Officer's determination for award under SGA 00–02 is the final agency action. The submission of the same proposal from any prior year competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. *Need for the Project:* 15 points.

The applicant shall document the extent of need for this project, as demonstrated by: (1) The potential number or concentration of Native American veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers which characterize the target population.

2. *Overall Strategy to Increase Employment and Retention:* 30 points.

The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, placement and post placement follow up services. Applicants should address their intent to target occupations in expanding (*e.g.* High Tech; Information Technology, and related Service Industries), rather than on declining industries. The supportive services to be provided as part of the strategy of promoting job readiness and job retention should be indicated. The applicant should identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training program such as SESAs (DVOP and LVER Programs), JTPA IV–C, other JTPA programs, and Workforce Investment or Development Boards or entities where in place, should be presented. It should be indicated how the activities will be tailored or responsive to the needs of Native American veterans. A participant flow chart may be used to show the sequence and mix of services.

Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, and job retention. (See Appendix D).

3. *Quality and Extent of Linkages with Other Providers of Services to the Native Americans and to Veterans:* 20 points.

The application should provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the Native American veterans in the local community and/or on the reservation and outside of the grant. For each service, it should be specified who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. Describe to the extent possible, how the project would fit into the community's continuum of care approach to respond to needs of the Native American Veteran and any linkages to HUD or VA programs or resources to benefit the proposed program.

4. *Demonstrated Capability in Providing Required Program Services:* 20 points.

The applicant should describe its relevant prior experience in operating employment and training programs and providing services to participants similar to that which is proposed under this solicitation. Specific outcomes achieved by the applicant should be described in terms of clients placed in jobs, etc. The applicant must also delineate its staff capability and ability to manage the financial aspects of Federal grant programs. Relevant documentation such as recent (within the last 12 months) financial and/or audit statements should be submitted (required for applicants who are non-profit agencies). Final or most recent technical reports for other relevant

programs should be submitted as applicable. The applicant should also address its capacity for timely startup of the program.

5. *Quality of Overall Employment and Training Strategy:* 15 points.

The application should demonstrate how the applicant proposes to obtain or access supportive services resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access transportation, child care, temporary, transitional, and permanent housing for participants through community resources, HUD, lease, JTPA or other means. Native American Grant funds may not be used to purchase housing.

Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness of costs, but will not be scored.

VII. Post Award Conference

A post-award conference will be held in a central location for those awarded PY 1999 JTPA IV–C funds from the Native American competition. It should be planned for June or July, 2000. Costs associated with attending this conference for up to two grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs shall be charged as administrative costs and reflected in the proposed budget. The site of the Post Award conference will be at a location convenient for the grantee and Grant Officer Technical Representative (GOTR). Please use your State Capital location for budget planning purposes. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and will also include best practices from past projects.

VIII. Reporting Requirements

The grantee shall submit the reports and documents listed below:

A. Financial Reports

The grantee shall report outlays, program income, and other financial information on a quarterly basis using SF 269A, *Financial Status Report, Short Form.* These forms shall cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET), whose address will be provided, no later than 30 days after the ending date of each Federal fiscal quarter during the grant period. In addition, a final SF 269 shall be submitted no later than 90 days after the end of the grant period.

B. Program Reports

Grantees shall submit a Quarterly Technical Performance Report 30 days after the end of each Federal fiscal quarter (*i.e.,* July 30, October 30, January 30 and April 30) to the DVET which contains the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) Identification of corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

A final Technical Performance Report will also be required as part of the final report package due 90 days after grant expiration.

C. Summary of Final Report Package

The grantee shall submit no later than 90 days after the grant expiration date a final report containing the following:

1. Final Financial Status Report (SF–269A) (copy to be provided following grant awards).

(b) Final Technical Performance Report—(Program Goals).

3. Final Narrative Report identifying—(a) major successes of the program; (b) obstacles encountered and actions taken (if any) to overcome such obstacles; (c) the total combined (directed/assisted) number of veterans placed during the entire grant period; (d) the number of veterans still employed at the end of the grant period; (e) an explanation regarding why those veterans placed during the grant period, but not employed at the end of the grant period, are not so employed; and (f) any recommendations to improve the program.

IX. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, plus any indirect charges claimed, may not exceed 20 percent of the total amount of the grant.

2. Indirect costs claimed by the applicant shall be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application. (Do not submit the State cost allocation plan.)

3. Rates traceable and trackable through the SESA Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in Native American grants to SESAS.

4. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

B. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State, Local and Indian Tribal Governments—OMB Circular A–87

Nonprofit organizations—OMB Circular A–122.

C. Administrative Standards and Provisions

All grants shall be subject to the following administrative standards and provisions:

29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

29 CFR Part 95—Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 30—Equal Employment Opportunity in Apprenticeship and Training.

29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

Signed at Washington, DC this 3rd day of March, 2000.

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet, SF 424A

Appendix C: Assurances and Certifications Signature Page

Appendix D: Technical Performance Goals Form

Appendix E: Direct Cost Descriptions for Applicants and Sub-Applicants

Appendix F: Glossary of Terms

BILLING CODE 5842–79P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		**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 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:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	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. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 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 for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

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) and 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.
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.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 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 for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

Quarterly
Performance and Enrollment Goals
(Enter all data cumulatively)

Grant Number: **Program Year:**

Performance Goals

	Quarters 1	2	3	4
Participants/Enrollments				
Assessments				
Employment Development Plans				
Job Placement Assistance				
Placements				
Terminations				
Follow-ups				

Core Training

	Quarters 1	2	3	4
Classroom Training				
On-the-job training				
Remedial education				
Literacy and bilingual training				
Institutional skills training				
Occupational skills training				
On-site industry-specific training				
Customized training				
Apprenticeship training				
Upgrading and retraining				
Supportive Services				
Other (specify)				

Ancillary Services

	Quarters			
	1	2	3	4
Counseling				
Job Search Assistance				
Case Management				
Job Club				
Work Experience				
Other (specify)				

Enrollment Goals by Eligibility Groups (do not double count)

	Quarters			
	1	2	3	4
Vietnam-era veteran				
Disabled veteran				
Recently separated veteran				

Enrollment Goals by Eligibility Subgroups (from above, as applicable, include here)

	Quarters			
	1	2	3	4
Female veterans				
Homeless veterans				
African-American veterans				
Hispanic veterans				
Native American veterans				
Other minority veterans				

Benchmarks

	Quarters			
	1	2	3	4
Average Wage at Placement				
Placement Rate				

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

Sub-Total _____ _____

	Administration	Program
Fringe Benefits For All Positions	_____	_____
Contractual	_____	_____
Travel	_____	_____
Indirect Costs	_____	_____
Equipment	_____	_____
Supplies	_____	_____
Total Costs ----------	_____	_____
	Administration	Program

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

GLOSSARY OF TERMS

Adequate Employment - See Unsubsidized Employment.

Administrative Costs - All direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of recipients and sub-recipients of the JTPA IV-C funds.

Adult Basic Education - Education for adults whose inability to speak, read or write the English language or to effectively reason mathematically, constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, which is designed to help eliminate such inability and raise the level, of education of such individuals with a view to making them less likely to become dependent on others, to improve their ability to benefit from occupational training and otherwise increase their opportunities for more productive and profitable employment, and to make them better able to meet their adult responsibilities.

Ancillary Services - Employment and training related activities other than core training which may enhance a participant's employability.

Apprenticeship Training - A formal occupational training program which combines on-the-job training and related instruction and in which workers learn the practical and conceptual skills required for a skilled occupation, craft, or trade. It may be registered or unregistered.

Assurances and Certifications - The act of certifying compliance with applicable federal and state laws and regulations regarding the receipt and expenditures of grant monies.

ASVET - Assistant Secretary for Veterans' Employment and Training (USDOL)

Average Wage at Placement - This is an average of the wages earned by participants upon entering employment. In the VWIP program this average should never be less than that of the Statewide average for Title IIA achieved during PY98.

Barriers to Employment - Characteristics that may hinder an individual's hiring, promotion or participation in the labor force. Some examples of individuals who may face barriers to employment include: single parents, women, displaced homemakers, youth, public assistance recipients, older workers, substance abusers, teenage parents, veterans, ethnic minorities, and those

with limited English speaking ability or a criminal record or with a lack of education, work experience, credentials, child care arrangements, transportation or alternative working patterns.

Case Management - A client centered approach in the delivery of services, designed to prepare and coordinate comprehensive employment plans for participants, to assure access to the necessary training and supportive services, and to provide support during program participation and after job placement. In accordance with this definition, the case manager acts as a facilitator in assisting the participant toward a successful completion of training.

Classroom Training - Any training of the type normally conducted in an institutional setting, including vocational education, which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, throughout the provision of courses such as remedial education, training in the primary language of persons with limited English language proficiency, or English-as-language training.

Cognizant Federal Agency - The federal agency that is assigned audit or indirect cost rate approval responsibility for a particular recipient organization by the Office of Management and Budget. (OMB Circulars A-87, A-102)

Core Training - Core training activities are employment focused interventions which address basic vocational skills deficiencies that prevent the participant from accessing appropriate jobs and/or occupations.

Counseling - Counseling in this sense can be any form of assistance which (1) provides guidance in the development of a participant's vocational goals and the means to achieve those goals; and/or (2) assist a participant with the solution to a variety of individual problems which may pose a barrier(s) to the participant in achieving vocational goals, e.g., PTSD counseling, substance abuse counseling, job counseling, etc.

Customized Training - A training program designed to meet the special requirements of an employer who has entered into an agreement with a Service Delivery Area to hire individuals who are trained to the employer's specifications. The training may occur at the employer's site or may be provided by a training vendor able to meet the employer's requirements. Such training usually requires a commitment from the employer to hire a specified number of trainees who satisfactorily complete the training.

Disabled Veteran - A veteran who is entitled to compensation under laws administered by the Veterans Administration; or an individual who was discharged or released from active duty because of service-connected disability.

USDOL - United States Department of Labor

USDVA - United States Department of Veterans Affairs (Formerly the Veterans Administration).

DVET - Director for Veterans' Employment and Training

DVOP - Disabled Veterans' Outreach Program

Economically Disadvantaged - means an individual who (A) receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program; (B) has, or is a member of a family which has, received a total family income for the six-month period prior to application for the program involved (exclusive of unemployment compensation, child support payments, and welfare payments) which, in relation to family size, was not in excess of the higher of (i) the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673 (2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), or (ii) 70 percent of the lower living standard income level; (C) is receiving (or has been determined within the 6-month period prior to the application for the program involved to be eligible to receive) food stamps pursuant to the Food Stamp Act of 1977; (D) qualified as a homeless individual under section 103 of the Stewart B. McKinney Homeless Assistance Act; (E) is a foster child on behalf of whom State or local government payments are made or (F) in cases permitted by regulations of the Secretary, is an individual with a disability whose income meets the requirements of clause (A) or (B), but who is a member of a family whose income does not meet such requirements.

Employment Development Plan (EDP) - An individualized written plan or intervention strategy for serving an individual which, as a result of an assessment of the veteran's economic needs, vocational interests, aptitudes, work history, etc., defines a reasonable vocational or employment goal and the developmental services or steps required to reach the goal and which documents the accomplishments made by the individual.

ETA - The Employment and Training Administration

Enrolled Veteran - Shall be synonymous with the term participant. A veteran who has been determined eligible for services at intake and who is receiving or scheduled to receive core training.

Follow-up - The tracking of what happens to participants when they leave the program for a period of 180 days after initial placement. The reporting requirements are to include the following data/information employment status (number of Entered Employments/Placements at 180 days after program has ended), average hourly wage (earnings change at 180 days after program has ended), and job retention (of those enrolled in training, provide number of those still employed in trained occupation at 180 days after program has ended), these measures can be used to assess long-term program performance and activity strategies for clients with diverse characteristics.

FTE - Full-time Equivalent, a personnel charge to the grant equal to 2,080 hours per annum.

FY - Fiscal Year. For federal government purposes, any twelve month period beginning on October 1 and ending on September 30.

GED - General Equivalency Diploma. A high school equivalency diploma which is obtained by passing the General Educational Diploma Equivalency Test which measures the application of skills and knowledge generally associated with four years of traditional high school instruction.

In-kind services - Property or services which benefit a federally assisted project or program and which are contributed without charge to the grantee.

Indirect Cost - A cost that is incurred for a common or joint purpose benefitting more than one cost objective and that is not readily assignable to the cost objectives specifically benefitted.

Institutional Skills Training - Skills training conducted in an institutional setting and designed to ensure that individuals acquire the skills, knowledge and abilities necessary to perform a job or group of jobs in an occupation for which there is a demand.

Intake - A process for screening individual applicants for eligibility; making an initial determination whether the program can benefit the applicants; providing information about the program, its services and the availability of those services; and selecting individual applicants for participation in the program.

Job Club Activities - A form of job search assistance provided in a group setting. Usually job clubs provide instruction and assistance in completing job applications and developing resumes and focus on maximizing employment opportunities in the labor market and developing job leads. Many job clubs use telephone banks and provide group support to participants before and after

they interview for openings.

Job Development - The process of marketing a program participant to employers, including informing employers about what the participant can do and soliciting a job interview for that individual with the employer.

Job Placement Services - Job placement services are geared towards placing participants in jobs and may involve activities such as job search assistance, training, or job development. These services are initiated to enhance and expedite participants' transition from training to employment.

Job Search Assistance (JSA) - An activity which focuses on building practical skills and knowledge to identify and initiate employer contacts and conduct successful interviews with employers. Various approaches may be used to include participation in a job club, receive instruction in identifying personal strengths and goals, resume and application preparation, learn interview techniques, and receive labor market information. Job search assistance is often a self-service activity in which individuals can obtain information about specific job openings or general job or occupational information.

Labor Exchange - Refers to the services provided to job seekers and employers by the State Employment Service Agencies, JTPA Service -Delivery Areas, or other entities. Services to job seekers may include assessment, testing, counseling, provision of labor market information and referral to prospective employers. Employer service may include accepting job orders, screening applicants, referring qualified applicants and providing follow-up.

Labor Force - The sum of all civilians classified as employed and unemployed and members of the Armed Forces stationed in the United States. (Bureau of Labor Statistics Bulletin 2175)

Literacy and Bilingual Training - See Adult Basic Education.

LVER - Local Veterans' Employment Representative

Minimum Economic Need - The level of wages paid to a program participant that will enable that participant to become economically self-sufficient.

Minority Veterans - For the purposes of this SGA, veterans who are IV-C eligible and are members of the following ethnic categories: African American, Hispanic, American Indian or Alaskan Native, Asian or Pacific Islander.

Occupational Skills Training - Includes both (1) vocational

education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs, and (2) on-the-job training.

Offender - Any adult or juvenile who has been subject to any stage of the criminal justice process for whom services under this Act may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

OASVET - Office of the Assistant Secretary for Veterans' Employment and Training (ASVET)

OJT - On-the-Job-Training - Training for a specific job and based in the employer's work site. A contract is written through which the employer receives an amount of money, which shall never exceed 50% of the trainee's wages. This payment is made to offset the employer's costs for training an unskilled worker(s). The period of training may never exceed that prescribed by the Dictionary of Occupational Titles (DOT) for the occupation in which the participant is being trained. Usually in the OJT agreement, this is a promise on the part of the employer to hire the trainee upon successful completion of the training.

On-site Industry-specific Training - This is training which is specifically tailored to the needs of a particular employer and/or industry. Participants may be trained according to specifications developed by an employer for an occupation or group of occupations at a job site. Such training is usually presented to a group of participants in an environment or job site representative of the actual job/occupation, and there is often an obligation on the part of the employer to hire a certain number of participants who successfully complete the training.

Outreach - An active effort by program staff to encourage individuals in the designated service delivery area to avail themselves of program services.

Outside Funds - Resources pledged to the JTPA IV-C program which have a quantified dollar value. Such resources may include training funds from programs such as JTPA Title IIA or Title III that are put aside for the exclusive use by participants enrolled in a JTPA IV-C program. Outside funds do not include in-kind services.

Participant, or Enrolled Participant - Means a veteran who: (1) has been determined eligible for participation upon intake; and (2) started or is scheduled to receive training or **ancillary** services. An individual who receives only outreach and/or intake and assessment services does not meet this definition.

Placement Rate - This is a method used to determine the percentage

of participants who become employed. The figure is calculated by dividing the number of total participants who were enrolled in the program by the number of participants who were placed or entered employment through the program.

Placement - The act of securing unsubsidized employment for or by a participant.

Pre-apprenticeship Training - Any training designed to increase or upgrade specific academic, or cognitive, or physical skills required as a prerequisite for entry into a specific trade or occupation.

Pre-enrollment Assessment - The process of determining the employability and training needs of individuals before enrolling them in the VWIP program. Individual factors usually addressed during pre-enrollment assessment include: an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, and personal circumstances.

Program Resources - Includes the total of both VWIP and outside funds.

PY - Program Year. The 12-month period beginning July 1, and ending, on June 30, in the fiscal year for which the appropriation is made.

Recently Separated Veteran - refers to any veteran who applies for participation in a IV-C funded activity within 48 months after separation from military service. (29 U.S.C., Chapter 19, section 1503(27)(C))

Remedial Education - Educational instruction, particularly in basic skills, to raise an individual's general competency level in order to succeed in vocational education or skill training programs, or employment.

Service-Connected Disabled - refers to (1) a veteran who is entitled to compensation under laws administered by the Department of Veterans' Affairs (DVA), or (2) an individual who was discharged or released from active duty because of a service-connected disability. (29 U.S.C., Chapter 19, section 1503(27)(B))

SESA - State Employment Security Agency, the state level organization affiliated with DOL's United States Employment Service.

SGA - Solicitation for Grant Application

Subgrant - An award of financial assistance in the form of money,

or property in lieu of money, made under a grant by a grantee to an eligible subgrantee.

Subgrantee - The government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Suitable Employment - See "Unsubsidized Employment"

Substance Abuser - An individual dependent on alcohol or drugs, especially narcotics, whose dependency constitutes or results in a substantial barrier to employment.

Supportive Services - means services which are necessary to enable an individual eligible for training under this Act, but who cannot afford to pay for such services, to participate in a training program funded under the this Act. Such supportive services may include transportation, health care, financial assistance, (except as a post-termination service), drug and alcohol abuse counseling and referral, individual and family counseling, special services and materials for individuals with disabilities, job coaches, child care and dependent care, temporary shelter, financial counseling, and other reasonable expenses required for participation in the training program and may be provided in-kind or through cash assistance.

Unsubsidized Employment - Employment not financed from funds provided under VWIP. In the VWIP Program the term "adequate" or "suitable" employment is also used to mean placement in unsubsidized employment which pays an income adequate to accommodate the participant's minimum economic needs.

Upgrading and Retraining - Training given to an individual who needs such training to advance above an entry level or dead-end position. This training shall include assisting veterans in acquiring needed state certification to be employed in the same field as they were trained in the military (i.e., Commercial Truck Driving License (CDL), Emergency Medical Technician (EMT), Airframe & Powerplant (A&P), Teaching Certificate, etc.).

Veteran - shall refer to an individual who served in the United States active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. (29 U.S.C. Chapter 19, section 1503(27)(A))

Veterans' Workforce Investment Program (VWIP) - Reference made to the "VWIP Program" means all activity funded by VWIP and outside resources.

VWIP Resources - This term is synonymous with VWIP funds/funding.

Vocational Exploration Training - Through assessments such as interest inventories and/or counseling, a process of identifying occupations or occupational areas in which a person may find satisfaction and potential, and for which his or her aptitudes and other qualifications may be appropriate.

Welfare and/or Public Assistance recipient - An individual who, during the course of the program year, receives or is a member of a family who receives cash welfare or public assistance payments under a Federal, State, or local welfare program.

Workforce Investment Act (WIA) - The purpose of this Act is to establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals, including veterans, who face serious barriers to employment and who are in need of such training to obtain prospective employment. The Act requires the ASVET to consult with the Secretary of the DVA to ensure that programs funded under VWIP of this Act meet the employment and training needs of service-connected disabled, Campaign and recently separated veterans and are coordinated, to the maximum extent feasible, with-related programs and activities.

Work Experience - A temporary activity (six months or less) which provides an individual with the opportunity to acquire the skills and knowledge necessary to perform a job, including appropriate work habits and behaviors, and which may be combined with classroom or other training. When wages are paid to a participant on work experience and when such wages are wholly paid for under JTPA, the participant may not receive this training under a private, for profit employer.

Youth - An individual, between the age of 20 and 24 years of age, who served on active duty in the U.S. Armed Forces.

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MERIT SYSTEMS PROTECTION BOARD

Opportunity To File Amicus Briefs in Jerry C. Sturdy v. Department of the Army, MSPB Docket No. DA–0330–98–0028–M–1

AGENCY: Merit Systems Protection Board.

ACTION: The Merit Systems Protection Board has requested an advisory opinion from the Director of the Office of Personnel Management (OPM) concerning the interpretation of regulations promulgated by OPM. The Board is providing interested parties with an opportunity to submit amicus briefs on the same questions raised in the request to OPM. The Board's request to OPM is reproduced below: Pursuant to 5 U.S.C. 1204(e)(1)(A), the members of the Merit Systems Protection Board request that you provide an advisory opinion concerning the interpretation of regulations promulgated by the Office of Personnel Management (OPM).

Background

After the agency issued the appellant a notice that he would be separated by reduction in force (RIF), the agency reassigned him under its Priority Placement Program. On appeal to the Board, he alleged that his nonselection for reassignment to a different position constituted a violation of his reemployment priority rights under 5 CFR part 330, subpart B (entitled ''Reemployment Priority List (RPL)'').

The Board dismissed the appeal, finding that it lacked RPL jurisdiction because the appellant was not separated from the agency by the RIF. *Sturdy* v. *Department of the Army,* 80 M.S.P.R. 273 (1998). The appellant filed a petition for judicial review before the U.S. Court of Appeals for the Federal Circuit, and the court in a nonprecedential order granted the agency's motion to remand this case to the Board for reconsideration of its jurisdictional determination.

Applicable Regulations

The Board's RPL jurisdiction is derived from 5 CFR 330.209, which provides that:

An individual who believes that his or her reemployment priority rights under this subpart have been violated because of the employment of another

person who otherwise could not have been appointed properly may appeal to the Merit Systems Protection Board under the provisions of the Board's regulations.

Our review of the regulatory history reveals that this provision was not revised in pertinent respects, since 1979. Because the Board's jurisdiction under this provision is based on reemployment priority rights, it is necessary to examine the nature and extent of such rights under part 330, subpart B.

The RPL regulations are derived form 5 U.S.C. 3315(a), which provides that ''[a] preference eligible who has been *separated* or furloughed without delinquency or misconduct, on request, is entitled to have his name placed on appropriate registers and employment lists * * * '' (Emphasis added.) See 53 FR 408 (1988). The RPL regulations themselves provide, at 5 CFR 330.201, that:

(a) The reemployment priority list (RPL) is the mechanism agencies use to give *re*employment consideration to their *former* competitive service employees *separated* by reduction in force (RIF) or fully recovered from a compensable injury after more than 1 year. * * *

(Emphasis added.) We note that Sturdy does not involve recovery from a compensable injury that, therefore, the discussion here will ignore that aspect of the Board's RPL jurisdiction.

In addition, 5 CFR 330.206(a)(3) provides that ''[a]n eligible employee may be entered on the RPL only for the commuting area in which *separated.''* (Emphasis added.) Subsection (a)(2) of the same section provides that ''[a]n employee is considered for positions having the same type of work schedule as the position from which *separated* * * * .'' (Emphasis added.) These provisions suggest that only ''former'' employees who were ''separated'' by RIF have reemployment priority rights under subpart B.

Other provisions of the RPL regulations suggest, however, the employees who have not been separated by RIF may have reemployment priority rights. For instance, 5 CFR § 330.202(a)(1) provides that ''[r]egistration [on the RPL] may take place as soon as a specific notice of separation under part 351 of this chapter, or a Certification of Expected Separation as provided in § 351.807 of this chapter, has been issued.'' Section 330.203(a)(3) provides in pertinent part that, to be eligible to apply for the RPL, the employee must ''[h]ave received a specific notice of [RIF] separation * * * or a Certification of Expected Separation * * *'' These provisions suggest that employees may have RPL rights once they receive a specific notice of RIF separation or a Certification of Expected Separation and enroll in the RPL, even before they are a separated by RIF.

Discussion

The Board has consistently held that it has jurisdiction over an RPL appeal only if the appellant has been separated by RIF. Stuck v. Department of the Navy, 72 M.S.P.R. 153, 157 (1996); Gometz v. Department of the Navy, 69 M.S.P.S.R. 284, 289 (1996); Horner v. Department of the Navy, 41 M.S.P.R. 20, 24 n.2 (1989); Bartlett v. Department of the Army, 18 M.S.P.R. 75, 77 (1983); see also Sweeney v. Department of the Interior, 76 M.S.P.R. 644, 647 (1997) (listing the jurisdictional criteria for an RPL appeal to include a showing that the employee was separated by RIF).

In Freeman v. Department of Agriculture, 2 M.S.P.R. 224, 226–27 (1980), the Board held that RPL rights vest only upon the employee's RIF separation, and noted that ''the very name of the right under discussion, a 'Reemployment Priority right,' clearly implies a right to return to employment'' and that ''[o]ne can only return after one is no longer employed.'' In Roberts v. Department of the Army, 168 F.3d 22, 23 (Fed. Cir. 1999), Roberts, who was not on any RPL, appealed his nonselection for a position, alleging that the selection of an individual on an RPL was improper. In holding that the Border lacked jurisdiction over the appeal, the court stated that ''[a]s Roberts has not been separated by RIF * * * Roberts does not have reemployment priority rights as set forth in the applicable regulations.'' *Id.*

As the agency has pointed out before the court in its motion for remand in this appeal, and as the Board noted in Sweeney, 76 M.S.P.R. at 648 n.2, OPM revised the RPL regulations in 1992 to permit enrollment in the RPL up to 6 months prior to the date of a RIF separation. Specifically, the regulations were revised by interim rules to permit enrollment in the RPL upon the employee's receipt of a specific notice of RIF separation (which must be issued at least 60 days before the RIF action, 5 CFR § 351.801(A)(1)) or a Certification of Expected Separation (which may be issued up to 6 months before the RIF action, 5 CFR § 351.807(a)). 57 FR 21899, 21890 (1992); 5 CFR § 330.203 (1993). Contrary to the agency's argument before the court in its motion for remand, however, RPL enrollment prior to 1992 was not ''restricted * * * to persons already actually separated by RIF,'' as discussed below.

Prior to 1988, 5 CFR § 330.201(e) provided, in pertinent part, that an agency's reemployment priority list ''shall consist of: (1) *Former* employees in the competitive service in tenure groups I or II who were *separated* [by RIF] under Part 351 of this chapter.'' (Emphasis added.)

On January 7, 1988, OPM proposed to revise its RPL regulations, noting that ''[t]he RPL is the mechanism agencies use to give reemployment consideration to employees who have been *separated* by reduction in force * * *'' 53 FR 408, 408 (1988). OPM stated that the proposed ''changes are intended to improve the operation of the RPL and clarify requirements.'' Id. OPM explained that ''[u]nder current regulations, * * * employees in the competitive service are eligible for the RPL when they have *received a notice of separation* by reduction in force (RIF).'' Id. This rule is not mentioned in the 1988 RPL regulations themselves, and it appears that the rule was contained in the Federal Personnel Manual (FPM). See Washington v. Garrett, 10 F.3d 1421, 1435 (9th Cir. 1993) (the court stated that, as of June 1988, when Washington was separated by RIF, ''an employee's name was to be placed automatically on the RPL by the agency the day after she received notification of her impending separation,'' citing FPM, ch. 330, subch. 2, sec. 2–3)c)). OPM further explained that the proposed revision of the RPL regulations ''would require an employee separated by RIF to complete an application specifying the conditions under which he or she would accept a job offer,'' instead of automatic enrollment in the RPL upon receipt of a RIF separation notice, and that the ''period of enrollment would run from the date the eligible is entered on the RPL, rather than from the date of separation.'' 53 FR 408.

On November 8, 1988, OPM issued its final regulations revising its RPL regulations pursuant to the proposal. 53 FR 45065 (1988). The revisions provided that an ''employee must submit the application [for the RPL] within 30 calendar days after the RIF separation date,'' 53 FR 45067; 5 CFR § 330.202(a)(1) (1989), and that to be eligible to apply for the RPL, an employee must ''[h]ave received a specific notice of [RIF] separation,'' 53 FR 45067; 5 CFR § 330.203(A)(3) (1989). They further provided that the employee must be enrolled on the RPL ''no later than 10 calendar days after receipt of an application or request.'' 53 FR 45067; 5 CFR § 330.202(b) (1989).

Thus, as early as 1988 and apparently before, employees could be enrolled in the RPL upon their receipt of a specific RIF separation notice; they were not required to wait until their actual RIF separation.

On May 26, 1992, OPM issued interim rules that provided for early warning of expected RIF separations. 57 FR 21889 (1992). The early warning was given in the form of a Certification of Expected Separation issued up to 6 months prior to the expected separation date, and employees were allowed to enroll in the RPL upon their receipt of the Certification. *Id.* OPM noted that, ''[p]reviously, participation in * * * the RPL * * * was limited to employees who had received a specific RIF notice'' and that ''[e]perience has shown that the earlier individuals are registered in such programs, the greater their chances of finding other employment and avoiding or minimizing any period of unemployment.'' *Id.* These interim rules become final rules when OPM revised the RPL regulations in 1995, upon sunsetting the FPM. 60 FR 3055 (1995). OPM noted at that time that ''[t]here was particular agreement not to change current policies in the sensitive area of reductions-in-force (RIF) and related reemployment priority lists (RPL).'' *Id.* The 1995 revision added to the regulations the explanatory language used by OPM at the time it proposed to revise the RPL regulations in 1988. To wit, section 330.201(a) was revised to add the statement that RPL is ''the mechanism agencies use to give *re*employment consideration to their *former* competitive service employees *separated* by reduction in force (RIF) * * *.'' *Id.* at 3,058 (emphasis added). The RPL regulations have not been revised since 1995.

As discussed, the RPL regulations are ambiguous on their face regarding whether the Board has jurisdiction over an RPL claim brought by an employee, such as Sturdy, who has not been separated by RIF, and our review of the regulatory history does not shed light on this issue.

Request for an Advisory Opinion

The members of the Board therefore request that you provide an advisory opinion on whether the Board has jurisdiction over an alleged violation of reemployment priority rights where the appellant was not separated by RIF.

The Director is requested to submit her advisory opinion to the Clerk of the Board within 30 days of her receipt of this letter, and to serve copies of her opinion on the parties and their representatives in the above-captioned appeal. (The addresses of the parties and their representatives are set forth below in the ''cc'' list.) The parties may file any comments on the Director's opinion no later than 30 days from the date of service of her opinion.

DATES: All briefs in response to this notice shall be filed with the Clerk of the Board on or before April 10, 2000.

ADDRESSES: All briefs should include the case name and docket number noted above (Jerry C. Sturdy v. Department of the Army, MSPB Docket No. DA–0330–98–0028–M–1) and be entitled ''Amicus Brief.'' Briefs should be filed with the Office of the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Shannon McCarthy, Deputy Clerk of the Board, or Matthew Shannon, Counsel to the Clerk, (202) 653–7200.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–5903 Filed 3–9–00; 8:45 am]

BILLING CODE 7400–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974; Systems of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice to amend records systems.

SUMMARY: NARA proposes to amend 3 system of records notices in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

Sections 552a(e)(4) and (11) of the Privacy Act require that the public be given 30 days to comment on new routine uses of information in the system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires 40 days to review the proposed new routine uses and exemptions for the system. Therefore, the public, OMB, and the Congress are invited to submit written comments by April 19, 2000.

DATES: The revised system notices will be effective without further notice on April 19, 2000, unless comments received before that date cause a contrary decision. If, based on the review of comments received, NARA determines to make changes to the system notices, a new final notice will be published.

ADDRESSES: Send comments to the Privacy Act Officer, Office of General Counsel (NGC), Room 3100, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001. You may also fax comments to 301–713–6040.

FOR FURTHER INFORMATION CONTACT: Mary Ronan at 301–713–6025, extension 226.

SUPPLEMENTARY INFORMATION: NARA proposes to amend the routine uses of 3 system of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The routine use statements for NARA 1, Researcher Application Files; NARA 5, Conference, Workshop, and Training Course Files; and NARA 6, Mailing List Files, are being modified to allow the NARA Development Staff to use the records to generate mailing lists for sending out fundraising materials for the Foundation for the National Archives. Use of records in Privacy Act systems NARA 1 and NARA 5 by the Development Staff is limited to those records where the subject individual has not requested that his or her name not be included on the mailing list. These 3 systems are also being modified to update addresses and contact points, and the authority citations.

We are also modifying Appendix B to update addresses of NARA facilities.

Dated: March 6, 2000.

John W. Carlin,

Archivist of the United States.

NARA 1

SYSTEM NAME:

Researcher Application Files.

SYSTEM LOCATION:

Researcher application files are maintained in the following locations in the Washington, DC, area and other geographical regions. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) Customer Services Division (College Park, MD);

(2) Presidential libraries and projects; and

(3) regional records services facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who apply to use original records for research in NARA facilities in the Washington, DC, area, the Presidential libraries, and the regional records services facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Researcher application files may include: Researcher applications; related correspondence; and electronic records. These files may contain the following information about an

individual: Name, address, telephone number, proposed research topic(s), occupation, name and address of employer/institutional affiliation, educational level and major field, expected result(s) of research, photo, researcher card number, type of records used, and other information furnished by the individual. Electronic systems may also contain additional information related to the application process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108, 2111 note, and 2203(f)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains researcher application files on individuals to: Register persons who apply to use original records for research at a NARA facility; record initial research interests of researchers; determine which records researchers may want to use; contact researchers if additional information of research interest is found or if problems with the requested records are discovered; and prepare mailing lists for sending information on NARA events, programs, publications, and invitations to join and contribute to the Foundation for the National Archives (unless individuals elect that their application information not be used for this purpose). The electronic databases serve as finding aids to the applications. Information in the system is also used by NARA staff to compile statistical and other aggregate reports regarding researcher use of records.

The routine use statements A, C, E, F, and G, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in the records may be retrieved by the name of the individual or by researcher card number.

SAFEGUARDS:

During normal hours of operation, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from terminals located in attended offices. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Researcher application files are temporary records and are destroyed in accordance with the disposition instructions in the NARA records schedule contained in FILES 203, the NARA Files Maintenance and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

For researchers who apply to use records and Nixon presidential materials in the Washington, DC area, the system manager for researcher application files is: Assistant Archivist for Records Services—Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001. For researchers who apply to use accessioned records, presidential records, and donated historical materials in the Presidential libraries and the regional records services facilities, the system managers of researcher application files are the directors of the individual libraries and regional records services facilities. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify: NARA Privacy Act Officer (NGC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address given above.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in researcher application files is obtained from researchers and from NARA employees who maintain the files.

NARA 5

SYSTEM NAME:

Conference, Workshop, and Training Course Files.

SYSTEM LOCATION:

Conference, workshop, and training course files may be maintained in the following locations in the Washington, DC, area and other geographical regions. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) Office of Records Services—Washington, DC (College Park, MD);

(2) Office of Human Resources and Information Services (College Park, MD);

(3) Presidential libraries and projects; and

(4) Office of Regional Records Services (College Park, MD).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include attendees and speakers at NARA-sponsored conferences, workshops, and training courses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Conference, workshop, and training course files maintained on attendees may include: Standard Forms 182—Request, Authorization, Agreement, and Certification of Training or equivalent forms; application/registration forms; evaluations; other administrative forms; and copies of payment records. Files maintained on speakers may include correspondence, biographical statements, and resumes. These files may contain some or all of the following information about an individual: Name, home address, business address, home telephone number, business telephone number, social security number, birthdate, position title, name of employer/organization, employment history, professional awards, areas of expertise, research interests, reasons for attendance, titles of publications, and other information furnished by the attendee or speaker.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104, 2109, and 2904.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains files on attendees and speakers to: Register attendees for conferences, workshops, training courses, and other events; contact attendees for follow-up discussions; plan, publicize, and document interest in current and future NARA-sponsored conferences, workshops, training courses, and special events; and prepare mailing lists for sending information on NARA events, programs, publications, and invitations to join and contribute to the Foundation for the National Archives (unless individuals elect that that their application information not be used for this purpose). Information in the records is also used to prepare statistical and other reports on conferences, workshops, training

courses, and other events sponsored by NARA.

NARA may disclose information on individuals in the files to outside organizations that co-sponsor conferences, workshops, training courses, and other events for purposes of administering the course or event. NARA may disclose information on an individual to the organization or agency that funded the individual's attendance. The routine use statement F, described in Appendix A following the NARA Notices, also applies to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in paper records may be retrieved by either the title or the date of the conference, workshop, training course, or event and thereunder by the name of the individual. Information in electronic records may be retrieved by the name of the individual.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from terminals located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Conference, workshop, and training course files are temporary records and are destroyed in accordance with the disposition instructions in the NARA records schedule contained in FILES 203, the NARA Files Maintenance and Records Disposition Manual. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

For conference, workshop, and training course files located in the Office of Records Services—Washington, DC, the system manager is the Assistant Archivist for Records Services—Washington, DC (NW), 8601 Adelphi Road, College Park, MD 20740–6001. For files located in the Office of Human Resources and Information Services, the system manager is the Assistant Archivist for Human Resources and Information Services (NH), 8601 Adelphi Road, College Park, MD 20740–6001. For files in the following locations, the system manager is the director: Presidential libraries and projects, and regional records services facilities. The addresses are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify: NARA Privacy Act Officer (NGC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address given above.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the files may be obtained from speakers, attendees, and potential speakers and attendees at NARA-sponsored conferences, workshops, and training courses, and from references provided by those individuals.

NARA 6

SYSTEM NAME:

Mailing List Files.

SYSTEM LOCATION:

Mailing lists may be maintained in the following NARA locations. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) Communications Staff (College Park, MD);

(2) National Historical Publications and Records Commission (Washington, DC);

(3) Public Programs (NWE) (College Park, MD);

(4) Staff Development Services Branch (College Park, MD);

(5) Acquisitions Services Division (College Park, MD);

(6) Presidential libraries and projects;

(7) Regional records services facilities; and

(8) Development Staff (College Park, MD).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system may include: Members of the media; Members of Congress; members of the National Historical Publications and Records Commission; members of the Foundation for the National Archives; local, political, and other dignitaries; researchers and records managers; historians, archivists, librarians, documentary editors, and other professionals in related fields; educators; authors; subscribers to free and fee publications and newsletters; buyers of NARA products; vendors; and other persons with an interest in NARA programs, exhibits, conferences, training courses, and other events.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to names and addresses, mailing lists may include any of the following information about an individual: Home/business telephone number; position title; name of employer, organization, and/or institutional affiliation; and subscription expiration date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104, 2307 and 2904(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains mailing lists to generate address labels to: Disseminate mailings of NARA and Foundation for the National Archives publications, newsletters, press releases, and announcements of meetings, conferences, workshops, training courses, public and educational programs, special events, and procurements; send invitations for exhibit openings, lectures, and other special events; send information on NARA events, programs, publications, and invitations to join and contribute to the Foundation for the National Archives; and send customers updated information about NARA holdings and about methods of requesting copies of accessioned and non-current records.

The routine use statement F, described in Appendix A following the NARA Notices, also applies to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Electronic records from which paper records may be printed.

RETRIEVABILITY:

Information about individuals maintained in mailing lists may be retrieved by: the name of the individual; the name of an employer or institutional/organizational affiliation; the category of individuals/organizations on mailing lists; the city or zip code.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from terminals located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Mailing lists are periodically updated and purged of outdated information. NARA organizational units retain mailing lists for as long as the lists are needed for the purposes previously cited.

SYSTEM MANAGER(S) AND ADDRESS:

For mailing lists maintained in the previously cited locations (1) through (8), the system managers are:

(1) Director, Communications Staff (NCOM) (College Park, MD);

(2) Executive Director, National Historical Publications and Records Commission (NHPRC) (Washington, DC);

(3) Assistant Archivist for Records Services—Washington, DC (College Park, MD);

(4) Assistant Archivist for Human Resources and Information Services (College Park, MD);

(5) Assistant Archivist for Administrative Services (College Park, MD);

(6) Directors of the Presidential libraries;

(7) Directors of regional records services facilities; and

(8) Development Officer (College Park, MD).

The addresses are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify: NARA Privacy Act Officer (NGC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address given above.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in mailing lists is obtained from individuals whose names are recorded on mailing lists for the purposes previously cited or from NARA employees who maintain the lists.

APPENDIX B—ADDRESSES OF NARA FACILITIES

Washington, DC, Area Facilities

The National Archives Building, 700 Pennsylvania Avenue, NW, Washington, DC 20408–0001

The National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001

National Records Centers

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409–0002

Military Personnel Records, National Personnel Records Center, 9700 Page Ave., St. Louis, MO 63132–5100

Civilian Personnel Records, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118–4199

Presidential Libraries

Herbert Hoover Library, 210 Parkside Dr., West Branch, IA (Mailing address: PO Box 488, West Branch, IA 52358–0488)

Franklin D. Roosevelt Library, 511 Albany Post Rd., Hyde Park, NY 12538–1999

Harry S. Truman Library, 500 W. US Hwy 24, Independence, MO 64050–1798

Dwight D. Eisenhower Library, 200 SE Fourth Street, Abilene, KS 67410–2900

John Fitzgerald Kennedy Library, Columbia Point, Boston, MA 02125

Lyndon Baines Johnson Library, 2313 Red River St., Austin, TX 78705–5702

Gerald R. Ford Library, 1000 Beal Avenue, Ann Arbor, MI 48109–2114

Gerald R. Ford Museum, 303 Pearl St. NW, Grand Rapids MI 49504–5353

Jimmy Carter Library, 1 Copenhill Ave. NE, Atlanta, GA 30307–1406

Ronald Reagan Library, 40 Presidential Dr., Simi Valley, CA 93065–0666

George Bush Library, 1000 George Bush Dr. West, College Station, TX 77845

Regional Records Services Facilities

NARA's Northeast Region (Boston), 380 Trapelo Road, Waltham, MA 02452–6399

NARA's Northeast Region (Pittsfield), 10 Conte Drive, Pittsfield, MA 01201–8230

NARA's Northeast Region (New York City), 201 Varick Street, New York, NY 10014–4811

NARA's Mid Atlantic Region (Northeast Philadelphia), 14700 Townsend Road, Philadelphia, PA 19154–1096

NARA's Mid Atlantic Region (Center City Philadelphia), 900 Market Street, Philadelphia, PA 19107–4292

NARA's Southeast Region, 1557 St. Joseph Avenue, East Point, GA 30344–2593

NARA's Great Lakes Region (Chicago), 7358 South Pulaski Road, Chicago, IL 60629–5898

NARA's Great Lakes Region (Dayton), 3150 Springboro Road, Dayton, OH 45439–1883

NARA's Central Plains Region (Kansas City), 2312 East Bannister Road, Kansas City, MO 64131–3011

NARA's Central Plains Region (Lee's Summit), 200 Space Center Drive, Lee's Summit, MO 64064–1182

NARA's Southwest Region, 501 West Felix Street, Building 1, Fort Worth, TX 76115–3405 (Mailing Address: P.O. Box 6216, Fort Worth, Texas 76115–0216)

NARA's Rocky Mountain Region, Building 48, Denver Federal Center, West 6th Avenue and Kipling Street, Denver, CO (Mailing Address: P.O. Box 25307, Denver, CO 80225–0307)

NARA's Pacific Region (San Francisco), 1000 Commodore Drive, San Bruno, CA 94066–2350

NARA's Pacific Region (Laguna Niguel), 24000 Avila Road, First Floor-East Entrance, Laguna Niguel, CA (Mailing Address: P.O. Box 6719, Laguna Niguel, CA 92607–6719)

NARA's Pacific Alaska Region (Seattle), 6125 Sand Point Way NE, Seattle, WA 98115–7999

NARA's Pacific Alaska Region (Anchorage), 654 West Third Avenue, Anchorage, AK 99501–2145

[FR Doc. 00–5964 Filed 3–9–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date and Time: March 31, 2000; 8 am 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Leon Esterowitz, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Major Research Instrumentation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and person information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6)) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5878 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L., 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Bilogical Sciences (BIO) (1110).

Date and Time: April 6, 2000, 8:45 a.m.–5 p.m.; April 7, 2000, 8:45 a.m–3:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 375.

Type of meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 306–1400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Planning and Issues Discussion.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5883 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Structure and Function; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Biomolecular Structure and Function—(1134) (Panel A).

Date and Time: April 19–21, 2000, 8:30 am to 6 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 340, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Thomas E. Smith or Dr. Barbara Zain, Program Directors, Molecular Biochemistry, Room 655S, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. (703) 306–1443.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biochemistry Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5875 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biomolecular Structure and Function; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biomolecular Structure and Function—(1134) (Panel B).

Date/Time: April 24–26, 2000 8:30 am to 6 pm.

Place: National Science Foundation, Room 340, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Kamal Shukla, Program Director, Molecular Biophysics, National Science Foundation, Room 655, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1444.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Molecular Biophysics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5879 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cell Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Cell Biology (1136)—(Panel A).

Date/Time: April 12–14, 2000; 8:30 am to 6 pm.

Place: National Science Foundation, Room 120, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Randolph Addison or Dr. Richard Rodewald, Program Directors, Cell Biology Program, National Science Foundation, Room 655, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1442.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Siganl Transduction and Regulation Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5876 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cognitive, Psychological Language Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following five meetings of the Advisory Panel for Cognitive, Psychological and Language Sciences (#1758):

1. *Date and Time:* March 31, 2000; 9:00 a.m.–3:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 950, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Catherine N. Ball, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: Closed Session: March 31, 9 a.m.–2 p.m.—To review and evaluate linguistics

dissertation proposals as part of the selection process for awards.

Agenda: Open Session: March 31, 2000, 2:00 p.m.–3:00 p.m.—General discussion of the current status and future plans of Linquistics Dissertations.

2. *Date and Time:* April 12–14, 2000; 9 a.m.–6:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 320, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Catherine N. Ball, Program Director for Linguistics, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1731.

Agenda: Closed Session: April 12, 9 a.m.–6:30 p.m.; April 13, 9:00 a.m.–6:30 p.m.; and April 14, 9:00 a.m.–1:00 p.m.—to review and evaluate linguistics proposals as part of the selection process for awards.

Agenda: Open Session: April 14, 2000, 1:00 p.m.–3:00 p.m.—General discussion of the current status and future plans of Linquistics.

3. *Date and Time:* April 24–26, 2000; 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 950, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Rodney R. Cocking, Program Director for Human Cognition and Perception, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1732.

Agenda: Closed Session: April 24, 8:30 a.m.–5:30 p.m.; April 25, 8:30 a.m.–5:30 p.m.; April 26, 8:30 a.m.–2:30 p.m.—To review and evaluate Human Cognition and Perception proposals as part of the selection process for awards.

Agenda: Open Session: April 26, 2000, 2:30 p.m.–5:30 p.m.—General discussion of the current status and future plans of Human Cognition and Perception.

4. *Date and Time:* May 7, 2000; 3 p.m.–7 p.m. May 8–9, 2000; 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 365, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Diane Scott-Jones, Program Director for Child Learning and Development, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1732.

Agenda: Closed Session: May 7, 3 p.m.–7 p.m.; May 8, 8:30 a.m.–3 p.m. and 4 p.m.—5:30 p.m.; May 9, 8:30 a.m.–5:30 p.m.—To review and evaluate Child Learning and Development proposals as part of the selection process of awards.

Agenda: Open Session: May 8, 2000, 3 p.m.–4 p.m.— General discussion of current status and future plans of Child Learning Development.

5. *Date and Time:* May 17–19, 2000; 8:30 a.m.–5:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Room 970, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Dr. Steven J. Breckler, Program Director for Social Psychology, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1728.

Agenda: Closed Session: May 17, 8:30 a.m.–5:30 p.m.; May 18, 8:30 a.m.–1:00 p.m.; and 2:00 p.m.–5:30 p.m.; May 19, 8:30 a.m.–5:30 p.m.—To review and evaluate social psychology proposals as part of the selection process for awards.

Agenda: Open Session: May 18, 2000, 1 p.m.–2 p.m.—General discussion of the current status and future plans of Social Psychology.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the National Science Foundation for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5872 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: March 22, 2000, 8 am–5:30 pm.

Place: Room 370, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Kamalakar Rajurkar, Program Director, Manufacturing Machines, and Equipment, (703) 306–1330, National Science Foundation, 4201 Boulevard, Arlington, VA 22230.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate ''XYZ On A Chip'' proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5877 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Economics, Decision and Management Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings of the Committee of Visitors for the Advisory Panel for Economics, Decision Risk and Management Sciences and Innovation and Organizational Change (#1760);

1. *Date and Time:* March 27, 28 and 29, 2000.

Place: National Science Foundation, 4201 Wilson Blvd, Room 970, Arlington, VA 22230.

Contact Person: Dr. Daniel Newlon, Program Director for Economics, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1753.

Agenda: To review and evaluate Economics proposals as part of the selection process for awards.

2. *Date and Time:* March 27, 28 and 29, 2000.

Place: National Science Foundation, 4201 Wilson Blvd, Room 970, Arlington, VA 22230.

Contact Person: Dr. Hal Arkes, Program Director for Decision, Risk and Management Sciences (DRMS), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1757.

Agenda: To review and evaluate DRMS proposals as part of the selection process for awards.

3. *Date and Time:* March 27, 28 and 29, 2000.

Place: National Science Foundation, 4201 Wilson Blvd, Room 970, Arlington, VA 22230.

Contact Person: Dr. Mariann (Sam) Jelinek, Program Director for Innovation and Organizational Change (IOC), National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1757.

Agenda: To review and evaluate IOC proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the

proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5880 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources (#1119)

Date and Time: April 5—8:30 am–6:15 pm, April 6—8:30 am–3:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: John B. Hunt, Senior Liaison, ACEHR, Directorate for Education and Human Resources, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230, 703–306–1602.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Review of FY 2000 Programs and strategic planning for FY 2001 and beyond.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer, HRM.

[FR Doc. 00–5884 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical Communications Systems (1196).

Date and Time: March 16–17, 2000, 8:30 am to 5 p.m.

Place: Room 880, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Vladimir Lumelsky, Program Director, Room 675, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted in response to the XYZ on a Chip program announcement (NSF 00–15).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5867 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date & Time: March 22–23, 2000; 9 am–6:30 pm.

Place: Room 375 both days, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Gernot Pomrenke, Program Director, Electronics, Photonics, and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate **Regular Research** proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5886 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Engineering Education and Centers (173).

Date/Time: March 15–17, 2000, 8 am to 5 pm.

Place: The Arlington Hilton, 950 N. Stafford Street, Arlington, VA 22203.

Type of Meeting: Closed.

Contact Person: Lynn Preston, Deputy Division Director, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Engineering Research Centers Full Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5874 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193)

Date/Time: March 30, 2000, 8:00 a.m.-5:00 p.m.

Place: Rooms 310, 330 & 330, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed

Contact Person: Dragana Brzakovic, Major Research Instrumentation Program, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Major Research Instrumentation Program proposals submitted in response to the program announcement (NSF 9–34).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5870 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: April 10, 2000; 8: am to 5 pm.

Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1557.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Postdoctoral Fellowship Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5873 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: March 22–23, 2000; 8:30 am to 5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 310, 380, and 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Margrete S. Kline and Ruta Sevo, Program Directors, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Program for Gender Equity in Science, Mathematics, Engineering, and Technology Large Collaborative Projects/Planning Grants.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management, Division of Human Resource Management.

[FR Doc. 00–5881 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: April 6–7, 2000; 8:30 am to 5 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 320 and 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Margrete S. Klein, Program Coordinator, POWRE Program, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1637.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Professional Opportunities for Women in Research and Education (POWRE) Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management, Division of Human Resource Management.

[FR Doc. 00–5882 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Information and Intelligent Systems (#1200).

Dates of meetings	Locations
April 10–11, 2000	National Science Foundation, Arlington, VA.
April 13–14, 2000	Hyatt Regency, San Francisco, CA.
April 13–14, 2000	National Science Foundation, Arlington, VA.
May 1–2, 2000	National Science Foundation, Arlington, VA.
May 4–5, 2000	Hyatt Regency, San Francisco, CA.
May 4–5, 2000	National Science Foundation, Arlington, VA.

Dates of meetings	Locations
May 8–9, 2000	National Science Foundation, Arlington, VA.
May 11–12, 2000	Hyatt Regency, San Francisco, CA.
May 11–12, 2000	National Science Foundation, Arlington, VA.

Time: Meetings will be held 8:00 a.m.–5:00 p.m.

Type of Meeting: Closed.

Contact Persons: Michael Lesk and Richard Hilderbrandt, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1930.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information Technology Research (ITR) proposals submitted to the Information Technology Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5868 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR) #1203.

Dates & Times: 8:30 am–5 pm each day.

Date	Room No.	Panel number
April 4, 2000	340	A
April 6–7, 2000	340	B
April 6–7, 2000	365	C
April 17, 2000	365	D
April 17, 2000	320	E
April 18–19, 2000	320	F
April 18–19, 2000	365	G
April 20–21, 2000	320	H
April 20–21, 2000	365	I

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Guebre X. Tessema, Program Director, NAFI, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 306–1817.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate proposals as part of the selection process to determine finalists considered for support for the instrumentation proposals submitted in response to program solicitation number NSF 99–170 and NSF 99–168.

Reason for Closing: The activity being evaluated may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.b.(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5871 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: March 26, 2000; 8:30 a.m. until 5:00 p.m.

Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lloyd Douglas, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1874.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Infrastructure Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c)(4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer, Division of Human Resource Management.

[FR Doc. 00–5887 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: Thursday, March 16, 2000; 8:30 am–6:00 pm, Rm. 310—DMR; Rm. 320 CHE; Rm. 370—AST; Rm. 380—PHY; Rm. 390—DMS (both days) Friday, March 17, 2000; 8:30 am–6:00 pm.

Place: Room 310, NSF, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Denise Caldwell, Program Director for the MPS POWRE proposals, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1807.

Purpose of Meeting: To provide advice and recommendations concerning physics submitted to NSF for financial support.

Agenda: To review and evaluate the Professional Opportunities for Women in Research and Education (POWRE) proposals as part of the selection process.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen York,

Committee Management Officer.

[FR Doc. 00–5885 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Physiology and Ethology (1148).

Date/Time: April 5–7, 2000, 8:30 a.m.–5 p.m.

Place: NSF, Room 380, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-open.

Contact Persons: Dr. Zoe Eppley and Dr. Kim Williams, Program Directors, Ecological & Evolutionary Physiology, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 5th, 2000, 4 p.m. to 5 p.m.—discussion on research trends, opportunities and assessment procedures in Integrative Biology and Neuroscience with Dr. James L. Edwards, Deputy Assistant Director, Directorate for Biological Sciences.

Closed Session: April 5th, 2000, 8:30 a.m. to 4 p.m. and 5 p.m. to 6 p.m.; April 6th, 2000, 8:30 a.m. to 6 p.m.; April 7th, 2000, 8:30 a.m. to 5 p.m. To review and evaluate the Ecological & Evolutionary Physiology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–5869 Filed 3–9–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc., Edwin I. Hatch Nuclear Plant, Units 1 and 2; Notice of Receipt of Application for Renewal of Facility Operating License Nos. DPR–57 and NPF–5 for an Additional Twenty-Year Period

On March 1, 2000, the U.S. Nuclear Regulatory Commission received, by letter dated February 29, 2000, an application from Southern Nuclear Operating Company, Inc., filed pursuant to Section 104(b) and 103 of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, for renewal of Facility Operating License Nos. DPR–57 and NPF–5, which authorizes the applicant to operate Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Hatch 1 and 2), for an additional 20-year period. The current operating licenses for Hatch 1 and 2 expire on August 6, 2014, and June 13, 2018, respectively. Hatch 1 and 2 are boiling-water reactors designed by General Electric and are located in Appling County, Georgia. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of a subsequent **Federal Register** notice.

A copy of the application is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20037, and on the NRC website at www.nrc.gov.

Dated at Rockville, Maryland, this the third day of March, 2000.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Chief, License Renewal and Standardization Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5897 Filed 3–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313]

Entergy Operations, Inc., Arkansas Nuclear One, Unit 1; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Entergy Operations, Inc. (Entergy) has submitted an application for renewal of operating license DPR–51 for an additional 20 years of operation at Arkansas Nuclear One, Unit 1 (ANO–1). ANO–1 is located in Pope County, Arkansas. The application for renewal was submitted by letter dated January 31, 2000, pursuant to 10 CFR part 54. A notice of receipt of application, including the environmental report (ER), was published in the **Federal Register** on February 11, 2000 (65 FR 7074). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on March 3, 2000 (65 FR 11609). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29.

In accordance with 10 CFR 54.23 and 10 CFR 51.53(c), Entergy submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Part 51 and is available for public inspection at the Commission's Public Document Room in the Gelman Building, 2120 L Street, NW, Washington, DC, 20003–1527. In addition, the Pendergraft Library, located at Arkansas Tech University, 305 West Q Street, Russellville, AR 72801, has agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants,'' (NUREG–1437) in support of the review of the application for renewal of the ANO–1 operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. 10 CFR 51.95 requires that the NRC prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in this scoping process by members of the public and local, State, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other environmental impact statements (EISs) that are being or will be prepared that are related to

but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Entergy Operations, Inc.

b. Any person who intends to petition for leave to intervene.

c. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

d. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

e. Any affected Indian tribe.

f. Any person who requests or has requested an opportunity to participate in the scoping process.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice of acceptance for docketing. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold a public meeting for the ANO–1 license renewal supplement to the GEIS. The scoping meeting will be held at the Holiday Inn in Russellville, Arkansas, on Tuesday, April 4, 2000. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 5:00 p.m. The second session will convene at 7:00 p.m. with a repeat of the overview portions of the meeting and will continue until 10:00 p.m. Both meetings will be transcribed and will include (1) an overview by the NRC staff of the National Environmental Policy Act (NEPA) environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; (2) an overview by Entergy of the proposed action, ANO–1 license renewal, and the environmental impacts as outlined in the ER; and (3) the opportunity for interested Government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Persons may register to attend or present oral comments at the meeting on the NEPA scoping process by contacting Mr. Thomas J. Kenyon by telephone at 1 (800) 368–5642, extension 1120, or by Internet to the NRC at anoeis@nrc.gov no later than March 27, 2000. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Kenyon's attention no later than March 27, 2000, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scoping process for the supplement to the GEIS to Chief, Rules and Directives Branch, Division of Administrative Services, Mailstop T–6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. To be considered in the scoping process, written comments should be postmarked by May 9, 2000. Electronic comments may be sent by the Internet to the NRC at anoeis@nrc.gov. Electronic submissions should be sent no later than May 9, 2000, to be considered in the scoping process and will be available for inspection at the NRC Public Document Room.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection at the NRC Public Document Room. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and a separate public meeting. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Kenyon at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 7th day of March, 2000.

For the Nuclear Regulatory Commission.

Scott F. Newberry,

Acting Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–5894 Filed 3–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop Concerning the Revision of the Oversight Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of public workshop.

SUMMARY: NRC will hold a public workshop at the Nuclear Energy Institute (NEI), 1776 I Street, NW (Republic Place), in Washington, DC to provide the public, those regulated by the NRC, and other stakeholders, with information about and an opportunity to provide views on how NRC plans to revise its oversight program for nuclear fuel cycle facilities. This workshop follows the recent public stakeholder workshop held in Rockville, Maryland on February 22–23, 2000. Presentations and other documents provided at each workshop, together with a transcript of each workshop, are placed on the NRC INTERNET web page (http://www.nrc.gov).

Similar to the revision of the oversight program for commercial nuclear power plants, NRC initiated an effort to improve its oversight program for nuclear fuel cycle facilities. This is described in SECY–99–188 titled, ''EVALUATION AND PROPOSED REVISION OF THE NUCLEAR FUEL

CYCLE FACILITY SAFETY INSPECTION PROGRAM.'' SECY–99–188 is available in the Public Document Room and on the NRC Web Page at http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html.

Purpose of Workshop

To obtain stakeholder views for improving the NRC oversight program for ensuring licensee and certificate holders maintain protection of worker and public health and safety, protection of the environment, and safeguards for nuclear material and sensitive information and material in the interest of national security. The oversight program applies to nuclear fuel cycle facilities regulated under 10 CFR Parts 40, 70, and 76. The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities, low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF_6) production facility. These facilities possess large quantities of materials that are potentially hazardous (i.e., radioactive, toxic, and/or flammable) to the workers, public, and environment. In revising the oversight program, the goal is to have an oversight program that: (1) Provides earlier and more objective indications of acceptable and changing safety and safeguards performance, (2) increases stakeholder confidence in the NRC, and (3) increases regulatory effectiveness, efficiency, and realism. In this regard, the NRC desires the revised oversight program to be more risk-informed and performance-based and more focused on significant risks and poorer performers.

The workshop will focus on:

- Plans for communicating revision of the oversight program with stakeholders internal and external to the NRC;
- Objective and scope of safety and national security related cornerstones for meeting the NRC mission;
- Key performance attributes for achieving each cornerstone;
- Licensee performance attributes the NRC needs to monitor/assess by means of licensee provided performance indicators and NRC inspections to ensure cornerstone objectives are met;
- Criteria for selection of performance indicators and risk informed inspections;
- Measurable parameters and measurement methods for performance indicators; and
- Thresholds for performance.

DATES: Members of the public and other stakeholders are invited to attend and participate in the workshop, which is scheduled for 9:00 a.m. to 5:00 p.m. on Wednesday, March 22, and Thursday, March 23, 2000.

ADDRESSES: NEI, 1776 I Street (Republic Place), Washington, DC. Visitor parking around NEI is limited; however, the meeting site may be reached from Rockville by taking the Red line metro to Farragut North, and exiting at K Street. Farragut Park will be in front of you. Notice that 17th Street is parallel to the park. Walk one block along 17th Street to I Street, turn right, walk one more block. NEI is on the left on corner of 18th and I Streets, NW. From Reagan National Airport, NEI may be reached by taking the Blue line train towards Addison Road to Farragut West. Exit to 18th Street, and NEI is diagonally across the street on the corner of 18th and I Streets, NW.

FOR FURTHER INFORMATION CONTACT: Walter Schwink, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7253, e-mail *wss@nrc.gov.*

Dated at Rockville, Maryland, this 6th day of March, 2000.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Operations Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 00–5896 Filed 3–9–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1718]

Standard Review Plan for the Mixed Oxide (MOX) Fuel Fabrication Facility Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has extended the public comment period on draft NUREG–1718, ''Standard Review Plan for the Review of an Application for the Mixed Oxide (MOX) Fuel Fabrication Facility,'' to allow interested parties additional time to prepare comments.

DATES: Submit comments by March 27, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm during Federal workdays.

Draft NUREG–1718 is available for inspection and copying for a fee at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

A free single copy of draft NUREG–1718, to the extent of supply, may be requested by writing to the U.S. Nuclear Regulatory Commission, Distribution Services, Washington, DC 20555–0001. Draft NUREG–1718 is available on the World Wide Web at *http://www.nrc.gov/NRC/NUREG/indexnum.html.* Comments may be submitted by selecting the ''comments'' link on the main page for the draft NUREG.

FOR FURTHER INFORMATION CONTACT: For further information regarding draft NUREG–1718 contact Andrew Persinko, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6522.

Dated at Rockville, Maryland, this 6th day of March, 2000.

For the Nuclear Regulatory Commission.

Melvyn L. Leach,

Branch Chief, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 00–5895 Filed 3–9–00; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Information-Based Indicia Program (IBIP) Performance Criteria for Information-Based Indicia and Security Architecture for Open IBI Postage Evidencing Systems (PCIBI–O)

AGENCY: Postal Service.

ACTION: Notice of availability of Performance Criteria, with request for comments.

SUMMARY: The Postal Service has compiled a revised draft functional Performance Criteria for open systems of the Information-Based Indicia program (IBIP), as defined in this release. The current release contains the performance criteria for the Indicium, the Postal Security Device (PSD), the Host System, and the IBIP Key Infrastructure components of an open IBI system. The Postal Service also seeks comments on intellectual property issues raised by IBIP Performance Criteria, policy, and procedures if adopted in present form. If an intellectual property issue includes patents or patent applications covering

any implementations of the Performance Criteria, the comment should include a listing of such patents and applications and the license terms available for such patents and applications.

ADDRESSES: Copies of the Performance Criteria noted above may be downloaded from the IBIP Web site at http://www.usps.com/ibip/welcome.htm, or obtained from Edmund Zelickman, United States Postal Service, 475 L'Enfant Plaza SW, Room 1P–801, Washington, DC 20260–2444. Copies of all written comments may be inspected, by appointment, between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

DATES: All written comments must be received on or before May 9, 2000.

FOR FURTHER INFORMATION CONTACT: Dan Lord, (202) 268–4599.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–5961 Filed 3–9–00; 8:45 am]

BILLING CODE 7710–12–U

PRESIDIO TRUST

Letterman Complex, The Presidio of San Francisco, Notice of Availability To Review the Final Environmental Impact Statement and Planning Guidelines

AGENCY: The Presidio Trust.

ACTION: Notice of availability to review the Final Environmental Impact Statement (EIS) and Planning Guidelines for new development and uses on 23 acres within the Letterman Complex, The Presidio of San Francisco, San Francisco, California (Presidio). The Final EIS is a supplement to the 1994 Final General Management Plan Amendment (GMPA) EIS for the Presidio.

SUMMARY: Pursuant to section 101(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–90 as amended), the Presidio Trust (Trust) has prepared a Final EIS analyzing the potential impacts of new development and uses on a 23-acre site within the 60-acre Letterman Complex, located in the northeast corner of the Presidio. The Final EIS describes and evaluates a preferred alternative (Digital Arts Center) and five additional alternatives for development and occupancy of new low- to mid-rise buildings totaling approximately 900,000 square feet. The six alternatives were fully examined in the Draft EIS that was circulated and filed in April 1999 (64 FR 22662–63). Two of the six alternatives were previously analyzed in the 1994 GMPA EIS: a specific proposal for the site (Science and Education Center) as part of a proposed action (Alternative A); and a no action alternative (Minimum Requirements/Alternative B). The other alternatives evaluated in the Final EIS were identified through a Request for Qualifications and scoping process and include a Sustainable Urban Village, a Mixed-Use Development, and a Live/Work Village.

CONTENTS OF FINAL EIS: The Final EIS consists of responses to all of the substantive comments received on the Draft EIS, and revisions to the Draft EIS that incorporate analysis, additional information, and suggested changes made in response to comments.

MATERIALS AVAILABLE TO THE PUBLIC: Copies of the Final EIS and Planning Guidelines are available by calling or writing: The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052, Phone: 415–561–5300.

The Final EIS, Planning Guidelines, and GMPA EIS are also available for review at:

The Presidio Trust Library, 34 Graham Street, San Francisco, CA 94129, Phone: 415–561–5300

William Penn Mott, Jr. Visitor Center (Presidio) (open 7 days), Montgomery Street, Main Post, San Francisco, CA 94129, Phone: 415–561–4323

GGNRA Park Headquarters, Building 201, Fort Mason, San Francisco, CA 94123, Phone: 415–561–4720

San Francisco Main Library, Government Information Center, Civic Center, San Francisco, CA 94102, Phone: 415–557–4500

San Francisco Library, Presidio Branch, 3150 Sacramento Street, San Francisco, CA 94115, Phone: 415–292–2155

The Final EIS and Planning Guidelines are available for viewing on the Internet by clicking on ''Library'' and then ''Postings'' at the following website: http://www.presidiotrust.gov.

LIMITATION ON ACTION: No decision on the preferred alternative will be made or recorded until at least 30 days after the publication by the U.S. Environmental Protection Agency (EPA) of notice that the Final EIS has been filed with the EPA. Subsequently, the Trust will publish a notice of the Record of Decision in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: March 2, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–5583 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–4R–U

PRESIDIO TRUST

Letterman Complex, The Presidio of San Francisco, Notice of Availability To Review Programmatic Agreement

AGENCY: The Presidio Trust.

ACTION: Notice of availability to review the Programmatic Agreement among the Presidio Trust, the Advisory Council on Historic Preservation, the National Park Service and the California State Historic Preservation Officer Regarding Deconstruction, New Construction, and the Execution of Associated Leases at the Letterman Complex, Presidio of San Francisco, California.

SUMMARY: The Presidio Trust (Trust) announces the availability of the ''Programmatic Agreement among the Presidio Trust, the Advisory Council on Historic Preservation, the National Park Service and the California State Historic Preservation Officer Regarding Deconstruction, New Construction, and the Execution of Associated Leases at the Letterman Complex, Presidio of San Francisco, California'' (PA). The PA was prepared pursuant to the regulations (36 CFR part 800) implementing the National Historic Preservation Act of 1966, as amended, 16 USC 470 (NHPA). The Trust, the Advisory Council on Historic Preservation, the National Park Service and the California State Historic Preservation Officer are signatories to the PA. The National Trust for Historic Preservation and the National Parks and Conservation Association are concurring parties to the PA. The purpose of the PA is to establish a mechanism for the Trust to comply with its NHPA obligations in the construction, deconstruction and execution of associated leases at the Letterman location. Among other things, the PA provides for public planning sessions, review of planning and design guidelines to ensure conformity with the ''Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings,'' review of conceptual design documents, schematic design documents, and construction documents for conformity with the planning and design guidelines, construction monitoring to ensure conformity with the approved project documents, and a methodology

for addressing archeological properties within the Letterman Complex.

Materials Available to the Public: The PA is available for viewing on the Internet by clicking on ''Library'' and then ''Postings'' at the following website: http://www.presidiotrust.gov. Additionally, copies are available for review at:

The Presidio Trust Library, 34 Graham Street, San Francisco, CA 94129, Phone: 415–561–5300.

William Penn Mott, Jr. Visitor Center (Presidio) (open 7 days), Montgomery Street, Main Post, San Francisco, CA 94129, Phone: 415–561–4323.

GGNRA Park Headquarters, Building 201, Fort Mason, San Francisco, CA 94123, Phone: 415–561–4720.

San Francisco Main Library, Government Information Center, Civic Center, San Francisco, CA 94102, Phone: 415–557–4500.

San Francisco Library, Presidio Branch, 3150 Sacramento Street, San Francisco, CA 94115, Phone: 415–292–2155.

For members of the public who do not have Internet access and for whom it would be burdensome to review the PA at any of the above locations, the Trust will consider requests to be sent a copy by mail or fax.

FOR FURTHER INFORMATION CONTACT: Cherilyn Widell, Compliance Officer, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: March 3, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–5731 Filed 3–9–00; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27145]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 3, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 28, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 28, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation and Entergy Power, Inc. (70–9583)

Entergy Corporation (''Entergy''), a registered holding company, located at 639 Loyola Avenue, New Orleans, Louisiana 70113, and Entergy Power, Inc. (''EPI''),[1] a wholly owned electric public utility subsidiary of Entergy (Entergy and EPI, collectively, the ''Applicants''), located at Parkwood Two Building, 10055 Grogan's Mill Road, Suite 500, The Woodlands, Texas 77380, have filed an application pursuant to sections 9(a), 10 and 11 of the Act and rules 51 and 54 under the Act.

In conjunction with the power supply arrangements recently negotiated among EPI, Entergy Power Marketing Corp. (''EPMC''), which markets and brokers electricity and other energy commodities and is an associate company of EPI, Sam Rayburn Municipal Power Agency (''SRMPA''), a municipal corporation and political subdivision of Texas, and Vinton Public Power Authority (''VPPA''), a public power authority in Louisiana, SRMPA assigned to EPI its option to purchase from VPPA a 20% undivided ownership interest in Unit No. 6 of the Roy S. Nelson Generating Station (''Nelson 6'') and certain related assets (''Nelson 6 Ownership Interest'').[2] EPI proposes to exercise the option and acquire from VPPA the Nelson 6 Ownership Interest for $1,000.

The Applicants state that the nominal purchase price that EPI proposes to pay for the Nelson 6 Ownership Interest reflects EPMC's prior purchase from SRMPA of an entitlement to 20% of the output of Nelson 6 (''Nelson 6 Capacity Entitlement'').[3]

Nelson 6 is a coal-fired, steam electric generating facility located in Westlake, Calcasieu Parish, Louisiana. Nelson 6 supplies a portion of the electric energy requirements of the cities of Jasper, Liberty, and Livingston, Texas and the Town of Vinton, Louisiana. Currently, Nelson 6 is owned by VPPA (20%), Sam Rayburn Generation & Transmission Cooperative (10%) and Entergy Gulf States (70%), an electric subsidiary of Entergy. Nelson 6 is directly interconnected with the transmission system of Entergy Gulf States and, thus, indirectly interconnected with the entire transmission grid of the Entergy System. Entergy Gulf States operates, maintains, and manages Nelson 6 on behalf of the co-owners.

Central and South West Corporation, et al. (70–9107)

Central and South West Corporation (''CSW'') 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a registered holding company, and its wholly owned public utility subsidiary, Central Power and Light Company (''CPL'') 539 North Caracahua Street, Corpus Christi, Texas 78401–2902 (collectively, ''Applicants''), have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), 12(c), and 13(b) of the Act, and rules 45, 46, 54, 90 and 91 under the Act, to an application-declaration previously filed under the Act.

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[1] Pursuant to an order of the Commission dated August 27, 1990 (HCAR No. 25136) (''1990 Order''), Entergy formed EPI to participate as a supplier of electricity at wholesale to non-associate companies in bulk power markets. EPI currently owns a total of 665 MW of generating assets in non-exempt electric generating facilities.

[2] In 1981, SRMPA purchased the Nelson 6 Ownership Interest from Entergy Gulf States (an Entergy domestic retail electric utility company). In 1992, for state tax reasons, VPPA purchased the Nelson 6 Ownership Interest from SRMP for the remaining undepreciated book value of the assets. With the sale to VPPA, SRMPA was granted a right of first refusal and an option to repurchase from VPPA legal title to the Nelson 6 Ownership Interest. Once the sale to VPPA occurred, SRMPA still remained responsible for a proportionate share of all costs and expenses of ownership.

[3] Concurrently with the transfer of the Nelson 6 Ownership Interest to VPPA, SRMPA purchased the Nelson 6 Capacity Entitlement with the money it received form VPPA for its sale. In 1998, SRMPA paid EPMC $59,605,565 in consideration for a requirements contract. Under the contract, SRMPA was also to make periodic payments based on the power actually received. Simultaneously, EPMC purchased the Nelson 6 Capacity Entitlement from SRMPA for $59,605,565. EPMC also assumed SRMPA's proportionate share of the costs of ownership of Nelson 6. EPI has agreed to supply EPMC with any power necessary for it to meet its obligations to SRMPA under the requirements contract.

Background

By order dated December 30, 1997 (''Omnibus Financing Order''),[4] the Commission authorized CSW and certain of its subsidiaries, including CPL, through December 31, 2002 (''Authorization Period''), to, among other things, engage in certain internal and external financing.

In 1999, Texas enacted the Texas Public Utility Regulatory Act (''Restructuring Legislation'') which governs the restructuring of the electric industry in Texas. The Restructuring Legislation permits electric utilities with assets in Texas to recover stranded costs caused by the transition to a competitive market for electric generation services through the issuance of transition bonds (''Transition Bonds'') as authorized by the Public Utility Commission of Texas (''PUCT''). In accordance with procedures set forth in the Restructuring Legislation, on September 18, 1999, CPL filed an application with the PUCT for a financing order (''Financing Order'') to permit CPL or a third-party assignee of CPL, to issue Transition Bonds.[5]

Under the terms of PUCT Financing Orders, the Transition Bonds will be secured by the rights and interests of CPL under the Financing Order, including the irrevocable right to impose, collect and receive nonbypassable market transition charges (''TC''),[6] as authorized in the Financing Order. These rights are referred to as ''Transition Property.'' The Restructuring Legislation further provides that the PUCT will make periodic adjustments to the TC.

Proposed Transactions

In connection with the PUCT Financing Order, Applicants and any affiliated successor in interest to CPL's electric distribution businesses and assets, seek authority through the Authorized Period to: (1) Form one or more new wholly owned entities (''Special Purpose Issuer'') which are expected to be any one of the following: A trust, corporation, limited liability company or partnership; (2) acquire all the equity securities issued by each Special Purpose Issuer; (3) cause any Special Purpose Issuer to issue and sell Transition Bonds in an aggregate principal amount not to exceed $800 million;[7] (4) enter into or cause any Special Purpose Issuer to enter into interest rate swaps, interest rate hedging programs and credit enhancement arrangements to reduce interest rate risks with respect to, and to facilitate the offering of Transition Bonds; and (5) provide certain services at other than cost.

Applicants further request that the issuance of Transition Bonds in an amount up to $800 million, be in addition to the financing limitations previously authorized in the Omnibus Financing Order.

Following the issuance of the PUCT Financing Order, CPL will sell and transfer the Transition Property and the associated TC revenue stream created by the Financing Order to a Special Purpose Issuer in exchange for the net proceeds from the sale of the Transition Bonds. The Special Purpose Issuer will issue Transition Bonds in an amount not to exceed $800 million to finance its purchase of the Transition Property and the associated TC revenue stream from CPL in accordance with the related Financing Order. CPL will use the gross proceeds from the sale of Transition Bonds to: (1) Pay costs incurred in the issuance and sale of the Transition Bonds; (2) refund or retire utility debt or equity associated with its stranded costs; and (3) pay the costs of such refinancing and retirement.

The Special Purpose Issuer may issue Transition Bonds in one or more series, and each series may be issued in one or more classes. Different series may have different maturities and coupon rates and each series may have classes with different maturities and coupon rates. There will be a date on which each class of Transition bonds is expected to be repaid and a legal final maturity date by which each class of Transition Bonds must be repaid, which will not be later than fifteen years after the date of issuance.[8]

In addition, CPL proposes to enter into a Servicing Agreement with the Special Purpose Issuer, under which CPL will act as the servicer of the TC revenue stream. In this capacity, CPL, among other things, would: (1) Bill customers and retail electric providers and make collections on behalf of the Special Purpose Issuer; and (2) file with the PUCT for adjustment to the TC to achieve a level which permits the payment of all debt service and full recovery of qualified costs to be collected through TCs in accordance with the amortization schedule for each series and class of Transition Bonds. CPL may subcontract with its affiliates to carry out some of its servicing responsibilities, provided that the ratings of the Transition Bonds are neither reduced nor withdrawn as a result. In order to satisfy rating agency requirements, compensation to CPL must be at an arms' length basis. Accordingly, Applicants request an exemption from the at-cost standards of section 13(b).[9]

Applicants also seek authority for the Special Purpose Issuer (and/or CPL, acting on behalf of the Special Purpose Issuer) to enter into transactions to convert all or a portion of any Transition Bond bearing interest at a floating rate (''Floating Rate Transition Bonds'') to fixed rate obligations using interest rate swaps (''Swaps'') or other derivative products designed for these purposes.

The Special Purpose Issuer may enter into one or more Swaps or one or more derivative instruments, such as interest rate caps, interest rate floors and interest rate collars (collectively, ''Derivative Transactions''), with one or more counterparties from time-to-time through the Authorization Period. The notional amounts of the Swaps and the expected average life of the Swaps will not exceed that of the underlying Transition Bonds. The term of the Swaps would match the maturity of the Floating Rate Transition Bonds and the swap notional amount would equal the outstanding principal amount of the bonds. Applicants also seek authorization for the Special Purpose Issuer (or CPL, acting on behalf of the

[4] Holding Co. Act Release No. 26811.

[5] As provided for in the Restructuring Legislation, Transition Bonds will have terms of not more than 15 years and the proceeds of Transition Bonds may be used solely for purposes of reducing the amount of recoverable regulatory assets and stranded costs, as determined by the PUCT, through the refinancing or retirement of utility debt or equity.

[6] Transition charges are generally defined in the Restructuring Legislation as nonbypassable amounts authorized to be charged for the use or availability of electric service under a Financing Order to recover a utility's ''qualified costs.'' Qualified costs include: 100% of a utility's regulatory assets as of December 31, 1998, 75% of a utility's estimated stranded costs as determined by the PUCT, 100% of the costs of issuing, supporting and servicing the Transition Bonds, 100% of the costs of retiring and refunding the utility's debt and equity securities with the proceeds of the Transition Bonds, and certain costs incurred by the PUCT in proceedings under the Restructuring Legislation.

[7] The Transition Bonds reflect the securitization of approximately $764 million of regulatory assets and up to $36 million of other qualified costs.

[8] Applicant state that the Transition Bonds are expected to have a credit rating of AAA.

[9] In addition, the Special Purpose Issuer may enter into an ''Administration Agreement'' with CPL or another affiliate of CSW (the ''Administrator''), under which the Administrator would provide ministerial services on an as-needed basis to the Special Purpose Issuer. These services will consist primarily of administrative or housekeeping matters relating to the Special Purpose Issuer and may include providing Transition Bond documentation notices, maintaining books and records, and maintaining authority to do business in appropriate jurisdictions. The Special Purpose Issuer will reimburse the Administrator for the cost of these services provided in compliance with section 13(b) and rules 90 and 91.

Special Purpose Issuer) to enter into an interest rate hedging program utilizing Derivative Transactions.

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5915 Filed 3–9–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42492; File No. SR–MSRB–00–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Underwriting and Transaction Assessments, Pursuant to Rule A–13

March 2, 2000.

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 February 7, 2000, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing a proposed amendment to its rule A–13 on underwriting and transaction assessments for brokers, dealers and municipal securities dealers. Rule A–13 currently provides for fee assessments based on transaction activity, as measured by the par value of inter-dealer sales, and on under writing activity. The proposed rule change would change the fee assessment based on transaction activity to include the par value of sales to customers. This would provide for necessary increases in revenue sufficient to offset declines in underwriting assessments and increases in Board expenses. In review of the present need to bring Board revenues into better balance with necessary expenditures, the Board is requesting Commission approval of the proposed rule change by April 1, 2000.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Board 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 Board has prepared summaries, set forth in Section 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 help provide sufficient revenues to fund Board operations and to allocate fees among broker, dealers and municipal securities dealers (collectively ''dealers'') in a manner that more accurately reflects each dealer's involvement in the municipal securities market. The proposed rule change would accomplish these purposes by revising the current fee based on transaction activity to include, as a basis for measuring involvement in the market, sales of municipal securities by dealers to customers. The proposed rule change would also exclude certain short-term securities from the new customer transaction-based fee assessment and from the existing fee assessment based on inter-dealer transactions.[3]

Current Fee Structure

Rule A–13 currently provides for an assessment based on the total par value of a dealer's inter-dealer sales transactions in municipal securities.[4] Dealers report these transactions by submitting transaction information to the automated comparison system operated by National Securities Clearing Corporation (''NSCC''). The Rule A–13 inter-dealer transaction assessment has been set at $.005 per $1,000 par value of sales since it was instituted in 1996.

In addition to the assessment based on inter-dealer transaction activity, the Board currently levies three other types of fees that are generally applicable to dealers. Rule A–12 provides for a $100 initial fee paid once by a dealer when it enters the municipal securities business. Rule A–14 provides for an annual fee of $200 paid by each dealer that conducts municipal securities business during the year. In addition to the Rule A–13 inter-dealer transaction assessment, Rule A–13 also provides for an assessment on underwriting activity, based on the par value of the dealer's purchases from the issuer of primary offerings of municipal securities.[5]

Proposed Fee Structure

Under the proposed rule change, the transaction-based fee, which currently takes into consideration only the amount of a dealer's inter-dealer sales activity, would be expanded to take into account the dealer's sales transactions to customers as well. A rate of $.005 per $1,000 par value would be used to calculate assessments for both inter-dealer and customer transactions.

The proposed rule change would exclude from the calculation of both inter-dealer and customer transaction-based fees certain transactions in very short-term instruments: securities that have a final stated maturity of nine months or less and securities that may be put to the issuer at least as frequently as every nine months. These excluded categories of short-term issues are referred to hereafter as ''municipal commercial paper,'' ''short-term notes,'' and ''variable rate demand obligations.'' These instruments are not currently excluded from the inter-dealer transaction-based fee, but would be excluded form that fee once the proposed rule change becomes effective.

Need for the Proposed Rule Change

Static or Declining Revenues

The proposed rule change is needed to help bring the Board's revenues more closely into balance with expenditures. During the past three fiscal years, the greatest part of the Board's revenues—

[3] Securities for which transaction fees are not assessed are those with a final stated maturity of nine months or less or which are ''puttable'' to an issuer at least as frequently as every nine months until maturity. The rationale for excluding these securities is discussed below.

[4] The total par value of sales transactions will be referred to hereafter as ''transaction activity.''

[5] The Rule A–13 underwriting assessment fee historically has varied, based on new issue volume in the market and the Board's revenue needs. Since 1991, Rule A–13 has provided for an assessment of $.03 per $1,000 on primary offerings (as defined in Exchange Act Rule 15c2–12) of municipal securities that have an aggregate par value of at least $1,000,000, that are not ''puttable'' to an issuer every two years or less, and that have a final stated maturity of two years or more. Since 1992, the Rule A–13 underwriting assessment has been $.01 per $1,000 for primary offerings with a final stated maturity of nine months or more, but less than two years, and $.01 per $1,000 for primary offerings which are ''puttable'' to an issuer every two years or less. Rule A–13 exempts from underwriting assessments those primary offerings which have a final stated maturity of nine months or less or which are puttable at least as frequently as every nine months until maturity.

69 percent—has come from the underwriting fee. Underwriting fee revenue, however, decreased by 16 percent in the last fiscal year (''FY'')—from $8,162,250 in FY 1998 to $6,819,726 in FY 1999—as total underwriting in the industry declined.[6] The Board projects a further ten percent decrease in underwriting fee revenue in FY 2000,[7] and little or no increase in underwriting volume in the years after 2000. In addition, the Board's annual revenue from inter-dealer transaction activities has been virtually unchanged over the past three years. Thus, the two major current sources of Board revenue are either static or declining. If there is no alteration in the fee structure, overall revenues are projected to decline six percent between FY 1999 and 2000.

Increase in Expenses

During the past five years, due to increased regulatory activities and expanded operation of the Municipal Securities Information Library (''MSIL'') system,[8] the Board's expenses have increased from $6,716,681 in FY 1994 to $9,849,701 in FY 1999. Much of the Board's expenses during this time have derived from development and operation of its Transaction Reporting System, which supports market surveillance and price transparency functions for the municipal securities market.[9]

In 1999, the Board began to look into possible ways to provide a ''real-time'' transaction reporting system in the municipal securities market to make price and volume information public on a more contemporaneous basis than is currently the case. This will continue to require budgetary allocations consistent with, or higher than, that experienced thus far. In addition, the Board's long-range plans call for increased involvement in activities to improve disclosure, which may entail substantial modification or enhancement of the Board's computer sytems.

Projected Shortfall and Request for Commission Approval

The proposed amendment, therefore, is necessary to address a projected shortfall in Board revenues caused by declining underwriting assessments and increases in projected expenses. The Board estimates that sales activity for long-term bonds in FY 2000 will be approximately $350 billion in inter-dealer trades and $480 billion in customer sales.[10] Assuming the customer transaction fee is effective for six months in FY 2000, Board revenues from transaction activity-based fees during FY 2000 would be about three million dollars.

The proposed change in the fee structure would bring the Board's revenues into better balance with its expenditures. Fiscal year 2000 expenditures are projected to be $11.98 million. Total revenues, including the transaction fees estimated above, are projected to be $10.39 million. If the proposed rule change is effective for half the current fiscal year, the projected shortfall will be $1.59 million. Without any assessment based upon customer trade activity, the projected shortfall would be an additional $1.2 million, *i.e.,* the total shortfall would be $2.79 million. For this reason, the Board is requesting that the Commission approve the proposed rule change prior to April 1, 2000, for effectiveness on the same date. In the years after 2000, without the proposed fee, there would be an even larger shortfall, which would be of serious concern to the Board.

Proposed Fee Structure Better Reflects Dealer's Market Participation

The Board's goal in determining the underwriting and transaction assessments has been to make the fees paid by each dealer reflect the dealer's involvement in the municipal securities market. When it originally adopted the rule A–13 underwriting fee in 1976, the Board stated its intention to broaden the scope of the rule, when possible, to reflect market activity occurring after the purchase of a new issue from an issuer. Reliable information to measure inter-dealer transaction activity first become available in 1995 as part of the Board's Transaction Reporting Program. This information, reported by dealers to the Board under Rule G–14, is the basis of the inter-dealer transaction fee that went into effect in 1996. In adopting the inter-dealer transaction fee, the Board noted that, together, the underwriting and inter-dealer transaction fees would more accurately reflect each dealer's participation in the market than the underwriting fee alone. At the same time, the Board stated its intention to examine customer transaction data when it became available, in order to adjust dealer fees even more equitably.[11]

Dealers began reporting customer transactions to the Board under rule G–14 in March 1998. Combined sales data (*i.e.,* inter-dealer plus customer sales) is a better measure of dealer participation in the market than is inter-dealer sales data alone, because there is substantial activity by dealers that buy securities on the inter-dealer market for resale to customers. The Board believes the combination of underwriting, inter-dealer and customer transaction fees to be the best currently available means for comprehensive measurement of dealer participation in the municipal securities market.[12]

Under the proposed rule change, the board would assess transaction fees on a monthly basis, based on transactions that dealers report to the Transaction Reporting System. Dealer sales to customers (not purchases by the dealer from customers) will be used as the measure of transaction activity. This avoids double counting when a dealer buys and sells a block of securities in the customer market.[13]

Exclusions

After reviewing trade data from the Transaction Reporting System, the Board determined to exclude certain

[6] Underwriting of long-term municipal securities was $286 billion in calendar year 1998 but declined in 1999 by more than 20 percent to $226 billion. *See* ''A Decade of Municipal Bond Finance,'' *The Bond Buyer,* January 7, 2000, at 30.

[7] New issues of municipal securities in January 2000 were about seven billion dollars, a decline of 35% from the level of January 1999. Refunding volume decreased more than 90%. *See* ''January's Deep Freeze: New-Issue Volume Lowest Since at Least '95,'' *The Bond Buyer,* February 1, 2000, at 1.

[8] The MSIL is composed of computer systems that store and disseminate, to the public and municipal securities enforcement agencies, the following information: official statements, advance refunding documents, and continuing disclosure of material events; political contributions by municipal securities professionals; and municipal securities transactions.

[9] MSIL expenditures during the past five fiscal years totaled $16.5 million, more than half of which is for Transaction Reporting System development and operations. Since inception, the Transaction Reporting System has been enhanced to disseminate more information in the transparency reports and to increase the information provided in a surveillance database to support enforcement of Board rules. Annual subscriptions to the transparency reports are available for a fee of $15,000, which has resulted in revenue that less than offsets the marginal cost of production. In January 2000, the Board began making available detailed transaction reports. The Board has determined that, in order to foster the broadest possible dissemination of price information, the new reports will be made available free of charge. *See* Exchange Act Release No. 41916 (Sept. 27, 1999) 64 FR 53759 (Oct. 4, 1999).

[10] Additional FY 2000 inter-dealer activity in short=term notes and short puts (securities excluded from the proposed fee) is estimated by the Board as $3.4 billion. Customer sales in the same securities are estimated to be $720 billion.

[11] *See* ''Revisions to Board Fee Assessments: Rules A–13, A–14 and G–14,'' *MSRB Reports,* Vol. 16, No. 2 (June 1996), at 13–15.

[12] As an alternative to the proposed transaction-based fee structure, the Board considered a revenue-based approach to fees. The Board concluded that it may not be feasible to conduct the objective audits necessitated by revenue-based fee assessment and, therefore, that the transaction-based approach is preferable.

[13] Similarly, the current inter-dealer transaction fee is assessed to the dealer on the ''sell side'' of each trade.

very short-term municipal issues (*e.g.,* commercial paper, variable rate demand obligations and short-term notes) from both the inter-dealer and customer transaction assessments.[14] There are relatively few transactions in these issues compared to the market as a whole (less than 7 percent of all transactions). However, transactions in these extremely short-term issues, which constitute about 51 percent of the par value traded, typically have very high par values. To assess a transaction activity fee on such issues would result in disproportionate fees for the small number of dealers that trade them, especially since those dealers also generally will have the highest levels of transaction and underwriting activity in issues that are subject to fee assessments.[15]

2. Basis

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(J) of the Act,[16] which requires, in pertinent part, that the Board's rules shall:

provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act in that it applies equally to all dealers in municipal securities.

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.

[14] Currently, all inter-dealer transactions required to be reported to the Board are considered for purposes of the fee calculation.

[15] In connection with the Board's proposal in 1995 to institute the inter-dealer transaction fee assessment, several municipal ''broker's brokers'' expressed a concern that they would be assessed a disproportionate share of Board fee revenue. The presently proposed rule change would address this concern. Since broker's brokers do not effect transactions with customers, the percentage of total Board revenue paid by these brokers would decrease when customer transactions are included in the fee base.

[16] 15 U.S.C. 78*o*–4(b)(2)(J).

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 MSRB 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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–00–03 and should be submitted by March 31, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5917 Filed 3–9–00; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42494; File No. SR–NASD–00–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Delay of the Implementation Date of Changes to Riskless Principal Trade Reporting Rules

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 February 24, 2000, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal

Nasdaq's proposal is an re-interpretation to NASD Rules 4632, 4642, 4652, 6420, and 6620, regarding riskless principal trade reporting. The intent of this proposed re-interpretation is to delay the effective date of the riskless principal trade reporting rule changes announced in SR–NASD–98–59[5] and SR–NASD–98–08,[6] and the interpretations thereto filed in SR–NASD–99–39[7] and SR–NASD–99–52.[8]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).

[6] *See* Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 37226 (July 15, 1999).

[7] *See* Securities Exchange Act Release No. 41731 (August 11, 1999), 64 FR 44983 (August 18, 1999).

[8] *See* Securities Exchange Act Release No. 41974 (October 4, 1999), 64 FR 55508 (October 13, 1999).

the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 24, 1999 and July 8, 1999, respectively, the Commission approved proposals to amend NASD trade reporting rules relating to riskless principal transactions in Nasdaq National Market, Nasdaq SmallCap Market, Nasdaq convertible debt, non-Nasdaq over-the-counter (''OTC'') equity securities, and exchange-listed securities traded in the third market (''Riskless Principal Trade Reporting Rules'').[9] Under the new Riskless Principal Trade Reporting Rules, a ''riskless'' principal transaction is one where an NASD member, after having received an order to buy (sell) a security, purchases (sells) the security as principal at the same price to satisfy the order to buy (sell).[10] The Riskless Principal Trade Reporting Rules provide that if a transaction is ''riskless,'' the offsetting transaction/leg (*e.g.,* the transaction with the customer) need not be reported.

In the Order approving SR–NASD–98–59, the Commission asked Nasdaq to submit an interpretation providing examples of how mark-ups, mark-downs, and other fees will be excluded for purposes of the amended riskless principal rules.[11] On August 5, 1999, Nasdaq filed with the Commission SR–NASD–99–39 [12] attached to which was *Notice to Members 99–65,* which gave examples of how mark-ups and other fees will be excluded for purposes of the Riskless Principles Trade Reporting Rules. SR–NASD–99–39 and *Notice to Members 99–65* were filed as an interpretation to existing NASD Rules 4632, 4642, 4652 and 6620. In addition to giving examples of how mark-ups and other fees will be excluded for purposes of the Riskless Principal Trade Reporting Rules, *Notice to Members 99–65* stated that the rule changes announced in SR–NASD–98–59 [13] and the interpretations to those rules contained in the *Notice* would become effective on September 30, 1999.

The NASD published *Notice of Members 99–65* (discussing the trade reporting rules for riskless principal transactions in Nasdaq and OTC securities) and *Notice to Members 99–66* (discussing, among other things, the trade reporting rules for the third market) in August 1999. The *Notices* announced that the Riskless Principal Trade Reporting Rules would go into effect on September 30, 1999.

Shortly after publication of *Notices to Members 99–65* and *99–66,* a number of firms represented that they were unable to prepare their systems for compliance with the new Riskless Principal Trade Reporting Rules by the September 30, 1999 deadline. The firms' inability to meet the September 30, 1999 deadline was due, in large part, to Year 2000 (''Y2K'') remediation and testing requirements, as well as other code changes. In addition, the firms stated that, due to a Y2K code freeze, they were not able to complete programming for the Riskless Principal Trade Reporting Rules until the end of the first quarter of 2000. Subsequently, Nasdaq filed SR–NASD–99–52,[14] the purpose of which was to delay the implementation date of the new Riskless Principal Trade Reporting Rules until March 1, 2000.

Nasdaq proposes to defer the implementation date of the Riskless Principal Trade Reporting Rules until September 1, 2000, because a number of NASD members have represented that the approach described in *Notices to Members 99–65* and *99–66* for riskless principal trade reporting would raise significant issues that need to be addressed in greater detail through, for example, interpretive guidance. The firms have requested an extension of the implementation date until September 1, 2000, to allow the firms and the NASD time to resolve the issues posed, and to program their systems.

Specifically, Nasdaq received a copy of a letter dated February 18, 2000 (''Letter'') in which the signatory firms requested an extension of the implementation date of the Riskless Principal Trade Reporting Rules.[15] The Letter stated that the signatory firms (''Firms'') are requesting the extension because they have asked the NASD to consider a proposed new approach to riskless principal trade reporting that differs significantly from the approach described in *Notices to Members 99–65* and *99–66.* The Firms proposed the new approach because they believe that, under the approach set forth in the *Notices,* accurately reporting trades through electronic communication networks would be problematic, as would executions in which both the first and second leg of riskless principal trades are reported by their own trading systems. The Letter gives examples of trade reporting problems presented by the Riskless Principal Trade Reporting Rules.

The Firms request an extension of the implementation date until September 1, 2000, to give them and the NASD adequate time to develop workable solutions to the reporting problems that have been identified, and to program their systems. The extension until September 1, 2000 is necessary because the industry and the NASD will be required to devote a portion of their technology resources in the first and second quarters of 2000 to the implementation of decimal pricing by the July 3, 2000 deadline established by the SEC's Decimalization Order.[16]

Nasdaq believes that a delay in the implementation of the Riskless Principal Trade Reporting Rules is reasonable in light of the decimalization efforts, the need for the NASD and the Firms to develop workable solutions to the problems identified, and the programming changes required by the rule change.

2. Statutory Basis

Nasdaq believes it would not be prudent nor would it be consistent with Section 15A of the Act [17] to require members to implement substantial system changes at a time when they are focusing significant resources and time

[9] *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) (SR–NASD–98–59). *See also* Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999) (SR–NASD–98–08).

[10] *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999)(SR–NASD–98–59). *See also,* Securities Exchange Act Release No. 41606 (July 8, 1999), 64 FR 38226 (July 15, 1999)(SR–NASD–98–08).

[11] *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999) at footnote 15.

[12] *See* Securities Exchange Act Release No. 41731 (August 11, 1999), 64 FR 44983 (August 18, 1999).

[13] *See* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999).

[14] *See* Securities Exchange Act Release No. 41974 (October 4, 1999), 64 FR 55508 (October 13, 1999).

[15] *See* February 18, 2000 letter to Belinda Blaine, Associate Director, SEC (a copy was sent to, among others, Robert Aber, Senior Vice President and General Counsel, Nasdaq), from Automated Securities Clearance, Ltd. and the following NASD member firms: Bernard L. Madoff Securities; CIBC World Markets; Credit Suisse First Boston; Deutsche Banc Alex. Brown; Donaldson, Lufkin & Jenrette; Goldman Sachs & Co.; Jefferies; Lehman Bros.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Morgan Stanley Dean Writer; and Salomon Smith Barney Inc.

[16] Order Directing the Exchanges and the NASD to Submit a Decimalization Implementation Plan Pursuant to Section 11A(a)(3)(B) of the Act, Release No. 34–42360 (January 28, 2000), 65 FR 5003 (February 2, 2000) (File No. 4–430).

[17] 15 U.S.C. 78o–3.

to implement decimal pricing, especially if the changes will not accomplish the objectives of streamlining trade reporting in Nasdaq, OTC, and Third Market securities and reducing SEC transaction fees. Thus, Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act [18] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received 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

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,[19] and Rule 19b–4(f)(1) [20] thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[21]

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, NW, Washington, DC 20549–0609. 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 the NASD. All submissions should refer to file number SR–NASD–00–06 and should be submitted by March 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5916 Filed 3–9–00; 8:45 am]

BILLING CODE 8010–01–M

[18] 15 U.S.C. 78o–3(b)(6).

[19] 15 U.S.C. 78s(b)(3)(A)(i).

[20] 17 CFR 240.19b–4(f)(1).

[21] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C 3507), SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of the publication of this notice. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of the notice. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Internet Retirement Insurance Benefit (IRIB) Application—0960–NEW. The information collected is used by SSA to determine entitlement to retirement insurance benefits. Currently, applicants for retirement insurance benefits complete an SSA–1 by telephone or in person with the assistance of an SSA employee. The IRIB application will enable individuals to complete the application on their own electronically over the Internet.

Number of Respondents: 80,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 20,000 hours.

2. Request for Internet Service—Authentication—0960–0596. The information collected on the electronic request for Internet Service, Authentication, is used by the Social Security Administration to identify its customers who are requesting Privacy Act protected information. The respondents are members of the public who request services from SSA through the Internet.

Number of Respondents: 21,000.

Frequency of Response: 1.

Average Burden Per Response: 1.5 minutes.

Estimated Annual Burden: 525 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: March 3, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–5768 Filed 3–9–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3246]

Culturally Significant Objects Imported for Exhibition Determinations: ''Golden Years of Faberge: Objects and Drawings From the Wigstrom Workshop''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999, as amended by

Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that the objects to be included in the exhibition ''Golden Years of Faberge: Objects and Drawings from the Wigstrom Workshop,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the A La Vieille Russie Gallery, New York, NY from on or about April 12, 2000 to on or about May 19, 2000, and at the New Orleans Museum of Art, from on or about June 17, 2000 to on or about August 20, 2000 is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: March 6, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–5923 Filed 3–9–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3247]

Culturally Significant Objects Imported for Exhibition Determinations: ''O'Keeffe on Paper''

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the object to be included in the exhibition ''O'Keeffe on Paper,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit object at the National Gallery of Art, Washington, DC from April 9, 2000 through July 9, 2000, and at the Georgia O'Keeffe Museum, Santa Fe, CA from July 29, 2000 through October 29, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including the exhibit object, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44; 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: March 6, 2000.

William B. Bader,

Assistant Secretary of State, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–5924 Filed 3–9–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3245]

Statutory Debarment Under the International Traffic in Arms Regulations Involving Orbit/FR, Inc.

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that Orbit/FR, Inc. is statutorily debarred pursuant to section 127.7 (c) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). It shall be the policy of the Department of State to deny all export license applications and other requests for approval involving Orbit/FR, Inc. directly or indirectly.

EFFECTIVE DATE: November 10, 1999.

FOR FURTHER INFORMATION CONTACT: Eva O. Tyler, Acting Chief, Compliance Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6644, Ext. 3).

SUPPLEMENTARY INFORMATION: On November 10, 1999, Oribt/FR, Inc. pled guilty to two (2) counts of violating the Arms Export Control Act (AECA) (22 U.S.C. 2778) in the U.S. District Court, Eastern District of Pennsylvania. The information charges Orbit/FR, Inc. with illegally exporting components for an antenna and radome measurement system, AL–8098, also known as AL–8099 to the People's Republic of China and illegally furnishing a defense service involving the modification of the antenna measurement software so that the antenna measurement system would have sufficient accuracy to measure antennas on a Patriot-type missile system to the People's Republic of China. *United States* v. *Orbit/FR, Inc.,* Eastern District of Pennsylvania, Criminal Docket No. CR 99–560.

Section 38(g)(4)(A) of the Arms Export Control Act (AECA), 22 U.S.C. 2778, prohibits licenses or other approvals for the export of defense articles and defense services to be issued to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA. The term ''person'', as defined in 22 CFR 120.14 of the International Traffic in Arms Regulations (ITAR), means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. The ITAR, specifically 126.7(e), defines the term ''party to the export'' to include the president, the chief executive officer, and other senior officers and officials of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end-user of any item to be exported.

The ITAR, Section 127.7, authorizes the Assistant Secretary of State for Political-Military Affairs to prohibit certain persons convicted of violating, or conspiring to violate, the AECA, from participating directly or indirectly in the export of defense articles or in the furnishing of defense services for which a license or approval is required. Such a prohibition is referred to as a ''statutory debarment,'' which may be imposed on the basis of a judicial proceeding that resulted in a conviction for violating, or of conspiring to violate, the AECA. See 22 CFR 127.7(c). The period for debarment will normally be three years from the date of conviction. At the end of the debarment period, and possibly after a period of one year, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by the AECA, 22 U.S.C. 2778(g)(4).

Statutory debarment is based solely upon a conviction in a criminal proceeding, conducted by a United States court. Thus, the administrative debarment procedures, as outlined in the ITAR, 22 CFR part 128, are not applicable in such cases.

The Department of State will not consider applications for licenses or

requests for approvals that involve any person or any party to the export who has been convicted of violating, or of conspiring to violate, the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the under Secretary for International Security Affairs for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision. 22 CFR 127.7(d).

The Department of State policy permits debarred persons to apply for reinstatement of export privileges one year after the date of the debarment, in accordance with the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, Section 127.7. A reinstatement request is made to the Director of the Office of Defense Trade Controls. Any decision to reinstate export privileges can be made only after the statutory requirements under Section 38(g)(4) of the AECA have been satisfied through a process administered by the Office of Defense Trade Controls. If reinstatement is granted, the debarment will be suspended.

Pursuant to the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, 22 CFR 127.7, the Assistant Secretary for Political-Military Affairs has statutorily debarred Orbit/FR, Inc. which has been convicted of violating the AECA. On November 10, 1999, Orbit/FR, Inc. was convicted of two counts of violating section 38 of the AECA.

Exceptions may be made to this denial policy on a case-by-case basis at the discretion of the Office of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interest; whether an exception would further law enforcement concerns which are not inconsistent with the foreign policy or national security interests of the United States; or, whether other compelling circumstances exist which are not inconsistent with the foreign policy or national security interests of the United States, and which do not conflict with law enforcement concerns.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: March 6, 2000.

Michael T. Dixon,

Acting Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs Department of State.

[FR Doc. 00–5922 Filed 3–9–00; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195; Flight Information Services Communications (FISC)

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–195 meeting to be held March 28, 29, and 30, 2000, starting at 8:30 a.m. each day. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC., 20036.

The agenda will include: March 28: Plenary convenes for 30 minutes: (1) Welcome and Introductions; (2) Agenda Overview; (3) Working Group (WG) 1, Aircraft Cockpit Weather Display, Work on Comparison Between Aircraft and Ground Weather Radar Document and the design Guidelines & Recommended Standards for Airborne Processing & Display of FIS–B Section for Change 1 to the FIS–B Minimum Aviation System Performance Standards (MASPS); 1:00 p.m. Plenary Reconvenes: (4) Review of Previous Meeting Minutes; (5) Report from WG–1 on Activities; (6) Report on ICAO METLINK Study Group and Program Management Committee Meetings; (7) Report on Concept of Operations for Cockpit Display of Weathers and Airspace Information Documents Development. March 29: (8) Work on FIS–B MASPS Section 4.0, Procedures for Performance Requirement Verification, Development; (9) Work on FIS–B MASPS Appendix E, Application Payload Encoding. March 30: (10) Review Issues (Action Items) and Address Future Work; (11) Dates and Location of Future Meetings; (12) Other Business; (13) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 2, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–5956 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 196; Night Vision Goggle (NVG) Appliances & Equipment

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–196 meeting to be held March 28–29, 2000, starting at 8 a.m. The meeting will be held at FAA Rotorcraft Directorate, (4th Floor, Don Watson Room), FAA Southwest Region Headquarters, 2601 Meacham Blvd, Ft. Worth, TX. 76139.

The agenda will include: (1) Welcome and Introductory Remarks; (2) Agenda Overview; (3) Review/Approval of Previous Minutes; (4) Action Item Status Review; (5) Bell Helicopters Training Program; (6) WAMCO NVG External Lighting Brief; (7) FAA Medical Certification Brief; (8) BAE NVG Heads-Up Display Systems; (9) Overview SC–196 Working Group (WG) Activities: (a) WG–1, Operational Concept/Requirements; (b) WG–2, NVG MOPS; (c) WG–3, Night Vision Imaging System Lighting; (d) WG–4, Maintenance/Serviceability; (e) WG–5, Training Guidelines/Considerations; (10) Open Forum; (11) WG Breakout Sessions; (12) Other Business; (13) Establish Agenda for Next Meeting; (14) Date and Location of Next Meeting; (15) Closing.

Attendance is open to the interested public but limied to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 2, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–5957 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/ EUROCAE Working Group 44; Terrain and Airport Databases

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting to be held April 3–7, 2000, starting at 9:00 a.m. The meeting will be held at EUROCONTROL Headquarters, Rue de la Fusee, 96, Brussels B–1130, Belgium.

The agenda will be as follows: April 3, Opening Plenary Session: (1) Welcome and Introductions; (2) Review/ Approval of Meeting Agenda; (3) Review Summary of the Previous Meeting; (4) Presentations; (5) New Business; (Break into Subgroups 2 and 3); (6) Subgroup 2, Terrain and Obstacle Databases: (a) Review of Summary of the Previous Minutes; (b) Review of Actions Taken During the Previous Meeting; (c) Presentations; (d) Review of the Draft Document; (7) Subgroup 3, Airport Databases: (a) Review of Summary of the Previous Meeting Minutes; (b) Review of Actions Taken During the Previous Meeting; (c) Presentations; (d) Review of the Draft Document. April 4–6: (8) Subgroup 2, Continuation of Previous Days Discussions: (9) Subgroup 3, Continuation of Previous Days Discussion. April 7: Closing Plenary Session: (10) Summary of Subgroups 2 and 3 Meetings; (11) Assign Tasks; (12) Other Business; (13) Dates and Locations of Next Meetings; (14) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833–9339 (phone), (202) 833–9434 (fax), or http://www.rtca/org (web site) or Mr. Philippe Caisso, at 011–33–5–62–14–5859 or e-mail *CAISSOPhilippe@stna.dgac.fr.* Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 6, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–5958 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–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 La Crosse Municipal Airport, La Crosse, WI

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 La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before April 10, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Michael A. Daigle, Airport Manager of the La Crosse Municipal Airport at the following address: La Crosse Municipal Airport, 2850 Airport Road, La Crosse, WI 54603.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of La Crosse under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4363. 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 La Crosse Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act off 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 24, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of La Crosse was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 25, 2000.

The following is a brief overview of the application.

PFC application number: 00–05–C–00–LSE.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2000.

Proposed charge expiration date: April 1, 2003.

Total estimated PFC revenue: $689,028.00.

Brief description of proposed projects: Reconstruct Runway 18/36 (phase 2 and 3), Install approach light system, Conduct master plan update, Acquire ground level passenger loading bridges, PFC administration.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: no request to exclude carriers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of La Crosse.

Issued in Des Plaines, Illinois on February 25, 2000.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 00–5955 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Minot International Airport, Minot, ND

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 use the revenue from a PFC at Minot International Airport under the provisions of the Aviation

Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATE: Comments must be received on or before April 10, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mike Ryan, Airport Director, of the City of Minot, North Dakota at the following address: Minot International Airport, 25 Airport Road, Suite 10, Minot, North Dakota 58701–1457.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Minot, North Dakota under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. 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 Minot International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 22, 2000, the FAA determined that the application to use the revenue from a PFC submitted by the City of Minot, North Dakota was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 13, 2000.

The following is a brief overview of the application. PFC application number: 00–05–U–00–MOT

Level of the PFC: $3.00.

Actual charge effective date: March 1, 1999.

Estimated charge expiration date: June 1, 2000.

Total estimated PFC revenue: $203,841.00.

Brief description of proposed project: Use: Runway 8–26 Restoration and Extension.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operator (ATCO) Class Carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Minot—Airport Directors offices at the Minot International Airport.

Issued in Des Plaines, Illinois on February 25, 2000.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 00–5954 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7020]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled, ''Approval of Underwriters for Marine Hull Insurance.''

DATES: Comments should be submitted on or before May 9, 2000.

FOR FURTHER INFORMATION CONTACT: Otto A. Strassburg, Chief, Division of Marine Insurance, Office of Insurance and Shipping Analysis, MAR–570, Room 8117, Maritime Administration, 400 Seventh Street, SW, Washington, D.C. 20590, telephone number: 202–366–4161. Copies of this collection can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: ''Approval of Underwriters for Marine Hull Insurance''.

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0517.

Form Number: None.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: This collection of information involves the approval of marine hull underwriters to insure MARAD program vessels. Foreign applicants will be required to submit financial data upon which MARAD approval would be based. In certain cases, brokers would be required to certify that American underwriters were offered opportunity to compete for the business.

Need and Use of the Information: 46 CFR Part 249, published as a final rule on June 20, 1988, prescribes regulations for approval of underwriters for marine hull insurance on vessels built or operated with subsidy or covered by vessel obligation guarantees issued pursuant to Title XI of the Merchant Marine Act, 1936, as amended. The regulations provide for approval of foreign underwriters on the basis of an assessment of their financial condition, the regulatory regime under which they operate, and a statement attesting to a lack of discrimination in their country against U.S. hull insurers. The regulations also require that American underwriters be given an opportunity to compete for every placement, thereby necessitating in some cases certification that such opportunity was offered.

Description of Respondents: Foreign underwriters of marine insurance and insurance brokers.

Annual Responses: 62 responses.

Annual Burden: 46 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: March 6, 2000.

Joel C. Richard,

Secretary.

[FR Doc. 00–5899 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on December 23, 1999, [64 FR 72140].

DATES: Comments must be submitted on or before April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones, Director, Office of Maritime Labor, Training and Safety, MAR–250, Room 7302, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone number 202–366–5755 or fax 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration.

Title of Collection: ''Maritime Administration Service Obligation Compliance Report and Merchant Marine Reserve, U.S. Naval Reserve (USNR), Annual Report.''

OMB Control Number: 2133–0509.

Type of Request: Approval of an existing information collection.

Affected Public: Every student and graduate of the USMMA and subsidized State maritime academies.

Form(s): MA–930.

Abstract: In accordance with the Maritime Education and Training Act of 1980, Public Law 96–453, every student and graduate of the U.S. Merchant Marine Academy, and subsidized State maritime academies incur a mandatory service obligation in the U.S. merchant marine. This collection of information is necessary to determine if a graduate of the USMMA or a subsidized State maritime academy is complying with the requirement to submit annually the form MA–930 to MARAD. This form is used to determine if a graduate has complied with the terms of the service obligation for that year.

Annual Estimated Burden Hours: 1500.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on March 6, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–5898 Filed 3–9–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 2, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

Departmental Offices Community Development Financial Institutions (CDFI) Fund

OMB Number: New.

Form Number: CDFI Form 0012 (Public) and CDFI Form 0013 (Private).

Type of Review: New collection.

Title: Survey on Lending in Indian Country.

Description: The data from this survey will provide information necessary for private lenders and government agencies to respond effectively to the diverse problems Native Americans confront in gaining access to capital.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–5857 Filed 3–9–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 28, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 10, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0064.

Form Number: IRS Form 4029.

Type of Review: Extension.

Title: Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.

Description: Form 4029 is used by members of recognized religious groups to apply for exemption from social security and Medicare taxes under Internal Revenue Code (IRC) sections 1402(g) and 3127. The information is

used to approve or deny exemption from social security and Medicare taxes.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 3,754.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 7 min.

Learning about the law or the form: 11 min.

Preparing the form: 11 min.

Copying, assembling, and sending the form to the IRS: 35 min.

Frequency of Response: Other (one-time).

Estimated Total Reporting/ Recordkeeping Burden: 4,017 hours.

OMB Number: 1545–0928.

Regulation Project Number: EE–35–85 (Final), TD 8219.

Type of Review: Extension.

Title: Income Tax: Taxable Years Beginning After December 31, 1953; OMB Control Number Under the Paperwork Reduction Act; Survivor Benefits, Distribution Restriction and Various Other Issues Under the Retirement Equity Act of 1984.

Description: The notices referred to in this Treasury decision are required by statute and must be provided by employers to retirement plan participants to inform participants of their rights under the plan or under the law. Failure to timely notify participants of their rights may result in loss of plan benefits.

Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 750,000.

Estimated Burden Hours Per Respondent: 31 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 385,000 hours.

OMB Number: 1545–1431.

Regulation Project Number: IA–74–93 (Final).

Type of Review: Extension.

Title: Substantiation Requirement for Certain Contributions.

Description: These regulations provide that, for purposes of substantiation for certain charitable contributions, consideration does not include *de minimis* goods or services. It also provides guidance on how taxpayers may satisfy the substantiation requirement for contributions of $250 or more.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 16,000.

Estimated Burden Hours Per Respondent: 3 hours, 13 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 51,500 hours.

OMB Number: 1545–1519.

Form Number: IRS Form 1099–LTC.

Type of Review: Extension.

Title: Long-Term Care and Accelerated Death Benefits.

Description: Under the terms of Internal Revenue Code (IRC) sections 7720B and 101g, qualified long-term and accelerated death benefits paid to chronically ill individuals are treated as amounts received for expenses incurred for medical care. Amounts received on a per diem basis in excess of $175 per day are taxable. Section 6050Q requires all such amounts to be reported.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 11 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 13,602 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–5858 Filed 3–9–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Report on the Feasibility and Appropriateness of Mandatory Subordinated Debt

AGENCY: Departmental Offices, Treasury.

ACTION: Request for comments.

SUMMARY: Legislation recently enacted requires the Board of Governors of the Federal Reserve System (Board) and the Secretary of the Treasury (Secretary) to conduct a study of the use of subordinated debt to bring market forces and market discipline to bear on the operation and assessment of the viability of large financial institutions. In conducting this study, we will consider the views of the general public. We invite all interested parties to submit written comments on the topics set forth below.

DATE: Comments must be in writing and must be received by May 9, 2000.

ADDRESSES: Send comments to: Subordinated Debt Study, Office of Financial Institutions Policy, Department of the Treasury, Room SC 37, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Joan Affleck-Smith, Director, Office of Financial Institutions Policy, U. S. Treasury Department, 202/622–2470; and Myron Kwast, Associate Director, Division of Research and Statistics, Federal Reserve Board, 202–452–2909.

SUPPLEMENTARY INFORMATION: Section 108 of the Gramm-Leach-Bliley Act of 1999 (Public Law No. 106–102) requires the Board and the Secretary to conduct a study of the feasibility and appropriateness of establishing a requirement that large insured depository institutions [1] and depository institution holding companies [2] maintain some portion of their capital in the form of subordinated debt [3] in order to bring market forces and market discipline to bear on the operation of, and the assessment of the viability of, such institutions and companies and to reduce the risk to economic conditions, financial stability, and any deposit insurance fund.

The Act also requires that, if such a subordinated debt requirement is feasible and appropriate, the study address: (1) The appropriate amount or percentage of capital that should be subordinated debt, and (2) The manner in which any such subordinated debt requirement could be incorporated into existing capital standards and other issues relating to the transition to such a requirement. The Act requires the Board and the Secretary to report to Congress by May 12, 2001 on their findings and conclusions in connection with the study together with any legislative and administrative proposals that the Board and the Secretary may determine to be appropriate.

[1] The term ''insured depository institution'' has the meaning given the term in section 3(c) of the Federal Deposit Insurance Act.

[2] The term ''holding company'' has the meaning given the term in section 2 of the Bank Holding Company Act of 1956.

[3] The term ''subordinated debt'' means unsecured debt that: (a) Has an original weighted average maturity of not less than five years; (b) is subordinated as to payment of principal and interest to all other indebtedness of the bank, including deposits; (c) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and (d) is not held in whole or in part by any affiliate or institution-affiliated party of the insured depository institution or bank holding company.

Suggested Format of Comments

In order to assist the Board and the Secretary in preparing the subordinated debt study, the two agencies have determined to invite interested parties to submit comments and information that would inform the study. Comment is invited on all of the issues under study and identified below as well as on other issues related to the study that have not been included below.

I. Objectives of a Mandatory Subordinated Debt Requirement

Several changes in the banking industry [4] have complicated the supervision of large banking organizations. These changes include the removal of barriers to interstate banking, the blurring of traditional boundaries between banking and other types of financial services, and the consolidation of bank and nonbank activities in very large organizations. Large banks use highly complex methods for taking, measuring, and controlling risks. This greatly increases the challenge that regulators have in evaluating bank performance and ensuring safety and soundness.

Proponents of a requirement for large banking organizations to issue subordinated debt (SD) argue that it would enhance market discipline exerted on banks, and thus help to promote safety and soundness. A mandatory SD policy could provide direct discipline through changes in a bank's cost of issuing SD. An SD requirement could also enhance indirect discipline, as private market participants and government supervisors evaluate bank risk by monitoring SD secondary market prices. Expectations of higher SD interest costs and the potential imposition of other market or regulatory penalties would provide a bank with incentives to manage risk-taking more effectively.

Some proponents of an SD requirement emphasize its potential in limiting supervisory forbearance towards troubled institutions, while others argue that it would serve the objective of improving transparency and disclosure as SD holders and other market participants demand sufficient information to assess the bank's financial condition.

Finally, an SD requirement is often viewed as a means to increase the protection of the deposit insurance funds, since SD could provide the FDIC an extra buffer to absorb losses in the event of bank failure.

[4] This and subsequent references to the banking industry refer to both commercial banks and savings institutions.

II. Is a Mandatory SD Requirement on Large Banking Organizations Feasible and Appropriate?

Current Market: An understanding of the current market for banking organization SD is necessary to evaluate the feasibility of instituting an SD requirement. Important features of the current market to consider include: Its liquidity; the typical size and frequency of debt issuance; fixed and variable issuance costs; the degree of homogeneity of the debt instruments; the quality of price and volume data; and the size and other characteristics of the issuing organizations. It is also important to assess the effectiveness of the current SD market with respect to: creating market discipline; protecting the FDIC; and providing useful information to government supervisors.

Benefits of Mandatory SD: Proponents of a mandatory SD policy argue that, if structured in certain ways, the policy would provide greater market discipline than that provided by the existing SD market. Some also have argued that: SD compares favorably to other debt instruments and to equity in providing accurate and timely signals about bank risk; mandatory SD could improve bank supervision; and mandatory SD would provide additional protection from losses to the deposit insurance funds.

Costs and Risks of Mandatory SD: Critics of mandatory SD argue that such a requirement may impose additional costs on banking organizations, including the greater underwriting and related costs arising from required periodic issuance. A mandatory policy may alter market liquidity in ways that raise banks' funding costs. There are concerns that a mandatory SD policy might lead to a substitution of debt for equity. Some have cautioned about risks to economic stability, including the possibility that such a policy could exacerbate a business cycle downturn. These critics also say that SD may not be necessary because the deposit insurance reforms enacted early in the 1990s may provide a sufficient amount of market discipline in a downturn. Furthermore, an SD policy structured in certain ways (*e.g.,* capping spreads on the debt or requiring put options) could unduly constrict supervisory flexibility and destabilize financial institutions or debt markets.

III. If an SD Requirement Is Feasible and Appropriate, How Should It Be Structured and to Which Organizations Should It Apply?

Most mandatory SD proposals have called for debt to be issued at the bank level, while the existing market for the publicly traded SD of large banking organizations is primarily at the holding company level. The minimum institution size to which an SD requirement would apply, the amount of SD required, the minimum frequency of issuance and maturity, and other features of the debt all would affect the degree to which the policy meets its desired objectives while avoiding undue costs and risks.

IV. If an SD Requirement is Feasible and Appropriate, How Should It Be Incorporated Into Existing Capital Standards and Supervisory Policies?

Some mandatory SD proposals would allow SD to count towards existing capital requirements while others call for SD over and above capital levels currently required. Application of mandatory SD only to U.S. banks could have implications for international competitiveness. Some argue that using interest rate spreads or SD as supervisory triggers (*e.g.*, in prompt corrective action and in setting risk-based deposit insurance premiums) would be critical to its effectiveness, while others argue that the augmented market discipline and additional information it would provide to supervisors would be worthwhile on their own.

V. If an SD Requirement Is Feasible and Appropriate, What Are the Transition Issues?

Imposing an SD requirement would raise various transition issues, including the treatment of existing SD outstanding (*e.g.*, grandfathering) and the length of a transition period to full implementation of the requirement.

Dated: February 25, 2000.

Gregory A. Baer,

Assistant Secretary for Financial Institutions, Department of the Treasury.

[FR Doc. 00–5856 Filed 3–9–00; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Application of Undertaker for Payment of Funeral Expenses From Funds to the Credit of a Deceased Depositor

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the POD Form 1672 ''Application of Undertaker for Payment of Funeral Expenses From Funds to the Credit of a Deceased Depositor''.

DATES: Written comments should be received on or before May 9, 2000.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Programs Branch, Room 144, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Spiegel, Manager, Judgment Fund Branch, Room 6D39, 3700 East West Highway, Hyattsville, Maryland 20872, (202) 874–8664.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Application of Undertaker for Payment of Funeral Expenses From Funds to the Credit of a Deceased Depositor.

OMB Number: 1510–0033.

Form Number: POD 1672.

Abstract: This form is used by the undertaker to apply for payment of a postal savings account of a deceased depositor to apply for funeral expenses. This form is supported by a certificate from a relative (POD 1690) and an itemized funeral bill. Payment is made to the funeral home.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 15.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 8.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 00–5846 Filed 3–9–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 851

AGENCY: Internal Revenue Service (IRS), Treasury.

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 851, Affiliations Schedule.

DATES: Written comments should be received on or before May 9, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Affiliations Schedule.

OMB Number: 1545–0025.

Form Number: 851.

Abstract: Form 851 is filed by the parent corporation for an affiliated group of corporations that files a consolidated return (Form 1120). Form 851 provides IRS with information on the names and identification numbers of the members of the affiliated group, the taxes paid by each member of the group, and stock ownership, changes in stock ownership and other information to determine that each corporation is a qualified member of the affiliated group as defined in Internal revenue Code section 1504.

Current Actions: There are no changes being made to Form 851 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and farms.

Estimated Number of Responses: 4,000.

Estimated Time Per Response: 12 hrs., 5 min.

Estimated Total Annual Burden Hours: 48,360.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: March 3, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5965 Filed 3–9–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4876–A

AGENCY: Internal Revenue Service (IRS), Treasury.

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4876–A, Election To Be Treated as an Interest Charge DISC.

DATES: Written comments should be received on or before May 9, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Be Treated as an Interest Charge DISC.

OMB Number: 1545–0190.

Form Number: 4876–A.

Abstract: A domestic corporation and its shareholders must elect to be an interest charge domestic international sales corporation (IC–DISC). Form 4876–A is used to make the election. IRS uses the information to determine if the corporation qualifies to be an IC–DISC.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,000.

Estimated Time Per Response: 5 hrs., 46 min.

Estimated Total Annual Burden Hours: 5,760.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

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.

Approved: March 2, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–5966 Filed 3–9–00; 8:45 am]

BILLING CODE 4830–01–U

Federal Register

Friday,

March 10, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 410

Medicare Program; Negotiated Rulemaking: Coverage and Administrative Policies for Clinical Diagnostic Laboratory Services; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 410

[HCFA–3250–P]

RIN 0938–AJ53

Medicare Program; Negotiated Rulemaking: Coverage and Administrative Policies for Clinical Diagnostic Laboratory Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish national coverage and administrative policies for clinical diagnostic laboratory services payable under Medicare Part B to promote Medicare program integrity and national uniformity, and simplify administrative requirements for clinical diagnostic laboratory services. A Negotiated Rulemaking Committee (the Committee) developed the proposed policies as directed by section 4554(b)(1) of the Balanced Budget Act of 1997 (the BBA).

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on May 9, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–3250–P, P.O. Box 8016, Baltimore, MD 21244–8016.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8016.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3250–P. 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 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Jackie Sheridan, (410) 786–4635 (for issues related to coverage policies). Brigid Davison, (410) 786–8794 (for issues related to documentation requirements). Dan Layne, (410) 786–3320 (for issues related to claims processing).

SUPPLEMENTARY INFORMATION:

Availability of Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested, and enclose a check or money order payable to the Superintendent of Documents, or enclose your VISA, Discover, or MasterCard number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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Overview

In this proposed rule, we explain the establishment of a negotiated rulemaking committee to develop coverage and administrative policies for clinical diagnostic laboratory services payable under Medicare Part B. We set out and explain proposed revisions to regulations on clinical diagnostic laboratory services payable under Medicare Part B, including provisions relating to national administrative policies. The addenda to this proposed rule include the proposed national coverage policies that are proposed as national coverage decisions, and an introduction explaining the uniform format used by the Committee in developing those decisions.

To assist readers in referencing sections contained in this proposed rule, we are providing the following table of contents:

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IX. Regulatory Impact Analysis

Due to referral practices in the performance of clinical diagnostic laboratory tests, the laboratory performing the test may not be the entity authorized to bill Medicare for the service. In order to avoid confusion, in this proposed rule we have used the word ''laboratory'' when discussing requirements that apply universally to laboratories and the word ''entity billing Medicare'' (or a similar phrase) to indicate requirements that apply to a laboratory or other entity that is authorized to submit the Medicare claim for the service.

I. Background

Note: Label comments about this section with the subject: ''Background''.

A. Current Statutory Authority and Medicare Policies

Section 1861(s)(3) of the Social Security Act (the Act) provides for payment of, among other things, clinical diagnostic laboratory services under Medicare Part B. Tests must be ordered either by a physician, as described in § 410.32(a), or by a qualified nonphysician practitioner, as described in § 410.32(a)(3). Tests may be furnished by any of the entities listed in § 410.32(d)(1). A laboratory furnishing tests on human specimens must meet all applicable requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Public Law 100–578), as set forth at 42 CFR part 493. Part 493 applies to laboratories seeking payment under the Medicare and Medicaid programs.

Section 1862(a)(1)(A) of the Act, to which there are certain explicit statutory exceptions, provides that no Medicare payment may be made for expenses incurred for items or services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member. We have consistently interpreted this provision to exclude services that are not safe and effective, are experimental, and are not furnished in accordance with accepted standards of medical practice. (Some exceptions exist such as category B devices under evaluation with FDA protocals.) Moreover, section 1862(a)(7) of the Act excludes coverage ''where such expenses are for routine physical checkups, eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of any eye examination) to determine the refractive state of the eyes, hearing aids or examination therefore, or immunizations (except as otherwise allowed under section 1861(s)(10) and paragraph (1)(B) or under paragraph (1)(F).''

We have consistently interpreted these provisions to prohibit coverage of screening services, including clinical laboratory tests furnished in the absence of signs, symptoms, complaints, or personal history of disease or injury, except as explicitly authorized by statute.

Under the above statutory authority, we have issued national coverage decisions and policies in a variety of documents, such as HCFA manual instructions, **Federal Register** notices, and HCFA Rulings. We have issued approximately 20 national coverage decisions pertaining to clinical diagnostic laboratory services in the Medicare Coverage Issues Manual (HCFA Pub. 6). Medicare program manuals are posted on the Internet at http://www. hcfa.gov/pubforms/progman.htm. Program transmittals and program memoranda are posted at http://www.hcfa.gov/pubforms/transmit/transmit.htm.

Under section 1842(a) of the Act, we contract with organizations to perform bill processing and benefit payment functions for Medicare Part B (Supplementary Medical Insurance). These Medicare contractors, who process Part B claims from noninstitutional entities, are called carriers. Under section 1816(a) of the Act, we contract with fiscal intermediaries to perform claims processing and benefit payment functions for Medicare Part A (Hospital Insurance). Fiscal intermediaries also process claims payable from the Medicare Part B trust fund that are submitted by providers that participate in Medicare Part A, such as hospitals and skilled nursing facilities. We use the term ''contractor(s)'' to mean carriers and fiscal intermediaries.

Medicare contractors review and adjudicate claims for services to assure that Medicare payments are made only for services that are covered under Medicare Part A or Part B. In the absence of a specific national coverage decision, coverage decisions are made at the discretion of the local contractors. Frequently, local contractors publish local medical review policies (LMRPs) to provide guidance to the public and medical community that they service. Contractors develop these local medical review polices by considering medical literature, the advice of local medical societies and medical consultants, and public comments. Our instructions regarding the development of local medical review policies appear in section 7500ff of the Medicare Carriers Manual (HCFA Pub. 13–3).

These LMRPs explain when an item or service will (or will not) be considered ''reasonable and necessary'' and thus eligible (or ineligible) for coverage under the Medicare statute. If a contractor develops an LMRP, its LMRP applies only within the area it serves. While another contractor may come to a similar decision, we do not require it to do so. An LMRP may not conflict with a national coverage decision once the national coverage decision is effective. If a national coverage decision conflicts with a previously made LMRP, the contractor must change its LMRP to conform it to the national coverage decision. A contractor may, however, make an LMRP that supplements a national coverage decision where the national coverage decision is silent on an issue. The LMRP may not alter the national coverage decision.

B. Recent Legislation

Section 4554(b)(1) of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, mandates use of a negotiated rulemaking committee to develop national coverage and administrative policies for clinical diagnostic laboratory services payable under Medicare Part B by January 1, 1999. Section 4554(b)(2) requires that these national coverage policies be ''designed to promote program integrity and national uniformity and simplify administrative requirements with respect to clinical diagnostic laboratory services payable under Medicare Part B in connection with the following:

- Beneficiary information required to be submitted with each claim or order for laboratory services.
- The medical conditions for which a laboratory test is reasonable and necessary (within the meaning of section 1862(a)(1)(A) of the Social Security Act).
- The appropriate use of procedure codes in billing for a laboratory test, including the unbundling of laboratory services.
- The medical documentation that is required by a Medicare contractor at the time a claim is submitted for a laboratory test (in accordance with section 1833(e) of the Act).
- Recordkeeping requirements in addition to any information required to be submitted with a claim, including physician's obligations regarding such requirements.
- Procedures for filing claims and for providing remittances by electronic media.
- Limitations on frequency of coverage for the same services performed on the same individual.''

II. Negotiated Rulemaking Process

Note: Label comments about this section with the subject: ''Negotiated Rulemaking Process''.

A. Convening the Committee

Negotiated rulemaking under the Negotiated Rulemaking Act (Public Law 101–648) 5 U.S.C. 561–570 is a process by which a committee of representatives of interests that may be significantly affected by a proposed rule, together with an agency representative attempt to reach consensus on the text or content of a proposed rule. The Committee is assisted by an impartial facilitator or mediator.

A convening process was followed to determine the interests likely to be significantly affected by the proposed rule and the individuals who should be appointed to the Committee to represent those interests. Impartial conveners interviewed potential representatives and made recommendations in a convening report. We considered the conveners' recommendations and published a notice of intent to negotiate on June 3, 1998 in the **Federal Register** (63 FR 30166). That notice described the scope of the negotiations and proposed Committee membership. Committee membership is based on responses to the notice, and the Committee is chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). One additional member was added by consensus of the Committee. Committee members represented the following organizations:

- American Association of Bioanalysts.
- American Association for Clinical Chemistry.
- American Association of Retired Persons (AARP).
- American Clinical Laboratory Association.
- American College of Physicians—American Society of Internal Medicine.
- American Health Information Management Association.
- American Hospital Association.
- American Medical Association.
- American Medical Group Association.
- American Society for Clinical Laboratory Science.
- American Society of Clinical Pathologists.
- American Society for Microbiology.
- Clinical Laboratory Management Association.
- American Society for Clinical Laboratory Science.
- College of American Pathologists.
- Health Industry Manufacturers Association.
- Medical Group Management Association.
- National Medical Association.

In addition, we represented the Department of Health and Human Services on the Committee.

B. Summary of the Committee Process

The Committee met nine times from July 13, 1998 to January 27, 1999 and again on August 30 and 31. We published notices of meetings in the **Federal Register** on June 3, 1998 (63 FR 30166), August 11, 1998 (63 FR 42796), January 4, 1999 (64 FR 69), and August 10, 1999 (64 FR 43338). We posted detailed agendas and minutes for each of these meetings on the HCFA web page at http://www.hcfa.gov/quality/qlty-8a.htm.

The Committee operated under organizational groundrules that it adopted by consensus. The organizational groundrule on ''consensus'' provided for the following:

- The Committee would operate by consensus.
- The Committee would make decisions with the unanimous concurrence of Committee members.
- Concurrence would mean only that the Committee member could live with the decision being considered by the Committee.
- An abstention would be the same as a concurrence for purposes of determining consensus.

Committee meetings were open to the general public. In addition, the Committee provided opportunities for the general public to submit written and oral comments.

The Committee prepared and signed an agreement at the conclusion of the meetings. The agreement states the provisions for which the Committee reached consensus in a consensus report. The Committee members agreed that they would not submit negative comments on this proposed rule as long as it has the same substance and effect as the consensus report. In addition, the Committee developed proposed national coverage decisions for certain clinical diagnostic laboratory tests or groups of tests. The Committee formed six workgroups to assist with this task and a ''Drafting Workgroup''. Each Committee member was permitted, but not required, to appoint a representative to each workgroup. The agreement signed by Committee Members represents ''consensus'' under the definition set out above. Thus, a Member may have chosen to abstain on some of the matters negotiated, rather than affirmatively indicating concurrence. In particular, the AARP did not participate in the workgroups which developed proposed national coverage policies for specific tests, and in this agreement defers to Committee members with specialized expertise in the areas covered. Therefore, the AARP's general concurrence reflects its abstention on the proposed national coverage policies for specific tests.

III. Proposed Policy Changes and Clarifications

Section 4554(b)(2) of the BBA explicitly directs that a negotiated rulemaking committee negotiate coverage and administrative policies for clinical diagnostic laboratory services ''payable under part B.'' Therefore, these Medicare policies apply to all laboratory services billed to Medicare Part B regardless of the location of the entity furnishing the service (physicians' office laboratories, hospital laboratories, independent laboratories, etc., or of the type of Medicare contractor processing the claims (carriers or fiscal intermediaries).

Any policy relating to the ordering of clinical diagnostic laboratory tests applies whether the individual ordering the test is a physician or a nonphysician practitioner qualified under § 410.32(a)(3) to order diagnostic tests. Section 410.32(a)(3) provides that nonphysician practitioners (that is, clinical nurse specialists, clinical psychologists, clinical social workers, nurse midwives, nurse practitioners, and physician assistants) who furnish services that would be physicians' services if furnished by a physician, and who are operating within the scope of their authority under State law and within the scope of their Medicare statutory benefit, may be treated the same as physicians treating beneficiaries for purposes of § 410.32. Thus, where this proposed rule discusses ordering clinical laboratory tests and refers to a ''physician,'' it means either a physician or a qualified nonphysician practitioner as defined in § 410.32(a)(3).

These proposed regulations do not purport to provide any immunities or safe harbors. The provisions of this proposed rule are not intended to limit criminal, civil or administrative law enforcement or overpayment recoveries.

A. Information Required With Each Claim

Note: Label comments about this section with the subject: ''Information Required with Claim.''

1. Required Data Fields

Section 4554(b)(2)(A) of the BBA directs the Committee to negotiate policies that are designed to promote program integrity and national uniformity, and to simplify administrative requirements for beneficiary information that must be submitted with each claim for laboratory services. The Committee reviewed the existing Medicare claims processing requirements that are outlined in the Medicare Carriers Manual (HCFA Pub. 14–3) sections 3005 and 3999, exhibit 10, and in the Medicare Fiscal Intermediary Manual (HCFA Pub. 13–3) section 3605 and Addendum L.

The Committee discussed the existing requirements related to information that must be submitted with the claims. To promote administrative simplicity, some members of the Committee suggested that the preamble to this rule include a listing of the specific data elements that are required for laboratory claims. However, the data elements that are required for a claim for a laboratory service may vary depending on certain factors. For example, required data fields will vary with the individual circumstances of the beneficiary, such as secondary payer situations; and the particular service furnished.

Moreover, claims processing requirements may be subject to change as other program requirements are modified or as the uniform requirements enacted under the Health Insurance Portability and Accountability Act (HIPAA) are implemented. Some members of the Committee expressed concern that having a list in the preamble that may rapidly become inaccurate could generate increased opportunity for errors or confusion. Thus, the Committee agreed to

encourage readers to refer to the claims processing sections of the Medicare Carriers Manual (section 3005 and 3999, exhibit 10) and Medicare Fiscal Intermediary Manual (section 3605 and Addendum L) in order to keep current regarding the specific policies related to data elements. As noted above, these manuals are posted on the Internet at http://www.hcfa.gov/pubforms/progman.htm.

2. Diagnostic Information Requirement

The Committee discussed when diagnostic information to support medical necessity must be submitted with a claim. The discussion focused on whether diagnostic information should be required on claims for all tests, even those not addressed by a national coverage policy or LMRP. Some Committee members emphasized that providing information on the reason for the patient visit or for the test would be useful in evaluating patient outcomes and quality of care and would ensure consistency and simplicity. Physicians' representatives expressed concern, however, about the burden that may be involved in providing the information. Laboratory representatives expressed concern about laboratories' ability to be paid if the physician does not provide the information.

The Committee concurred that this proposed rule would not promulgate a requirement that diagnostic information be submitted with every claim; however, there may be other requirements for a diagnosis code with every claim. The Committee recommended, however, that physicians be encouraged voluntarily to provide diagnosis information (either the reason for the visit or the reason for the test) with the order, and laboratories be encouraged to submit information that they receive with the claim.

3. Date of Service

The date of service is a required data field for laboratory claims. A laboratory service may take place over a period of time. That is, the date the physician orders the test, the date the specimen is collected from the patient, the date the laboratory accesses the specimen, the date of the test, and the date results are produced may not be the same. For example, often several days elapse between taking a sample and producing results in microbiology tests that are cultured. The Committee discussed what ''date of service'' laboratories must report on claims for clinical diagnostic laboratory services. To ensure equitable treatment of beneficiaries and providers, as well as to promote national claims processing consistency, it is necessary that all laboratories report this date consistently.

Laboratory representatives reported that some laboratory computer systems are programmed to report the date of acquisition of the specimen or the date of accession (the date the test is entered into the computer system), in the date of service field on the claim form. In addition, Medicare issued Program Memorandum A–9J–4 in April, 1995 that instructed some laboratories, primarily hospital-based laboratories, to report the date of performance as the date of service on automated multi-channel tests.

After considerable discussion the Committee reached consensus that the date of service for Medicare claim purposes should be the date the tested specimen was collected and that the person obtaining the specimen must furnish the date of collection of the specimen to the entity billing Medicare. However, the Committee felt that further input was needed to make an informed decision to determine appropriate date of service for Medicare claim purposes. We are committed to the concept that we should establish a national policy regarding date of service for Medicare claims that will promote program integrity and national uniformity, yet minimize the burden on laboratories. Therefore, we are specifically soliciting public comment on this issue from organizations serving on the Negotiated Rulemaking as well as others. As discussed below in ''Effective Date of Provisions'', we are proposing to provide a grace period of up to 12 months after the effective date of the final rule to accommodate any system changes required by the policy changes or clarifications resulting from the Committee's negotiations. Laboratories will have up to 24 months (12 months delayed effective date and up to 12 months grace period for system changes) after publication of the final rule to achieve system modification to submit claims in accordance with the final policy on date of service.

B. Medical Conditions for Which a Test May Be Reasonable and Necessary

Note: Label comments about this section with the subject: ''National Coverage Decisions''.

Section 4554(b)(2) of the Act instructs the Committee to consider the medical conditions for which a laboratory test is considered reasonable and necessary (within the meaning of section 1862(a)(1)(A) of the Act) in developing national coverage policies. These policies must be designed to promote program integrity and national uniformity and simplify administrative requirements. We are promulgating these policies as ''national coverage decisions'' under section 1862(a)(1) of the Act, as defined in § 405.732. These decisions are binding upon the claims processing contractors as well as the review and appeal entities.

1. The Committee Process Used for Proposed National Coverage Decisions

The Committee reached consensus to outline the specific medical conditions for which a number of specific clinical laboratory services may be reasonable and necessary. The Committee developed an extensive list of tests for which it believed that a national coverage decision was appropriate. It focused on those services that have a diversity of LMRPs.

Given the large number of tests under consideration, the Committee used workgroups to assist with the development of the coverage decisions. The Committee formed workgroups to address laboratory tests in six major clinical categories and assigned and prioritized tests (or groups of tests) to the workgroups. The six clinical categories of tests were endocrinology and metabolism, cardiology and other therapeutic drug monitoring, hematology and coagulation, oncology and anatomic pathology, infectious diseases, and gastrointestinal and renal.

Each workgroup was co-chaired by two Committee members. Each Committee member was entitled to appoint a designee to each workgroup. In addition, each workgroup had at least one Medicare carrier medical director as a nonvoting technical consultant. Each workgroup included, at a minimum, a pathologist, another specialty physician, a primary care physician, a laboratory expert, a coding expert, and a Medicare expert (HCFA staff).

To ensure that the workgroups approached the task consistently, the Committee negotiated a process to be used by the workgroups to develop draft recommendations for proposed national coverage decisions. The national coverage decisions are based on authoritative evidence. In addition, the national coverage decisions reflect common, generally accepted medical practice through the input of nationally recognized organizations, rather than solely the opinion of individual practitioners. The workgroup process included the following:

- Seeking input from relevant national medical specialty societies and voluntary health agencies through the AMA representative.
- Reviewing relevant scientific literature and practice guidelines.

• Reviewing existing local medical review policies, as well as any existing relevant templates for local policies developed by a task force of carrier medical directors.

Because of the statutory deadline for the Committee's work, the workgroups operated under very tight time constraints. Workgroup members communicated by telephone conference calls, e-mail, and FAX.

Workgroup recommendations were posted on the HCFA website for the negotiations by November 4, 1998 and public comments were solicited through November 11, 1998. At the Committee's November meeting, the full Committee considered each workgroup's recommendations, and any comments from the public or from other Committee members. The Committee modified the draft policies, where necessary, in order to respond to comments and to achieve consensus.

The Committee reached consensus on the 23 proposed national coverage decisions included in Addendum B. In addition, the Committee reached consensus on the introductory explanation of those decisions included in Addendum A. The Committee reached consensus that the decisions should be published in manual form, rather than as a codified regulation. This would ensure that coverage decisions are updated in a timely manner as appropriate (for example, changes in technology, coding, or national practice standards).

2. Uniform Format

The Committee used a uniform format for the proposed national coverage decisions that included a narrative description of the test, panel of tests, or group of tests addressed in the decision; clinical indications for which the test(s) may be considered reasonable and necessary and not screening for Medicare purposes; limitations on use of the test(s); and diagnosis codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM codes).

The lists of ICD–9–CM codes in each policy were derived from the narrative description, indications, and, in some decisions, limitations, and are included in the decisions to achieve the statutory objective to promote national uniformity in processing claims. The codes are listed in one of the following three sections: (1) ICD–9–CM codes covered by Medicare program; (2) ICD–9–CM codes denied; and (3) ICD–9–CM codes that do not support medical necessity.

The first section lists covered codes—those for which there is a presumption of medical necessity. Diagnoses listed in this section may support medical necessity of the claim, but the claim may be subject to review to determine whether the test was in fact reasonable and necessary in the particular circumstances presented. If the policy takes an ''exclusionary'' approach (described below), this section states: ''Any ICD–9–CM code not listed in either of the ICD–9–CM code sections below.''

The second section lists diagnosis codes that are never covered. If an ICD–9–CM code listed in this section is submitted with the claim, the test may be initially billed to the Medicare beneficiary without billing Medicare because the test is a service that is not covered by Medicare under any circumstances, such as a screening service that is not paid for under a statutory screening exception. The beneficiary, however, does have a right to have the claim submitted to Medicare.

The third section lists codes that generally are not considered to support a decision that the test is reasonable and necessary, but for which there are limited exceptions. Generally, diagnoses in this section will result in denial. In certain circumstances, however, additional documentation could support a decision of medical necessity and must be submitted by the ordering provider to the billing entity for submission with the claim. In other circumstances, it may be appropriate for the ordering physician or the laboratory to obtain an advance beneficiary notice from the beneficiary consistent with § 7300.5 of the Medicare Carriers Manual and § 3430—3432.1 of the Fiscal Intermediary Manual. If the policy takes an ''inclusionary'' approach (described below), this section of the policy states: ''Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.''

Each proposed national coverage decision published in Addendum B includes a section titled ''Reasons for Denial.'' The Committee did not negotiate the language included in this section. The language represents our interpretation of Medicare's longstanding policies. It is included in the national coverage decision for informational purposes.

Each proposed decision contains a section for sources of information on which the decision is based. A national coverage decision must be based on authoritative evidence. Authoritative evidence could include peer-reviewed medical literature, clinical practice guidelines or consensus, and formal opinions of national medical specialty societies and national voluntary health organizations.

Coding guidelines that apply to all tests are included in each proposed policy. Some policies contain additional coding guidelines relevant for the specific test or group of tests addressed in the policy.

To develop national coverage decisions for the tests assigned to each workgroup, the Committee agreed to use one of two approaches, referred to as ''inclusionary'' and ''exclusionary.'' Decisions using the ''inclusionary'' approach list the ICD–9–CM codes in the following two categories: ICD–9–CM Codes Covered by Medicare Program and ICD–9–CM Codes Denied. These decisions do not list the codes that require additional documentation to support medical necessity.

The ''exclusionary'' approach was used for tests for which LMRPs identified a large number of acceptable ICD–9–CM codes. The Committee used this approach to develop a proposed policy on blood counts, including complete blood counts. In lieu of listing all the ICD–9–CM codes that support medical necessity of a test or group of tests, decisions using the ''exclusionary'' approach list ICD–9–CM codes in the following two categories: ICD–9–CM codes denied and ICD–9–CM codes that do not support medical necessity. Any diagnosis code not listed in either of those two categories is presumed to support the medical necessity of the billed services.

3. Explanation of Effect of a National Coverage Decision

A national coverage decision for a diagnostic laboratory test is a document that includes the circumstances under which the test may be considered reasonable and necessary and, therefore payable under Medicare. This decision applies nationwide and is binding on all Medicare carriers, fiscal intermediaries, peer review organizations, health maintenance organizations, competitive medical plans, and health care prepayment plans when published in a HCFA program manual or the **Federal Register**. The decisions published in Addendum B of this proposed rule would, when final, be national coverage decisions under section 1862(a)(1) of the Act and regulations codified at § 405.732. When final, these decisions may not be disregarded, set aside, or otherwise reviewed by an Administrative Law Judge. A court's review of a national coverage decision is limited to whether the record is incomplete or otherwise lacks adequate information to support the validity of the decision, unless the case has been remanded to the Secretary to supplement the record previously.

4. Proposed Decisions Developed by the Committee

The committee developed proposed national policy decisions for the following tests:

- Urine bacterial culture.
- Human immunodeficiency virus testing (prognosis, including monitoring).
- Human immunodeficiency virus (diagnosis).
- Blood counts.
- Partial thromboplastin time.
- Prothrombin time.
- Iron studies.
- Blood glucose.
- Glycated hemoglobin/glycated protein.
- Thyroid testing.
- Collagen crosslinks.
- Lipids.
- Digoxin.
- Alpha-fetoprotein.
- Carcinoembronic Antigen.
- Human chorionic gonadotropin.
- Tumor antigen by immunoassay-CA 125.
- Tumor antigen by immunoassay-CA 15–3/CA27.29.
- Tumor antigen by immunoassay-CA 19–9.
- Total Prostate specific antigen.
- Gamma glutamyltransferase.
- Hepatitis panel.
- Fecal occult blood.

5. Request for Comments

The Committee encourages comment on these proposed policies. The Committee recognizes that these proposed policies address important and complex questions concerning the medical necessity of clinical diagnostic laboratory services. The Committee sought to develop evidence-based proposed policies for clinical diagnostic laboratory services that promote program integrity. The Committee found it difficult to do this in some cases because generally accepted medical practice may include testing that is excluded by statute from Medicare coverage, for example, blood glucose screening of patients at high risk for diabetes. The Committee believes that its proposed policies address many concerns that have been raised by the variation among LMRPs. In view of the short time period allowed by the BBA for addressing these complicated issues, the Committee requests public comment, particularly from those with evidence that would support any proposed changes. We encourage commenters to submit, with their comments, copies of medical literature supporting their recommendation for change, rather than simply providing the references to appropriate medical sources.

6. Ongoing Coverage Process

The Committee discussed whether there should be an ongoing process to update these policies, once they are final, and/or to develop additional national coverage policies for other diagnostic laboratory tests or groups of tests. We informed the Committee about steps we are taking to develop a process to address coverage issues for all Medicare services, including laboratory tests. See 80 FR 22619 published April 27, 1999.

The Committee discussed how this process could be used to update the national coverage policies resulting from Committee negotiations, as well as to develop additional policies. We assured Committee Members that they would have an opportunity to comment on that process and on any policies being developed using that process. In light of the information provided and recognizing that section 4554(b)(6) of the Balanced Budget Act provides an opportunity for public notice and comment in a biennial review of laboratory coverage policies, the Committee discontinued its discussions about whether there should be a separate coverage process for laboratory tests.

C. Appropriate Use of Procedure Codes

Note: Label comments about this section with the subject: ''Procedure Codes''.

The Committee also discussed issues related to procedure codes and modifiers under HCFA's Common Procedure Coding System (HCPCS). HCPCS codes include Current Procedural Terminology (CPT) codes developed by the CPT Editorial Panel of the American Medical Association (AMA) that are copyrighted by the AMA. The Committee reached consensus that certain procedure codes or modifiers should be clarified in this preamble.

1. Use of the Word ''Screening'' in Descriptor

Some Committee members noted that use of the words ''screen'' or ''screening'' in the descriptor of some CPT codes may cause confusion in distinguishing between screening for a disease or disease precursors using a laboratory test (which is generally excluded from Medicare coverage), and screening for a specific analyte or group of related analytes using a laboratory test (which may be covered under Medicare). The use of the term ''screening'' or ''screen'' in these CPT code descriptors does not necessarily describe a test performed in the absence of signs or symptoms of an illness, disease, or condition. The failure to make this distinction may lead to inappropriate denial of claims.

If a test is reasonable and necessary for diagnosing or treating a beneficiary's medical condition, Medicare covers testing for a specific analyte or group of related analytes, even though the words ''screen'' or ''screening'' may appear in the CPT code descriptor for the test. Examples of CPT codes where screening for an analyte may be used diagnostically include the following:

- 83068: Hemoglobin; unstable, screen.
- 86255: Fluorescent noninfectious agent antibody; screen, each antibody.
- 87081: Culture bacterial; screening, for single organisms.

We will include this clarification in instructions we issue to the contractors.

2. Multiple Testing

Committee members also noted potential confusion about multiple claim submissions by a laboratory for the same CPT code for the same beneficiary for the same day. Generally, multiple testing is considered to be duplicative and is not payable under Medicare. Under certain circumstances, however, claims for multiple services assigned the same CPT code may be submitted because the multiple services are medically necessary to diagnose or treat the beneficiary's condition. In these circumstances, presently the laboratory must use CPT modifier ''–59.'' CPT modifier ''–59'' is defined in Appendix A of Current Procedural Terminology, Fourth Edition in part, as follows:

> Distinct procedural service: Under certain circumstances, the physician may need to indicate that a procedure or service was distinct or independent from other services performed on the same day. Modifier ''–59'' is used to identify procedures/services that are not normally reported together, but are appropriate under the circumstances. This may represent a different session or patient encounter, different procedure or surgery, different site or organ system, separate incision/excision, separate lesion, or separate injury (or area of injury in extensive injuries) not ordinarily encountered or performed on the same day by the same physician.

This modifier replaced the previous HCPCS modifier ''GB'' (Distinct procedural service).

A few examples of appropriate use of CPT modifier ''–59'' are the following:

- Biochemical studies performed on different samples, for example, renins (CPT code 84244).

• Multiple blood cultures (CPT codes 87040 and 87103), generally 2–3 collected to document etiology of sepsis.

• Multiple lesion samples collected from distinct anatomic sites for culture for bacteria (CPT codes 87070 and 87075).

The American Medical Association's CPT Editorial Panel is considering changes in the modifier codes to indicate multiple services for the year 2000 update. If such changes are implemented, they may alter the clarification discussed above. We will issue instructions to our contractors addressing modifiers to indicate that a procedure or service is distinct or independent from other services performed on the same day.

D. Documentation and Recordkeeping Requirements

Note: Label comments about this section with the subject: ''Documentation''.

Section 4554(b)(2) of the BBA provides for uniform national coverage and administrative policies in connection with ''[t]he medical documentation that is required by a Medicare contractor at the time a claim is submitted for a laboratory test'' and ''[r]ecordkeeping requirements in addition to any information required to be submitted with a claim, including physicians' obligations regarding such requirements.'' Section 4317 of the BBA provides, with respect to diagnostic laboratory and certain other services, that ''if the Secretary (or fiscal agent of the Secretary) requires the entity furnishing the * * * service to provide diagnostic or other medical information in order for payment to be made to the entity, the physician or practitioner [ordering the service] shall provide that information to the entity at the time the * * * service is ordered by the physician or practitioner.''

1. Maintenance of Documentation

Since section 1862(a)(1)(A) of the Act prohibits Medicare payment for services that are not reasonable and necessary for the diagnosis or treatment of illness or injury, information describing the patient's signs, symptoms or medical condition(s) documenting the circumstances making laboratory services medically necessary must be maintained in a form that can be accessible or retrievable.

The Committee discussed what documentation generally exists with each entity. The Committee's consensus reflects members' understanding of existing responsibilities for maintaining information regarding medical necessity of clinical diagnostic laboratory services and accuracy of claims submissions. Generally, physicians maintain information in the patient's medical record, and laboratories maintain the information provided to them by the ordering physician. To promote uniformity, the Committee's consensus was that we propose a codified regulation addressing documentation and recordkeeping requirements for clinical diagnostic laboratory services consistent with present practices.

We are proposing to add a new paragraph (d)(2)(i) to § 410.32 to clarify that the ordering physician is responsible for maintaining documentation of medical necessity in the beneficiary's medical record. In addition, we are proposing to add paragraph (d)(2)(ii) to § 410.32 to clarify that the entity submitting the claim must maintain the documentation it receives from the ordering physician and the documentation that the claim information that it submitted to the Medicare contractor accurately reflects the documentation received from the ordering physician.

We are also proposing to add a new paragraph (d)(2)(iii) to § 410.32 to clarify that the entity submitting the claim may request additional diagnostic and other information to document that the services it bills are reasonable and necessary. Examples of situations in which a billing entity may wish to seek additional documentation may include, but would not be limited to, situations where diagnostic information is not submitted with an order for a test for which there is a national coverage decision or LMRP; where data analysis indicate that the particular beneficiary may exceed applicable frequency parameters for this particular test, or where there is an indication of potential aberrant utilization. In making requests for additional information, laboratories should focus their requests on material relevant to medical necessity of the services billed. In addition, documentation requests must take into account current rules and regulations related to patient confidentiality that are applicable in the area where the physician is practicing.

2. Submission of Documentation

The Committee discussed who should be responsible for supplying documentation when a Medicare contractor reviews a laboratory claim. The Committee acknowledges that, for program integrity purposes, Medicare make payments only for services that are reasonable and necessary under Medicare. The Committee consensus is based on the general principle that physicians and laboratories may each be requested to provide the information that they maintain (as described below) but does not alter the responsibility of the entity submitting the claim.

Specifically, the Committee consensus was that, upon request, laboratories must supply documentation that they maintain, such as the requisition from the ordering physician. We are proposing to add a new paragraph (d)(3)(i) to § 410.32(d) to specify that, upon request, the entity submitting the claim must provide the following information: (1) Documentation of the physician's order for the service billed, including information sufficient to enable us to identify and contact the ordering physician; (2) documentation showing accurate processing of the order and submission of the claim; and, (3) diagnostic and other medical information that supports medical necessity supplied to the laboratory by the ordering physician or qualified nonphysician practitioner, including any ICD–9–CM code or narrative description supplied.

The entity submitting a claim is responsible for documentation of medical necessity of the services to justify and support Medicare payment of the claim. Some Committee members, however, expressed concerns about protecting beneficiary confidentiality if laboratories are required to handle beneficiary medical records. The Committee agreed that if the information supplied by the entity submitting the claim (laboratory) was not sufficient to demonstrate that the services were reasonable and necessary, then we would seek additional information directly from the ordering physician. If the ordering physician does not supply the information, we will notify the laboratory and deny the claim.

We are proposing to add a new paragraph (d)(3)(ii) to § 410.32 to specify that, if the documentation provided under paragraph (d)(3)(i) by the entity submitting the claim does not demonstrate that the service is reasonable and necessary, we would take the following actions: (1) provide the ordering physician information sufficient to identify the claim being reviewed; (2) request from the ordering physician those parts of a beneficiary's medical record that are relevant to the specific claim(s) being reviewed; and (3) if the ordering physician does not supply the documentation requested, inform the entity submitting the claim(s) that the documentation has not been supplied and deny the claim.

Since the entity submitting the claim would be the entity to experience a

payment denial if documentation does not support the medical necessity of the claim, the Committee agreed that the basic premise that Medicare would seek additional diagnostic and other medical information from the entity that usually maintains that documentation—the ordering physician—does not preclude the laboratory from requesting additional diagnostic or other medical information from the ordering provider. In making requests for additional information, laboratories must focus their request for additional information on material relevant to medical necessity. In addition, documentation requests must take into account current rules and regulations related to patient confidentiality that are applicable in the area where the physician is practicing.

Similar to proposed paragraph (d)(2)(iii) of § 410.32, we are proposing to add a new paragraph (d)(3)(iii) to § 410.32 to state that the entity submitting the claim may request additional diagnostic and other medical information to document that the services for which it bills are reasonable and necessary. When such a request is made, it must be focused on material relevant to the medical necessity of the specific test(s), taking into consideration current rules and regulations on patient confidentiality.

3. Signature on Requisition

Section 410.32(a) requires that all diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests must be ordered by the physician who is treating the beneficiary for a specific medical problem and who uses the results in the management of the beneficiary's specific medical problem. Some have interpreted this regulation to require a physician's signature on the requisition as documentation of the physician's order. Regulations implementing the Clinical Laboratory Improvement Act (CLIA) at § 493.1105, relating to the requisition specify that a laboratory must perform services only at the written or electronic request of an authorized person. Further, this section permits oral requests for laboratory services only if the laboratory subsequently requests written authorization for the testing within 30 days. While the signature of a physician on a requisition is one way of documenting that the treating physician ordered the test, it is not the only permissible way of documenting that the test has been ordered.

The Committee consensus is that this issue would be resolved by our publication of an instruction to Medicare contractors clarifying that the signature of the ordering physician is not required for Medicare purposes on a requisition for a clinical diagnostic laboratory test. We will issue a program instruction that reiterates this point.

4. Retention of Records

The Committee discussed the length of time that records to document medical necessity for clinical diagnostic laboratory services must be retained. The Committee consensus was to identify, in this preamble, current record retention requirements in Federal law. The provisions of the Federal statutes and regulations that pertain specifically to retention of records related to laboratory testing, including a brief summary of those provisions are set forth as follows:

- 42 CFR 482.24(b)(1), ''Condition of Participation for Hospitals—Standard: Form and Retention of Record'' specifies that medical records must be retained in their original or legally reproduced form for at least 5 years.
- 42 CFR 488.5(a) and 488.6, which discuss accreditation standards for hospitals or other providers or suppliers deemed to meet applicable Medicare conditions of participation, include record retention standards.
- 42 CFR 493.1105, which implements the Clinical Laboratory Improvement Amendments of 1988 (CLIA), specifies that records of test requisitions or test authorizations must be retained for a minimum of 2 years. The patient's chart or medical record, if used as the test requisition, must be retained for a minimum of 2 years and must be available to the laboratory at the time of testing and be available to us upon request.
- 42 CFR 493.1107 specifies that records of patient testing, including, if applicable, instrument printouts, must be retained for at least 2 years. Immunohematology and transfusion records must be retained for no less than 5 years in accordance with 21 CFR part 606, subpart I.
- 42 CFR 493.1107 and 1109 state that records of blood and blood product testing must be maintained for a period not less than 5 years after processing records have been completed, or 6 months after the latest expiration date, whichever is the later date, in accordance with 21 CFR 606.160(d).
- 42 CFR 493.1257(g) specifies that the laboratory must retain all slide preparation for cytology exams for 5 years from the date of examination, or slides may be loaned to proficiency testing programs, in lieu of maintaining them for this time period.
- 42 CFR 1003.132, related to civil monetary penalties, assessments, and exclusions, states that an action must begin within 6 years from the date on which the claim was presented, the request for payment was made, or the incident occurred.

E. Procedures for Filing Claims

Note: Label comments about this section with the subject: ''Claims Processing''.

1. Coding of Narrative Diagnoses

Most laboratory claims are submitted to us electronically. Laboratories that receive narrative diagnosis information from an ordering physician must translate that information into an appropriate diagnosis code (ICD–9-CM code) to submit the claim electronically. The Committee discussed policies for assigning an ICD–9-CM code if there is not an exact match between the code descriptor and the narrative the laboratory received from the ordering physician. The Committee consensus was that an appropriate diagnosis code may be assigned to a narrative, even if the wording of the narrative does not exactly match the code descriptor for the ICD–9-CM code. If an ICD–9-CM code is submitted by the ordering physician, laboratories must use that code in submitting the claim unless the laboratory has obtained documentation from the physician to support altering the code. For example, if a physician submits an incomplete code (that is, only 3 digits of a code that requires 5 digits), the laboratory must document the appropriate subclassification if it is required to report a code on the claim. We will include this clarification in future program instructions.

2. Limitation on Number of Diagnoses

The Committee discussed variation among Medicare contractor's in the number of ICD–9–CM codes on a claim form that the contractor's computer systems will accept. If a contractor's system accepts a limited number of codes, a claim may be denied even if the physician who ordered the test supplied a code that would support the medical necessity of the test. The Committee was informed that, when proposed HIPAA standards are implemented, eight ICD–9–CM codes will be permitted on electronic claims. Committee members provided information indicating that this number would be sufficient for the vast majority of claims.

Until HIPAA standards permitting eight ICD–9–CM codes are implemented, Medicare contractors, whose systems accept fewer than eight ICD–9–CM codes in the diagnoses field, would permit the laboratory to submit additional codes in the narrative field. If it would require the Medicare contractor to make a change in its

claims processing system in order to use this information for automated claims processing, the additional diagnoses would only be used by the contractor in processing claims that were suspended for manual review.

3. Matching of Diagnosis to Procedure

All Medicare contractors presently process claims using any diagnosis-to-procedure code matching supplied by the laboratory. Some Committee members wished to find a way to have contractors examine all submitted codes. The Committee consensus was that, in the absence of matching of codes supplied by the laboratory, Medicare contractors must examine all submitted codes on prepayment review, taking into account program integrity concerns. Claims will not be denied solely because there is no matching of diagnosis and procedure codes on the claim form. We will include this clarification in future instructions to our contractors.

The Committee also discussed ways of avoiding denial of an entire claim if it is submitted with diagnosis codes for multiple procedures (tests) and one of the diagnosis codes indicates screening, but the laboratory does not link the diagnosis and procedure codes. The Committee was concerned that absent information indicating which test(s) is performed for which diagnosis, the contractor may deny all of the claimed services after examining the diagnosis codes.

The Committee consensus was that laboratories have the option of submitting a separate claim for the procedure that is not covered by Medicare. We would instruct the Medicare contractors to allow this option.

In order to ensure that noncovered procedures can be identified, ordering providers must supply to the laboratory the necessary information to specifically identify any noncovered test ordered, such as a test ordered for screening purposes. When this information is supplied to the laboratory, the laboratory must supply this information with any claim for the noncovered service. For example, when an ICD–9–CM code that indicates screening is provided by the physician, the laboratory must either submit a separate claim for the procedure that is not covered by Medicare or match that code on a claim form with the CPT code(s) provided for that purpose.

F. Limitation on Frequency

Note: Label comments about this section with the subject: ''Frequency''.

Section 4554(b)(2) of the BBA instructs the Committee to negotiate policies that take into consideration ''Limitations on frequency of coverage for the same tests performed on the same individual.''

1. Notice of Frequency Screens

The Committee discussed the use of frequency screens and their impact on the laboratory community. Some Committee members noted that, since frequency screens are a program integrity tool and therefore are not published, there is no means for a laboratory to know when a claim would be reviewed and perhaps denied in the absence of additional documentation of medical necessity. After studying the data on frequency denials and discussing the issue, we agreed that a frequency screen would not result in a frequency-based denial unless information published by us or our contractor includes an indication of the frequency that is generally considered reasonable utilization of that test for Medicare payment purposes.

We will issue instructions to Medicare contractors through a revision to the program integrity sections of the Medicare Carriers Manual and Fiscal Intermediary Manual. In the future, we will be moving this information to the Program Integrity Manual. These instructions will provide that, except for egregious utilization, contractors may not use a frequency screen that could result in a frequency-based denial unless the contractor has published information about the appropriate frequency for the service or unless we have published information about the appropriate frequency in a national coverage decision. The information regarding appropriate frequency either may include the frequency with which the service is generally considered reasonable utilization for Medicare purposes or may be an absolute limit on coverage. The information must be published in advance of implementation of a frequency screen in a form, such as a contractor bulletin, that is widely disseminated to affected providers and suppliers. The contractor must consult with appropriate advisors, including medical specialty and other organizations before developing and publishing local frequency information for a clinical diagnostic laboratory test. Local frequency information for a particular test may not conflict with a national coverage decision or policy that includes frequency information for that test.

If a Medicare contractor has been applying a frequency screen in the absence of published information about the frequency expectation, the contractor must either publish information about the appropriate frequency or stop using the frequency screen. Frequency screens that can result in denial must not be more restrictive than the frequency described in the published information. Contractors may, however, continue to deal with egregious utilization without prior publication of frequency information by using Category III edits described in section 7506.2 of the Medicare Carriers Manual, which are typically provider specific.

2. Automatic Denial and Manual Review

The Committee discussed Medicare policy on automatic denials of laboratory claims as the policy applies to frequency screens. The Committee consensus is that the current policy regarding automatic denial and manual review of claims as stated in Medicare Carriers Manual sections 7505.1 and 7506 is appropriate and should be codified in regulations.

We are proposing to add a new paragraph (d)(4) to § 410.32 to provide that, except in limited and specified circumstances as described below, we will not deny a claim for services that exceed utilization parameters without reviewing all relevant documentation submitted with the claim (for example, justifications prepared by providers or suppliers, primary and secondary diagnoses, and copies of medical records). We, however, may automatically deny a claim without any manual review under the following circumstances: (1) If a national coverage decision or policy or LMRP review policy specifies the circumstances under which a service is denied and those circumstances exist, or the service is specifically excluded from Medicare coverage by statute; or (2) if we determine that a specific provider or supplier has engaged in egregious overutilization of a particular service and the claim is for that service.

3. Notice to Beneficiaries

The Committee discussed the impact of frequency screens on laboratories furnishing services to beneficiaries who use multiple laboratories. Several Committee members suggested proposals for notifying beneficiaries of frequency denials and requesting that they advise their physicians of the denial in an effort to encourage the physician to obtain an advance beneficiary notice. Such a notification mechanism would be costly to Medicare, would frequently and inaccurately identify potential denial situations due to time lags between

receipt of services, and may be confusing to beneficiaries. Some members of the Committee expressed concern that such a mechanism may have the unintended effect of beneficiaries failing to receive necessary services. The Committee could not agree to a specific proposal and therefore we are soliciting new ideas for addressing this problem from Committee members as well as others. We are especially interested in ideas that include shared responsibility for solving the problem.

4. Consistent Remittance Message

Some Committee Members expressed concern that HCFA may not be using a consistent denial message to indicate claims that are denied for excess frequency. We agreed to instruct the Medicare claims processing contractors (carriers and fiscal intermediaries) to consistently use remittance advice language that identifies the reason for denial as excessive frequency. The language would read as follows: ''Claim/service denied/reduced because the payer deems the information submitted does not support this level of service, this many services, this length of service or this dosage.''

IV. Other Topics Discussed by the Committee

The Committee also discussed some topics that we identified as outside the scope of the negotiations, but are of concern to some Committee members. The Committee discussed Medicare provisions on limitation of liability (sometimes called waiver of liability) in the context of laboratory services. These provisions are currently found in section 1879 of the Social Security Act, 42 CFR part 411, subpart K, section 7330 of the Medicare Carriers Manual, section 3440—3446.9 of the Fiscal Intermediary Manual, and any currently applicable rulings. If prerequisites for waiver of liability in these provisions are met, these provisions are equally applicable to laboratory services. If we issue revisions or clarifications of these policies in the future, the revisions would be applicable to all providers/suppliers, including laboratories, unless otherwise stated.

V. Provisions of the Proposed Regulations

This proposed rule would establish uniform national coverage and administrative policies for clinical diagnostic laboratory services payable under Medicare Part B. This proposed rule would promote Medicare program integrity and national uniformity and would simplify administrative requirements for clinical diagnostic laboratory services. These regulations do not provide, or purport to provide, any immunities or safe harbors. Additionally, these regulations do not limit any criminal, civil, or administrative law enforcement and overpayment actions. These Medicare policies apply to all Medicare contractors processing Part B laboratory claims, including fiscal intermediaries. The changes we would make to 42 CFR part 410 are set forth as follows:

- We are proposing to redesignate paragraph (d) introductory text as paragraph (d)(1) and adding a heading.
- We are proposing to redesignate paragraphs (d)(1) through (d)(7) as paragraphs (d)(1)(i) through (d)(1)(vii).
- We are proposing to add a new paragraph (d)(2) to § 410.32 that would outline documentation and recordkeeping requirements related to clinical diagnostic laboratory tests. The proposed documentation and recordkeeping requirements read as follows:

+ Paragraph (d)(2)(i) would specify that the physician (or qualified nonphysician practitioner) who orders the service must maintain documentation of medical necessity in the beneficiary's medical record.

+ Paragraph (d)(2)(ii) would require the entity submitting the claim to maintain documentation it receives from the ordering physician and information documenting that the claim submitted accurately reflects the information it received from the ordering physician.

+ Paragraph (d)(2)(iii) would authorize the entity submitting the claim to request additional diagnostic and other medical information to document that the services it bills are reasonable and necessary. This request must be relevant to the medical necessity of the specific test(s), and take into consideration current rules and regulations on patient confidentiality.

- We are proposing to add a new paragraph (d)(3) to § 410.32 relating to claims review.

+ Paragraph (d)(3)(i) would specify that the entity submitting the claim must provide documentation of the physician's order for the service billed, showing accurate processing and submission of the claim, and diagnostic or other medical information supplied to the laboratory by the ordering physician or qualified nonphysician practitioner, including any ICD–9–CM code or narrative description supplied.

+ Paragraph (d)(3)(ii) would specify that if the documentation submitted by the laboratory does not demonstrate that the service is reasonable and necessary, we will provide the ordering physician information sufficient to identify the claim being reviewed and request from the ordering physician those parts of the beneficiary's medical record that are relevant to the claim(s) being reviewed. If the documentation is not provided timely, we will notify the billing entity and deny the claim.

+ Paragraph (d)(3)(iii) would authorize the entity submitting the claim to request additional diagnostic and other medical information that is relevant to the medical necessity of the specific services from the ordering physician consistent with applicable patient confidentiality laws and regulations.

- We are proposing to add a new paragraph (d)(4) to § 410.32 to outline when we may deny a claim without manual review.

+ Paragraph (d)(4)(i) would state that unless indicated in paragraph (d)(4)(ii), we will not deny a claim for services that exceed utilization parameters without reviewing all relevant documentation submitted with the claim.

+ Paragraph (d)(4)(ii) would permit automatic denial of claims when there is a national coverage decision, or LMRP that specifies the circumstances under which the service is denied, the statute excludes Medicare coverage for the service, or the specific provider or supplier has engaged in egregious overutilization of the service and the claim is for that service.

VI. Effective Date of Provisions

The Committee discussed the appropriate effective date of the provisions for which it reached consensus. Changes or clarifications resulting from the Committee's negotiations will impact each entity submitting the claim differently (for example, variance in the time frame for computer systems and software updates in accordance with this proposed regulation, compliance with the comprehensive HIPAA administrative simplification regulations, etc.). We especially are concerned about smaller entities because of the lack of resources at their disposal to identify and implement changes. Due to such differences among laboratories and physician offices, the Committee recommended that HCFA provide an extended period of advance notification prior to implementation. We note that the national coverage decisions included in addendum B effect approximately 60 percent of the total volume of laboratory services billed to the Medicare program. The Committee is concerned that there be an adequate opportunity to educate the community

regarding the decisions and their impact upon claims payment. They were also concerned that there be adequate opportunity to modify computer systems to accommodate these provisions.

The Committee reached consensus to recommend that changes arising from these actions would become effective 12 months after publication of the final regulation. Further, it recommended a grace period of not more than 12 months after the effective date of the changes be available for any system changes any party is required to make. In modifying claims processing systems for the proposed changes, we will give priority to implementation of the national coverage decisions. We are proposing to delay the effective date of this proposed rule and national coverage decisions in accordance with the Committee's consensus recommendation.

The Committee also discussed a strategy to communicate the changes to affected parties. Many members of the Committee will continue to work together in further developing a plan through which they could adequately inform the community, especially physicians and laboratories, of the provisions of this proposed rule and the national coverage decisions. We will instruct the contractors to issue a bulletin to notify affected providers, such as physicians, hospitals, and laboratories, of the policies. Within 90 days of receiving this instruction from us, contractors must issue the bulletin at least 90 days before the effective date of the policy and national coverage decision.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- 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.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Documentation and Recordkeeping Requirements

In summary, § 410.32(d)(2)(i) requires the physician or (qualified nonphysican practitioner, as defined in paragraph (a)(3) of this section), who orders the service to maintain documentation of medical necessity in the beneficiary's medical record.

While this requirement is subject to the PRA, we believe that the burden associated with this requirement is exempt from the PRA, as defined in 5 CFR 1320.3(b)(2), because this requirement is considered a usual and customary business practice.

Submitting the Claim

In summary, § 410.32(d)(2)(ii) requires an entity submitting the claim to maintain the following documentation:

- The documentation that it receives from the ordering physician.
- The documentation that the information that it submitted with the claim accurately reflects the information it received from the ordering physician.

While this requirement is subject to the PRA, we believe that the burden associated with this requirement is exempt from the PRA, as defined in 5 CFR 1320.3(b)(2), because this requirement is considered a usual and customary business practice.

Entity Request for Additional Information

In summary, § 410.32(d)(2)(iii) requires that an entity submitting a claim may request additional diagnostic and other information to document that the services it bills are reasonable and necessary. If the entity requests additional documentation, it must request material relevant to the medical necessity of the specific test(s), taking into consideration current rules and regulations on patient confidentiality.

The burden associated with this requirement is the time and effort for the physician or (qualified nonphysican practitioner, as defined in paragraph (a)(3) of this section), who orders the service, to disclose additional diagnostic and other information to the entity submitting the claim that demonstrates that the services it bills are reasonable and necessary. While this requirement is subject to the PRA, we believe that the burden associated with this requirement is exempt from the PRA, as defined in 5 CFR 1320.3(b)(2), because this requirement is considered a usual and customary business practice.

Claims Review: Documentation Requirements

In summary, § 410.32(d)(3)(i) requires that an entity submitting a claim provide to HCFA upon request; 1) documentation of the physician's order for the service billed (including information sufficient to enable HCFA to identify and contact the ordering physician), 2) documentation showing accurate processing of the order and submission of the claim and, 3) any diagnostic or other medical information supplied to the laboratory by the ordering physician, including any ICD–9–CM code or narrative description supplied.

In summary, § 410.32(d)(3)(iii) authorizes the entity submitting the claim to request additional diagnostic and other medical information that is relevant to the medical necessity of the specific services from the ordering physician consistent with applicable patient confidentiality laws and regulations.

Since these reporting requirements would be imposed pursuant to the conduct of an administrative action and/or audit, these requirements are not subject to the PRA as defined under 5 CFR 1320.4(a)(2).

If you have any comments on any of these information collection and recordkeeping requirements, please mail the original and 3 copies directly to the following:

Health Care Financing Administration, Office of Information Services, Standards and Security Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: John Burke HCFA–3250–P

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt, HCFA Desk Officer.

VIII. 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, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

IX. Regulatory Impact Analysis

We have examined the impacts of this proposed rule as required by Executive

Order (EO) 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).

Section 1102(b) of the Social Security Act (the Act) requires us to prepare a regulatory impact analysis (RIA) 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 603 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.

A. Executive Order 12866

The intent of this Proposed rule is to promote program integrity and national uniformity and simplify administrative procedures for clinical diagnostic laboratory services. We do not expect the provisions of this proposed rule to have a significant cost effect upon providers or suppliers. The provisions of the proposed rule, for the most part, are administrative and state explicitly and codify practices that are currently in effect. That is, physicians maintain documentation in the medical record and laboratories maintain the information that is provided to them. We expect no cost consequence of codifying this common practice.

Similarly, we do not anticipate a cost effect of the provision related to the documentation that must be submitted upon claims review. While some Medicare contractors presently request medical record information directly from laboratories, the laboratories must in turn seek the information from the physicians. Requiring Medicare contractors to seek medical record information directly from physicians may result in a minimal increase in the administrative cost of conducting claims review. We anticipate that there would be offsetting savings from reduced Medicare contractor requests to laboratories for documentation. This would result in a decreased documentation burden to the laboratories.

The provision in § 410.32(d)(4) merely codifies policies that are presently included in the Medicare program manuals. Since these provisions are currently operational, there is no cost effect to their codification.

The national coverage decisions published as Addendum B to this proposed rule potentially may give rise to a cost effect. Approximately 60 percent of the total volume of laboratory claims would be subject to a national coverage decision if these decisions become effective unchanged. Implementation of the national coverage decisions would result in some adjustments in the amount and degree of coverage (that is, there would be some increases and some decreases). However, we do not have data available to precisely quantify the amounts involved. We estimate that the net cost effect of these coverage decisions would not be significant.

If there is currently an LMRP for a test for which we issue a national coverage decision, and the LMRP was more liberal than the national coverage decisions, this would result in a cost savings to the Medicare program . If an LMRP was more restrictive than an national coverage decision, it would result in a cost increase for the Medicare program. After careful analysis of the information available regarding LMRPs, we estimate that the costs and savings are likely to offset each other, and that the proposed national coverage decisions would have a negligible cost impact.

We should point out, however, that clinical diagnostic laboratory services are considered as part of the calculation of the sustained growth factor used in determining changes in the Medicare payment amounts under the Medicare physician fee schedule. Should there be a significant increase in Medicare payment for laboratory services, Medicare may recover these costs through reductions in the otherwise applicable physician payments.

B. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we do not anticipate that this proposed rule would have a significant cost impact. Thus, we certify that this proposed rule would not result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million.

C. Regulatory Flexibility Act (RFA)

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 hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Intermediaries and carriers, physicians, and many laboratories are considered small entities.

This proposed rule would affect all clinical laboratories located in physician offices, hospitals, other health facilities, Medicare contractors, and independent laboratories. There are approximately 160,000 labs affected. We believe the impact of this proposed rule on these entities, for the most part, would be positive. As stated above, this proposed rule would, for the most part, explicitly state and codify existing policies. Having a clear statement of policies would be beneficial to entities submitting Medicare claims because they can avoid unintentional errors. The provision relating to Medicare seeking medical record information directly from physicians would reduce the burden of recordkeeping and reporting on laboratories without increasing the burden on physicians.

Publication of clear and consistent national coverage decisions would assist physicians and laboratories in knowing in advance situations where additional documentation may be needed to support payment on a claim. The documentation may be submitted with the initial claim, thus avoiding the increased cost of appealing a denied claim. National coverage decisions relating to laboratory claims would result in consistent coverage determination regardless of geography, and consequently, less confusion for beneficiaries, who often do not understand the present situations of coverage for a service in one area and not in other areas. Reduced confusion for the beneficiary results in reduced inquiry workloads for Medicare contractors.

As noted above, there may be some areas where implementation of the national coverage decisions would result in denial of payment in situations where payment is presently made. We believe that the proposed policies, developed in partnership with the physician and laboratory community and based on authoritative evidence, reflect the appropriate treatment of

clinical diagnostic laboratory services. Thus, to the extent that payment is presently being made for these services, we believe it is inappropriate and should be curtailed.

We do not expect any beneficiary to be deprived of medically necessary services as a result of these provisions. Nor do we expect that there would be an impact upon the availability of covered services to beneficiaries. Beneficiaries may, however, experience a minimal increase in out-of-pocket costs if they choose to have testing that is not covered by Medicare. That is, publication of clear decisions regarding when a test is considered medically necessary may prompt physicians and laboratories to execute advanced beneficiary notices and charge patients for noncovered services, when they may not have followed these procedures due to ambiguity regarding whether the service would be covered by Medicare.

If Medicare were to fail to implement the policies proposed in the rule and addendum, inconsistency among the contractors would continue. The inconsistency would cause confusion on the part of laboratories, physicians, and beneficiaries in predicting Medicare coverage decisions and anticipating documentation needs. In debating the provisions of the proposed rule, the Committee considered a broad range of alternatives and their impact upon all affected parties. In light of the explicit language of section 4554(b) of the BBA to use negotiated rulemaking to pursue recommendations relating to the problems of program inconsistency, program abuse, and administrative complexity in Medicare payment of clinical diagnostic laboratory services, we have not independently considered other alternatives. Rather, we have accepted the consensus recommendations of the Committee, which included representatives of laboratories, physicians, and beneficiaries. Because the provisions of this proposed rule have the support of these organizations, we do not anticipate adverse reactions to this proposal.

For these reasons, the Secretary certifies, that this rule would not have a significant economic impact on a substantial number of small entities or a significant 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.

We have reviewed this proposed rule under the threshold criteria of Executive Order 13132. We have determined that it does not significantly affect States' rights, roles, and responsibilities.

List of Subjects in Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

For the reasons set forth in the preamble, 42 CFR chapter IV would be amended as follows:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

Subpart B—Medical and Other Health Services

1. The authority citation for Part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.32:

A. Paragraph (d) introductory text is redesignated as paragraph (d)(1) and a heading is added;

B. Paragraphs (d)(1) through (d)(7) are redesignated as paragraphs (d)(1)(i) through (d)(1)(vii); and

C. Paragraphs (d)(2) through (d)(4) are added to read as follows:

§ 410.32 Diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests: Conditions.

* * * * *

(d) *Diagnostic laboratory tests*—(1) *Who may furnish services.* * * *

(2) *Documentation and recordkeeping requirements.* (i) *Ordering the service.* The physician or (qualified nonphysican practitioner, as defined in paragraph (a)(3) of this section), who orders the service must maintain documentation of medical necessity in the beneficiary's medical record.

(ii) *Submitting the claim.* The entity submitting the claim must maintain the following documentation:

(A) The documentation that it receives from the ordering physician.

(B) The documentation that the information that it submitted with the claim accurately reflects the information it received from the ordering physician.

(iii) *Requesting additional information.* The entity submitting the claim may request additional diagnostic and other medical information to document that the services it bills are reasonable and necessary. If the entity requests additional documentation, it must request material relevant to the medical necessity of the specific test(s), taking into consideration current rules and regulations on patient confidentiality.

(3) Claims review. (i) *Documentation requirements.* Upon request by HCFA, the entity submitting the claim must provide the following information :

(A) Documentation of the physician's order for the service billed (including information sufficient to enable HCFA to identify and contact the ordering physician).

(B) Documentation showing accurate processing of the order and submission of the claim.

(C) Diagnostic or other medical information supplied to the laboratory by the ordering physician, including any ICD–9–CM code or narrative description supplied.

(ii) *Services that are not reasonable and necessary.* If the documentation provided under paragraph (d)(3)(i) of this section does not demonstrate that the service is reasonable and necessary, HCFA takes the following actions:

(A) Provides the ordering physician information sufficient to identify the claim being reviewed.

(B) Requests from the ordering physician those parts of a beneficiary's medical record that are relevant to the specific claim(s) being reviewed.

(C) If the ordering physician does not supply the documentation requested, informs the entity submitting the claim(s) that the documentation has not been supplied and denies the claim.

(iii) *Medical necessity.* The entity submitting the claim may request additional diagnostic and other medical information from the ordering physician to document that the services it bills are reasonable and necessary. If the entity requests additional documentation, it must request material relevant to the medical necessity of the specific test(s), taking into consideration current rules and regulations on patient confidentiality.

(4) *Automatic denial and manual review*—(i) *General rule.* Except as provided in paragraph (d)(4)(ii) of this section, HCFA does not deny a claim for services that exceeds utilization parameters without reviewing all relevant documentation submitted with the claim (for example, justifications prepared by providers, primary and secondary diagnoses, and copies of medical records).

(ii) *Exceptions.* HCFA may automatically deny a claim without manual review under the following circumstances:

(A) A national coverage decision or LMRP specifies the circumstances under which the service is denied, or the service is specifically excluded from Medicare coverage by statute.

(B) HCFA determines that a specific provider or supplier has engaged in egregious overutilization of a particular service, and the claim is for that service.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 9, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: November 24, 1999.

Donna E. Shalala,

Secretary.

Note: The following addendums A-C will not appear in the Code of Federal Regulations.

Addendum A—Introduction to National Coverage Policies for Diagnostic Laboratory Tests

Purpose

This addendum provides an introduction to national coverage policies for diagnostic laboratory tests payable under Part B of Medicare. This addendum explains what a national coverage policy is, what effect a national coverage policy has, and describes the various sections in the policies. In addition, it explains the two approaches used to develop these national coverage policies.

What Is a National Coverage Policy?

Part B of title XVIII of the Social Security Act (the Act) provides for Supplementary Medical Insurance (SMI) for certain Medicare beneficiaries, specifying what health care items or services will be covered by the Medicare Part B program. Diagnostic laboratory tests are generally covered under Part B, unless excluded from coverage by the Act. Services that are generally excluded from coverage include routine physical examinations and services that are not reasonable and necessary for the diagnosis or treatment of an illness or injury. HCFA interprets these provisions to prohibit coverage of screening services, including laboratory tests furnished in the absence of signs, symptoms, or personal history of disease or injury, except as explicitly authorized by statute. A test may be considered medically appropriate, but nonetheless be excluded from Medicare coverage by statute.

A national coverage policy for diagnostic laboratory test(s) is a document stating HCFA's policy with respect to the circumstances under which the test(s) will be considered reasonable and necessary, and not screening, for Medicare purposes. Such a policy applies nationwide. A national coverage policy is neither a practice parameter nor a statement of the accepted standard of medical practice. Words such as ''may be indicated'' or ''may be considered medically necessary'' are used for this reason. Where a policy gives a general description and then lists examples (following words like ''for example'' or ''including''), the list of examples is not meant to be all inclusive but merely to provide some guidance.

What Is the Effect of a National Coverage Policy?

A national coverage policy to which this introduction applies is a National Coverage Decision (NCD) under section 1862(a)(1) of the Social Security Act. Regulations on National Coverage Decisions are codified at 42 CFR 405.732(b)–(d). A Medicare contractor may not develop a local policy that conflicts with a national coverage policy.

What Is the Format for These National Coverage Policies?

Below are the headings for national coverage policies, developed by the Negotiated Rulemaking Committee on Clinical Diagnostic Laboratory Tests.

National Coverage Policy For

This section identifies the official title of the policy.

Other Names/Abbreviations

This section identifies other names for the policy. It generally reflects more colloquial terminology.

Description

This section includes a description of the test(s) addressed by the policy and provides a general description of the appropriate uses of the test(s).

Descriptor(s)

The descriptor(s) used in this section is (are) the Current Procedural Terminology (CPT) or other HCFA Common Procedure Coding System (HCPCS). The CPT is developed and copyrighted by the American Medical Association (AMA). If a descriptor does not accurately or fully describe the test, a more complete description may be included elsewhere in the policy, such as in the *Indications* section.

Indications

This section lists detailed clinical indications for Medicare coverage of the test(s).

Limitations

This section lists any national frequency expectations, as well as other limitations on Medicare coverage of the specific test(s) addressed in the policy—for example, if it would be unnecessary to perform a particular test with a particular combination of diagnoses.

ICD–9–CM Codes Covered by Medicare Program

Code: Description

This section includes covered codes—those where there is a presumption of medical necessity, but the claim is subject to review to determine whether the test was in fact reasonable and necessary. The diagnosis codes are from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). Where the policy takes an ''exclusionary'' approach, as described below, this section states: ''Any ICD–9–CM code not listed in either of the ICD–9–CM code sections below.''

Reasons for Denial

This section includes standard language reflecting national policy with respect to all tests—such as denial of screening services and denial if medical necessity is not documented in the patient's medical record. This section may also include reasons for denial related to the specific test(s). This section was not negotiated by the Negotiated Rulemaking Committee, but rather reflects HCFA policy.

ICD–9–CM Codes Denied

Code: Description

This section lists codes that are never covered. If a code from this section is given as the reason for the test, the test may be billed to the Medicare beneficiary without billing Medicare first because the service is not covered by statute, in most instances because it is performed for screening purposes and is not within an exception. The beneficiary, however, does have a right to have the claim submitted to Medicare, upon request.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

This section lists/describes generally non-covered codes for which there are only limited exceptions. However, additional documentation could support a determination of medical necessity in certain circumstances. Subject to section 1879 of the Social Security Act (the Act), 42 CFR 411, subpart K, section 7330 of the Medicare Carriers Manual section 3440–3446.9 of the Medicare Fiscal Intermediary Manual and any applicable rulings, it would be appropriate for the ordering physician or the laboratory to obtain an advance beneficiary notice from the beneficiary. Where the policy takes an ''inclusionary'' approach, as described below, this section states: ''Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.''

Sources of Information

Relevant sources of information used in developing the policy are listed in this section.

Coding Guidelines

This section includes coding guidelines that apply generally to all policies, as well any additional coding instructions appropriate for a specific national coverage policy. The coding guidelines may be from or based on a Coding Clinic for ICD–9–CM published by the American Hospital Association.

Documentation Requirements

This section refers to documentation requirements for clinical diagnostic laboratory tests at 42 CFR 410.32(d) and includes any specific documentation requirements related to the test(s) addressed in the policy.

Other Comments

This section may contain any other relevant comments that are not addressed in the sections described above.

What Are the Two Approaches Used in Developing a National Coverage Policy?

To develop national coverage policies for the tests assigned to each Workgroup, the Committee agreed to use one of two approaches, referred to as ''inclusionary'' and ''exclusionary''. Policies using the ''inclusionary'' approach list the ICD–9–CM codes in the following two categories: ICD–9–CM Codes Covered by Medicare Program and ICD–9–CM Codes Denied. These policies do not list the codes that require additional documentation to support medical necessity.

The exclusionary approach was used for tests for which local medical review policies had identified a large number of acceptable ICD–9–CM codes. The Committee used this approach to develop a proposed policy on blood counts. In lieu of listing all the ICD–9–CM codes that support medical necessity of a test or group of tests, policies using the ''exclusionary'' approach list ICD–9–CM codes in the following two categories: ICD–9–CM Codes Denied and ICD–9–CM Codes That Do Not Support Medical Necessity.

Addendum B—National Coverage Decisions

Medicare National Coverage Decision: Culture, Bacterial, Urine.

Other Names/Abbreviations: Urine culture.

Description.

A bacterial urine culture is a laboratory procedure performed on a urine specimen to establish the probable etiology of a presumed urinary tract infection. It is common practice to do a urinalysis prior to a urine culture. A urine culture may also be used as part of the evaluation and management of another related condition. The procedure includes aerobic agar-based isolation of bacteria or other cultivable organisms present, and quantitation of types present based on morphologic criteria. Isolates deemed significant may be subjected to additional identification and susceptibility procedures as requested by the ordering physician. The physician's request may be through clearly documented and communicated laboratory protocols.

HCPCS Codes: (alpha numeric, CPT © AMA):

Code:	Descriptor:
87086	Culture, bacterial, urine; quantitative, colony count.
87087	Culture, bacterial, urine; commercial kit.
87088	Culture, bacterial, urine; identification, in addition to quantitative or commercial kit.
87184	Sensitivity studies, antibiotic; disk method, per plate (12 or fewer disks).
87186	Sensitivity studies, antibiotic; microtiter, minimum inhibitory concentration (MIC), any number of antibiotics.

Indications

1. A patient's urinalysis is abnormal suggesting urinary tract infection, for example, abnormal microscopic (hematuria, pyuria, bacteriuria); abnormal biochemical urinalysis (positive leukocyte esterase, nitrite, protein, blood); a Gram's stain positive for microorganisms; positive bacteriuria screen by a non-culture technique; or other significant abnormality of a urinalysis. While it is not essential to evaluate a urine specimen by one of these methods before a urine culture is performed, certain clinical presentations with highly suggestive signs and symptoms may lend themselves to an antecedent urinalysis procedure where follow-up culture depends upon an initial positive or abnormal test result.

2. A patient has clinical signs and symptoms indicative of a possible urinary tract infection (UTI). Acute lower UTI may be present with urgency, frequency, nocturia, dysuria, discharge or incontinence. These findings may also be noted in upper UTI with additional systemic symptoms (for example, fever, chills, lethargy); or pain in the costovertebral, abdominal, or pelvic areas. Signs and symptoms may overlap considerably with other inflammatory conditions of the genitourinary tract (for example, prostatitis, urethritis, vaginitis, or cervicitis). Elderly or immunocompromised patients, or patients with neurologic disorders may present atypically (for example, general debility, acute mental status changes, declining functional status).

3. The patient is being evaluated for suspected urosepsis, fever of unknown origin, or other systemic manifestations of infection but without a known source. Signs and symptoms used to define sepsis have been well-established.

4. A test-of cure is generally not indicated in an uncomplicated infection. However, it may be indicated if the patient is being evaluated for response to therapy and there is a complicating co-existing urinary abnormality including structural or functional abnormalities, calculi, foreign bodies, or ureteral/renal stents or there is clinical or laboratory evidence of failure to respond as described in Indications 1 and 2.

5. In surgical procedures involving major manipulations of the genitourinary tract, preoperative examination to detect occult infection may be indicated in selected cases (for example, prior to renal transplantation, manipulation or removal of kidney stones, or transurethral surgery of the bladder or prostate).

6. Urine culture may be indicated to detect occult infection in renal transplant recipients on immunosuppressive therapy.

Limitations

1. CPT 87086 or 87087 may be used one time per encounter. CPT 87086 and 87087 are not used concurrently.

2. Colony count restrictions on coverage of CPT 87088 do not apply as they may be highly variable according to syndrome or other clinical circumstances (for example , antecedent therapy, collection time, degree of hydration).

3. CPT 87088, 87184, and 87186 may be used multiple times in association with or independent of 87086 or 87087, as urinary tract infections may be polymicrobial.

4. Testing for asymptomatic bacteriuria as part of a prenatal evaluation may be medically appropriate but is considered screening and therefore not covered by Medicare. The US Preventive Services Task Force has concluded that screening for asymptomatic bacteriuria outside of the narrow indication for pregnant women is generally not indicated. There are insufficient data to recommend screening in ambulatory elderly patients including those with diabetes. Testing may be clinically indicated on other grounds including likelihood of recurrence or potential adverse effects of antibiotics, but is considered screening in the absence of clinical or laboratory evidence of infection.

ICD–9–CM Codes Covered by Medicare Program

Code	Descriptor
003.1	Salmonella septicemia.
038.0–038.9	Septicemia.
276.2	Acidosis.
276.4	Metabolic acidosis/alkalosis.
286.6	Defibrination syndrome/disseminated intravascular coagulation.
288.0	Agranulocytosis/neutropenia.
288.8	Other specified disease of white blood cells including leukemoid reaction/leukocytosis.
306.53	Psychogenic dysuria.
306.59	Other psychogenic genitourinary malfunction.
518.82	Other pulmonary insufficiency, not elsewhere classified.
570	Acute and subacute necrosis of liver.

Code	Descriptor
580.0–580.9	Acute glomerulonephritis.
583.0–583.9	Nephritis and Nephropathy, not specified as acute or chronic.
584.5	Acute renal failure, with lesion of tubular necrosis.
584.9	Acute renal failure, unspecified.
585	Chronic renal failure.
586	Renal failure, unspecified.
590.00–590.9	Infections of kidney/pyelonephritis acute and chronic.
592.0–592.9	Calculus of kidney and ureter.
593.0–593.9	Other disorders of kidney and ureter (cyst, stricture, obstruction, reflux, etc.).
594.0–594.9	Calculus of lower urinary tract.
595.0–595.9	Cystitis.
597.0	Urethritis, not sexually transmitted and urethral syndrome.
597.80–597.89	Other urethritis.
598.00–598.01	Urethral stricture due to infection.
599.0	Urinary tract infection, site not specified.
599.7	Hematuria.
600	Hyperplasia of prostate.
601.0–601.9	Inflammatory diseases of prostate.
602.0–602.9	Other disorders of prostate (calculus, congestion, atrophy, etc.).
604.0–604.99	Orchitis and epididymitis.
608.0–608.9	Other disorders of male genital organs (seminal vesiculitis, spermatocele, etc.).
614.0–614.9	Inflammatory disease of ovary, fallopian tube, pelvic cellular tissue, and peritoneum.
615.0–615.9	Inflammatory disease of uterus, except cervix.
616.0	Cervicitis and endocervicitis.
616.10–616.11	Vaginitis and vulvovaginitis.
616.2–616.9	Other inflammatory conditions of cervix, vagina and vulva.
619.0–619.9	Fistula involving female genital tract.
625.6	Stress incontinence, female.
639.0	Genital tract and pelvic infection complicating abortion, ectopic or molar pregnancies.
639.5	Shock complicating abortion, ectopic or molar pregnancies.
646.60–.64	Infections of genitourinary tract in pregnancy.
670.00–.04	Major puerperal infection.
672.00–.04	Pyrexia of unknown origin during the puerperium.
724.5	Backache, unspecified.
780.2	Syncope and collapse.
780.6	Fever (Hyperthermia).
780.79	Other malaise and fatigue.
780.9	Other general symptoms (altered mental status, chills, generalized pains).
785.0	Tachycardia, unspecified.
785.50–.59	Shock without mention of trauma.
788.0–788.9	Symptoms involving urinary system. (renal colic, dysuria, retention of urine, incontinence of urine, frequency, polyuria, nocturia, oliguria, anuria, other abnormality of urination, urethral discharge, extravasation of urine, other symptoms of urinary system).
789.00–789.09	Abdominal pain.
789.60–789.69	Abdominal tenderness.
790.7	Bacteremia.
791.0–791.9	Nonspecific findings on examination of urine (proteinuria, chyluria, hemoglobinuria, myoglobinuria, biliuria, glycosuria, acetonuria, other cells and casts in urine, other nonspecific findings on examination of urine).
799.3	Debility, unspecified (only for declining functional status).
939.0	Foreign body in genitourinary tract, bladder and urethra.
939.3	Foreign body in genitourinary tract, penis.
V44.50–V44.6	Artificial cystostomy or other artificial opening of urinary tract status.
V55.5–V55.6	Attention to cystostomy or other artificial opening of urinary tract.
V58.69	Long-term (current) use of other medications.
V72.84	Pre-operative examination, unspecified.

Reasons for Denial

Note: This section has not been negotiated by the Negotiated Rulemaking Committee. It includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

• Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. The documentation may include notes documenting relevant signs, symptoms, or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

• A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating

nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995).

ICD–9–CM Codes Denied..

Code	Descriptor
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Descriptor

Any ICD–9–CM code not listed in either of the ICD–9–CM sections.

Sources of Information

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Sodeman, TM. 1995. A practical strategy for diagnosis of urinary tract infections. Clin. Lab. Med. 15:235–250.

Stamm WE, and TM Hooton. 1993. Management of urinary tract infections in adults. N. Engl. J. Med. 329:1328–1334.

United States Preventive Services Task Force (1996). Guidelines for screening for asymptomatic bacteriuria.

Lachs MS, Nachamkin I, Edelstein PH et al. 1992. Spectrum bias in the evaluation of diagnostic tests: lessons from the rapid dipstick test for urinary tract infection. Ann. Int. Med. 117:135–140.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS Codes'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43).

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52).

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44).

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as

though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45).

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test.

6. In the case of pre-operative examination (V72.84), the following codes may support medical necessity: 585, 586, 592.0–592.9, 594.0–594.9, 600, 602.0–602.9, 939.0, 939.3.

7. Specific coding guidelines:

a. Use CPT 87086 Culture, bacterial, urine; quantitative, colony count where a urine culture colony count is performed to determine the approximate number of bacteria present per milliliter of urine. The number of units of service is determined by the number of specimens.

b. Use CPT 87087 Culture, bacterial, urine; commercial kit where a commercial kit uses manufacturer defined media for isolation, presumptive identification, and quantitation of morphotypes present. The number of units of service is determined by the number of specimens.

c. Use CPT 87088 Culture, bacterial, urine; identification in addition to quantitative or commercial kit where identification of morphotypes recovered by quantitative culture or commercial kits and deemed to represent significant bacteriuria requires the use of additional testing, for example, biochemical test procedures on colonies. Identification based solely on visual observation of the primary media is usually not adequate to justify use of this code. The number of units of service is determined by the number of isolates.

d. Use CPT 87184 or 87186, Sensitivity studies where susceptibility testing of isolates deemed to be significant is performed concurrently with identification. The number of units of service is determined by the number of isolates. These codes are not exclusively used for urine cultures but are appropriate for isolates from other sources as well.

e. Appropriate combinations are as follows: CPT 87086 or 87087, 1 per specimen with 87088, 1 per isolate and 87184 or 87186 where appropriate.

f. Culture for other specific organism groups not ordinarily recovered by media used for aerobic urine culture may require use of additional CPT codes (for example, anaerobes from suprapubic samples).

g. Identification of isolates by non-routine, nonbiochemical methods may be coded appropriately (for example, immunologic identification of streptococci, nucleic acid techniques for identification of N. gonorrhoeae).

h. While infrequently used, sensitivity studies by methods other than CPT 87184 or 87186 are appropriate. CPT 87181, agar dilution method, each antibiotic or CPT 87188, macrotube dilution method, each antibiotic may be used. The number of units of service is the number of antibiotics multiplied by the number of unique isolates.

8. ICD–9–CM code 780.02, 780.9 or 799.3 should be used only in the situation of an elderly patient, immunocompromised patient or patient with neurologic disorder who presents without typical manifestations of a urinary tract infection but who presents with one of the following signs or symptoms, not otherwise explained by another co-existing condition: increasing debility; declining functional status; acute mental changes; changes in awareness; or hypothermia.

9. In cases of post renal-transplant urine culture used to detect clinically significant occult infection in patients on long term immunosuppressive therapy, use code V58.69.

Documentation Requirements

Appropriate HCPCS/CPT code(s) must be used as described.

National Coverage Decision for: Human Immunodeficiency Virus Testing (Prognosis including monitoring).

Other Names/Abbreviations: HIV–1 or HIV–2 quantification or viral load.

Description

HIV quantification is achieved through the use of a number of different assays which measure the amount of circulating viral RNA. Assays vary both in methods used to detect viral RNA as well as in ability to detect viral levels at lower limits. However, all employ some type of nucleic acid amplification technique to enhance sensitivity, and results are expressed as the HIV copy number.

Quantification assays of HIV plasma RNA are used prognostically to assess relative risk for disease progression and predict time to death, as well as to assess efficacy of antiretroviral therapies over time.

HIV quantification is often performed together with CD4+ T cell counts which provide information on extent of HIV induced immune system damage already incurred.

HCPCS Codes (alpha numeric, CPT© AMA)

Code	Descriptor
87536	Infectious agent detection by nucleic acid (DNA or RNA); HIV–1, quantification.
87539	Infectious agent detection by nucleic acid (DNA or RNA); HIV–2, quantification.

Indications

1. A plasma HIV RNA baseline level may be medically necessary in any patient with confirmed HIV infection.

2. Regular periodic measurement of plasma HIV RNA levels may be medically necessary to determine risk for disease progression in an HIV-infected individual and to determine when to initiate or modify antiretroviral treatment regimens.

3. In clinical situations where the risk of HIV infection is significant and initiation of therapy is anticipated, a baseline HIV quantification may be performed. These situations include:

a. Persistence of borderline or equivocal serologic reactivity in an at-risk individual.

b. Signs and symptoms of acute retroviral syndrome characterized by fever, malaise, lymphadenopathy and rash in an at-risk individual.

Limitations

1. Viral quantification may be appropriate for prognostic use including baseline determination, periodic monitoring, and monitoring of response to therapy. Use as a diagnostic test method is not indicated.

2. Measurement of plasma HIV RNA levels should be performed at the time of establishment of an HIV infection diagnosis. For an accurate baseline, 2 specimens in a 2-week period are appropriate.

3. For prognosis including antiretroviral therapy monitoring, regular, periodic measurements are appropriate. The frequency of viral load testing should be consistent with the most current Centers for Disease Control and Prevention guidelines for use of antiretroviral agents in adults and adolescents or pediatrics.

4. Because differences in absolute HIV copy number are known to occur using different assays, plasma HIV RNA levels should be measured by the same analytical method. A change in assay method may necessitate re-establishment of a baseline.

5. Nucleic acid quantification techniques are representative of rapidly emerging and evolving new technologies. As such, users are advised to remain current on FDA-approval status.

ICD–9–CM Codes Covered by Medicare Program

Code	Descriptor
042	Human immunodeficiency virus [HIV] disease.
079.53	Human immunodeficiency virus, type 2 [HIV–2].
647.60–.64	Other viral diseases complicating pregnancy (including HIV–I and II).
795.71	Nonspecific serologic evidence of human immunodeficiency virus [HIV].
V08	Asymptomatic human immunodeficiency virus [HIV] infection status.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. It includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

• Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. The documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

• A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Descriptor
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
DV16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

CDC. 1998. Guidelines for the use of antiretroviral agents in HIV-infected adults and adolescents. MMWR 47 (RR–5).

CDC. 1998. Guidelines for the use of antiretroviral agents in pediatric HIV infection. MMWR 47 (RR–4).

CDC. 1998. Public Health Service Task Force recommendations for the use of antiretroviral drugs in pregnant women infected with HIV–1 for maternal health and for reducing perinatal HIV–1 transmission in the United States. MMWR 47 (RR–2).

Carpenter, C.C., M.A. Fischi, S.M. Hammer, et . al. 1998. Antiretroviral therapy for HIV infection in 1998. Updated recommendations of the international AIDS society-USA panel. .A.M.A. 280:78–86.

Saag, M.S., M. Holodniy, D.R. Kuritzkes, et al. 1996. HIV viral load markers in clinical practice. Nature Medicine 2(6): 625–629.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be

provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. Specific coding guidelines:

a. Temporary code G0100 has been superseded by code 87536 effective January 1, 1998.

b. CPT codes for quantification should not be used simultaneously with other nucleic acid detection codes for HIV–1 (that is, 87534, 87535) or HIV–2 (that is, 87537, 87538).

7. Codes 647.60–.64 should only be used for HIV infections complicating pregnancy.

Other Comments

Assessment of CD4+ T cell numbers is frequently performed in conjunction with viral load determination. When used in concert, the accuracy with which the risk for disease progression and death can be predicted is enhanced.

Medicare National Coverage Decision For: Human Immunodeficiency Virus Testing (Diagnosis).

Other Names/Abbreviations: HIV, HIV–1, HIV–2, HIV1/2, HTLV III, Human T-cell lymphotrophic virus, AIDS, Acquired immune deficiency syndrome.

Description

Diagnosis of Human Immunodeficiency Virus (HIV) infection is primarily made through the use of serologic assays. These assays take one of two forms: antibody detection assays and specific HIV antigen (p24) procedures. The antibody assays are usually enzyme immunoassays (EIA) which are used to confirm exposure of an individual's immune system to specific viral antigens. These assays may be formatted to detect HIV–1, HIV–2, or HIV–1 and 2 simultaneously and to detect both IgM and IgG. When the initial EIA test is repeatedly positive or indeterminant, an alternative test is used to confirm the specificity of the antibodies to individual viral components. The most commonly used method is the Western Blot.

The HIV–1 core antigen (p24) test detects circulating viral antigen which may be found prior to the development of antibodies and may also be present in later stages of illness in the form of recurrent or persistent antigenemia. Its prognostic utility in HIV infection has been diminished as a result of development of sensitive viral RNA assays, and its primary use today is as a routine screening tool in potential blood donors.

In several unique situations, serologic testing alone may not reliably establish an HIV infection. This may occur because the antibody response (particularly the IgG response detected by Western Blot) has not yet developed (that is, acute retroviral syndrome), or is persistently equivocal because of inherent viral antigen variability. It is also an issue in perinatal HIV infection due to transplacental passage of maternal HIV antibody. In these situations, laboratory evidence of HIV in blood by culture, antigen assays, or proviral DNA or viral RNA assays, is required to establish a definitive determination of HIV infection.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
86689	Qualitative or semiquantitative immunoassays performed by multiple step methods; HTLV or HIV antibody, confirmatory test (for example, Western Blot).
86701	Qualitative or semiquantitative immunoassays performed by multiple step methods; HIV–1.
86702	Qualitative or semiquantitative immunoassays performed by multiple step methods; HIV–2.
86703	Qualitative or semiquantitative immunoassays performed by multiple step methods; HIV–1 and HIV–2, single assay.
87390	Infectious agent antigen detection by enzyme immunoassay technique, qualitative or semiquantitative, multiple step; HIV–1.
87391	Infectious agent antigen detection by enzyme immunoassay technique, qualitative or semiquantitative, multiple step; HIV–2.
87534	Infectious agent detection by nucleic acid (DNA or RNA); HIV–1, direct probe technique.
87535	Infectious agent detection by nucleic acid (DNA or RNA); HIV–1, direct probe technique HIV–1, amplified probe technique.
87537	Infectious agent detection by nucleic acid (DNA or RNA); HIV–2, direct probe technique.
87538	Infectious agent detection by nucleic acid (DNA or RNA); HIV–2, amplified probe technique.

Indications

Diagnostic testing to establish HIV infection may be indicated when there is a strong clinical suspicion supported by one or more of the following clinical findings:

1. The patient has a documented, otherwise unexplained, AIDS-defining or AIDS-associated opportunistic infection.

2. The patient has another documented sexually transmitted disease which identifies significant risk of exposure to HIV and the potential for an early or subclinical infection.

3. The patient has documented acute or chronic hepatitis B or C infection which identifies a significant risk of exposure to HIV and the potential for an early or subclinical infection.

4. The patient has a documented AIDS-defining or AIDS-associated neoplasm.

5. The patient has a documented AIDS-associated neurologic disorder or otherwise unexplained dementia.

6. The patient has another documented AIDS-defining clinical condition, or a history of other severe, recurrent, or persistent conditions which suggest an underlying immune deficiency (for example, cutaneous or mucosal disorders).

7. The patient has otherwise unexplained generalized signs and symptoms suggestive of a chronic process with an underlying immune deficiency (for example, fever, weight loss, malaise, fatigue, chronic diarrhea, failure to thrive, chronic cough, hemoptysis, shortness of breath, or lymphadenopathy).

8. The patient has otherwise unexplained laboratory evidence of a chronic disease process with an underlying immune deficiency (for example, anemia, leukopenia,

pancytopenia, lymphopenia, or low CD4+ lymphocyte count).

9. The patient has signs and symptoms of acute retroviral syndrome with fever, malaise, lymphadenopathy, and skin rash.

10. The patient has documented exposure to blood or body fluids known to be capable of transmitting HIV (for example, needlesticks and other significant blood exposures) and antiviral therapy is initiated or anticipated to be initiated.

11. The patient is undergoing treatment for rape. (HIV testing is a part of the rape treatment protocol.)

For a comprehensive tabulation of AIDS-defining and AIDS associated conditions, refer to information source document #5.

Limitations

1. HIV antibody testing in the United States is usually performed using HIV–1 or HIV–½ combination tests. HIV–2 testing is indicated if clinical circumstances suggest HIV–2 is likely (that is, compatible clinical findings and HIV–1 test negative). HIV–2 testing may also be indicated in areas of the country where there is greater prevalence of HIV–2 infections.

2. The Western Blot test should be performed only after documentation that the initial EIA tests are repeatedly positive or equivocal on a single sample.

3. The HIV antigen tests currently have no defined diagnostic usage.

4. Direct viral RNA detection may be performed in those situations where serologic testing does not establish a diagnosis but strong clinical suspicion persists (for example, acute retroviral syndrome, nonspecific serologic evidence of HIV, or perinatal HIV infection).

5. If initial serologic tests confirm an HIV infection, repeat testing is not indicated.

6. If initial serologic tests are HIV EIA negative and there is no indication for confirmation of infection by viral RNA detection, the interval prior to retesting is 3–6 months.

7. Testing for evidence of HIV infection using serologic methods may be medically appropriate in situations where there is a risk of exposure to HIV. However, in the absence of a documented AIDS defining or HIV associated disease, an HIV associated sign or symptom, or documented exposure to a known HIV-infected source, the testing is considered by Medicare to be screening and thus is not covered by Medicare (for example, history of multiple blood component transfusions, exposure to blood or body fluids not resulting in consideration of therapy, history of transplant, history of illicit drug use, multiple sexual partners, same-sex encounters, prostitution, or contact with prostitutes).

8. The CPT Editorial Panel has issued a number of codes for infectious agent detection by direct antigen or nucleic acid probe techniques that have not yet been developed or are only being used on an investigational basis. Laboratory providers are advised to remain current on FDA-approval status for these tests.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
003.1	Salmonella septicemia.
007.2	Coccidiosis (Isoporiasis).
007.4	Cryptosporidiosis.
007.8	Other specified protozoal intestinal diseases.
010.00–010.96	Primary tuberculous infection.
011.00–011.96	Pulmonary tuberculosis.
012.00–012.86	Other respiratory tuberculosis.
013.00–013.96	Tuberculosis of meninges and central nervous system.
014.00–014.86	Tuberculosis of intestines, peritoneum and mesenteric glands.
015.00–015.96	Tuberculosis of bones and joints.
016.00–016.96	Tuberculosis of genitourinary system.
017.00–017.96	Tuberculosis of other organs.
018.00–018.96	Miliary tuberculosis.
027.0	Listeriosis.
031.0–031.9	Diseases due to other mycobacteria.
038.2	Pneumococcal septicemia.
038.43	Septicemia (Pseudomonas).
039.0–.9	Actinomycotic infections (includes Nocardia).
041.7	Pseudomonas infection.
042	HIV disease (Acute retroviral syndrome, AIDS-related complex).
046.3	Progressive multifocal leukoencephalopathy.
049.0–049.9	Other non-arthropod-borne viral diseases of central nervous system.
052.0–052.8	Chickenpox (with complication).
053.0–053.9	Herpes zoster.
054.0–054.9	Herpes simplex.
055.0–055.8	Measles (with complication).
070.20–070.23	Viral hepatitis B with hepatic coma.
070.30–070.33	Viral hepatitis B without mention of hepatic coma.
070.41	Acute or unspecified hepatitis C with hepatic coma.
070.42	Hepatitis delta without mention of active hepatitis B disease with hepatic coma.
070.44	Chronic hepatitis C with hepatic coma.
070.49	Other specified viral hepatitis with hepatic coma.
070.51	Acute or unspecified hepatitis C without hepatic coma.
070.52	Hepatitis delta without mention of active hepatitis B disease without hepatic coma.
070.54	Chronic hepatitis C without hepatic coma.
070.59	Other specified viral hepatitis without hepatic coma.
070.6	Unspecified viral hepatitis with hepatic coma.
070.9	Unspecified viral hepatitis without hepatic coma.
078.0	Molluscum contagiosum.
078.10–078.19	Viral warts.
078.3	Cat-scratch disease.
078.5	Cytomegaloviral disease.
078.88	Other specified diseases due to Chlamydiae.
079.50	Retrovirus unspecified.
079.51	HTLV–I.
079.52	HTLV–II.
079.53	HTLV–III.
079.59	Other specified Retrovirus.

Code	Description
079.88	Other specified chlamydial infection.
079.98	Unspecified chlamydial infection.
085.0–085.9	Leishmaniasis.
088.0	Bartonellosis.
090.0–090.9	Congenital syphilis.
091.0–091.9	Early syphilis symptomatic.
092.0–092.9	Early syphilis, latent.
093.0–093.9	Cardiovascular syphilis.
094.0–094.9	Neurosyphilis.
095.0–095.9	Other forms of late syphilis, with symptoms.
096	Late syphilis, latent.
097.0–097.9	Other and unspecified syphilis.
098.0–098.89	Gonococcal infections.
099.0	Chancroid.
099.1	Lymphogranuloma venereum.
099.2	Granuloma inguinale.
099.3	Reiter's disease.
099.40–099.49	Other nongonococcal urethritis.
099.50–099.59	Other venereal diseases due to Chlamydia trachomatis.
099.8	Other specified venereal disease.
099.9	Venereal disease unspecified.
110.1	Dermatophytosis of nail.
111.0	Pityriasis versicolor.
112.0–112.9	Candidiasis.
114.0–114.9	Coccidioidomycosis.
115.00–115.99	Histoplasmosis.
116.0–116.2	Blastomycotic infection.
117.3	Aspergillosis.
117.5	Cryptococcosis.
118	Opportunistic mycoses.
127.2	Strongyloidiasis.
130.0–130.9	Toxoplasmosis.
131.01	Trichomonal vulvovaginitis.
132.2	Phthirus pubis.
133.0	Scabies.
136.2	Specific infections by free living amebae.
136.3	Pneumocystosis.
136.8	Other specified infectious and parasitic disease (for example, microsporidiosis).
176.0–176.9	Kaposi's sarcoma.
180.0–180.9	Malignant neoplasm of cervix uteri.
200.20–200.28	Burkitt's tumor or lymphoma.
200.80–200.88	Lymphosarcoma, other named variants.
201.00–201.98	Hodgkin's disease.
280.0–280.9	Iron deficiency anemias.
285.9	Anemia, unspecified.
287.3	Primary thrombocytopenia.
288.0	Agranulocytosis.
288.8	Other specified disease of white blood cells.
294.8	Other specified organic brain syndromes (chronic).
310.1	Organic personality syndrome.
322.2	Chronic meningitis.
336.9	Unspecified disease of spinal cord.
348.3	Encephalopathy unspecified.
354.0–354.9	Mononeuritis of upper limbs and mononeuritis multiplex.
356.8	Other specified idiopathic peripheral neuropathy.
363.20	Chorioretinitis, unspecified.
425.4	Other primary cardiomyopathies.
473.0–473.9	Chronic sinusitis.
481	Pneumococcal pneumonia.
482.0–482.9	Other bacterial pneumonia.
484.1	Pneumonia in cytomegalic inclusion disease.
512.8	Other spontaneous pneumothorax.
516.8	Other specified alveolar and parietoalveolar pneumonopathies.
528.2	Oral aphthae.
528.6	Leukoplakia of oral mucosa.
530.2	Ulcer of esophagus.
583.9	Nephropathy with unspecified pathological lesion in kidney.
588.8	Other specified disorders resulting from impaired renal function.
647.60–.64	Other viral diseases complicating pregnancy (use for HIV I and II).
682.0–682.9	Other cellulitis and abscess.
690.10–690.18	Seborrheic dermatitis.
696.1	Other psoriasis.
698.3	Lichenification and lichen simplex chronicus.
704.8	Other specified diseases of hair and hair follicles.

Code	Description
706.0–706.9	Diseases of sebaceous glands.
780.6	Fever.
780.79	Other malaise and fatigue.
783.2	Abnormal loss of weight.
783.4	Lack of expected normal physiological development.
785.6	Enlargement of lymph nodes.
786.00	Respiratory abnormality, unspecified.
786.05	Shortness of breath.
786.2	Cough.
786.3	Hemoptysis.
786.4	Abnormal sputum.
787.91	Diarrhea.
795.71	Nonspecific serologic evidence of human immunodefiency virus.
799.4	Wasting disease.
V01.7	Contact with or exposure to communicable diseases, other viral diseases.
V71.5	Rape.

Reasons for Denial

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V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
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V60.0–V60.9	Housing, household, and economic circumstances.
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V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
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Code	Description
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V79.9	Special screening for mental disorders.
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V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in neither of the ICD–9–CM sections above.

Sources of Information

CDC, 1993. Revised classification system for HIV infection and expanded surveillance case definition for AIDS among adolescents and adults. MMWR 41 (No. RR17).

CDC, 1994. Revised classification system for human immunodeficiency virus infection in children less than 13 years of age.

CDC, 1998. Guidelines for treatment of sexually transmitted diseases. MMWR 47 (RR1):11–17.

Piatak, M., M.S. Saag, L.C. Yang, *et al.* 1993. High levels of HIV–1 in plasma during all stages of infection determined by competitive PCR. Science 259:1749–1754.

Rhame, R.S. 1994. Acquired immunodeficiency syndrome, p. 628–652. *In Infectious Diseases;* P.D. Hoeprich, M.C. Jordan, and A.R. Ronald (J.B. Lippincott Co., Philadelphia).

Vasudevachari, M.D., R.T. Davey, Jr., J.A. Metcalf, and H.C. Lane. 1997. Principles and procedures of human immunodeficiency virus serodiagnosis. *In Manual of Clinical Laboratory Immunology* (Fifth ed.); N.R. Rose, E.C. de Macario, J.D. Folds, H.C. Lane, and R.M. Nakamura (ASM Press, Washington, DC).

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1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

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4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. Specific coding guidelines:

a. CPT 86701 or 86703 is performed initially. CPT 86702 is performed when 86701 is negative and clinical suspicion of HIV–2 exists.

b. CPT 86689 is performed only on samples repeatedly positive by 86701, 86702, or 86703.

c. CPT 87534 or 87535 is used to detect HIV–1 RNA where indicated. CPT 87537 or 87538 is used to detect HIV–2 RNA where indicated.

Documentation Requirements

Appropriate HCPCS/CPT codes must be used as described.

Medicare National Coverage Decision: Blood Counts.

Other Names/Abbreviations: CBC.

Description

Blood counts are used to evaluate and diagnose diseases relating to abnormalities of the blood or bone marrow. These include primary disorders such as anemia, leukemia, polycythemia, thrombocytosis and thrombocytopenia. Many other conditions secondarily affect the blood or bone marrow, including reaction to inflammation and infections, coagulopathies, neoplasms and exposure to toxic substances. Many treatments and therapies affect the blood or bone marrow, and blood counts may be used to monitor treatment effects.

The complete blood count (CBC) includes a hemogram and differential white blood count (WBC). The hemogram includes enumeration of red blood cells, white blood cells, and platelets, as well as the determination of hemoglobin, hematocrit, and indices.

The symptoms of hematological disorders are often nonspecific, and are commonly encountered in patients who may or may not prove to have a disorder of the blood or bone marrow. Furthermore, many medical conditions that are not primarily due to abnormalities of blood or bone marrow may have hematological manifestations that result from the disease or its treatment. As a result, the CBC is one of the most commonly indicated laboratory tests.

In patients with possible hematological abnormalities, it may be necessary to determine the hemoglobin and hematocrit, to calculate the red cell indices, and to measure the concentration of white blood cells and platelets. These measurements are usually performed on a multichannel analyzer that measures all of the parameters on every sample. Therefore, laboratory assessments routinely include these measurements.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
85007	Blood count; manual differential WBC count (includes RBC morphology and platelet estimation).
85008	Blood counts, manual blood smear examination without differential parameters.
85013	Blood counts, Spun microhematocrit.
85014	Blood counts, Other than spun hematocrit.
85018	Blood counts, Hemoglobin.
85021	Blood counts, Hemogram, automated (RBC, WBC, Hgb, Hct, and indices only).
85022	Blood counts, Hemogram, automated, and manual differential WBC count (CBC).
85023	Blood counts, Hemogram and platelet count, automated, and manual differential WBC count (CBC).
85024	Blood counts, Hemogram and platelet count, automated, and automated partial differential WBC count (CBC).

Code	Descriptor
85025	Hemogram and platelet count, automated and automated complete differential WBC count (CBC).
85027	Blood counts, Hemogram and platelet count, automated.
85031	Blood count; hemogram, manual, complete CBC (RBC, Hgb, Hct, differential and indices.
85048	Blood counts, White blood cell (WBC).
85590	Platelet; manual count.
85595	Platelet, automated count.

Indications

Indications for a CBC or hemogram include red cell, platelet, and white cell disorders. Examples of these indications are enumerated individually below.

1. Indications for a CBC generally include the evaluation of bone marrow dysfunction as a result of neoplasms, therapeutic agents, exposure to toxic substances, or pregnancy. The CBC is also useful in assessing peripheral destruction of blood cells, suspected bone marrow failure or bone marrow infiltrate, suspected myeloproliferative, myelodysplastic, or lymphoproliferative processes, and immune disorders.

2. Indications for hemogram or CBC related to red cell (RBC) parameters of the hemogram include signs, symptoms, test results, illness, or disease that can be associated with anemia or other red blood cell disorder (e.g., pallor, weakness, fatigue, weight loss, bleeding, acute injury associated with blood loss or suspected blood loss, abnormal menstrual bleeding, hematuria, hematemesis, hematochezia, positive fecal occult blood test, malnutrition, vitamin deficiency, malabsorption, neuropathy, known malignancy, presence of acute or chronic disease that may have associated anemia, coagulation or hemostatic disorders, postural dizziness, syncope, abdominal pain, change in bowel habits, chronic marrow hypoplasia or decreased RBC production, tachycardia, systolic heart murmur, congestive heart failure, dyspnea, angina, nailbed deformities, growth retardation, jaundice, hepatomegaly, splenomegaly, lymphadenopathy, ulcers on the lower extremities).

3. Indications for hemogram or CBC related to red cell (RBC) parameters of the hemogram include signs, symptoms, test results, illness, or disease that can be associated with polycythemia (for example, fever, chills, ruddy skin, conjunctival redness, cough, wheezing, cyanosis, clubbing of the fingers, orthopnea, heart murmur, headache, vague cognitive changes including memory changes, sleep apnea, weakness, pruritus, dizziness, excessive sweating, visual symptoms, weight loss, massive obesity, gastrointestinal bleeding, paresthesias, dyspnea, joint symptoms, epigastric distress, pain and erythema of the fingers or toes, venous or arterial thrombosis, thromboembolism, myocardial infarction, stroke, transient ischemic attacks, congenital heart disease, chronic obstructive pulmonary disease, increased erythropoetin production associated with neoplastic, renal or hepatic disorders, androgen or diuretic use, splenomegaly, hepatomegaly, diastolic hypertension.)

4. Specific indications for CBC with differential count related to the WBC include signs, symptoms, test results, illness, or disease associated with leukemia, infections or inflammatory processes, suspected bone marrow failure or bone marrow infiltrate, suspected myeloproliferative, myelodysplastic or lymphoproliferative disorder, use of drugs that may cause leukopenia, and immune disorders (e.g., fever, chills, sweats, shock, fatigue, malaise, tachycardia, tachypnea, heart murmur, seizures, alterations of consciousness, meningismus, pain such as headache, abdominal pain, arthralgia, odynophagia, or dysuria, redness or swelling of skin, soft tissue bone, or joint, ulcers of the skin or mucous membranes, gangrene, mucous membrane discharge, bleeding, thrombosis, respiratory failure, pulmonary infiltrate, jaundice, diarrhea, vomiting, hepatomegaly, splenomegaly, lymphadenopathy, opportunistic infection such as oral candidiasis.)

5. Specific indications for CBC related to the platelet count include signs, symptoms, test results, illness, or disease associated with increased or decreased platelet production and destruction, or platelet dysfunction.(e.g., gastrointestinal bleeding, genitourinary tract bleeding, bilateral epistaxis, thrombosis, ecchymosis, purpura, jaundice, petechiae, fever, heparin therapy, suspected DIC, shock, pre-eclampsia, neonate with maternal ITP, massive transfusion, recent platelet transfusion, cardiopulmonary bypass, hemolytic uremic syndrome, renal diseases, lymphadenopathy, hepatomegaly, splenomegaly, hypersplenism, neurologic abnormalities, viral or other infection, myeloproliferative, myelodysplastic, or lymphoproliferative disorder, thrombosis, exposure to toxic agents, excessive alcohol ingestion, autoimmune disorders (SLE, RA and other).

6. Indications for hemogram or CBC related to red cell (RBC) parameters of the hemogram include, in addition to those already listed, thalassemia, suspected hemoglobinopathy, lead poisoning, arsenic poisoning, and spherocytosis.

7. Specific indications for CBC with differential count related to the WBC include, in addition to those already listed, storage diseases/mucopolysaccharidoses, and use of drugs that cause leukocytosis such as G–CSF or GM–CSF.

8. Specific indications for CBC related to platelet count include, in addition to those already listed, May-Hegglin syndrome and Wiskott-Aldrich syndrome.

Limitations

1. Testing of patients who are asymptomatic, or who do not have a condition that could be expected to result in a hematological abnormality, is screening and is not a covered service.

2. In some circumstances it may be appropriate to perform only a hemoglobin or hematocrit to assess the oxygen carrying capacity of the blood. When the ordering provider requests only a hemoglobin or hematocrit, the remaining components of the CBC are not covered.

3. When a blood count is performed for an end-stage renal disease (ESRD) patient, and is billed outside the ESRD rate, documentation of the medical necessity for the blood count must be submitted with the claim.

4. In some patients presenting with certain signs, symptoms or diseases, a single CBC may be appropriate. Repeat testing may not be indicated unless abnormal results are found, or unless there is a change in clinical condition. If repeat testing is performed, a more descriptive diagnosis code (*e.g.,* anemia) should be reported to support medical necessity. However, repeat testing may be indicated where results are normal in patients with conditions where there is a continued risk for the development of hematologic abnormality.

ICD–9–CM Codes Covered by Medicare Program

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9-CM code sections below.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and

necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code	Description
078.10–078.19	Viral warts.
210.0–210.9	Benign neoplasm of lip, oral cavity, and pharynx.
214.0	Lipoma, skin and subcutaneous tissue of face.
216.0–216.9	Benign neoplasm of skin.
217	Benign neoplasm of breast.
222.0–222.9	Benign neoplasm of male genital organs.
224.0	Benign neoplasm of eye.
230.0	Carcinoma in situ of lip, oral cavity and pharynx.
232.0–232.9	Carcinoma in situ of skin.
300.00–300.09	Neurotic disorders.
301.0–301.9	Personality disorders.
302.0–302.9	Sexual deviations and disorders.
307.0	Stammering and stuttering.
307.20–307.23	Tics.
307.3	Stereotyped repetitive movements.
307.80–307.89	Psychalgia.
312.00–312.9	Disturbance of conduct, not elsewhere classified.
313.0–313.9	Disturbance of emotions specific to childhood and adolescence.
314.00–314.9	Hyperkinetic syndrome of childhood.
363.30–363.35	Chorioretinal scars.
363.40–363.43	Choroidal degeneration.

Code	Description
363.50–363.57	Hereditary choroidal dystrophies.
363.70–363.9	Choroidal detachment.
366.00–366.9	Cataract.
367.0–367.9	Disorders of refraction and accommodation.
371.00–371.9	Corneal opacity and other disorders of cornea.
373.00–373.9	Inflammation of eyelids.
375.00–375.9	Disorders of lacrimal system.
376.21–376.9	Disorders of the orbit, *except 376.3 Other exophthalmic conditions.*
377.10–377.16	Optic atrophy.
377.21–377.24	Other disorders of optic disc.
384.20–384.25	Perforation of tympanic membrane.
384.81–384.82	Other specified disorders of tympanic membrane.
385.00–385.90	Other disorders of middle ear and mastoid.
387.0–387.9	Otosclerosis.
388.00–388.5	Other disorders of ear.
389.00–389.9	Hearing loss.
440.0–440.1	Atherosclerosis of aorta and renal artery.
443.8–443.9	Peripheral vascular disease.
448.1	Capillary nevus, non neoplastic.
457.0	Postmastectomy lymphedema syndrome.
470	Deviated nasal septum.
471.0–471.9	Nasal polyps.
478.0	Hypertrophy of nasal turbinates.
478.4	Polyp of vocal cord or larynx.
520.0–520.9	Disorders of tooth development and eruption.
521.0–521.9	Diseases of hard tissues of teeth.
524.00–524.9	Dentofacial anomalies, including malocclusion.
525.0–525.9	Other diseases and conditions of teeth and supporting structures.
526.0–526.3	Diseases of the jaws.
527.6–527.9	Diseases of the salivary glands.
575.6	Cholesterolosis of gallbladder.
600	Hyperplasia of prostate.
603.0	Encysted hydrocele.
603.8	Other specified types of hydrocele.
603.9	Hydrocele, unspecified.
605	Redundant prepuce and phimosis.
606.0–606.1	Infertility, male.
608.1	Spermatocoele.
608.3	Atrophy of testis.
610.0–610.9	Benign mammary dysplasia.
611.1–611.6	Other disorders of breast.
611.9	Unspecified breast disorder.
616.2	Cyst of Bartholin's gland.
618.0–618.9	Genital prolapse.
620.0–620.3	Noninflammatory disorders of ovary, fallopian tube, and broad ligament.
621.6–621.7	Malposition or inversion of uterus.
627.2–627.9	Menopausal and post menopausal disorders.
628.0–628.9	Infertility, female.
676.00–676.94	Other disorders of breast associated with childbirth and disorders of lactation.
691.0–691.8	Atopic dermatitis and related disorders.
692.0–692.9	Contact dermatitis and other eczema.
700	Corns and callosities.
701.0–701.9	Other hypertrophic and atrophic conditions of skin.
702.0–702.8	Other dermatoses.
703.9	Unspecified disease of nail.
706.0–706.9	Diseases of sebaceous glands.
709.00–709.4	Other disorders of skin and subcutaneous tissue.
715.00–715.98	Osteoarthrosis.
716.00–716.99	Other and unspecified arthropathies.
718.00–718.99	Other derangement of joint.
726.0–726.91	Peripheral esthesiopathies and allied syndromes.
727.00–727.9	Other disorders of synovium, tendon, and bursa.
728.10–728.85	Disorders of muscle ligament and fascia.
732.0–732.9	Osteochondropathies.
733.00–733.09	Osteoporosis.
734	Flat foot.
735.0–735.9	Acquired deformities of toe.
736.00–736.9	Other acquired deformities of limb.
737.0–737.9	Curvature of spine.
738.0–738.9	Other acquired deformity.
739.0–739.9	Nonallopathic lesions, not elsewhere classified.
830.0–839.9	Dislocations.
840.0–848.9	Sprains and strains.
905.0–909.9	Late effects of musculoskeletal and connective tissue injuries.

Code	Description
910.0–919.9	Superficial injuries.
930.0–932	Foreign body on external eye, in ear, in nose.
955.0–957.9	Injury to peripheral nerve.
V03.0–V06.9	Need for prophylactic vaccination.
V11.0–V11.9	Personal history of mental disorder.
V14.0–V14.8	Personal history of allergy to medicinal agents.
V16.0	Family history of malignant neoplasm, gastrointestinal tract.
V16.3	Family history of malignant neoplasm, breast.
V21.0–V21.9	Constitutional states in development.
V25.01–V25.9	Encounter for contraceptive management.
V26.0–V26.9	Procreative management.
V40.0–V40.9	Mental and behavioral problems.
V41.0–V41.9	Problems with special senses and other special functions.
V43.0–V43.1	Organ or tissue replaced by other means, eye globe or lens.
V44.0–V44.9	Artificial opening status.
V45.00–V45.89	Other post surgical states.
V48.0–V48.9	Problems with head, neck, and trunk.
V49.0–V49.9	Problems with limbs.
V51	Aftercare involving the use of plastic surgery.
V52.0–V52.9	Fitting and adjustment of prosthetic device and implant.
V53.01–V53.09	Fitting and adjustment of devices related to nervous system and special senses.
V53.1	Fitting and adjustment of spectacles and contact lenses.
V53.31–V53.39	Fitting and adjustment of cardiac device.
V53.4	Fitting and adjustment of orthodontic devices.
V53.5	Fitting and adjustment of other intestinal appliance.
V53.6	Fitting and adjustment of urinary devices.
V53.7	Fitting and adjustment of orthopedic devices.
V53.8	Fitting and adjustment of wheelchair.
V53.9	Fitting and adjustment of other and unspecified device.
V54.0–V54.9	Other orthopedic aftercare.
V55.0–V55.9	Attention to artificial openings.
V57.0–V57.9	Care involving use of rehabilitation procedures.
V58.5	Orthodontics.
V59.0–V59.9	Donors.
V61.0–V61.9	Other family circumstances.
V62.2–V62.9	Other psychosocial circumstances.
V65.2	Person feigning illness.
V65.3	Dietary surveillance and counseling.
V65.40–V65.49	Other counseling, not elsewhere classified.
V65.5	Person with feared complaint in whom no diagnosis was made.
V65.8	Other reasons for seeking consultation.
V65.9	Unspecified reason for consultation.
V66.0-V66.9	Convalescence and palliative care.
V67.3	Follow-up examination following psychotherapy.
V67.4	Follow-up examination following treatment of healed fracture.
V69.3	Problems related to lifestyle, gambling and betting.
V71.01–V71.09	Observation and evaluation for suspected conditions not found, mental.
V72.0–V72.2	Special investigations, examination of eyes and vision, ears and hearing, dental.
V72.4–V72.7	Special investigations, radiologic exam, laboratory exam, diagnostic skin and sensitization tests.
V72.9	Special investigation, unspecified.
V76.10–V76.19	Special screening for malignant neoplasms, breast.
V76.2	Special screening for malignant neoplasms, cervix.

Sources of Information

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Cancer: Principals & Practice of Oncology, DeVita, et al., 5th edition, Philadelphia: Lippincott-Raven, 1997.

Cecil Textbook of Medicine, Bennett, et al., 20th edition, Philadelphia: W.B. Saunders, 1996.

Williams Hematology, Beutler, et al., 5th editiion, New York: McGraw-Hill, 1995.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding

Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Partial Thromboplastin Time

Other Names/Abbreviations: PTT.

Description

Basic plasma coagulation function is readily assessed with a few simple laboratory tests: The partial thromboplastin time (PTT), prothrombin time (PT), thrombin time (TT), or a quantitative fibrinogen determination. The partial thromboplastin time (PTT) test is an in vitro laboratory test used to assess the intrinsic coagulation pathway and monitor heparin therapy.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
85730	Thromboplastin time, partial (PTT); plasma or whole blood.

Indications

1. The PTT is most commonly used to quantitate the effect of therapeutic unfractionated heparin and to regulate its dosing. Except during transitions between heparin and warfarin therapy, in general both the PTT and PT are not necessary together to assess the effect of anticoagulation therapy. PT and PTT must be justified separately. (See ''Limitations'' section for further discussion.)

2. A PTT may be used to assess patients with signs or symptoms of hemorrhage or thrombosis. For example:

- Abnormal bleeding, hemorrhage or hematoma petechiae or other signs of thrombocytopenia that could be due to Disseminated Intravascular Coagulation
- Swollen extremity with or without prior trauma

3. A PTT may be useful in evaluating patients who have a history of a condition known to be associated with the risk of hemorrhage or thrombosis that is related to the intrinsic coagulation pathway. Such abnormalities may be genetic or acquired. For example:

- Dysfibrinogenemia.
- Afibrinogenemia (complete).
- Acute or chronic liver dysfunction or failure, including Wilson's disease.
- Hemophilia.
- Liver disease and failure.
- Infectious processes.
- Bleeding disorders.
- Disseminated intravascular coagulation.
- Lupus erythematosus or other conditions associated with circulating inhibitors, e.g., Factor VIII Inhibitor, lupus-like anticoagulant, etc.
- Sepsis.
- Von Willebrand's disease.
- Arterial and venous thrombosis, including the evaluation of hypercoagulable states.
- Clinical conditions associated with nephrosis or renal failure.
- Other acquired and congenital coagulopathies as well as thrombotic states.

4. A PTT may be used to assess the risk of thrombosis or hemorrhage in patients who are going to have a medical intervention known to be associated with increased risk of bleeding or thrombosis. An example is as follows:

- Evaluation prior to invasive procedures or operations of patients with personal or family history of bleeding or who are on heparin therapy

Limitations

1. The PTT is not useful in monitoring the effects of warfarin on a patient's coagulation routinely. However, a PTT may be ordered on a patient being treated with warfarin as heparin therapy is being discontinued. (See coding guidelines for instructions on the use of code V58.61 in this situation.) A PTT may also be indicated when the PT is markedly prolonged due to warfarin toxicity.

2. The need to repeat this test is determined by changes in the underlying medical condition and/or the dosing of heparin.

3. Testing prior to any medical intervention associated with a risk of bleeding and thrombosis (other than thrombolytic therapy) will generally be considered medically necessary only where there are signs or symptoms of a bleeding or thrombotic abnormality or a personal history of bleeding, thrombosis or a condition associated with a coagulopathy. Hospital/clinic-specific policies, protocols, etc., in and of themselves, cannot alone justify coverage.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
002.0–002.9	Typhoid and paratyphoid.
003.0–003.9	Other Salmonella infections.
042	Human immunodeficiency virus (HIV) disease.
038.9	Unspecified Septicemia.
060.0–060.9	Yellow fever.
65.0–065.9	Arthopod borne hemorrhagic fever.
070.0–070.9	Viral Hepatitis.
075	Infectious mononucleosis.
078.6	Hemorrhagic nephrosonephritis.
078.7	Arenaviral hemorrhagic fever.
120.0	Schistosomiasis haematobium.
121.1	Clonorchiasis.
121.3	Fascioliasis.
124	Trichinosis.
135	Sarcoidosis.
155.0–155.2	Malignant neoplasm of liver and intrahepatic bile ducts.
197.7	Malignant neoplasm of liver, specified as secondary.
238.4	Polycythemia vera.
238.7	Other lymphatic and hemapoietic tissues.
239.9	Neoplasm of unspecified nature, site unspecified.
246.3	Hemorrhage and infarction of thyroid.
250.40–250.43	Diabetic with renal manifestations.
269.0	Deficiency of Vitamin K.

Code	Description
273.0–273.9	Disorders of plasma protein metabolism.
273.2	Other paraproteinemias.
275.0–275.9	Disorders of iron metabolism.
277.1	Disorders of porphyrin metabolism.
277.3	Amyloidosis.
285.1	Acute posthemorrhagic anemia.
286.0	Congenital factor VIII disorder—Hemophilia A.
286.1	Congenital factor IX disorder—Hemophilia B.
286.2–286.3	Other congenital factor deficiencies.
286.4	von Willebrand's disease.
286.5	Hemorrhagic disorder due to circulating anticoagulants.
286.6	Defibrination syndrome.
286.7	Acquired coagulation factor deficiency.
286.8–.9	Other and unspecified coagulation defects.
287.0–287.9	Purpura and other hemorrhagic conditions.
289.0	Polycythemia, secondary.
325	Phlebitis and thrombophlebitis of intracranial ventricles sinuses.
360.43	Hemophthalmos, except current injury.
362.34	Amaurosis fugax.
362.43	Hemorrhagic detachment of retinal pigment epithelium.
362.81	Retinal hemorrhage.
363.6	Choroidal hemorrhage.
363.72	Choroidal detachment.
368.9	Unspecified Visual Disturbances.
372.72	Conjunctive hemorrhage.
374.81	Hemorrhage of eyelid.
376.32	Orbital hemorrhage.
377.42	Hemorrhage in optic nerve sheaths.
379.23	Vitreous hemorrhage.
380.31	Hematoma of auricle or pinna.
403.01, 403.11, 403.91	Hypertensive Renal Disease with renal failure.
404.02, 404.12, 404.92	Hypertensive Heart and Renal Disease with renal failure.
423.0	Hemopericardium.
427.31	Atrial fibrillation.
427.9	Cardiac dysrhythmias, unspecified.
428.0	Congestive heart failure.
429.79	Mural thrombus.
430–432.9	Cerebral hemorrhage.
433.00–433.91	Occlusion and stenosis of precerebral arteries.
434.00–434.91	Occlusion of cerebral arteries.
435.9	Focal neurologic deficit.
444.0–444.9	Arterial embolism and thrombosis.
446.6	Thrombotic microangiopathy.
447.2	Rupture of artery.
448.0	Hereditary Hemorrhagic telangiectasia.
451.0–451.9	Phlebitis and thrombophlebitis.
453.0–453.9	Other Venous emboli and thrombosis.
456.0	Esophageal varices with bleeding.
456.1	Esophageal varices without bleeding.
459.89	Ecchymosis.
530.7	Gastroesophageal laceration—hemorrhage syndrome.
531.00–535.61	Gastric-Duodenal ulcer disease.
537.83	Angiodysplasia of stomach and duodenum with hemorrhage.
556.0–557.9	Hemorrhagic bowel disease.
562.02–562.03	Diverticulosis of small intestine with hemorrhage.
562.12	Diverticulosis of colon with hemorrhage.
562.13	Diverticulitis of colon without hemorrhage.
568.81	Hemoperitoneum (nontraumatic).
569.3	Hemorrhage of rectum and anus.
570	Acute and subacute necrosis of liver.
571.0–573.9	Liver disease (in place of specific codes listed).
576.0–576.9	Biliary tract disorders.
577.0	Acute pancreatitis.
578.0–578.9	Gastrointestinal Hemorrhage.
579.0–579.9	Malabsorption.
581.0–581.9	Nephrotic Syndrome.
583.9	Nephritis, with unspecified pathological lesion in kidney.
584.5–584.9	Acute Renal Failure.
585	Chronic Renal Failure.
586	Renal failure.
593.81–593.89	Other disorders of kidney and ureter, with hemorrhage.
596.7	Hemorrhage into bladder wall.
596.8	Other disorders of bladder, with hemorrhage.
599.7	Hematuria.

Code	Description
607.82	Penile hemorrhage.
608.83	Vascular disorders of male genital organs.
611.8	Hematoma of breast.
620.7	Hemorrhage of broad ligament.
621.4	Hematometra.
622.8	Other specified disorders of cervix, with hemorrhage.
623.6	Vaginal hematoma.
623.8	Other specified diseases of the vagina, with hemorrhage.
624.5	Hematoma of vulva.
626.6	Metrorrhagia.
626.7	Postcoital bleeding.
627.0	Premenopausal bleeding.
627.1	Postmenopausal bleeding.
629.0	Hematocele female not elsewhere classified.
632	Missed abortion.
634.00–634.92	Spontaneous abortion.
635.10–635.12	Legally induced abortion, complicated by delayed or excessive hemorrhage.
636.10–636.12	Illegally induced abortion, complicated by delayed or excessive hemorrhage.
637.10–637.12	Abortion unspecified, complicated by delayed or excessive hemorrhage.
638.1	Failed attempt abortion, complicated by delayed or excessive hemorrhage.
639.1	Delayed or excessive hemorrhage following abortion and ectopic and molar pregnancies.
639.6	Complications following abortion and ectopic and molar pregnancies, embolism.
640.00–640.93	Hemorrhage in early pregnancy.
641.00–641.93	Antepartum hemorrhage.
642.00–642.94	Hypertension complicating pregnancy, childbirth, and the puerperium.
646.70–646.73	Liver disorders in pregnancy.
656.00–656.03	Fetal maternal hemorrhage.
658.40–658.43	Infection of amniotic cavity.
666.00–666.34	Postpartum hemorrhage.
671.20–671.54	Phlebitis in pregnancy.
673.00–673.84	Obstetrical pulmonary embolus.
674.30–674.34	Other complications of surgical wounds, with hemorrhage.
710.0	Systemic Lupus erythematosus.
713.2	Arthropathy associated with hematologic disorders (note: may not be used without indicating associated condition first).
713.6	Arthropathy associated with Henoch Schoenlein (note: may not be used without indicating associated condition first).
719.10–.19	Hemarthrosis.
729.5	Leg pain/calf pain.
733.1	Pathologic fracture associated with fat embolism.
762.1	Other forms of placental separation with hemorrhage (affecting newborn code—do not assign to mother's record).
764.90–764.99	Fetal intrauterine growth retardation.
767.0–767.1	Subdural and cerebral hemorrhage.
767.8	Other specified birth trauma, with hemorrhage.
770.3	Fetal and newborn pulmonary hemorrhage.
772.0–.9	Fetal and neonatal hemorrhage.
774.0–.7	Other perinatal jaundice.
776.0–776.9	Hemorrhagic disease of the newborn.
780.2	Syncope.
782.4	Jaundice, unspecified, not of newborn.
782.7	Spontaneous ecchymoses Petechiae.
784.7	Epistaxis.
784.8	Hemorrhage from throat.
785.4	Gangrene.
785.50	Shock.
786.05	Shortness of breath.
786.3	Hemoptysis.
786.59	Chest pain.
789.00–.09	Abdominal pain.
790.92	Abnormal coagulation profile.
800.00–800.99	Fracture of vault of skull.
801.00–801.99	Fracture of base of skull.
802.20–802.9	Fracture of face bones.
803.00–.99	Other fracture, skull.
804.00–.99	Multiple fractures, skull.
805.00–806.9	Fracture, vertebral column.
807.00–807.09	Fractures of rib(s), closed.
807.10–807.19	Fracture of rib(s), open.
808.8–.9	Fracture of pelvis.
809.0–.1	Fracture of trunk.
810.00–.13	Fracture of clavicle.
811.00–.19	Fracture of scapula.
812.00–.59	Fracture of humerus.
813.10–.18	Fracture of radius and ulna, upper end, open.

Code	Description
813.30–.38	Fracture of radius and ulna, shaft, open.
813.50–813.58	Fracture of radius and ulna, lower end, open.
813.90–.98	Fracture of radius and ulna, unspecified part, open
819.0–819.1	Multiple fractures.
820.00– 821.39	Femur.
823.00–.92	Tibia and fibula.
827.0–829.1	Other multiple lower limb.
852.00–853.19	Subarachnoid subdural, and extradural hemorrhage, following injury, Other and specified intracranial hemorrhage following injury.
860.0–860.5	Traumatic pneumothorax and hemothorax.
861.00–.32	Injury to heart and lung.
862.0–.862.9	Injury to other and unspecified intrathoracic organs.
863.0–.9	Injury to gastrointestinal tract.
864.00–.19	Injury to liver.
865.00–.19	Injury to spleen.
866.00–.13	Injury to kidney.
867.0–.9	Injury to pelvic organs.
868.00–.19	Injury to other intra-abdominal organs.
869.0–.1	Internal injury to unspecified or ill defined organs.
900.00–.9	Injury to blood vessels of head and neck.
901.0–.9	Injury to blood vessels of the thorax.
902.0–.9	Injury to blood vessels of the abdomen and pelvis.
903.00–.9	Injury to blood vessels of upper extremity.
904.0–.9	Injury to blood vessels of lower extremity and unspecified sites.
920–924.9	Contusion with intact skin surface.
925.1–929.9	Crushing injury.
958.2	Secondary and recurrent hemorrhage.
959.9	Injury, unspecified site.
964.2	Poisoning by anticoagulants.
964.5	Poisoning by anticoagulant antagonists.
964.7	Poisoning by natural blood and blood products.
980.0	Toxic effects of alcohol.
989.5	Snake venom.
995.2	Unspecified adverse effect of drug, medicinal and biological substance (due to correct medicinal substance properly administered).
996.7	Other complications of internal prosthetic device.
997.02	Iatrogenic cerbrovascular infarction or hemorrhage.
998.11	Hemorrhage or hematoma complicating a procedure.
999.2	Other vascular complications of medical care.
V12.3	Personal history of diseases of blood and blood forming organs.
V58.2	Admission for Transfusion of blood products.
V58.61	Long term (current use) of anticoagulants.
V72.81	Pre-operative cardiovascular examination.
V72.83	Other specified pre-operative examination.
V72.84	Pre-operative examination, unspecified.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

• Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

• A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–09–CM Codes That Do Not Support Medical Necessity:

Code: Description

Any ICD–9–09CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

CMD Clinical Laboratory Workgroup

1999 CPT Physicians' Current Procedural Terminology, American Medical Association

Blue Book of Diagnostic Tests; PL Liu; Saunders

Wintrobe's Clinical Hematology; 9th Ed, 1993, Lea and Febiger

Harrison's *Principles of Internal Medicine, 14th Ed., McGraw Hill, 1997.*

Disorders of Hemostasis, Ratnoff, Oscar D. and Forbes, Charles D., W.B. Saunders Company, 1996

Hemostasis and Thrombosis: Basic Principles and Clinical Practice. *Colman,* et al editors, J.B. Lippincott, 3rd Edition, 1994, pp 896–898 and 1045–1046.

''College of American Pathologists Conference XXXI on Laboratory Monitoring of Anticoagulant Therapy,'' Arch Pathol Lab Med, Vol 122, Sep 1998, P 782–798.

Lupus Anticoagulants/Antiphospholipid-protein Antibodies: The Great Imposters, Triplett DA, Lupus 1996:5:431

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test.

6. When patients are being converted from heparin therapy to warfarin therapy, use code V58.61 to document the medical necessity of the PTT.

7. When coding for Disseminated Intravascular Coagulation (DIC), use 286.6 or code for the signs and symptoms clinically indicating DIC.

8. If a specific condition is known and is the reason for a pre-operative test, submit the clinical text description or ICD–9–CM code describing the condition with the order/referral. If a specific condition or disease is not known, and the pre-operative test is for pre-operative clearance only, assign code V72.84.

9. Assign codes 289.8—other specified disease of blood and blood-forming organs only when a specific disease exists and is indexed to 289.8, (for example, myelofibrosis). Do not assign code 289.8 to report a patient on long term use of anticoagulant therapy (for example, to report a PTT value or re-check need for medication adjustment.) Assign code V58.61 to referrals for PTT checks or re-checks. (Reference AHA's Coding Clinic, March–April, pg 12—1987, 2nd quarter pg 8—1989)

Medicare National Coverage Decision for Prothrombin Time

Other Names/Abbreviations: PT

Description

Basic plasma coagulation function is readily assessed with a few simple laboratory tests: the partial thromboplastin time (PTT), prothrombin time (PT), thrombin time (TT), or a quantitative fibrinogen determination. The prothrombin time (PT) test is one in-vitro laboratory test used to assess coagulation. While the PTT assesses the intrinsic limb of the coagulation system, the PT assesses the extrinsic or tissue factor dependent pathway. Both tests also evaluate the common coagulation pathway involving all the reactions that occur after the activation of factor X. Extrinsic pathway factors are produced in the liver and their production is dependent on adequate vitamin K activity. Deficiencies of factors may be related to decreased production or increased consumption of coagulation factors. The PT/INR is most commonly used to measure the effect of warfarin and regulate its dosing. Warfarin blocks the effect of vitamin K on hepatic production of extrinsic pathway factors.

A prothrombin time is expressed in seconds and/or as an international normalized ratio (INR). The INR is the PT ratio that would result if the WHO reference thromboplastin had been used in performing the test.

Current medical information does not clarify the role of laboratory PT testing in patients who are self monitoring. Therefore, the indications for testing apply regardless of whether or not the patient is also PT self-testing.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
85610 ..	Prothrombin Time.

Indications

1. A PT may be used to assess patients taking warfarin. The prothrombin time is generally not useful in monitoring patients receiving heparin who are not taking warfarin.

2. A PT may be used to assess patients with signs or symptoms of abnormal bleeding or thrombosis. For example:

- swollen extremity with or without prior trauma
- unexplained bruising
- abnormal bleeding, hemorrhage or hematoma
- petechiae or other signs of thrombocytopenia that could be due to Disseminated Intravascular Coagulation

3. A PT may be useful in evaluating patients who have a history of a condition known to be associated with the risk of bleeding or thrombosis that is related to the extrinsic coagulation pathway. Such abnormalities may be genetic or acquired. For example:

- dysfibrinogenemia
- afibrinogenemia (complete)
- acute or chronic liver dysfunction or failure, including Wilson's disease and Hemochromatosis
- disseminated intravascular coagulation (DIC)
- congenital and acquired deficiencies of factors II, V, VII, X;
- vitamin K deficiency
- lupus erythematosus
- hypercoagulable state
- paraproteinemia
- lymphoma
- amyloidosis
- acute and chronic leukemias
- plasma cell dyscrasia
- HIV infection
- malignant neoplasms
- hemorrhagic fever
- salicylate poisoning
- obstructive jaundice
- intestinal fistula
- malabsorption syndrome
- colitis
- chronic diarrhea
- presence of peripheral venous or arterial thrombosis or pulmonary emboli or myocardial infarction
- patients with bleeding or clotting tendencies
- organ transplantation
- presence of circulating coagulation inhibitors

4. A PT may be used to assess the risk of hemorrhage or thrombosis in patients who are going to have a medical intervention known to be associated with increased risk of bleeding or thrombosis. For example:

- evaluation prior to invasive procedures or operations of patients with personal history of bleeding or a condition associated with coagulopathy.
- prior to the use of thrombolytic medication

Limitations

1. When an ESRD patient is tested for PT, testing more frequently than weekly (the frequency authorized by 3171.2, Fiscal Intermediary Manual, or 2231.3 Medicare Carrier Manual) requires documentation of medical necessity [e.g. other than ''Chronic Renal Failure'' (ICD–9–CM 585) or ''Renal Failure, Unspecified'' (ICD–9–CM 586)]

2. The need to repeat this test is determined by changes in the underlying medical condition and/or the dosing of warfarin. In a patient on stable warfarin therapy, it is ordinarily not necessary to repeat testing more than every two to three weeks. When testing is performed to evaluate a patient with signs or symptoms of abnormal bleeding or thrombosis and the initial test result is normal, it is ordinarily not necessary to repeat testing unless there is a change in the patient's medical status.

3. Since the INR is a calculation, it will not be paid in addition to the PT when expressed in seconds, and is considered part of the conventional prothrombin time, 85610.

4. Testing prior to any medical intervention associated with a risk of bleeding and thrombosis (other than thrombolytic therapy) will generally be considered medically necessary only where there are signs or symptoms of a bleeding or thrombotic abnormality or a personal history of bleeding, thrombosis or a condition associated with a coagulopathy. Hospital/clinic-specific policies, protocols, *etc.,* in and of themselves, cannot alone justify coverage.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
002.0–002.9	Typhoid and paratyphoid.
003.0–003.9	Other Salmonella infections.
038.9	Unspecified Septicemia.
042	Human Immunodeficiency virus (HIV) disease.
060.0–060.9	Yellow fever
065.0–065.9	Arthropod-borne hemorrhagic fever.
070.0–070.9	Viral hepatitis.
075	Infectious mononucleosis.
078.6	Hemorrhagic nephrosonephritis.
078.7	Arenaviral hemorrhagic fever.
84.8	Blackwater fever.
120.0	Schistosomiasis.
121.1	Clonorchiasos.
121.3	Fascioliasis.

Code	Description
124	Trichinosis.
134.2	Hirudiniasis.
135	Sarcoidosis.
152.0–152.9	Malignant neoplasm of small intestine, including duodenum.
155.0–155.2	Malignant neoplasm of liver and intrahepatic bile ducts.
156.0–156.9	Malignant neoplasm of gallbladder and extrahepatic bile ducts.
157.0–157.9	Malignant neoplasm of pancreas.
188.0–189.9	Malignant neoplasm of bladder, kidney, and other and unspecified urinary organs.
198.0	Secondary malignant neoplasm, kidney.
198.1	Secondary malignant neoplasm, other urinary organs.
200.00–200.88	Lymphosarcoma and reticulosarcoma.
202.0–202.98	Nodular and other Lymphomas.
223.0–223.9	Benign neoplasm of kidney and other urinary organs.
238.4	Polycythemia vera.
238.5	Histocytic and mast cells—neoplasm of uncertain behavior.
238.6	Plasma cells—neoplasm of uncertain behavior.
238.7	Other lymphatic and hematopoietic tissues.
239.4	Neoplasm of unspecified nature, bladder.
239.5	Neoplasm of unspecified nature, other genitourinary organs.
239.9	Neoplasm of unspecified nature, site unspecified.
246.3	Hemorrhage and infarction of thyroid.
250.40–250.43	Diabetic with renal manifestations.
263.0–263.9	Other and unspecified protein/calorie malnutrition.
269.0	Deficiency of Vitamin K.
269.2.	Unspecified vitamin deficiency.
273.0–273.9	Disorders of plasma protein metabolism.
275.0	Disorders of iron metabolism.
277.1	Disorders of porphyrin metabolism.
277.3	Amyloidosis.
280.0	Iron deficiency anemia, secondary to blood loss—chronic.
280.9	Iron deficiency anemia, unspecified.
281.0	Pernicious anemia.
281.1	Other Vitamin B12 Deficiency Anemia, NEC.
281.9	Unspecified Deficiency Anemia, NOS.
285.0	Sideroblastic anemia.
285.1	Acute posthemorrhagic anemia.
286.0– 286.9	Coagulation defects.
287.0–287.9	Purpura and other hemorrhagic conditions.
290.40–290.43	Arteriosclerotic dementia.
325	Phlebitis and thrombophlebitis of intracranial venous sinuses.
342.9	Hemiplegia NOS.
42.90	Hemiplegia NOS, Side NEC.
360.43	Hemophthalmios, except current injury.
362.18	Retinal vasculitis.
362.30–362.37	Retinal vascular occlusion.
362.43	Hemorrhagic detachment of retnal pigment epithelium.
362.81	Retinal hemorrhage.
363.61–363.72	Choroidal hemorrhage and rupture, detachment.
368.9	Unspecified Visual Disturbances.
372.72	Conjunctival hemorrhage.
374.81	Hemorrage in optic nerve sheaths.
376.32	Orbital hemorrhage.
377.42	Hemorrhage in optic nerve sheaths.
377.53	Disorders of optic chiasm associated with vascular disorders.
377.62	Disorders of visual pathways associated with vascular disorders.
377.72	Disorders of visual cortex associated with vascular disorders.
379.23	Vitreous hemorrhage.
380.31	Hematoma of auricle or pinna.
386.2	Vertigo of central origin.
386.50	Labyrinthine dysfunction, unspecified.
394.0–394.9	Diseases of the mitral valve.
395.0	Rheumatic aortic stenosis.
395.2	Rheumatic aortic stenosis with insufficiency.
396.0–396.9	Diseases of mitral and aortic valves.
397.0–397.9	Diseases of other endocardial structures.
398.0–398.99	Other rheumatic heart disease.
403.01, 403.11,.	
403.91	Hypertensive Renal Disease with renal failure.
404.02, 404.12,.	
404.92	Hypertensive Heart and Renal Disease with renal failure.
410.00–410.92	Acute myocardial infarction.
411.1	Intermediate coronary syndrome.
411.81	Coronary occlusion without myocardial infarction.
411.89	Other acute and subacute forms of ischemic heart disease.

Code	Description
413.0–413.9	Angina pectoris.
414.00–414.05	Coronary atherosclerosis.
414.8	Other specified forms of chronic ischemic heart disease.
414.9	Chronic ischemic heart disease, unspecified.
415.0–415.19	Acute pulmonary heart disease.
416.9	Chronic pulmonary heart disease, unspecified.
423.0	Hemopericardium.
424.0	Mitral valve disorders.
424.1	Aortic valve disorder.
424.90	Endocarditis, valve unspecified, unspecified cause.
425.0–425.9	Cardiomyopathy.
427.0–427.9	Cardiac dysrhythmias.
428.0–428.9	Heart failure.
429.0–429.4	Ill-defined descriptions and complications of heart disease.
429.79	Other certain sequelae of myocardial infarction, not elsewhere classified.
430	Subarachnoid hemorrhage.
431	Intracerebral hemorrhage.
432.0–432.9	Other and unspecified intracranial hemorrhage.
433.00–433.91	Occlusion and stenosis of precerebral arteries.
434.00–434.91	Occlusion of cerebral arteries.
435.0–435.9	Transient cerebral ischemia.
436	Acute, but ill-defined cerebrovascular disease.
437.0	Cerebral atherosclerosis.
437.1	Other generalized ischemic cerebrovascular disease.
437.6	Nonpyogenic thrombosis of intracranial venous sinus.
440.0–440.9	Atherosclerosis.
441.0–441.9	Aortic aneurysm and dissection.
443.0–443.9	Other peripheral vascular disease.
444.0–444.9	Arterial embolism and thrombosis.
447.1	Stricture of artery.
447.2	Rupture of artery.
447.6	Arteritis, unspecified.
448.0	Hereditary hemorrhagic telangiectasia.
448.9	Other and unspecified capillary diseases.
451.0–451.9	Phlebitis and thrombophlebitis.
452	Portal vein thrombosis.
453.0–453.9	Other venous embolism and thrombosis.
455.2	Internal hemorrhoids with other complication.
455.5	External hemorrhoids with other complication.
455.8	Unspecified hemorrhoids with other complication.
456.0–456.1	Esophageal varices.
456.8	Varices of other sites.
459.0	Hemorrhage, unspecified.
459.1	Postphlebitis syndrome.
459.2	Compression of vein.
459.81	Venous (peripheral) insufficiency, unspecified.
459.89	Other, other specified disorders of circulatory system.
511.8	Other specified forms of effusion, except tuberculosis.
514	Pulmonary congestion and hypostasis.
530.7	Gastroesophageal laceration—hemorrhage syndrome.
530.82	Esophageal hemorrhage.
531.00–535.61	Gastric ulcer, duodenal ulcer, peptic ulcer, gastrojejunal ulcer, gastritis and duodenitis.
555.0–555.9	Regional enteritis.
556.0–556.9	Ulcerative colitis.
557.0–557.9	Vascular insufficiency of intestine.
562.02—562.03	Diverticulosis of small intestine with hemorrhage.
562.10	Diverticulosis of colon w/o hemorrhage.
562.11	Diverticulitis of colon w/o hemorrhage.
562.12	Diverticulosis of colon with hemorrhage.
562.13	Diverticulitis of colon without hemorrhage.
568.81	Hemoperitoneum (nontraumatic).
569.3	Hemorrhage of rectum and anus.
571.0–571.9	Chronic liver disease and cirrhosis.
572.2	Hepatic coma.
572.4	Hepatorenal syndrome.
572.8	Other sequelae of chronic liver disease.
573.1–573.9	Hepatitis in viral diseases, other and unspecified disorder of liver.
576.0–576.9	Other disorders of Biliary tract.
577.0	Acute pancreatitis.
578.0–578.9	Gastrointestinal hemorrhage.
579.0–579.9	Intestinal Malabsorption.
581.0—581.9	Nephrotic Syndrome.
583.9	Nephritis, with unspecified pathological lesion in kidney.
584.5–584.9	Acute Renal Failure.

Code	Description
585	Chronic Renal Failure.
586	Renal failure, unspecified.
593.81–593.89	Other specified disorders of kidney and ureter.
596.7	Hemorrhage into bladder wall.
596.8	Other specified disorders of bladder.
599.7	Hematuria.
607.82	Vascular disorders of penis.
608.83	Vascular disorders of male genital organs.
611.8	Other specified disorders of breast—hematoma.
620.7	Hemorrhage of broad ligament.
621.4	Hematometra.
622.8	Other specified noninflammatory disorders of cervix.
623.6	Vaginal hematoma.
623.8	Other specified noninflammatory disorders of the vagina.
624.5	Hematoma of vulva.
626.2–626.9	Abnormal bleeding from female genital tract.
627.0	Premenopausal menorrhagia.
627.1	Postmenopausal bleeding.
629.0	Hematocele female, not classified elsewhere.
632	Missed abortion.
634.10–634.12	Spontaneous abortion, complicated by excessive hemorrhage.
635.10–635.12	Legally induced abortion, complicated by delayed or excessive hemorrhage.
636.10–636.12	Illegally induced abortion, complicated by delayed or excessive hemorrhage.
637.10–637.12	Abortion unspecified, complicated by delayed or excessive hemorrhage.
638.1	Failed attempted abortion, complicated by delayed or excessive hemorrhage.
639.1	Delayed or excessive hemorrhage following abortion and ectopic and molar pregnancies.
639.6	Complications following abortion and ectopic and molar pregnancies with embolism.
640.00–640.93	Hemorrhage in early pregnancy.
641.00–641.93	Antepartum hemorrhage, abruptio placentae, and placenta previa.
642.00–642.94	Hypertension complicating pregnancy, childbirth, and the puerperium.
646.70–646.73	Liver disorders in pregnancy.
656.00–656.03	Fetal maternal hemorrhage.
658.40–658.43	Infection of amniotic cavity.
666.00–666.34	Postpartum hemorrhage.
671.20–671.94	Venous complications in pregnancy and the puerperium.
673.00–673.84	Obstetrical pulmonary embolism.
674.30–674.34	Other complications of obstetrical surgical wounds.
713.2	Arthropathy associated with hematological disorders.
713.6	Arthropathy associated with hypersensitivity reaction.
719.15	Hemarthrosis (5th digits 5, 6, and 9 allowed only).
719.16	Lower leg.
719.19	Multiple sites.
729.5	Pain in limb.
733.1	Patholgic fracture, unspecified site.
746.00–746.9	Other Congenital anomalies of heart.
762.1	Other forms of placental separation and hemorrhage.
767.0–767.1	Subdural and cerebral hemorrhage.
767.8	Other specified birth trauma.
770.3	Pulmonary hemorrhage.
772.0–772.9	Fetal and neonatal hemorrhage.
774.6	Unspecified fetal and neonatal jaundice.
776.0–776.9	Hemorrhagic disease of the newborn.
780.2	Syncope an collapse.
782.3	Edema.
782.4	Jaundice, unspecified, not of newborn.
782.7	Spontaneous ecchymosis.
784.7	Epistaxis.
784.8	Hemorrhage from throat.
785.4	Gangrene.
785.50	Shock without mention of trauma.
786.05	Shortness of breath.
786.3	Hemoptysis.
786.59	Chest pain, other.
789.00–789.09	Abdominal pain.
789.1	Hepatomegaly.
789.5	Ascites.
790.92	Abnormal coagulation profile.
790.94	Euthyroid sick syndrome.
791.2	Hemoglobinuria.
794.8	Abnormal Liver Function Study.
800.00–800.99	Fracture of vault of skull.
801.00–801.99	Fracture of base of skull.
802.20–802.9	Fracture of face bones.
803.00–803.99	Other and unqualified skull fractures.

Code	Description
804.00–804.99	Multiple fractures involving skull or face with other bones.
805.00–806.9	Fracture, vertebral column.
807.00–807.09	Fractures of rib(s), closed.
807.10–807.19	Fracture of rib(s), open.
808.8–808.9	Fracture of Pelvis.
809.0–809.1	Ill-defined fractures of bones of Trunk.
810.00–810.13	Fracture of Clavicle.
811.00–811.19	Fracture of Scapula.
812.00–812.59	Fracture of Humerus.
813.10–18	Fracture of radius and ulna, upper end, open.
813.30–38	Shaft, open.
813.50–813.58	Lower end, open.
813.90–98	Fracture unspecified part, open.
819.0–819.1	Multiple fractures involving both upper limbs, closed and open.
820.00–821.39	Fracture of neck of femur.
823.00–823.92	Fracture of tibia and fibula.
827.0–829.1	Other multiple lower limb.
852.00–852.59	Subarachnoid, subdural, and extradural hemorrhage, following injury.
853.00–853.19	Other and specified intracranial hemorrhage following injury.
852.00–853.19	Subarachnoid subdural, and extradural hemorrhage, following injury, Other and specified intracranial hemorrhage following injury.
860.0–860.5	Traumatic pneumothorax and hemothorax.
861.00–.32	Injury to heart and lung.
862.0–.862.9	Injury to other and unspecified intrathoracic organs.
863.0–.9	Injury to gastrointestinal tract.
864.00–.19	Injury to liver.
865.00–.19	Injury to spleen.
866.00–.13	Injury to kidney.
867.0–.9	Injury to pelvic organs.
868.00–.19	Injury to other intra-abdominal organs.
869.0–.1	Internal injury to unspecified or ill defined organs.
900.00–.9	Injury to blood vessels of head and neck.
901.0–.9	Injury to blood vessels of the thorax.
902.0–.9	Injury to blood vessels of the abdomen and pelvis.
903.00–.9	Injury to blood vessels of upper extremity.
904.0–.9	Injury to blood vessels of lower extremity and unspecified sites.
920—924.9	Contusion with intact skin surface.
925.1—929.9	Crushing injury.
958.2	Secondary and recurrent hemorrhage.
959.9	Injury, unspecified site.
964.0–964.9	Poisoning by agents primarily affecting blood constituents.
980.0–980.9	Toxic effect of alcohol.
981	Toxic effect of petroleum products.
982.0–982.8	Toxic effects of solvents other than petroleum-based.
987.0–987.9	Toxic effect of other gases, fumes or vapors.
989.0–989.9	Toxic effect of other substances chiefly non-medicinal as to source.
995.2	Unspecified adverse effect of drug, medicinal and biological substance (due to correct medicinal substance properly administered).
996.82	Complication of transplanted liver.
997.4	Digestive system complications.
998.11–998.12	Hemorrhage or hematoma complicating a procedure.
997.02	Iatrogenic cerbrovascular infarction or hemorrhage.
999.2	Other vascular complications.
999.8	Other transfusion reactions.
V08	Asymptomatic HIV infection.
V12.1	History of nutritional deficiency.
V12.3	Personal history of diseases of blood and blood-forming organs.
V15.1	Personal history of surgery to heart and great vessels.
V15.2	Personal history of surgery of other major organs.
V42.0	Kidney replaced by transplant.
V42.1	Heart replaced by transplant.
V42.2	Heart valve replaced by transplant.
V42.6	Lung replaced by transplant.
V42.7	Liver replaced by transplant.
V42.8	Other specified organ or tissue replaced by transplant.
V43.2	Heart replaced by other means.
V43.3	Heart valve replaced by other means.
V43.4	Blood vessel replaced by other means.
V43.60	Unspecified joint replaced by other means.
V58.2	Transfusion of blood products.
V58.61	Long-term (current) use of anticoagulants.
V72.84	Pre-operative examination, unspecified.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

• Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

• A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9-CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0—798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

CMD Clinical Laboratory Workgroup.

1999 CPT Physicians' Current Procedural Terminology, American Medical Association

Wintrobe's Clinical Hematology 9th Ed. Lea and Febinger Harrison's Principles of Internal Medicine, McGraw Hill, 14th Ed., 1997.

Diagnostic Tests Handbook, Springhouse Corporation, 1987.

Hemostasis and Thrombosis: Basic Principles and Clinical Practice. Colman, et al editors, J.B. Lippincott, 3rd Edition, 1994, pp 896–898 and 1045–1046.

Disorders of Hemostasis, Ratnoff, Oscar D. and Forbes, Charles D., W.B. Saunders Company, 1996.

Merck Manual of Diagnosis and Therapy, 16th Edition (should be replaced with 17th Edition when available in 1999.)

''Performance of the Coumatrak System at a Large Anticoagulation Clinic''. Coagulation and Transfusion Medicine. January 1995. pp 98–102.

''Monitoring Oral Anticoagulation Therapy with Point-of-Care Devices. Correlation and

Caveats''. Clinical Chemistry: No. 9, 1997, pp 1785–1786.

''College of American Pathologists Conference XXXI on Laboratory Monitoring of Anticoagulant Therapy''. Arch. Pathol. Lab. Med. Vol. 122. September 1998. pp 768–780.

''A Structured Teaching and Self-management Program for Patients Receiving Oral Anti-coagulation''. JAMA; 1999; 281: 145–150.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test.

6. If a specific condition is known and is the reason for a pre-operative test, submit the text description or ICD–9–CM code describing the condition with the order/referral. If a specific condition or disease is not known, and the pre-operative test is for pre-operative clearance only, assign code V72.84.

7. Assign codes 289.8—other specified disease of blood and blood-forming organs only when a specific disease exists and is indexed to 289.8 (for example, myelofibrosis). Do not assign code 289.8 to report a patient on long term use of anticoagulant therapy (e.g. to report a PT value or re-check need for medication adjustment.) Assign code V58.61 to referrals for PT checks or re-checks. (Reference AHA's Coding Clinic, March–April, pg 12—1987, 2nd quarter pg 8—1989)

Medicare National Coverage Decision for Serum Iron Studies

Other Names/Abbreviations

Description

Serum iron studies are useful in the evaluation of disorders of iron metabolism, particularly iron deficiency and iron excess. Iron studies are best performed when the patient is fasting in the morning and has abstained from medications that may influence iron balance.

Iron deficiency is the most common cause of anemia. In young children on a milk diet, iron deficiency is often secondary to dietary deficiency. In adults, iron deficiency is usually the result of blood loss and is only occasionally secondary to dietary deficiency or malabsorption. Following major surgery the patient may have iron deficient erythropoiesis for months or years if adequate iron replacement has not been given. High doses of supplemental iron may cause the serum iron to be elevated. Serum iron may also be altered in acute and chronic inflammatory and neoplastic conditions.

Total iron binding capacity (TIBC) is an indirect measure of transferrin, a protein that binds and transports iron. TIBC quantifies transferrin by the amount of iron that it can bind. TIBC and transferrin are elevated in iron deficiency, and with oral contraceptive use, and during pregnancy. TIBC and transferrin may be decreased in malabsorption syndromes or in those affected with chronic diseases. The percent saturation represents the ratio of iron to the TIBC.

Assays for ferritin are also useful in assessing iron balance. Low concentrations are associated with iron deficiency and are highly specific. High concentrations are found in hemosiderosis (iron overload without associated tissue injury) and hemochromatosis (iron overload with associated tissue injury). In these conditions the iron is elevated, the TIBC and transferrin are within the reference range or low, and the percent saturation is elevated. Serum ferritin can be useful for both initiating and monitoring treatment for iron overload.

Transferrin and ferritin belong to a group of serum proteins known as acute phase reactants, and are increased in response to stressful or inflammatory conditions and also can occur with infection and tissue injury due to surgery, trauma or necrosis. Ferritin and iron/TIBC (or transferrin) are affected by acute and chronic inflammatory conditions, and in patients with these disorders, tests of iron status may be difficult to interpret.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82728	Ferritin.
83540	Iron.
83550	Iron Binding capacity.
84466	Transferrin.

Indications

1. Ferritin (82728), iron (83540) and either iron binding capacity (83550) or transferrin (84466) are useful in the differential diagnosis of iron deficiency, anemia, and for iron overload conditions.

A. The following presentations are examples that may support the use of these studies for evaluating iron deficiency:

- Certain abnormal blood count values (i.e., decreased mean corpuscular volume (MCV), decreased hemoglobin/hematocrit when the MCV is low or normal, or increased red cell distribution width (RDW) and low or normal MCV).
- Abnormal appetite (pica)
- Acute or chronic gastrointestinal blood loss
- Hematuria
- Menorrhagia
- Malabsorption
- Status post-gastrectomy
- Status post-gastrojejunostomy
- Malnutrition
- Preoperative autologous blood collection(s)
- Malignant, chronic inflammatory and infectious conditions associated with anemia which may present in a similar manner to iron deficiency anemia
- Following a significant surgical procedure where blood loss had occurred and had not been repaired with adequate iron replacement.

B. The following presentations are examples that may support the use of these studies for evaluating iron overload:

- Chronic Hepatitis
- Diabetes
- Hyperpigmentation of skin
- Arthropathy
- Cirrhosis
- Hypogonadism
- Hypopituitarism
- Impaired porphyrin metabolism

- Heart failure
- Multiple transfusions
- Sideroblastic anemia
- Thalassemia major
- Cardiomyopathy, cardiac dysrhythmias and conduction distrubances

2. Follow-up testing may be appropriate to monitor response to therapy, *e.g.,* oral or parenteral iron, ascorbic acid, and erythropoietin.

3. Iron studies may be appropriate in patients after treatment for other nutritional deficiency anemias, such as folate and vitamin B12, because iron deficiency may not be revealed until such a nutritional deficiency is treated.

4. Serum ferritin may be appropriate for monitoring iron status in patients with chronic renal disease with or without dialysis.

5. Serum iron may also be indicated for evaluation of toxic effects of iron and other metals (*e.g.,* nickel, cadmium, aluminum, lead) whether due to accidental, intentional exposure or metabolic causes.

Limitations

1. Iron studies should be used to diagnose and manage iron deficiency or iron overload states. These tests are not to be used solely to assess acute phase reactants where disease management will be unchanged. For example, infections and malignancies are associated with elevations in acute phase reactants such as ferritin, and decreases in serum iron concentration, but iron studies would only be medically necessary if results of iron studies might alter the management of the primary diagnosis or might warrant direct treatment of an iron disorder or condition.

2. If a normal serum ferritin level is documented, repeat testing would not ordinarily be medically necessary unless there is a change in the patient's condition, and ferritin assessment is needed for the ongoing management of the patient. For example, a patient presents with new onset insulin-dependent diabetes mellitus and has a serum ferritin level performed for the suspicion of hemochromatosis. If the ferritin level is normal, the repeat ferritin for diabetes mellitus would not be medically necessary.

3. When an End Stage Renal Disease (ESRD) patient is tested for ferritin, testing more frequently than every three months (the frequency authorized by 3167.3, Fiscal Intermediary manual) requires documentation of medical necessity [*e.g.,* other than ''Chronic Renal Failure'' (ICD–9–CM 585) or ''Renal Failure, Unspecified'' (ICD–9–CM 586)].

4. It is ordinarily not necessary to measure both transferrin and TIBC at the same time because TIBC is an indirect measure of transferrin. When transferrin is ordered as part of the nutritional assessment for evaluating malnutrition, it is not necessary to order other iron studies unless iron deficiency or iron overload is suspected as well.

5. It is not ordinarily necessary to measure both iron/TIBC (or transferrin) and ferritin in initial patient testing. If clinically indicated after evaluation of the initial iron studies, it may be appropriate to perform additional iron studies either on the initial specimen or on a subsequently obtained specimen. After a diagnosis of iron deficiency or iron overload is established, either iron/TIBC (or transferrin) or ferritin may be medically necessary for monitoring, but not both.

6. It would not ordinarily be considered medically necessary to do a ferritin as a preoperative test except in the presence of anemia or recent autologous blood collections prior to the surgery.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
002.0–002.9	Typhoid and paratyphoid fevers.
003.0–003.9	Other salmonella infections.
006.0–006.9	Amebiasis.
007.0–007.9	Other protozoal intestinal diseases.
008.00–008.8	Intestinal infections due to other organisms.
009.0–009.3	Ill-defined intestinal infections.
011.50–011.56	Tuberculous bronchiectasis.
014.00–014.86	Tuberculosis of intestines, peritoneum, and mesenteric glands.
015.00–015.96	Tuberculosis of bones and joints.
016.00–016.06	Tuberculosis of kidney.
016.10–016.16	Tuberculosis of bladder.
016.20–016.26	Tuberculosis of ureter.
016.30–016.36	Tuberculosis of other urinary organs.
042	Human Immunodeficiency virus (HIV) disease.
070.0–070.9	Viral hepatitis.
140.0–149.9	Malignant neoplasm of lip oral cavity and pharynx.
150.0–159.9	Malignant neoplasm of digestive organs and peritoneum.
160.0–165.9	Malignant neoplasm of respiratory and intrathoracic organs.
170.0–176.9	Malignant neoplasm of bone, connective tissue, skin and breast.
179–189.9	Malignant neoplasm of genitourinary organs.
190.0–199.1	Malignant neoplasm of other and unspecified sites.
200.0–208.91	Malignant neoplasm of lymphatic and hematopoietic tissue.
210.0–229.9	Benign neoplasms.
230.0–234.9	Carcinoma in situ.
235.0–238.9	Neoplasms of uncertain behavior.
239.0–239.9	Neoplasms of unspecified nature.
250.00–250.93	Diabetes mellitus.
253.2	Panhypopituitarism.
253.7	Iatrogenic pituitary disorders.
253.8	Other disorders of the pituitary and other syndromes of diencephalohypophyseal origin.
256.3	Other ovarian failure.
257.2	Other testicular hypofunction.
260	Kwashiorkor.
261	Nutritional marasmus.
262	Other severe protein-calorie malnutrition.
263.0–263.9	Other and unspecified protein-calorie malnutrition.
275.0	Disorders of iron metabolism.
277.1	Disorders of porphyrin metabolism.
280.0–280.9	Iron deficiency anemias.
281.0–281.9	Other deficiency anemias.
282.4	Thalassemias.
285.0	Sideroblastic anemia (includes hemochromatosis with refractory anemia).
285.1	Acute post-hemorrhagic anemia.

Code	Description
285.9	Anemia, unspecified.
286.0–286.9	Coagulation defects (congenital factor disorders).
287.0–287.9	Purpura and other hemorrhagic conditions.
306.4	Physiological malfunction arising from mental factors, gastrointestinal.
307.1	Anexoria nervosa.
307.50–307.59	Other and unspecified disorders of eating.
425.4	Other primary cardiomyopathies.
425.5	Alcoholic cardiomyopathy.
425.7	Nutritional and metabolic cardiomyopathy.
425.8	Cardiomyopathy in other diseases classified elsewhere.
425.9	Secondary cardiomyopathy, unspecified.
426.0–426.9	Conduction disorders.
427.0–427.9	Cardiac dysrhythmias.
428.0–428.9	Heart Failure.
530.7	Gastroesophageal laceration-hemorrhage syndrome.
530.82	Esophageal hemorrhage.
531.00–531.91	Gastric ulcer.
532.00–532.91	Duodenal ulcer.
533.00–533.91	Peptic ulcer, site unspecified.
534.00–534.91	Gastrojejunal ulcer.
535.00–535.61	Gastritis and duodenitis.
536.0–536.9	Disorders of function of stomach.
537.83	Angiodysplasia of stomach and duodenum with hemorrhage.
555.0–555.9	Regional enteritis.
556.0–556.9	Ulcerative colitis.
557.0	Acute vascular insufficiency of intestine.
557.1	Chronic vascular insufficiency of intestine.
562.02	Diverticulosis of small intestine with hemorrhage.
562.03	Diverticulitis of small intestine with hemorrhage.
562.12	Diverticulosis of colon with hemorrhage.
562.13	Diverticulitis of colon with hemorrhage.
569.3	Hemorrhage of rectum and anus.
569.85	Angiodysplasia of intestine with hemorrhage.
570	Acute and subacute necrosis of liver.
571.0–571.9	Chronic liver disease and cirrhosis.
572.0–572.8	Liver abscess and sequelae of chronic liver disease.
573.0–573.9	Other disorders of liver.
578.0–578.9	Gastrointestinal hemorrhage.
579.0–579.3	Intestinal malabsorption.
581.0–581.9	Nephrotic syndrome.
585	Chronic renal failure.
586	Renal failure, unspecified.
608.3	Atrophy of testis.
626.0–626.9	Disorders of menstruation and other abnormal bleeding from female genital tract.
627.0	Premenopausal menorrhagia.
627.1	Postmenopausal bleeding.
648.20–648.24	Other current conditions in the mother classifiable elsewhere, but complicating pregnancy, childbirth, or the puerperium: Anemia.
698.0–698.9	Pruritis and related conditions.
704.00–704.09	Alopecia.
709.00–709.09	Dyschromia.
719.40–719.49	Pain in joint.
773.2	Hemolytic disease due to other and unspecified isoimmunization.
773.3	Hydrops fetalis due to isoimmunization.
773.4	Kernicterus due to isoimmunization.
773.5	Late anemia due to isoimmunization.
783.9	Other symptoms concerning nutrition, metabolism and development.
790.0	Abnormality of red blood cells.
790.4	Nonspecific elevation of levels of transaminase or lactic acid dehydrogenase [LDH].
790.5	Other nonspecific abnormal serum enzymelevels.
790.6	Other abnormal blood chemistry.
799.4	Cachexia.
964.0	Poisoning by agents primarily affecting blood constituents, iron compounds.
984.0–984.9	Toxic effect of lead and its compounds (including fumes).
996.85	Complications of transplanted organ, bone marrow.
999.8	Other transfusion reaction.
V08	Asymptomatic HIV infection.
V12.1	Personal history of nutritional deficiency.
V12.3	Personal history of diseases of blood and blood forming organs.
V15.1	Personal history of surgery to heart and great vessels.
V15.2	Personal history of surgery to other major organs.
V43.2	Heart replaced by other means.
V43.3	Heart valve replaced by other means.
V43.4	Blood vessel replaced by other means.

Code	Description
V43.60	Unspecified joint replaced by other means.
V72.84	Pre-operative examination, unspecified.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied:

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs
V16.6	Family history of malignant neoplasm, leukemia
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment
V62.1	Adverse effects of work environment
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special screening for disorders of blood and blood-forming organs.
V79.0–V79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above

Sources of Information

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Guyatt GH, Patterson C, Ali M, Singer J, Levine M, Turpie I, Meyer R. Diagnosis of Iron-Deficiency Anemia in the Elderly. AmJMed. 1990; 88:205–209.

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Burns ER, *et al.* Brief Clinical Observations. AmJMed. 1991; 90:653–654.

Yang Q, *et al.* Hemochromatosis-associated Mortality in the United States from 1979 to 1992: An Analysis of Multiple-Cause Mortality Data. AnIntMed. 1998; 129:946–953.

Coding Guidelines:

1. Any claim for a test listed in AHCPCS CODES@ above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. ICD–9–CM code V82.9 (special screening of other conditions, unspecified condition), or comparable narratives should be used to indicate screening tests performed in the absence of a specific sign, symptom, or complaint. Use of V82.9 or comparable narrative will result in the denial of claims as non covered screening services. (Note: this language may be inappropriate for screening tests that are specifically covered by statute, such as pap smears.) All ICD–9–CM diagnosis codes must be coded to the highest level of specificity.

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit or fifth-digit classifications are provided, they must be assigned. From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a nonspecific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Collagen Crosslinks, Any Method

Other Names/Abreviations

Description

Collagen crosslinks, part of the matrix of bone upon which bone mineral is deposited, are biochemical markers the excretion of which provide a quantitative measurement of bone resorption. Elevated levels of urinary collagen crosslinks indicate elevated bone resorption. Elevated bone resorption contributes to age-related and postmenopausal loss of bone leading to osteoporosis and increased risk of fracture. The collagen crosslinks assay can be performed by immunoassay or by high performance liquid chromatography (HPLC). Collagen crosslink immunoassays measure the pyridinoline crosslinks and associated telopeptides in urine.

Bone is constantly undergoing a metabolic process called turnover or remodeling. This includes a degradation process, bone resorption, mediated by the action of osteoclasts, and a building process, bone formation, mediated by the action of osteoblasts. Remodeling is required for the maintenance and overall health of bone and is tightly coupled; that is, resorption and formation must be in balance. In abnormal states of bone remodeling, when resorption exceeds formation, it results in a net loss of bone. The measurement of specific, bone-derived resorption products provides analytical data about the rate of bone resorption.

Osteoporosis is a condition characterized by low bone mass and structural deterioration of bone tissue, leading to bone fragility and an increased susceptibility to fractures of the hip, spine, and wrist. The term primary osteoporosis is applied where the causal factor in the disease is menopause or aging. The term secondary osteoporosis is applied where the causal factor is something other than menopause or aging, such as long-term administration of glucocorticosteroids, endocrine-related disorders (other than loss of estrogen due to menopause), and certain bone diseases such as cancer of the bone.

With respect to quantifying bone resorption, collagen crosslink tests can provide adjunct diagnostic information in concert with bone mass measurements. Bone mass measurements and biochemical markers may have complementary roles to play in assessing effectiveness of osteoporosis treatment. Proper management of osteoporosis patients, who are on long-term therapeutic regimens, may include laboratory testing of biochemical markers of bone turnover, such as collagen crosslinks, that provide a profile of bone turnover responses within weeks of therapy. Changes in collagen crosslinks are determined following commencement of antiresorptive therapy. These can be measured over a shorter time interval, such as three months, when compared to bone mass density. If bone resorption is not elevated, repeat testing is not medically necessary.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82523	Collagen cross links, any method.

Indications

Generally speaking, collagen crosslink testing is useful mostly in ''fast losers'' of bone. The age when these bone markers can help direct therapy is often pre-Medicare. By the time a fast loser of bone reaches age 65, she will most likely have been stabilized by appropriate therapy or have lost so much bone mass that further testing is useless. Coverage for bone marker assays may be established, however, for younger Medicare beneficiaries and for those who might become fast losers because of some other therapy such as glucocorticoids. Safeguards should be incorporated to prevent excessive use of tests in patients for whom they have no clinical relevance.

Collagen crosslinks testing is used to:

- identify individuals with elevated bone resorption, who have osteoporosis in whom response to treatment is being monitored;
- predict response (as assessed by bone mass measurements) to FDA approved antiresorptive therapy in postmenopausal women;
- assess response to treatment of patients with osteoporosis, Paget's disease of the bone, or risk for osteoporosis where

treatment may include FDA approved antiresorptive agents, anti-estrogens or selective estrogen receptor moderators.

Limitations

Because of significant specimen to specimen collagen crosslink physiologic variability (15–20%), current recommendations for appropriate utilization include: one or two base-line assays from specified urine collections on separate days; followed by a repeat assay about three months after starting anti-resorptive therapy; followed by a repeat assay in 12 months after the three-month assay; and thereafter not more than annually, unless there is a change in therapy in which circumstance an additional test may be indicated three months after the initiation of new therapy.

Some collagen crosslink assays may not be appropriate for use in some disorders, according to FDA labeling restrictions.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
203.00–.01	Multiple myeloma.
242.00–242.91	Thyrotoxicosis.
245.2	Chronic lymphocytic thyroiditis (only if thyrotoxic).
246.9	Unspecified disorder of thyroid.
252.0	Hyperparathyroidism.
256.2	Postablative ovarian failure.
256.3	Other ovarian failure.
256.8	Other ovarian dysfunction.
256.9	Unspecified ovarian dysfunction.
268.9	Unspecified vitamin D deficiency.
269.3	Mineral deficiency, not elsewhere classified.
627.0	Premenopausal menorrhagia.
627.1	Postmenopausal bleeding.
627.2	Menopausal or female climacteric state.
627.4	States associated with artificial menopause.
627.8	Other specified menopausal and postmenopausal disorders.
627.9	Unspecified menopausal & postmenopausal disorder.
731.0	Osteitis deformans without mention of bone tumor (Paget's disease of bone).
733.00–733.09	Osteoporosis
733.10–733.19	Pathological fracture
733.90	Disorder of bone and cartilage, unspecified
805.8	Fracture of vertebral column without mention of spiral cord injury, unspecified, closed
V58.69	Long-term (current) use of other medications.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.

Code	Description
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections.

Sources of Information

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Chesnut CH, III, Bell NH, Clark G, et al. Hormone replacement therapy in postmenopausal women: urinary N-telopeptide of type I collagen monitors therapeutic effect and predicts response of bone mineral density. Am. J. Med. 1997; 102:29–37.

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Garnero P, Shih WJ, Gineyts E, et al. Comparison of new biochemical markers of bone turnover in late postmenopausal osteoporotic women in response to alendronate treatment. J. Clin. Endocrinol. Metab. 1994; 79:1693–700.

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Hesley RP, Shepard KA, Jenkins DK, Riggs BL. Monitoring estrogen replacement therapy and identifying rapid bone losers with an immunoassay for deoxypyridinoline. Osteoporos. Int. 1998;8:159–64.

Melton LJ, III, Khosla S, Atkinson EJ, et al. Relationship of bone turnover to bone density and fractures. J.Bone Miner. Res.1997; 12:1083–91.

Millard PS. Prevention of osteoporosis: making sense of the published evidence. In: Rosen CJ (ed). Osteoporosis: diagnostic and therapeutic principles. Totowa: Humana Press Inc. 1996:275–85.

Rosen CJ. Biochemical markers of bone turnover. In: Rosen CJ(ed). Osteoporosis: diagnostic and therapeutic principles. Totowa: Humana Press Inc. 1996:129–41.

Schneider DL, Barrett-Connor EL. Urinary N-Telopeptide levels discriminate normal, osteopenic, and osteoporotic bone mineral density. Arch. Intern. Med. 1997; 157:1241–5.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. When the indication for the test is long-term administration of glucocorticosteroids, use ICD–9–CM code V58.69.

Medicare National Coverage Decision for Blood Glucose Testing

Description

This policy is intended to apply to blood samples used to determine glucose levels.

Blood glucose determination may be done using whole blood, serum or plasma. It may be sampled by capillary puncture, as in the fingerstick method, or by vein puncture or arterial sampling. The method for assay may be by color comparison of an indicator stick, by meter assay of whole blood or a filtrate of whole blood, using a device approved for home monitoring, or by using a laboratory assay system using serum or plasma. The convenience of the meter or stick color method allows a patient to have access to blood glucose values in less than a minute or so and has become a standard of care for control of blood glucose, even in the inpatient setting.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82947	Glucose; quantitative.
82948	Glucose; blood, reagent strip.
82962	Glucose, blood by glucose monitoring device(s) cleared by the FDA specifically for home use.

Indications

Blood glucose values are often necessary for the management of patients with diabetes mellitus, where hyperglycemia and hypoglycemia are often present. They are also critical in the determination of control of blood glucose levels in the patient with impaired fasting glucose (FPG 110–125 mg/dL), the patient with insulin resistance syndrome and/or carbohydrate intolerance (excessive rise in glucose following ingestion of glucose or glucose sources of food), in the patient with a hypoglycemia disorder such as nesidioblastosis or insulinoma, and in patients with a catabolic or malnutrition state. In addition to those conditions already listed, glucose testing may be medically necessary in patients with tuberculosis, unexplained chronic or recurrent infections, alcoholism, coronary artery disease (especially in women), or unexplained skin conditions (including pruritis, local skin infections, ulceration and gangrene without an established cause). Many medical conditions may be a consequence of a sustained elevated or depressed glucose level. These include comas, seizures or epilepsy, confusion, abnormal hunger, abnormal weight loss or gain, and loss of sensation. Evaluation of glucose may also be indicated in patients on medications known to affect carbohydrate metabolism.

Limitations

Frequent home blood glucose testing by diabetic patients should be encouraged. In stable, non-hospitalized patients who are unable or unwilling to do home monitoring, it may be reasonable and necessary to measure quantitative blood glucose up to four times annually.

Depending upon the age of the patient, type of diabetes, degree of control, complications of diabetes, and other co-morbid conditions, more frequent testing than four times annually may be reasonable and necessary.

In some patients presenting with nonspecific signs, symptoms, or diseases not normally associated with disturbances in glucose metabolism, a single blood glucose test may be medically necessary. Repeat testing may not be indicated unless abnormal results are found or unless there is a change in clinical condition. If repeat testing is performed, a specific diagnosis code (e.g., diabetes) should be reported to support medical necessity. However, repeat testing may be indicated where results are normal in patients with conditions where there is a confirmed continuing risk of glucose metabolism abnormality (e.g., monitoring glucocorticoid therapy).

ICD–9–CM Codes Covered by Medicare Program

Code	Description
011.00–011.96	Tuberculosis.
038.0–038.9	Septicemia.
112.1	Recurrent vaginal candidiasis.
112.3	Interdigital candidiasis.
118	Opportunistic mycoses.
157.4	Malignant neoplasm of Islets of Langerhans.
158.0	Malignant neoplasm of retroperitoneum.
211.7	Benign neoplasm of Islets of Langerhans.
242.00–242.91	Thyrotoxicosis.
250.00–250.93	Diabetes mellitus.
251.0–251.9	Disorders of pancreatic internal secretion.
253.0–253.9	Disorders of the pituitary gland.
255.0	Cushing syndrome.
263.0–263.9	Malnutrition.
271.0–271.9	Disorders of carbohydrate transport and metabolism.
272.0–272–4	Disorders of lipoid metabolism.
275.0	Hemochromotosis.
276.0–276.9	Disorders of fluid, electrolyte and acid-base balance.
278.3	Hypercarotinemia.
293.0	Acute delirium.
294.9	Unspecified organic brain syndrome.
298.9	Unspecified psychosis.
300.9	Unspecified neurotic disorder.
310.1	Organic personality syndrome.
337.9	Autonomic nervous system neuropathy.
345.10–345.11	Generalized convulsive epilepsy.
348.3	Encephalopathy, unspecified.
355.9	Neuropathy, not otherwise specified.
356.9	Unspecified hereditary and idiopathic peripheral neuropathy.
357.9	Unspecified inflammatory and toxic neuropathy.
362.10	Background retinopathy.
362.18	Retinal vasculitis.
362.29	Nondiabetic proliferative retinopathy.
362.50–362.57	Degeneration of macular posterior pole.
362.60–362.66	Peripherial retinal degeneration.
362–81–362.89	Other retinal disorders.
362.0	Unspecified retinal disorders.
365.–04	Borderline glaucoma.
365.32	Corticosteriod-induced glaucoma residual.
366.00–366.09	Presenile cataract.
366.10–366.19	Senile cataract.
367.1	Acute myopia.
368.8	Other specified visual disturbance.

Code	Description
373.00	Blepharitis.
377.24	Pseudopapilledema.
377.9	Autonomic nervous system neuropathy.
378.50–378.55	Paralytic strabiamus.
379.45	Argyll-Robertson pupils.
410.00–410.92	Acute myocardial infarctions.
414.00–414.19	Coronary atherosclerosis and aneurysm of heart.
425.9	Secondary cardiomyopathy, unspecified.
440.23	Arteriosclerosis of extremities with ulceration.
440.24	Arteriosclerosis of extremities with gangrene.
440.9	Arteriosclerosis, not otherwise specified.
458.0	Postural hypotension.
462	Acute pharyngitis.
466.0	Acute bronchitis.
480.0–486	Pneumonia.
490	Recurrent bronchitis, not specified as acute or chronic.
491.0–491.9	Chronic bronchitis.
527.7	Disturbance of salivory secretion (drymouth).
528.0	Stomatitis.
535.50–535.51	Gastritis.
536.8	Dyspepsia.
571.8	Other chronic nonalcoholic liver disease.
572.0–.8	Liver abscess and sequelae of chronic liver disease.
574.50–574.51	Choledocholitiasis.
575.0–575.12	Cholecystitis.
576.1	Cholangitis.
577.0	Acute pancreatitis.
577.1	Chronic pancreatitis.
577.8	Pancreatic multiple calculi.
590.00–590.9	Infections of the kidney.
595.9	Recurrent cystitis.
596.4	Bladder atony.
596.53	Bladder paresis.
599.0	Urinary tract infection, recurrent.
607.84	Impotence of organic origin.
608.89	Other disorders male genital organs.
616.10	Vulvovaginitis.
626.0	Amenorrhea.
626.4	Irregular menses.
628.9	Infertility—female.
648.00	Diabetes mellitus complicating pregnancy, Childbirth or the puerperium, unspecified as to episode of care or not applicable.
648.03	Diabetes mellitus complicating pregnancy, Childbirth or the puerperium, antipartum condition or complication.
648.04	Diabetes mellitus complicating pregnancy, Childbirth or the puerperium, postpartum condition or complication.
648.80	Abnormal glucose tolerance complicating pregnancy, childbirth or the puerperium, unspecified as to episode of care or not applicable.
648.83	Abnormal glucose tolerance complicating pregnancy, childbirth or the puerperium, antipartum condition or complication.
648.84	Abnormal glucose tolerance complicating pregnancy, childbirth or the puerperium, postpartum condition or complication.
656.60–656.63	Fetal problems affecting management of mother—large for-date of fetus.
657.00–657.03	Polyhydramnios.
680.0–680.9	Carbuncle and furuncle.
686.00–686.9	Infections of skin and subcutaneous tissue.
698.0	Pruritis ani.
698.1	Pruritis of genital organs.
704.1	Hirsutism.
705.0	Anhidrosis.
707.0–707.9	Chronic ulcer of skin.
709.3	Degenerative skin disorders.
729.1	Myalgia.
730.07–730.27	Osteomyelitis of tarsal bones.
780.01	Coma.
780.02	Transcient alteration of awareness.
780.09	Alteration of consciousness, other.
780.2	Syncope and collapse.
780.39	Seizures, not otherwise specified.
780.4	Dizziness and giddiness.
780.71–.79	Malaise and fatigue.
780.8	Hyperhidrosis.
782.0	Loss of vibratory sensation.
783.1	Abnormal weight gain.
783.2	Abnormal loss of weight.
783.5	Polydipsia.

Code	Description
785.0	Tachycardia.
785.4	Gangrene.
786.01	Hyperventilation.
786.09	Dyspnea.
786.50	Chest pain, unspecified.
787.6	Fecal incontinence.
787.91	Diarrhea.
788.41–788.43	Frequency of urination and polyuria.
789.1	Hepatomegaly.
790.2	Abnormal glucose tolerance test.
790.6	Other abnormal blood chemistry (hyperglycemia).
791.0	Proteinuria.
791.5	Glycosuria.
796.1	Abnormal reflex.
799.4	Cachexia.
V23.0–.9	Supervision of high risk pregnancy.
V67.2	Follow-up examination, following chemotherapy.
V67.51	Follow up examination with high-risk medication not elsewhere classified.
V58.69	Long term current use of other medication.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

• Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

• A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9-CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9-CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.

Code	Description
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD– 9–CM sections above.

Sources of Information

AACE Guidelines for the Management of Diabetes Mellitus, Endocrine Practice (1995)1:149–157.

Bower, Bruce F. And Robert E. Moore, Endocrine Function and Carbohydrates.

Clinical Laboratory Medicine, Kenneth D. McClatchy, editor. Baltimore/Williams & Wilkins, 1994. Pp 321–323.

Report of the Expert Committee on the Diagnosis and Classification of Diabetes Mellitus, Diabetes Care, Volume 20, Number 7, July 1997, pages 1183 *et seq.*

Roberts, H.J., Difficult Diagnoses. W. B. Saunders Co., pp 69–70.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45).

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. A diagnostic statement of impaired glucose tolerance must be evaluated in the context of the documentation in the medical record in order to assign the most accurate ICD–9–CM code. An abnormally elevated fasting blood glucose level in the absence of the diagnosis of diabetes is classified to Code 790.6—other abnormal blood chemistry. If the provider bases the diagnostic statement of ''impaired glucose tolerance'' on an abnormal glucose tolerance test, the condition is classified to 790.2—normal glucose tolerance test. Both conditions are considered indications for ordering glycated hemoglobin or glycated protein testing in the absence of the diagnosis of diabetes mellitus.

7. When a patient is under treatment for a condition for which the tests in this policy are applicable, the ICD–9–CM code that best describes the condition is most frequently listed as the reason for the test.

8. When laboratory testing is done solely to monitor response to medication, the most accurate ICD–9–CM code to describe the reason for the test would be V58.69—long term use of medication.

9. Periodic follow-up for encounters for laboratory testing for a patient with a prior history of a disease, who is no longer under treatment for the condition, would be coded with an appropriate code from the V67 category—follow-up examination.

10. According to ICD–9–CM coding conventions, codes that appear in italics in the Alphabetic and/or Tabular columns of ICD–9–CM are considered manifestation codes that require the underlying condition to be coded and sequenced ahead of the manifestation. For example, the diagnostic statement, ''thyrotoxic exophthalmos (376.21),'' which appears in italics in the tabular listing, requires that the thyroid disorder (242.0–242.9) is coded and sequenced ahead of thyrotoxic exophthalmos. Therefore, a diagnostic statement that is listed as a manifestation in ICD–9–CM must be expanded to include the underlying disease in order to accurately code the condition.

Documentation Requirements

The ordering physician must include evidence in the patient's clinical record that an evaluation of history and physical preceded the ordering of glucose testing and that manifestations of abnormal glucose levels were present to warrant the testing.

Medicare National Coverage Decision for Glycated Hemoglobin/glycated Protein

Description

The management of diabetes mellitus requires regular determinations of blood glucose levels. Glycated hemoglobin/protein levels are used to assess long-term glucose control in diabetes. Alternative names for these tests include glycated or glycosylated hemoglobin or Hgb, hemoglobin glycated or glycosylated protein, and fructosamine.

Glycated hemoglobin (equivalent to hemoglobin A1) refers to total glycosylated hemoglobin present in erythrocytes, usually determined by affinity or ion-exchange chromatographic methodology. Hemoglobin A1c refers to the major component of hemoglobin A1, usually determined by ion-exchange affinity chromatography, immunoassay or agar gel electrophoresis. Fructosamine or glycated protein refers to glycosylated protein present in a serum or plasma sample. Glycated protein refers to measurement of the component of the specific protein that is glycated usually by colorimetric method or affinity chromatography.

Glycated hemoglobin in whole blood assesses glycemic control over a period of 4–8 weeks and appears to be the more appropriate test for monitoring a patient who is capable of maintaining long-term, stable control. Measurement may be medically necessary every 3 months to determine whether a patient's metabolic control has been on average within the target range. More frequent assessments, every 1–2 months, may be appropriate in the patient whose diabetes regimen has been altered to improve control or in whom evidence is present that intercurrent events may have altered a previously satisfactory level of control (for example, post-major surgery or as a result of glucocorticoid therapy). Glycated protein in serum/plasma assesses glycemic control over a period of 1–2 weeks. It may be reasonable and necessary to monitor glycated protein monthly in pregnant diabetic women. Glycated hemoglobin/protein test results may

be low, indicating significant, persistent hypoglycemia, in nesidioblastosis or insulinoma, conditions which are accompanied by inappropriate hyperinsulinemia. A below normal test value is helpful in establishing the patient's hypoglycemic state in those conditions.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82985	Glycated protein.
83036	Hemoglobin; glycated.

Indications

Glycated hemoglobin/protein testing is widely accepted as medically necessary for the management and control of diabetes. It is also valuable to assess hyperglycemia, a history of hyperglycemia or dangerous hypoglycemia. Glycated protein testing may be used in place of glycated hemoglobin in the management of diabetic patients, and is particularly useful in patients who have abnormalities of erythrocytes such as hemolytic anemia or hemoglobinopathies.

Limitations

It is not considered reasonable and necessary to perform glycated hemoglobin tests more often than every three months on a controlled diabetic patient to determine whether the patient's metabolic control has been on average within the target range. It is not considered reasonable and necessary for these tests to be performed more frequently than once a month for diabetic pregnant women. Testing for uncontrolled type one or two diabetes mellitus may require testing more than four times a year. The above Description Section provides the clinical basis for those situations in which testing more frequently than four times per annum is indicated, and medical necessity documentation must support such testing in excess of the above guidelines.

Many methods for the analysis of glycated hemoglobin show significant interference from elevated levels of fetal hemoglobin or by variant hemoglobin molecules. When the glycated hemoglobin assay is initially performed in these patients, the laboratory may inform the ordering physician of a possible analytical interference. Alternative testing, including glycated protein, for example, fructosamine, may be indicated for the monitoring of the degree of glycemic control in this situation. It is therefore conceivable that a patient will have both a glycated hemoglobin and glycated protein ordered on the same day. This should be limited to the initial assay of glycated hemoglobin, with subsequent exclusive use of glycated protein.

These tests are not considered to be medically necessary for the diagnosis of diabetes.

ICD–9–CM Codes Covered by The Medicare Program

Code	Description
211.7	Benign neoplasm of islets of Langerhans.
250.00–250.93	Diabetes mellitus & various related codes.
251.0	Hypoglycemic coma.
251.1	Other specified hypoglycemia.
251.2	Hypoglycemia unspecified.
251.3	Post-surgical hypoinsulinemia.
251.4	Abnormality of secretion of glucagon.
251.8	Other specified disorders of pancreatic internal secretion.
251.9	Unspecified disorder of pancreatic internal secretion.
258.0–.9	Polyglandular dysfunction.
271.4	Renal glycosuria.
275.0	Hemochromatosis.
577.1	Chronic pancreatitis.
579.3	Other and unspecified postsurgical nonabsorption.
648.00	Diabetes mellitus complicating pregnancy, Childbirth or the puerperium, unspecified as to episode of care or not applicable.
648.03	Diabetes mellitus complicating pregnancy, Childbirth or the puerperium, antepartum condition or complication.
648.04	Diabetes mellitus complicating pregnancy, Childbirth or the puerperium, postpartum condition or complication.
648.80	Abnormal glucose tolerance complicating pregnancy, childbirth or the puerperium, unspecified as to episode of care or not applicable.
648.83	Abnormal glucose tolerance complicating pregnancy, childbirth or the puerperium, antepartum condition or complication.
648.84	Abnormal glucose tolerance complicating pregnancy, childbirth or the puerperium, postpartum condition or complication.
790.2	Abnormal glucose tolerance test.
790.6	Other abnormal blood chemistry (hyperglycemia.)
962.3	Poisoning by insulin and antidiabetic agents.
V12.2	Personal history of endocrine, metabolic, and immunity disorders.
V58.69	Long-term use of other medication.

Reasons For Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and

necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above

Sources of Information

Bower, Bruce F. and Robert E. Moore, Endocrine Function and Carbohydrates. Clinical Laboratory Medicine, Kenneth D. McClatchy, editor. Baltimore/Williams & Wilkins, 1994. pp. 321–323.

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Sacks, David B., Carbohydrates. In Tietz Textbook of Clinical Chemistry, 2nd Ed., Carl A. Burtis and Edward R. Ashwood, editors. Philadelphia, W.B. Saunders Co., 1994. pp. 980–988.

Tests of Glycemia in Diabetes, American Diabetes Association, Diabetes Care, Volume 20, Supplement I, January 1997, pp. 518–520.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43)

2. Screening is the testing for disease or disease precursors in seemingly well individuals so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no related sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the

reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52).

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45).

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. A diagnostic statement of impaired glucose tolerance must be evaluated in the context of the documentation in the medical record in order to assign the most accurate ICD–9–CM code. An abnormally elevated fasting blood glucose level in the absence of the diagnosis of diabetes is classified to Code 790.6—other abnormal blood chemistry. If the provider bases the diagnostic statement of ''impaired glucose tolerance'' on an abnormal glucose tolerance test, the condition is classified to 790.2—normal glucose tolerance test. Both conditions are considered indications for ordering glycated hemoglobin or glycated protein testing in the absence of the diagnosis of diabetes mellitus.

Medicare National Coverage Decision For Thyroid Testing

Other Names/Abbreviations

Description

Thyroid function studies are used to delineate the presence or absence of hormonal abnormalities of the thyroid and pituitary glands. These abnormalities may be either primary or secondary and often but not always accompany clinically defined signs and symptoms indicative of thyroid dysfunction.

Laboratory evaluation of thyroid function has become more scientifically defined. Tests can be done with increased specificity, thereby reducing the number of tests needed to diagnose and follow treatment of most thyroid disease. Measurements of serum sensitive thyroid-stimulating hormone (TSH) levels, complemented by determination of thyroid hormone levels [free thyroxine (fT–4) or total thyroxine (T4) with Triiodothyronine (T3) uptake] are used for diagnosis and follow-up of patients with thyroid disorders. Additional tests may be necessary to evaluate certain complex diagnostic problems or on hospitalized patients, where many circumstances can skew tests results. When a test for total thyroxine (total T4 or T4 radioimmunoassay) or T3 uptake is performed, calculation of the free thyroxine index (FTI) is useful to correct for abnormal results for either total T4 or T3 uptake due to protein binding effects.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
84436	Thyroxine; total.
84439	Thyroxine; free.
84443	Thyroid stimulating hormone (TSH).
84479	Thyroid hormone (T3 or T4) uptake or thyroid hormone binding ratio (THBR).

Indications

Thyroid function tests are used to define hyper function, euthyroidism, or hypofunction of thyroid disease. Thyroid testing may be reasonable and necessary to:

- distinguish between primary and secondary hypothyroidism;
- confirm or rule out primary hypothyroidism;
- monitor thyroid hormone levels (for example, patients with goiter, thyroid nodules, or thyroid cancer);
- monitor drug therapy in patients with primary hypothyroidism;
- confirm or rule out primary hyperthyroidism; and
- monitor therapy in patients with hyperthyroidism.

Thyroid function testing may be medically necessary in patients with disease or neoplasm of the thyroid and other endocrine glands. Thyroid function testing may also be medically necessary in patients with metabolic disorders; malnutrition; hyperlipidemia; certain types of anemia; psychosis and non-psychotic personality disorders; unexplained depression; ophthalmologic disorders; various cardiac arrhythmias; disorders of menstruation; skin conditions; myalgias; and a wide array of signs and symptoms, including alterations in consciousness; malaise; hypothermia; symptoms of the nervous and musculoskeletal system; skin and integumentary system; nutrition and metabolism; cardiovascular; and gastrointestinal system.

It may be medically necessary to do follow-up thyroid testing in patients with a personal history of malignant neoplasm of the endocrine system and in patients on long-term thyroid drug therapy.

Limitations

Testing may be covered up to two times a year in clinically stable patients; more frequent testing may be reasonable and necessary for patients whose thyroid therapy has been altered or in whom symptoms or signs of hyperthyroidism or hypothyroidism are noted.

ICD–9–CM Codes Covered by Medicare Program.

Code	Description
017.50–017.56	Tuberculosis of the thyroid gland.
183.0	Malignant neoplasm of ovary.
193	Malignant neoplasm of thyroid gland.
194.8	Malignant neoplasm of other endocrine glands and related structures, other.
198.89	Secondary malignant neoplasm of the thyroid.
220	Benign neoplasm of ovary.
226	Benign neoplasm of thyroid gland.
227.3	Benign neoplasm of pituitary gland and craniopharyngeal duct.
234.8	Carcinoma in situ of other and unspecified sites.
237.4	Neoplasm of uncertain behavior of other and unspecified endocrine glands.
239.7	Neoplasm of unspecified nature, thyroid gland.
240.0–240.9	Goiter specified and unspecified.
241.0–241.9	Nontoxic nodular goiter.
242.00–242.91	Thyrotoxicosis with or without goiter.
243	Congenital hypothyroidism.

Code	Description
244.0–244.9	Acquired hypothyroidism.
245.0–245.9	Thyroiditis.
246.0–246.9	Other disorders of thyroid.
250.00–250.93	Diabetes mellitus.
252.1	Hypoparathyroidism.
253.1	Other and unspecified anterior pituitary hyper function.
253.2	Panhypopituitarism.
253.3–253.4	Pituitary dwarfism.
253.4	Other anterior pituitary disorders.
253.7	Iatrogenic pituitary disorders.
255.2	Adrenogenital disorders.
255.4	Corticoadrenal insufficiency.
256.3	Ovarian failure.
257.2	Testicular hypofunction.
258.0–258.9	Polyglandular dysfunction.
262	Malnutrition, severe.
263.0–263.9	Malnutrition, other and unspecified.
266.0	Ariboflavinosis.
272.0	Pure hypercholesterolemia.
272.2	Mixed hyperlipidemia.
272.4	Other and unspecified hyperlipidemia.
275.40–275.49	Calcium disorders.
276.0	Hyposmolality andor hypernatremia.
276.1	Hyposmolality andor hyponatremia.
278.3	Hypercarotinemia.
279.4	Autoimmune disorder, not classified elsewhere.
281.0	Pernicious anemia.
281.9	Unspecified deficiency anemia.
283.0	Autoimmune hemolytic anemia.
285.9	Anemia, unspecified.
290.0	Senile dementia, uncomplicated.
290.10–290.13	Presenile dementia.
290.20–290.21	Senile dementia with delusional or depressive features.
293.0–293.1	Delirium.
293.81–293.89	Transient organic mental disorders.
294.8	Other specified organic brain syndromes.
296.00–296.99	Affective psychoses.
297.0	Paranoid state, simple.
297.9	Unspecified paranoid state.
298.3	Acute paranoid reaction.
300.00–300.09	Anxiety states.
307.9	Agitation—other and unspecified special symptoms or syndromes, not elsewhere classified.
310.1	Organic personality syndrome.
311	Depressive disorder, not elsewhere classified.
331.0–331.2	Alzheimer's, pick's disease, Senile degeneration of brain.
333.1	Essential and other specified forms of tremor.
354.0	Carpal Tunnel syndrome.
356.9	Idiopathic peripheral neuropathy, unspecified polyneuropathy.
359.9	Myopathy, unspecified.
368.2	Diplopia.
372.71	Conjunctival hyperemia.
372.73	Conjunctival edema.
374.41	Lid retraction or lag.
374.82	Eyelid edema.
376.30–376.31	Exophthalmic conditions, unspecified and constant.
376.33–376.34	Orbital edema or congestion, intermittent exophthalmos.
378.50–378.55	Paralytic strabismus.
401.0–401.9	Essential hypertension.
403.00–403.91	Hypertensive renal disease.
404.00–404.93	Hypertensive heart and renal disease.
423.9	Unspecified disease of pericardium.
427.0	Paroxysmal supraventricular tachycardia.
427.2	Paroxysmal tachycardia, unspecified.
427.31	Atrial fibrillation.
427.89	Other specified cardiac dysrhythmia.
427.9	Cardiac dysrhythmia, unspecified.
428.0	Congestive heart failure.
428.1	Left heart failure.
429.3	Cardiomegaly.
511.9	Unspecified pleural effusion.
518.81	Acute respiratory failure.
529.8	Other specified conditions of the tongue.
560.1	Paralytic ileus.
564.0	Constipation.

Code	Description
564.7	Megacolon, other than Hirschsprung's.
568.82	Peritoneal effusion (chronic).
625.3	Dysmenorrhea.
626.0–626.2	Disorders of menstruation.
626.4	Irregular menstrual cycle.
648.10–648.14	Other current conditions in the mother, classifiable elsewhere, but complicating pregnancy, childbirth, or the puerperium, thyroid dysfunction.
676.20–676.24	Engorgement of breast associated with childbirth and disorders of lactation.
698.9	Unspecified pruritic disorder.
701.1	Keratoderma, acquired (dry skin).
703.8	Other specified diseases of nail (Brittle nails).
704.00–704.09	Alopecia.
709.01	Vitiligo.
710.0–710.9	Diffuse disease of connective tissue.
728.2	Muscle wasting.
728.9	Unspecified disorder of muscle, ligament, and fascia.
729.1	Myalgia and myositis, unspecified.
729.82	Musculoskeletal cramp.
730.30–.39	Periostitis without osteomyelitis.
733.09	Osteoporosis, drug induced.
750.15	Macroglossia, congenital.
759.2	Anomaly of other endocrine glands.
780.01	Coma.
780.02	Transient alteration of awareness.
780.09	Alteration of consciousness, other.
780.50–780.52	Insomnia.
780.6	Fever.
780.71–.79	Malaise and fatigue.
780.8	Hyperhidrosis.
780.9	Other general symptoms (hyperthermia).
781.0	Abnormal involuntary movements.
781.3	Lack of coordination, ataxia.
782.0	Disturbance of skin sensation.
782.3	Localized edema.
782.8	Changes in skin texture.
782.9	Other symptoms involving skin and integumentary tissues.
783.1	Abnormal weight gain.
783.2	Abnormal lost of weight.
783.6	Polyphagia.
784.1	Throat pain.
784.49	Voice disturbance.
784.5	Other speech disturbance.
785.0	Tachycardia, unspecified.
785.1	Palpitations.
785.9	Other symptoms involving cardiovascular system.
786.09	Other symptoms involving respiratory system.
786.1	Stridor.
787.2	Dysphagia.
787.91–787.99	Other symptoms involving digestive system.
789.5	Ascites.
793.9	Nonspecific abnormal findings on radiological and other examination, other (neck).
794.5	Thyroid, abnormal scan or uptake.
796.1	Other nonspecific abnormal findings, abnormal reflex.
799.2	Nervousness.
990	Effects of radiation, unspecified.
V10.87	Personal history of malignant neoplasm of the thyroid.
V10.88	Personal history of malignant neoplasm of other endocrine gland.
V12.2	Personal history of endocrine, metabolic and immunity disorders.
V58.69	Long term (current) use of other medications.
V67.0–V67.9	Follow-up examination.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

• Tests for routine screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

A claim for a test for which there is a national coverage or local medical review

policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied:

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

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The Merck Manual, 16th Edition, pp. 1072–1081.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a

screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. When a patient is under treatment for a condition for which the tests in this policy are applicable, the ICD–9–CM code that best describes the condition is most frequently listed as the reason for the test.

7. When laboratory testing is done solely to monitor response to medication, the most accurate ICD–9–CM code to describe the reason for the test would be V58.69—long term use of medication.

8. Periodic follow-up for encounters for laboratory testing for a patient with a prior history of a disease, who is no longer under treatment for the condition, would be coded with an appropriate code from the V67 category—follow-up examination.

9. According to ICD–9–CM coding conventions, codes that appear in italics in the Alphabetic and/or Tabular columns of ICD–9–CM are considered manifestation codes that require the underlying condition to be coded and sequenced ahead of the manifestation. For example, the diagnostic statement ''thyrotoxic exophthalmos (376.21),'' which appears in italics in the tabular listing, requires that the thyroid disorder (242.0–242.9) is coded and sequenced ahead of thyrotoxic exophthalmos. Therefore, a diagnostic statement that is listed as a manifestation in ICD–9–CM must be expanded to include the underlying disease in order to accurately code the condition.

10. Use code 728.9 to report muscle weakness as the indication for the test. Other diagnoses included in 728.9 do not support medical necessity.

11. Use code 194.8 (Malignant neoplasm of other endocrine glands and related structures, Other) to report multiple endocrine neoplasia syndromes (MEN–1 and MEN–2). Other diagnoses included in 194.8 do not support medical necessity.

Documentation Requirements

When these tests are billed at a greater frequency than the norm (two per year), the ordering physician's documentation must support the medical necessity of this frequency.

Medicare National Coverage Decision for Lipids

Other Names/Abbreviations

Description

Lipoproteins are a class of heterogeneous particles of varying sizes and densities containing lipid and protein. These lipoproteins include cholesterol esters and free cholesterol, triglycerides, phospholipids and A, C, and E apoproteins. Total cholesterol comprises all the cholesterol found in various lipoproteins.

Factors that affect blood cholesterol levels include age, sex, body weight, diet, alcohol and tobacco use, exercise, genetic factors, family history, medications, menopausal status, the use of hormone replacement therapy, and chronic disorders such as hypothyroidism, obstructive liver disease, pancreatic disease (including diabetes), and kidney disease.

In many individuals, an elevated blood cholesterol level constitutes an increased risk of developing coronary artery disease. Blood levels of total cholesterol and various fractions of cholesterol, especially low density lipoprotein cholesterol (LDL–C) and high density lipoprotein cholesterol (HDL–C), are useful in assessing and monitoring treatment for that risk in patients with cardiovascular and related diseases. Blood levels of the above cholesterol components including triglyceride have been separated into desirable, borderline and high risk categories by the National Heart, Lung and Blood Institute in their report in 1993. These categories form a useful basis for evaluation and treatment of patients with hyperlipidemia (See Reference). Therapy to reduce these risk parameters includes diet, exercise and medication, and fat weight loss, which is particularly powerful when combined with diet or exercise.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
80061	Lipid panel.
82465	Cholesterol, serum, total.
83715	Lipoprotein, blood; electrophoretic separation and quantitation.
83716	Lipoprotein, blood: high resolution fractionation and quantitation of lipoprotein cholesterols (for example, electrophoretic, nuclear magnetic resonance, ultracentrifugation).
83718	Lipoprotein, direct measurement; high density cholesterol (HDL cholesterol).
83721	Lipoprotein, direct measurement, LDL cholesterol.
84478	Triglycerides.

Indications

The medical community recognizes lipid testing as appropriate for evaluating atherosclerotic cardiovascular disease. Conditions in which lipid testing may be indicated include:

- assessment of patients with atherosclerotic cardiovascular disease;
- evaluation of primary dyslipidemias;
- any form of atherosclerotic disease;
- diagnostic evaluation of diseases associated with altered lipid metabolism, such as: nephrotic syndrome, pancreatitis, hepatic disease, and hypo and hyperthyroidism;
- secondary dyslipidemias, including diabetes mellitus, disorders of gastrointestinal absorption, chronic renal failure; and
- signs or symptoms of dyslipidemias, such as skin lesions.
- as follow-up to the initial screen for coronary heart disease (total cholesterol + HDL cholesterol) when total cholesterol is determined to be high (>240 mg/dL), or borderline-high (200–240 mg/dL) plus two or more coronary heart disease risk factors, or an HDL cholesterol <35 mg/dl.

To monitor the progress of patients on anti-lipid dietary management and pharmacologic therapy for the treatment of elevated blood lipid disorders, total cholesterol, HDL cholesterol and LDL cholesterol may be used. Triglycerides may be obtained if this lipid fraction is also elevated or if the patient is put on drugs (for example, thiazide diuretics, beta blockers, estrogens, glucocorticoids, and tamoxifen) which may raise the triglyceride level.

When monitoring long term anti-lipid dietary or pharmacologic therapy and when following patients with borderline high total or LDL cholesterol levels, it may be reasonable to perform the lipid panel annually. A lipid panel (CPT code 80061) at a yearly interval will usually be adequate while measurement of the serum total

cholesterol (CPT code 82465) or a measured LDL (CPT code 83721) should suffice for interim visits if the patient does not have hypertriglyceridemia (for example, ICD–9–CM code 272.1, Pure hyperglyceridemia).

Any one component of the panel or a measured LDL may be reasonable and necessary up to six times the first year for monitoring dietary or pharmacologic therapy. More frequent total cholesterol HDL cholesterol, LDL cholesterol and triglyceride testing may be indicated for marked elevations or for changes to anti-lipid therapy due to inadequate initial patient response to dietary or pharmacologic therapy. The LDL cholesterol or total cholesterol may be measured three times yearly after treatment goals have been achieved.

Electrophoretic or other quantitation of lipoproteins (CPT codes 83715 and 83716) may be indicated if the patient has a primary disorder of lipoid metabolism (ICD–9–CM codes 272.0 to 272.9).

Limitations

Lipid panel and hepatic panel testing may be used for patients with severe psoriasis which has not responded to conventional therapy and for which the retinoid estretinate has been prescribed and who have developed hyperlipidemia or hepatic toxicity. Specific examples include erythrodermia and generalized pustular type and psoriasis associated with arthritis.

Routine screening and prophylactic testing for lipid disorder are not covered by Medicare. While lipid screening may be medically appropriate, Medicare by statute does not pay for it. Lipid testing in asymptomatic individuals is considered to be screening regardless of the presence of other risk factors such as family history, tobacco use, etc.

Once a diagnosis is established, one or several specific tests are usually adequate for monitoring the course of the disease. Less specific diagnoses (for example, other chest pain) alone do not support medical necessity of these tests.

When monitoring long term anti-lipid dietary or pharmacologic therapy and when following patients with borderline high total or LDL cholesterol levels, it is reasonable to perform the lipid panel annually. A lipid panel (CPT code 80061) at a yearly interval will usually be adequate while measurement of the serum total cholesterol (CPT code 82465) or a measured LDL (CPT code 83721) should suffice for interim visits if the patient does not have hypertriglyceridemia (for example, ICD–9–CM code 272.1, Pure hyperglyceridemia).

Any one component of the panel or a measured LDL may be medically necessary up to six times the first year for monitoring dietary or pharmacologic therapy. More frequent total cholesterol HDL cholesterol, LDL cholesterol and triglyceride testing may be indicated for marked elevations or for changes to anti-lipid therapy due to inadequate initial patient response to dietary or pharmacologic therapy. The LDL cholesterol or total cholesterol may be measured three times yearly after treatment goals have been achieved.

If no dietary or pharmacological therapy is advised, monitoring is not necessary.

When evaluating non-specific chronic abnormalities of the liver (for example, elevations of transaminase, alkaline phosphatase, abnormal imaging studies, *etc.*), a lipid panel would generally not be indicated more than twice per year.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
242.00–245.9	Disorders of the thyroid gland with hormonal dysfunction.
250.00–.93	Diabetes mellitus.
255.0	Cushing's syndrome.
260	Kwashiorkor.
261	Nutritional marasmus.
262	Other severe, protein-calorie malnutrition.
263.0	Malnutrition of moderate degree.
263.1	Malnutrition of mild degree.
263.8	Other protein-calorie malnutrition.
263.9	Unspecified protein-calorie malnutrition.
270.0	Disturbances of amino-acid transport.
271.1	Galactosemia.
272.0	Pure hypercholesterolemia.
272.1	Hyperglyceridemia.
272.2	Mixed hyperlipidemia (tuberous xanthoma).
272.3	Hyperchylomicronemia.
272.4	Other and unspecified hyperlipidemia (unspecified xanthoma).
272.5	Lipoprotein deficiencies.
272.6	Lipodystrophy.
272.7	Lipidoses.
272.8	Other disorders of lipoid metabolism.
272.9	Unspecified disorders of lipoid metabolism.
277.3	Amyloidosis.
278.01	Morbid obesity.
303.90–303.92	Alcoholism.
362.10–362.16	Other background retinopathy and retinal vascular change.
362.30–362.34	Retinal vascular occlusion.
362.82	Retinal exudates and deposits.
371.41	Corneal arcus, juvenile.
374.51	Xanthelasma.
379.22	Crystalline deposits in vitreous.
388.00	Degenerative & vascular disorder of ear, unspecified.
388.02	Transient ischemic deafness.
410.00–410.92	Acute myocardial infarction.
411.0–411.1	Other acute & subacute forms of ischemic heart disease.
411.81	Coronary occlusion without myocardial infarction.
411.89	Other acute and subacute ischemic heart disease.
412	Old myocardial infarction.
413.0–413.1	Angina pectoris.
413.9	Other and unspecified angina pectoris.
414.00–414.03	Coronary atherosclerosis.
414.04	Coronary athrscl-artery bypass graft.
414.05	Coronary athrscl-unspec graft.
414.10	Aneurysm, heart (wall).
414.11	Coronary vessel aneurysm.

Code	Description
414.19	Other aneurysm of heart.
414.8	Other specified forms of chronic ischemic heart disease.
414.9	Chronic ischemic heart disease, unspecified.
428.0–428.9	Heart failure.
429.2	Arteriosclerotic cardiovascular disease.
429.9	Heart disease NOS.
431	Intracerebral hemorrhage.
433.00-.91	Occlusion & stenosis of precerebral arteries.
434.00-.91	Occlusion of cerebral arteries.
435.0-.9	Transient cerebral ischemia.
437.0	Other & ill-defined cerebrovascular disease.
437.1	Other generalized ischemic cerebrovascular disease.
437.5	Moyamoya disease.
438.0-.9	Late effects of cerebrovascular disease.
440.0–440.9	Arteriosclerosis.
441.00–441.9	Aortic aneurysms.
442.0	Upper extremity aneurysm.
442.1	Renal artery aneurysm.
442.2	Iliac artery aneurysm.
444.0-.9	Arterial embolism & thrombosis.
557.1	Chronic vascular insufficiency of intestine.
571.8	Other chronic non-alcoholic liver disease.
571.9	Unspecified chronic liver disease without mention of alcohol.
573.8	Other specified disorders of liver.
573.9	Unspecified disorders of liver.
577.0–577.9	Pancreatic disease.
579.3	Other & unspecified postsurgical nonabsorption.
579.8	Other specified intestinal malabsorption.
581.0–581.9	Nephrotic syndrome.
584.5	Acute renal failure with lesion of tubular necrosis.
585	Chronic renal failure.
588.0	Renal osteodystrophy.
588.1	Nephrogenic diabetes insipidus.
588.8	Other specified disorders resulting from impaired renal function.
588.9	Unspecified disorder resulting from impaired renal function.
607.84	Impotence of organic origin, penis disorder.
646.70–646.71	Liver disorders in pregnancy.
646.73	Liver disorder antepartum.
648.10–648.14	Thyroid disfunction in pregnancy and the puerperium.
6.0	Psoriatic arthropathy.
696.1	Other psoriasis.
751.61	Biliary atresia.
764.10–764.19	''Light for dates'' with signs of fetal malnutrition.
786.50	Chest pain unspecified.
786.51	Precordial pain.
786.59	Chest pain, other.
789.1	Hepatomegaly.
790.4	Abnormal transaminase.
790.5	Abnormal alkaline phosphatase.
790.6	Other abnormal blood chemistry.
793.4	Abnormal imaging study.
987.9	Toxic effect of unspecified gas or vapor.
996.81	Complication of transplanted organ, kidney, failure.
V42.0	Transplanted organ, kidney.
V58.69	Long term (current) use of other medications.

Reasons For Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.]

• Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

• A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

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• Tests that are not ordered by a treating physician or other qualified treating

nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

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Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9-CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a nonspecific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Digoxin Therapeutic Drug Assay

Other Names/Abbreviations

Description

A digoxin therapeutic drug assay is useful for diagnosis and prevention of digoxin toxicity, and/or prevention for under dosage of digoxin.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
80162	Digoxin (Therapeutic Drug Assay)

Indications

Digoxin levels may be performed to monitor drug levels of individuals receiving digoxin therapy because the margin of safety between side effects and toxicity is narrow or because the blood level may not be high enough to achieve the desired clinical effect.

Clinical indications may include individuals on digoxin:

- With symptoms, signs or electrocardiogram (ECG) suggestive of digoxin toxicity;
- Taking medications that influence absorption, bioavailability, distribution, and/or elimination of digoxin;
- With impaired renal, hepatic, gastrointestinal, or thyroid function;
- With pH and/or electrolyte abnormalities;
- With unstable cardiovascular status, including myocarditis;
- Requiring monitoring of patient compliance.

Clinical indications may include individuals:

- Suspected of accidental or intended overdose; or
- Who have an acceptable cardiac diagnosis (as listed) and for whom an accurate history of use of digoxin is unobtainable

The value of obtaining regular serum digoxin levels is uncertain, but it may be reasonable to check levels once yearly after a steady state is achieved. In addition, it may be reasonable to check the level if:

- Heart failure status worsens;
- Renal function deteriorates;
- Additional medications are added that could affect the digoxin level; or
- Signs or symptoms of toxicity develop.

Steady state will be reached in approximately 1 week in patients with normal renal function, although 2–3 weeks may be needed in patients with renal impairment. After changes in dosages or the addition of a medication that could affect the digoxin level, it is reasonable to check the digoxin level one week after the change or addition. Based on the clinical situation, in cases of digoxin toxicity, testing may need to be done more than once a week.

Digoxin is indicated for the treatment of patients with heart failure due to systolic dysfunction and for reduction of the ventricular response in patients with atrial fibrillation or flutter. Digoxin may also be indicated for the treatment of other supraventricular arrhythmias, particularly in the presence of heart failure.

Limitations

This test is not appropriate for patients on digitoxin or treated with digoxin FAB (fragment antigen binding) antibody.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
242.00–242.91	Thyrotoxicosis with or without goiter.
243	Congenital hypothyroidism.
244.0–244.9	Acquired hypothyroidism.
245.0–245.9	Thyroiditis.
275.2	Disorders of magnesium metabolism.
275.40–.49	Disorders of calcium metabolism.
276.0	Hyperosmolality.
276.1	Hyposmolality.
276.2	Acidosis.
276.3	Alkalosis.
276.4	Mixed acid-base balance disorder.
276.5	Volume depletion.
276.6	Fluid overload.
276.7	Hyperpotassemia.
276.8	Hypopotassemia.
276.9	Electrolyte and fluid disorder (not elsewhere classified).
293.0	Acute delirium.
293.1	Subacute delirium.
307.47	Other dysfunctions of sleep stages or arousal from sleep.
368.16	Psychophysical visual disturbances.
368.8	Other specified visual disturbances.
368.9	Unspecified visual disturbances.
397.9	Rheumatic diseases of endocardium.
398.0	Rheumatic myocarditis.
398.91	Rheumatic heart Failure.
402.01	Hypertensive heart disease, malignant with CHF.
402.11	Hypertensive heart disease, benign with CHF.
402.91	Hypertensive heart disease, unspecified with CHF.
403.00–403.91	Hypertensive renal disease.
404.00–404.93	Hypertensive heart & renal disease.
410.00–410.92	Acute myocardial infarction.
411.0–411.89	Other acute & subacute forms of ischemic heart disease.
413.0–413.9	Angina pectoris.

Code	Description
422.0–422.99	Acute myocarditis.
425.0–425.9	Cardiomyopathy.
426.0–426.9	Conduction disorders.
427.0–427.9	Cardiac dysrhythmias.
428.0–428.9	Heart failure.
429.4	Heart disturbances postcardiac surgery.
429.5	Rupture chordae tendinae.
429.6	Rupture papillary muscle.
429.71	Acquired cardiac septal defect.
514	Pulmonary congestion & hypostasis.
579.9	Unspecified intestinal malabsorption.
584.5–584.9	Acute renal failure.
585	Chronic renal failure.
586	Renal failure, unspecified.
587	Renal sclerosis, unspecified.
588.0	Renal osteodystrophy.
588.1	Nephrogenic Diabetes Insipidus.
588.8	Impaired renal function (not elsewhere classified).
588.9	Unspecified disorder resulting from impaired renal function.
780.01	Coma.
780.02	Transient alteration of awareness.
780.09	Other ill-defined general symptoms (drowsiness, semicoma, somnolence, stupor, unconsciousness).
780.1	Hallucinations.
780.2	Syncope & collapse.
780.4	Dizziness and giddiness.
780.71–.79	Malaise & fatigue.
783.0	Anorexia.
784.0	Headache.
787.01–787.03	Nausea & vomiting.
787.91	Diarrhea.
794.31	Abnormal electrocardiogram.
799.2	Nervousness.
972.1	Poisoning by cardiotonic glycosides & drugs of similar action.
995.2	Unspecified adverse effect of drug, medicinal and biological substance.
*E942.1	Adverse effect of cardiotonic glycosides and drugs of similar action.
V58.69	Encounter long term—medication use (not elsewhere classified).

*Code may not be reported as a stand-alone or first-listed code on the claim.

Reasons For Denial

Note: Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.

Code	Description
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above

Sources of Information

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Duhme DW, Greenblatt DJ, Koch-Weser J. Reduction of digoxin toxicity associated with measurement of serum levels. A report from the Boston Collaborative Drug Surveillance Program. Ann Intern Med 1974 Apr; 80(4):516–519.

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Konstam M, Dracup K, Baker D, *et al.* Heart Failure: Evaluation and Care of Patients with Left-Ventricular Systolic Dysfunction. Clinical Practice Guideline No. 11. AHCPR Publication No. 94–0612. Rockville, MD: Agency for Health Care Policy and Research, Public Health Service, U.S. Department of Health and Human Services. June 1994.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9-CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9-CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9-CM code is submitted, the underlying sign, symptom or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Alpha-fetoprotein

Other Names/Abbreviations: Afp.

Description

Alpha-fetoprotein (AFP) is a polysaccharide found in some carcinomas. It is effective as a biochemical marker for monitoring the response of certain malignancies to therapy.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82105	Alpha-fetoprotein; serum.

Indications

AFP is useful for the diagnosis of hepatocellular carcinoma in high-risk patients (such as alcoholic cirrhosis, cirrhosis of viral etiology, hemochromatosis, and alpha $_1$-antitrypsin deficiency) and in separating patients with benign hepatocellular neoplasms or metastases from those with hepatocellular carcinoma and, as a non-specific tumor associated antigen, serves in marking germ cell neoplasms of the testis, ovary, retro peritoneum, and mediastinum.

Limitations

ICD–9–09CM Codes Covered by Medicare Program

Code	Description
070.22–070.23	Chronic viral hepatitis B with hepatic coma, with or without mention of hepatitis delta
070.32–070.33	Chronic viral hepatitis B without mention of hepatic coma, with or without mention of hepatitis delta
070.44	Chronic hepatitis C with hepatic coma
070.54	Chronic hepatitis C without mention of hepatic coma
095.3	Syphilis of liver
121.1	Clonorchiasis
121.3	Fascioliasis
155.0–155.2	Malignant neoplasm of the liver and intrahepatic bile ducts
164.2–164.9	Malignant neoplasm of the mediastinum
183.0	Malignant neoplasm, ovary
186.0	Malignant neoplasm of undescended testis
186.9	Malignant neoplasm, other and unspecific testis
197.1	Secondary malignant neoplasm of mediastinum
197.7	Secondary malignant neoplasm of liver
198.6	Secondary malignant neoplasm of ovary
198.82	Secondary malignant neoplasm, genital organs
211.5	Benign neoplasm of liver and biliary passages
235.3	Neoplasm of uncertain behavior of liver and biliary passages
272.2	Mixed hyperlipidemia
275.0	Disorder of iron metabolites
275.1	Disorder of copper metabolism
277.00	Cystic Fibrosis without mention of meconium ileus
277.6	Other deficiencies of circulating enzymes
285.0	Sideroblastic Anemia
571.2	Alcoholic cirrhosis of liver
571.40	Chronic hepatitis, unspecified
571.41	Chronic persistent hepatitis
571.49	Other chronic hepatitis
571.5	Cirrhosis of liver without mention of alcohol
608.89	Other specified disorders of male genital organs
793.1	Non-specific abnormal findings of lung field
793.2	Non-specific abnormal findings of other intrathoracic organs
793.3	Non-specific abnormal findings of biliary tract
793.6	Non-specific abnormal findings of abdominal area, including retro peritoneum
V10.07	Personal history of malignant neoplasm, liver
V10.43	Personal history of malignant neoplasm, ovary
V10.47	Personal history of malignant neoplasm, testis

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

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- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
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- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE

devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995).

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–099–09CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above

Sources of Information

Tatsuta M. Yamamura H. Iishi H. Kasugai H. Okuda S.Value of serum alpha-fetoprotein and ferritin in the diagnosis of hepatocellular carcinoma. Oncology. 43(5):306–10, 1986.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45).

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition described by that code must be related to the above indications for the test.

Medicare National Coverage Decision for Carcinoembryonic Antigen

Other Names/Abbreviations: CEA.

Description

Carcinoembryonic antigen (CEA) is a protein polysaccharide found in some carcinomas. It is effective as a biochemical marker for monitoring the response of certain malignancies to therapy.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82378	Carcinoembryonic antigen (CEA).

Indications

CEA may be medically necessary for follow-up of patients with colorectal carcinoma. It would however only be medically necessary at treatment decision-making points. In some clinical situations (*e.g.* adenocarcinoma of the lung, small cell carcinoma of the lung, and some gastrointestinal carcinomas) when a more specific marker is not expressed by the tumor, CEA may be a medically necessary alternative marker for monitoring. Preoperative CEA may also be helpful in determining the post-operative adequacy of surgical resection and subsequent medical management. In general, a single tumor marker will suffice in following patients with colorectal carcinoma or other malignancies that express such tumor markers.

In following patients who have had treatment for colorectal carcinoma, ASCO guideline suggests that if resection of liver metastasis would be indicated, it is recommended that post-operative CEA testing be performed every two to three months in patients with initial stage II or stage III disease for at least two years after diagnosis.

For patients with metastatic solid tumors which express CEA, CEA may be measured at the start of the treatment and with subsequent treatment cycles to assess the tumor's response to therapy.

Limitations

Serum CEA determinations are generally not indicated more frequently than once per chemotherapy treatment cycle for patients with metastatic solid tumors which express CEA or every two months post-surgical treatment for patients who have had colorectal carcinoma. However, it may be proper to order the test more frequently in certain situations, for example, when there has been a significant change from prior CEA level or a significant change in patient status which could reflect disease progression or recurrence.

Testing with a diagnosis of an in situ carcinoma is not reasonably done more frequently than once, unless the result is abnormal, in which case the test may be repeated once.

ICD–9–09–CM Codes Covered by Medicare Program

Code	Description
150.0–150.9	Malignant neoplasm of the esophagus.
151.0–151.9	Malignant neoplasm of stomach.
152.0–154.8	Malignant neoplasm of small intestine, including duodenum, rectum, rectosigmoid junction and anus.
157.0–157.9	Primary malignancy of pancreas.
159.0	Malignant neoplasm of intestinal tract, part unspecified.
162.0–162.9	Malignant neoplasm of trachea, bronchus, lung.
174.0–174.9	Malignant neoplasm of female breast.
175.0–175.9	Malignant neoplasm of male breast.
183.0	Malignant neoplasm of ovary.
197.0	Secondary malignant neoplasm of neoplasm of lung.
197.4	Secondary malignant neoplasm of small intestine.
197.5	Secondary malignant neoplasm of large intestine and rectum.
230.3	Carcinoma in situ of colon.
230.4	Carcinoma in situ of rectum.
230.7	Carcinoma in situ of other/unspecified parts of intestine.
230.9	Carcinoma in situ other and unspecified digestive organs.
235.2	Neoplasm of uncertain behavior of stomach, intestines, rectum.
790.99	Other nonspecific findings on examination of blood.
V10.00	Personal history of malignant neoplasm of gastro-intestinal tract, unspecified.
V10.3	Personal history of malignant neoplasm, breast.
V10.05	Personal history of malignant neoplasm, large intestine.
V10.06	Personal history of malignant neoplasm, rectum, rectosigmoid junction, anus.
V10.11	Personal history of malignant neoplasm, bronchus, and lung.
V10.43	Personal history of malignant neoplasm, ovary.
V67.2	Follow-up examination following chemotherapy.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device

Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995).

ICD–9–CM Codes Denied

Code	Description
798.0–798.9 S	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above

Sources of Information

Journal Clinical Oncol: 14(10:2843–2877), 1996

Vauthey JN. Dudrick PS. Lind DS. Copeland EM 3rd. Management of recurrent colorectal cancer: another look at carcinoembryonic antigen-detected recurrence [see comments]. [Review] Digestive Diseases. 14(1):5–13, 1996 Jan–Feb.

Grem J. The prognostic importance of tumor markers in adenocarcinomas of the gastrointestinal tract. [Review] [38 refs] Current Opinion in Oncology. 9(4):380–7, 1997 Jul.

Bergamaschi R. Arnaud JP. Routine compared with nonscheduled follow-up of patients with ''curative'' surgery for colorectal cancer. Annals of Surgical Oncology. 3(5):464–9, 1996 Sep.

Kim YH. Ajani JA. Ota DM. Lynch P. Roth JA. Value of serial carcinoembryonic antigen levels in patients with resectable adenocarcinoma of the esophagus and stomach Cancer. 75(2):451–6, 1995 Jan 15.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45).

5. When a nonspecific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

6. To show elevated CEA, use ICD–9–CM 790.99 (Other nonspecific findings on examination of blood) only if a more specific diagnosis has not been made. If a more specific diagnosis has been made, use the code for that diagnosis.

Medicare National Coverage Decision for Human Chorionic Gonadotropin

Other Names/Abbreviations: hCG.

Description

Human chorionic gonadotropin

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
84702	Gonodotropin, chorionic (hCG); quantitative.

Indications

hCG is useful for monitoring and diagnosis of germ cell neoplasms of the ovary, testis, mediastinum, retroperitoneum, and central nervous system. In addition, it is useful for diagnosis of pregnancy and pregnancy-associated conditions.

Limitations

Not more than once per month for diagnostic purposes. As needed for monitoring of patient progress and treatment. Qualitative hCG assays (CPT 84703) are not appropriate for medically managing patients with known or suspected germ cell neoplasms.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
158.0	Malignant neoplasm of retroperitoneum.
158.8	Malignant neoplasm of specified parts of peritoneum.
164.2	Malignant neoplasm of anterior mediastinum.
164.3	Malignant neoplasm of posterior mediastinum.
164.8	Malignant neoplasm, other (includes malignant neoplasm of contiguous overlapping sites of thymus, heart, and mediastinum whose point of origin cannot be determined.
164.9	Malignant neoplasm of mediastinum, part unspecified.
181	Malignant neoplasm of placenta.
183.0	Malignant neoplasm of ovary.
183.8	Other specified sites of uterine adnexas.
186.0	Malignant neoplasm of undescended testes.
186.9	Malignant neoplasm of other and unspecified testis.
194.4	Malignant neoplasm of pineal gland.
197.1	Secondary malignant neoplasm of mediastinum.
197.6	Secondary malignant neoplasm of retroperitoneum and peritoneum.
198.6	Secondary malignant neoplasm of ovary.
198.82	Secondary malignant neoplasm of other genital organs.
236.1	Neoplasm of uncertain behavior, placenta.
623.8	Vaginal bleeding.
625.9	Pelvic pain.
630	Hydatidiform mole.
631	Pregnancy, molar.
632	Missed abortion.
633.9	Ectopic pregnancy.
640.00–	Threatened abortion.
V10.09	Personal history of malignant neoplasm, other gastrointestinal sites.
V10.29	Personal history of malignant neoplasm of other respiratory and intrathoracic organs.
V10.43	Personal history of malignant neoplasm, ovary.
V10.47	Personal history of malignant neoplasm, testis.
V22.0–.1	Pregnancy.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9-CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied:

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

O'Callaghan A. Mead GM. Testicular carcinoma. [Review] [23 Refs] Postgraduate Medical Journal. 73(862):4816, 1997 Aug.

Sawamura Y. Current diagnosis and treatment of central nervous system germ cell tumours. [Review] [47 Refs] Current Opinion in Neurology. 9(6):41923, 1996 Dec.

Wilkins M. Horwich A. Diagnosis and treatment of urological malignancy: The testes. [Review] [23 Refs] British Journal of Hospital Medicine. 55(4): 199203, 1996. Feb 21, Mar 5.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45).

5. When a nonspecific ICD–9–CM code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Tumor Antigen by Immunoassay—CA125

Other Names/Abbreviations

Description

Immunoassay determinations of the serum levels of certain proteins or carbohydrates serve as tumor markers. When elevated, serum concentration of these markers may reflect tumor size and grade.

This policy specifically addresses tumor antigen CA125.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
Not yet assigned	Tumor antigen 125.

Indications

CA125 is a high molecular weight serum tumor marker elevated in 80% of patients who present with epithelial ovarian carcinoma. It is also elevated in carcinomas of the fallopian tube, endometrium, and endocervix. An elevated level may also be associated with the presence of a malignant mesothelioma.

A CA125 level may be obtained as part of the initial pre-operative work-up for women presenting with a suspicious pelvic mass to be used as a baseline for purposes of post-operative monitoring. Initial declines in CA125 after initial surgery and/or chemotherapy for ovarian carcinoma are also measured by obtaining three serum levels during the first month post treatment to determine the patient's CA125 half-life, which has significant prognostic implications.

CA125 levels are again obtained at the completion of chemotherapy as an index of residual disease. Surveillance CA125 measurements are generally obtained every 3 months for 2 years, every 6 months for the next 3 years, and yearly thereafter. CA125 levels are also an important indicator of a patient's response to therapy in the presence of advanced or recurrent disease. In this setting, CA125 levels may be obtained prior to each treatment cycle.

Limitations

These services are not covered for the evaluation of patients with signs or symptoms suggestive of malignancy. The service may be ordered at times necessary to assess either the presence of recurrent disease or the patient's response to treatment with subsequent treatment cycles.

CA125 is specifically not covered for aiding in the differential diagnosis of patients with a pelvic mass as the sensitivity and specificity of the test is not sufficient. In general, a single ''tumor marker'' will suffice in following a patient with one of these malignancies.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
180.0	Malignant neoplasm, endocervix.
182.0	Malignant neoplasm of corpus uteri, except isthmus.
183.0	Malignant neoplasm,ovary.
183.2	Malignant neoplasm, fallopian tube.
183.8	Malignant neoplasm, other specified sites of uterine adnexa.
184.8	Malignant neoplasm, other specified sites of female genital organs.
198.6	Secondary malignant neoplasm, ovary.
198.82	Secondary malignancy of genital organs.
236.0–236.3	Neoplasm of uncertain behavior of female genital organs.
V10.43–V10.44	Personal history of malignant neoplasm of female genital organs.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.

Code	Description
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions

ICD–9–CM Codes That Do Not Support Medical Necessity

Code Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

Clinical Pancreatic Guideline for the Use of Tumor Markers in Breast and Colorectal Cancer, American Society of Clinical Oncology. J Clin Oncol 14:2843–2877, 1996.

Chan DW, Beveridge RA, Muss H, *et al.* Use of Triquant BR Radioimmunoassay for Early Detection of Breast Cancer Recurrence in Patients with Stage II and Stage III Disease. J Clin Oncol 1977, 15(6):2322–2328.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom or condition must be related to the indications for the test above.

Documentation Requirements

Indicated if service request for CA125 is requested more frequently than stipulated.

Medicare National Coverage Decision for Tumor Antigen by Immunoassay CA15–3/CA27.29

Other Names/Abbreviations

Description

Immunoassay determinations of the serum levels of certain proteins or carbohydrates serve as tumor markers. When elevated, serum concentration of these markers may reflect tumor size and grade.

This policy specifically addresses the following tumor antigens: CA15–3 and CA27.29

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
Not yet assigned	Tumor antigen CA15–3/CA27.29.

Indications

Multiple tumor markers are available for monitoring the response of certain malignancies to therapy and assessing whether residual tumor exists postsurgical therapy.

CA 15–3 is often medically necessary to aid in the management of patients with breast cancer. Serial testing must be used in conjunction with other clinical methods for monitoring breast cancer. For monitoring, if medically necessary, use consistently either CA 15–3 or CA 27.29, not both.

CA 27.29 is equivalent to CA 15–3 in its usage in management of patients with breast cancer.

Limitations

These services are not covered for the evaluation of patients with signs or

symptoms suggestive of malignancy. The service may be ordered at times necessary to assess either the presence of recurrent disease or the patient's response to treatment with subsequent treatment cycles.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
174.0–174.9	Breast, primary (female)—malignant neoplasm of female breast.
175.0–175.9	Breast, primary (male)—malignant neoplasm of male breast
198.2	Secondary malignant neoplasm (male breast).
198.81	Secondary malignant neoplasm (female breast).
V10.3	Personal history of malignant neoplasm, breast.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

• Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

• A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemi.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

Clinical Pancreatic Guideline for the Use of Tumor Markers in Breast and Colorectal Cancer, American Society of Clinical Oncology. J Clin Oncol 14:2843–2877, 1996.

Chan DW, Beveridge RA, Muss H, *et al.* Use of Triquant BR Radioimmunoassay for Early Detection of Breast Cancer Recurrence in Patients with Stage II and Stage III Disease. J Clin Oncol 1977, 15(6):2322–2328.

Bone GG, von Mensdorff-Pouilly S, Kenemans P, van Kamp GJ, *et al.* Clinical and Technical Evaluation of ACS BR Serum Assay of MUC–1 Gene Derived Glycoprotein in Breast Cancer, and Compared with CA15–3 Assays. Clin Chem 1997, 43(4):585–593.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Tumor Antigen by Immunoassay CA19–9

Other Names/Abbreviations

Description

Immunoassay determinations of the serum levels of certain proteins or carbohydrates serve as tumor markers. When elevated, serum concentration of these markers may reflect tumor size and grade.

This policy specifically addresses the following tumor antigen: CA19–9.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
Not yet assigned	Tumor antigen CA19–9.

Indications

Multiple tumor markers are available for monitoring the response of certain malignancies to therapy and assessing whether residual tumor exists post-surgical therapy.

Levels are useful in following the course of patients with established diagnosis of pancreatic and biliary ductal carcinoma. The test is not indicated for diagnosing these two diseases.

Limitations

These services are not covered for the evaluation of patients with signs or symptoms suggestive of malignancy. The service may be ordered at times necessary to assess either the presence of recurrent disease or the patient's response to treatment with subsequent treatment cycles.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
155.1	Malignant neoplasm, intrahepatic bile ducts.
156.1	Malignant neoplasm, extrahepatic bile ducts.
156.8	Malignant neoplasm, other specified sites of gallbladder and extrahepatic bile ducts.
156.9	Malignant neoplasm, unspecified part of biliary tract.
157.0–157.9	Malignant neoplasm, pancreas.
197.8	Secondary malignant neoplasm, other digestive organs and spleen.
235.3	Neoplasm of uncertain behavior, liver and biliary passages.
235.5	Neoplasm of uncertain behavior, other and unspecified digestive organs.
V10.09	Other personal history of cancer.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that

exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

Clinical Pancreatic Guideline for the Use of Tumor Markers in Breast and Colorectal Cancer, American Society of Clinical Oncology. J Clin Oncol 14:2843–2877, 1996.

Richter JM, Christensen MR, Rustgi AK, and Silverstein MD. The Clinical Utility of the CA19–9 Radioimmunoassay for the Diagnosis of Pancreatic Cancer Presenting as Pain or Weight Loss: A Cost Effective Analysis. Arch Intern Med 1989, 149:2292–2297.

Safi F, SchlosseW, Falkenreck S, *et al.* Prognostic Value of CA 19–9 Serum Course in Pancreatic Cancer. Hepaetogastroenterology 1998 Jan–Feb; 45(19):253–9.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs,

symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Prostate Specific Antigen

Other Names/Abbreviations: Total PSA.

Description

PSA, a tumor marker for adenocarcinoma of the prostate, can predict residual tumor in the post-operative phase of prostate cancer. Three to six months after radical prostatectomy, PSA is reported to provide a sensitive indicator of persistent disease. Six months following introduction of antiandrogen therapy, PSA is reported as capable of distinguishing patients with favorable response from those in whom limited response is anticipated.

PSA when used in conjunction with other prostate cancer tests, such as digital rectal examination, may assist in the decision making process for diagnosing prostate cancer. PSA also, serves as a marker in following the progress of most prostate tumors once a diagnosis has been established. This test is also an aid in the management of prostate cancer patients and in detecting metastatic or persistent disease in patients following treatment.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
84153	Prostate Specific Antigen (PSA), total

Indications

PSA is of proven value in differentiating benign from malignant disease in men with lower urinary tract signs and symptoms (*e.g.,* hematuria, slow urine stream, hesitancy, urgency, frequency, nocturia and incontinence) as well as with patients with palpably abnormal prostate glands on physician exam, and in patients with other laboratory or imaging studies that suggest the possibility of a malignant prostate disorder. PSA is also a marker used to follow the progress of prostate cancer once a diagnosis has been established, such as in detecting metastatic or persistent disease in patients who may require additional treatment. PSA testing may also be useful in the differential diagnosis of men presenting with as yet undiagnosed disseminated metastatic disease.

Limitations

Generally, for patients with lower urinary tract signs or symptoms, the test is performed only once per year unless there is a change in the patient's medical condition.

Testing with a diagnosis of in situ carcinoma is not reasonably done more frequently than once, unless the result is abnormal, in which case the test may be repeated once.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
185	Malignant neoplasm of prostate.
188.5	Malignant neoplasm of bladder neck.
196.5	Secondary malignant neoplasm, lymph nodes inguinal region and lower limb.
196.6	Secondary malignant neoplasm, intrapelvic lymph nodes.
196.8	Secondary malignant neoplasm, lymph nodes of multiple sites.
198.5	Secondary malignant neoplasm, bone and bone marrow.
198.82	Secondary malignant neoplasm, genital organs.
233.4	Carcinoma in situ, prostate.
239.5	Neoplasm of unspecified nature, other genitourinary organs.
596.0	Bladder neck obstruction.
599.7	Hematuria.
601.9	Unspecified prostatitis.
602.9	Unspecified disorder of prostate.
788.20	Retention of urine, unspecified.
788.21	Incomplete bladder emptying.
790.93	Elevated prostate specific antigen.
793.6/793.7	Non-specific abnormal result of radiologic examination, evidence of malignancy.
794.9	Bone scan evidence of malignancy.
V10.46	Personal history of malignant neoplasm; prostate.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
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- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.
- Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance

has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

Laboratory Test Handbook, 3rd edition, pp. 338–340.

Cooner WH, Mosley BR, Rutherford CL, *et al*. Prostate Cancer Detection in a Clinical Urological Practice by Ultrasonography, Digital Rectal Examination and Prostate Specific Antigen. J.Urol.1990;143: 1146–1154.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9–CM code is submitted, the underlying sign, symptom or condition must be related to the indications for the test above.

6. To show elevated PSA, use ICD–9–CM code 790.93 (Elevated prostate specific antigen). If a more specific diagnosis code has been made, use the code for that diagnosis.

Medicare National Coverage Decision for Gamma Glutamyl Transferase

Other Names/Abbreviations: GGT.

Description

Gamma glutamyltransferase (GGT) is an intracellular enzyme that appears in blood following leakage from cells. Renal tubules, liver, and pancreas contain high amounts, although the measurement of GGT in serum is almost always used for assessment of

hepatobiliary function. Unlike other enzymes which are found in heart, skeletal muscle, and intestinal mucosa as well as liver, the appearance of an elevated level of GGT in serum is almost always the result of liver disease or injury. It is specifically useful to differentiate elevated alkaline phosphatase levels when the source of the alkaline phosphatase increase (bone, liver, or placenta) is unclear. The combination of high alkaline phosphatase and a normal GGT does not, however, rule out liver disease completely.

As well as being a very specific marker of hepatobiliary function, GGT is also a very sensitive marker for hepatocellular damage. Abnormal concentrations typically appear before elevations of other liver enzymes or bilirubin are evident. Obstruction of the biliary tract, viral infection (e.g., hepatitis, mononucleosis), metastatic cancer, exposure to hepatotoxins (e.g., organic solvents, drugs, alcohol), and use of drugs that induce microsomal enzymes in the liver (e.g., cimetidine, barbiturates, phenytoin, and carbamazepine) all can cause a moderate to marked increase in GGT serum concentration. In addition, some drugs can cause or exacerbate liver dysfunction (e.g., atorvastatin, troglitazone, and others as noted in FDA Contraindications and Warnings.)

GGT is useful for diagnosis of liver disease or injury, exclusion of hepatobiliary involvement related to other diseases, and patient management during the resolution of existing disease or following injury.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82977	Glutamyltransferase, gamma (GGT).

Indications

1. To provide information about known or suspected hepatobiliary disease, for example:
   a. following chronic alcohol or drug ingestion;
   b. following exposure to hepatotoxins;
   c. when using medication known to have a potential for causing liver toxicity (e.g., following the drug manufacturer's recommendations); or
   d. following infection (e.g., viral hepatitis and other specific infections such as amebiasis, tuberculosis, psittacosis, and similar infections)
2. To assess liver injury/function following diagnosis of primary or secondary malignant neoplasms
3. To assess liver injury/function in a wide variety of disorders and diseases known to cause liver involvement (e.g., diabetes mellitus, malnutrition, disorders of iron and mineral metabolism, sarcoidosis, amyloidosis, lupus, and hypertension)
4. To assess liver function related to gastrointestinal disease
5. To assess liver function related to pancreatic disease
6. To assess liver function in patients subsequent to liver transplantation
7. To differentiate between the different sources of elevated alkaline phosphatase activity

Limitations

When used to assess liver dysfunction secondary to existing non-hepatobiliary disease with no change in signs, symptoms, or treatment, it is generally not necessary to repeat a GGT determination after a normal result has been obtained unless new indications are present.

If the GGT is the only ''liver'' enzyme abnormally high, it is generally not necessary to pursue further evaluation for liver disease for this specific indication.

When used to determine if other abnormal enzyme tests reflect liver abnormality rather than other tissue, it generally is not necessary to repeat a GGT more than one time per week.

Because of the extreme sensitivity of GGT as a marker for cytochrome oxidase induction or cell membrane permeability, it is generally not useful in monitoring patients with known liver disease.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
003.1	Salmonella septicemia.
006.0–.9	Amebiasis.
014.00–.86	Tuberculosis of intestines, peritoneum, and mesenteric glands.
017.90–.96	Tuberculosis of other specified organs.
018.90–.96	Miliary tuberculosis, unspecified.
020.0–.9	Plague.
022.3	Anthrax septicemia.
027.0	Listeriosis.
027.1	Erysipelothrix infection.
030.1	Tuberculoid leprosy [Type T].
032.83	Diphtheritic peritonitis.
036.1	Meningococcal encephalitis.
036.2	Meningococcemia.
038.0–.9	Septicemia.
039.2	Actinomycotic infections, abdominal.
040.0	Gas gangrene.
042	Human immunodeficiency virus (HIV) disease.
054.0	Eczema herpeticum.
054.5	Herpetic septicemia.
060.0–.1	Yellow fever.
070.0–.9	Viral hepatitis.
072.71	Mumps hepatitis.
073.0	Ornithosis, with pneumonia.
074.8	Other specified diseases due to Coxsackie virus.
075	Infectious mononucleosis.
078.5	Cytomegaloviral disease.
079.99	Unspecified viral infection.
082.0–.9	Tick-borne rickettsioses, stet.
084.9	Other pernicious complications of malaria.
086.1	Chagas disease with organ involvement other than heart.
088.81	Lyme disease.
091.62	Secondary syphilitic hepatitis.
095.3	Syphilis of liver.
100.0	Leptospirosis icterohemorrhagica.

Code	Description
112.5	Candidiasis, disseminated.
115.00	Infection by Histoplasma capsulatum without mention of manifestation.
120.9	Schistosomiasis, unspecified.
121.1	Clonorchiasis.
121.3	Fascioliasis.
122.0	Echinococcus granulosus infection of liver.
122.5	Echinococcus multilocularis infection of liver.
122.8	Echinococcosis, unspecified, of liver.
122.9	Echinococcus, other and unspecified.
130.5	Hepatitis due to toxoplasmosis.
135	Sarcoidosis.
150.0–159.9	Malignant neoplasm of digestive organs and peritoneum.
160.0–165.9	Malignant neoplasm of respiratory and intrathoracic organs.
170.0–176.9	Malignant neoplasm of bone, connective tissue, skin, and breast.
179–189.9	Malignant neoplasm of genitourinary organs.
200.00–208.91	Malignant neoplasm of lymphatic and hematopoietic tissue.
211.5	Benign neoplasm of liver and biliary passages.
211.6	Benign neoplasm of pancreas, except islets of Langerhans.
211.7	Benign neoplasm of islets of Langerhans.
228.04	Hemangioma of intra-abdominal structures.
230.8	Carcinoma in situ of liver and biliary system.
235.0–238.9	Neoplasms of uncertain behavior.
239.0	Neoplasm of unspecified nature of digestive system.
250.00–.93	Diabetes mellitus.
252.0	Hyperparathyroidism.
263.1	Malnutrition of mild degree.
263.9	Unspecified protein-calorie malnutrition.
268.0	Rickets, active.
268.2	Osteomalacia, unspecified.
269.0	Deficiency of vitamin K.
270.2	Other disturbances of aromatic amino acid metabolism.
270.9	Unspecified disorder of amino acid metabolism.
271.0	Glycogenosis.
272.0	Pure hypercholesterolemia.
272.1	Pure hyperglyceridemia.
272.2	Mixed hyperlipidemia.
272.4	Other and unspecified hyperlipidemia.
272.7	Lipidoses.
272.9	Unspecified disorder of lipoid metabolism.
275.0	Disorders of iron metabolism.
275.1	Disorders of copper metabolism.
275.3	Disorders of phosphorus metabolism.
275.40–.49	Disorders of calcium metabolism.
277.1	Disorders of porphyrin metabolism.
277.3	Amyloidosis.
277.4	Disorders of bilirubin excretion.
277.6	Other deficiencies of circulating enzymes.
282.60–.69	Sickle cell anemia.
286.6	Defibrination syndrome.
286.7	Acquired coagulation factor deficiency.
289.4	Hypersplenism.
291.0–.9	Alcoholic psychoses.
303.00–.03	Acute alcoholic intoxication.
303.90–.93	Other and unspecified alcohol dependence.
304.0–.9	Drug dependence.
305.00–.93	Non-dependent abuse of drugs.
357.5	Alcoholic polyneuropathy.
359.2	Myotonic disorders.
452	Portal vein thrombosis.
453.0–.9	Other vein embolism and thrombosis.
456.0–.21	Esophageal varices.
555.0–.9	Regional enteritis.
556.0–.9	Ulcerative colitis.
557.0	Acute vascular insufficiency of intestine.
558.1–.9	Other noninfectious gastroenteritis and colitis.
560.0–.9	Intestinal obstruction without mention of hernia.
562.01	Diverticulitis of small intestine (without mention of hemorrhage).
562.03	Diverticulitis of small intestine with hemorrhage.
562.11	Diverticulitis of colon (without mention of hemorrhage).
562.13	Diverticulitis of colon with hemorrhage.
567.0–.9	Peritonitis.
569.83	Perforation of intestine.
570	Acute and subacute necrosis of liver.
571.0–.9	Chronic liver disease and cirrhosis.

Code	Description
572.0–.8	Liver abscess and sequelae of chronic liver disease.
573.0–.9	Other disorders of liver.
574.00–.91	Cholelithiasis.
575.0–.9	Other disorders of gallbladder.
576.0–.9	Other disorders of biliary tract.
581.0–.9	Nephrotic syndrome.
582.0–.9	Chronic glomerulonephritis.
583.0–.9	Nephritis and nephropathy not specified as acute or chronic.
584.5–.9	Acute renal failure.
585	Chronic renal failure.
586	Renal failure, unspecified.
587	Renal sclerosis, unspecified.
588.0–.9	Disorders resulting from impaired renal function
590.00–.9	Infections of kidney.
646.7	Liver disorders in pregnancy.
960.0–979.9	Poisoning by drugs, medicinal, and biological substances.
980.0–989.89	Toxic effects of substances chiefly nonmedical as to source.
V58.61–.69	Long term (current) drug use.
V67.1	Follow-up examination, radiotherapy.
V67.2	Follow-up examination, chemotherapy.
V67.51	Follow-up examination after completed treatment with high-risk medications, not elsewhere classified.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

• Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

• A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.

Code	Description
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above.

Sources of Information

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Gornall, A.G., and Goldberg, D.M., ''Hepatobiliary Disorders,'' in Gornall, A.G. (ed.)., *Applied Biochemistry of Clinical Disorders* (2nd ed.), 1986, J.B. Lippincott, pp. 211–246.

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Illustrated Guide to Diagnostic Tests (2nd ed.), 1997, Springhouse Corporation.

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Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52.)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Hepatitis Panel

Description

This panel consists of the following tests:

Hepatitis B surface antigen (HBsAg) (CPT 87340).

Hepatitis C antibody (CPT 86803).

Hepatitis B core antibody (HBcAb), IgM Antibody (CPT 86705).

Hepatitis A antibody (HAAb), IgM Antibody (CPT 86709).

Hepatitis is an inflammation of the liver resulting from viruses, drugs, toxins, and other etiologies. Viral hepatitis can be due to one of at least five different viruses, designated Hepatitis A, B, C, D, and E. Most cases are caused by Hepatitis A virus (HAV), Hepatitis B virus (HBV), or Hepatitis C virus (HCV).

HAV is the most common cause of hepatitis in children and adolescents in the United States. Prior exposure is indicated by a positive IgG anti-HAV. Acute HAV is diagnosed by IgM anti-HAV, which typically appears within four weeks of exposure, and which disappears within three months of its appearance. IgG anti-HAV is similar in the timing of its appearance, but it persists indefinitely. Its detection indicates prior effective immunization or recovery from infection. Although HAV is spread most commonly by fecal-oral exposure, parenteral infection is possible during the acute viremia stage of the disease. After exposure, standard immune globulin may be effective as a prophylaxis.

HBV produces three separate antigens (surface, core, and e (envelope) antigens) when it infects the liver, although only hepatitis B surface antigen (HBsAg) is included as part of this panel. Following exposure, the body normally responds by producing antibodies to each of these antigens; one of which is included in this panel: Hepatitis B surface antibody (HBsAb)-IgM antibody , HBsAg is the earlier marker, appearing in serum four to eight weeks after exposure, and typically disappearing within six months after its appearance. If HBsAg remains detectable for greater than six months, this indicates chronic HBV infection. HBcAb, in the form of both IgG and IgM antibodies, are next to appear in serum, typically becoming detectable two to three months following exposure. The IgM antibody gradually declines or disappears entirely one to two years following exposure, but the IgG usually remains detectable for life. Because HBsAg is present for a relatively short period and usually displays a low titer, a negative result does not exclude an HBV diagnosis. HBcAb, on the other hand, rises to a much higher titer and remains elevated for a longer period of time, but a positive result is not diagnostic of acute disease, since it may be the result of a prior infection. The last

marker to appear in the course of a typical infection is HBsAb, which appears in serum four to six months following exposure, remains positive indefinitely, and confers immunity. HBV is spread exclusively by exposure to infected blood or body fluids; in the U.S., sexual transmission accounts for 30% to 60% of new cases of HBV infection.

The diagnosis of acute HBV infection is best established by documentation of a positive IgM antibody against the core antigen (HBcAb-IgM) and by identification of a positive hepatitis B surface antigen (HBsAg). The diagnosis of chronic HBV infection is established primarily by identifying a positive hepatitis B surface antigen (HBsAg) and demonstrating positive IgG antibody directed against the core antigen (HBcAb-IgG). Additional tests such as Hepatitis B e antigen (HBeAg) and Hepatitis B e antibody (HBeAb), the envelope antigen and antibody, are not included in the Hepatitis Panel, but may be of importance in assessing the infectivity of patients with HBV. Following completion of a HBV vaccination series, HBsAb alone may be used monthly for up to six months, or until a positive result is obtained, to verify an adequate antibody response.

HCV is the most common cause of post-transfusion hepatitis; overall HCV is responsible for 15% to 20% of all cases of acute hepatitis, and is the most common cause of chronic liver disease. The test most commonly used to identify HCV measures HCV antibodies, which appear in blood two to four months after infection. False positive HCV results can occur. For example, a patient with a recent yeast infection may produce a false positive anti-HCV result. For this reason, at present positive results usually are confirmed by a more specific technique. Like HBV, HCV is spread exclusively through exposure to infected blood or body fluids.

This panel of tests is used for differential diagnosis in a patient with symptoms of liver disease of injury. When the time of exposure or the stage of the disease is not known, a patient with continued symptoms of liver disease despite a completely negative Hepatitis Panel may need a repeat panel approximately two weeks to two months later to exclude the possibility of hepatitis. Once a diagnosis is established, specific tests can be used to monitor the course of the disease.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
80059	Hepatitis Panel.

Indications

1. To detect viral hepatitis infection when there are abnormal liver function test results, with or without signs or symptoms of hepatitis.

2. Prior to and subsequent to liver transplantation.

Limitations

After a hepatitis diagnosis has been established, only individual tests, rather than the entire panel, are needed.

ICD–9–CM Codes Covered by Medicare Program

Code	Description
070.0–.9	Viral hepatitis.
456.0–.21	Esophageal varices with or without mention of bleeding.
570	Acute and subacute necrosis of liver.
571.5	Cirrhosis of liver without mention of alcohol.
572.0–.8	Liver abscess and sequelae of chronic liver disease.
573.3	Hepatitis, unspecified.
780.31	Febrile convulsions.
780.71	Chronic fatigue syndrome.
780.79	Other malaise and fatigue.
782.4	Jaundice, unspecified, not of newborn.
783.0–.6	Symptoms concerning nutrition, metabolism, and development.
784.69	Other symbolic dysfunction.
787.01–.03	Nausea and vomiting.
789.00–.09	Abdominal pain.
789.1	Hepatomegaly.
789.6	Localized abdominal tenderness (RUQ).
794.8	Nonspecific abnormal results of function studies, liver.
999.3	Other infection following infusion, injection, trans fusion, or vaccination.
996.82	Complications of transplanted organ, liver.
V72.85	Liver transplant recipient evaluation.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

- Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.
- Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.
- Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.
- A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9-CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.
- If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.
- Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.
- Failure of the laboratory performing the test to have the appropriate Clinical

Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms, (sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9-CM code not listed in either of the ICD–9-CM sections above

Sources of Information

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Pincus, M.R., and Schaffner, J.A., ''Assessment of liver function,'' in Henry, J.B. (ed.), *Clinical Diagnosis and Management by Laboratory Methods* (19th ed.), 1996, W.B. Saunders, pp. 253–267.

Tietz, N.W. (ed.), *Clinical Guide to Laboratory Tests* (3rd ed.), 1995, pp. 320–327.

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Wallach, J., *Interpretation of Diagnostic Tests,* 1996, Little Brown and Co.

Illustrated Guide to Diagnostic Tests (2nd ed.), 1997, Springhouse Corporation.

Sleisenger and Fordtrans's Gastrointestinal and Liver Disease (6th ed.), 1997, W.B. Saunders.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9-CM diagnosis code or comparable narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are

provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

Medicare National Coverage Decision for Fecal Occult Blood

Description

The fecal occult blood test detects the presence of trace amounts of blood in stool. The procedure is performed by testing one or several small samples of one, two or three different stool specimens.

This test may be performed with or without evidence of iron deficiency anemia, which may be related to gastrointestinal blood loss. The range of causes for blood loss include inflammatory causes, including acid-peptic disease, non-steroidal anti-inflammatory drug use, hiatal hernia, Crohn's disease, ulcerative colitis, gastroenteritis, and colon ulcers. It is also seen with infectious causes, including hookworm, stronglyoidal ascariasis, tuberculosis, and enteroamebiasis. Vascular causes include angiodysplasia, hemangiomas, varices, blue rubber bleb nevus syndrome, and watermelon stomach. Tumors and neoplastic causes include lymphoma, leiomyosarcoma, lipomas, adenocarcinoma and primary and secondary metastases to the GI tract. Drugs such as nonsteroidal anti-inflammatory drugs also cause bleeding. There are extra gastrointestinal causes such as hemoptysis, epistaxis, and oropharyngeal bleeding. Artifactual causes include hematuria, and menstrual bleeding. In addition, there may be other causes such as coagulopathies, gastrostomy tubes or other appliances, factitial causes, and long distance running.

Three basic types of fecal hemoglobin assays exist, each directed at a different component of the hemoglobin molecule.

(1) Immunoassays recognize antigenic sites on the globin portion and are least affected by diet or proximal gut bleeding, but the antigen may be destroyed by fecal flora.

(2) The heme-porphyrin assay measures heme-derived porphyrin and is least influenced by enterocolic metabolism or fecal storage. This assay does not discriminate dietary from endogenous heme. The capacity to detect proximal gut bleeding reduces its specificity for colorectal cancer screening but makes it more useful for evaluating overall GI bleeding in case finding for iron deficiency anemia.

(3) The guaiac-based test is the most widely used. It requires the peroxidase activity of an intact heme moiety to be reactive. Positivity rates fall with storage. Fecal hydration such as adding a drop of water increases the test reactivity but also increases false positivity.

Of these three tests, the guaiac-based test is the most sensitive for detecting lower bowel bleeding. Because of this sensitivity, it is advisable, when it is used for screening, to defer the guaiac-based test if other studies of the colon are performed prior to the test. Similarly, this test's sensitivity may result in a false positive if the patient has recently ingested meat. Both of these cautions are appropriate when the test is used for screening, but when appropriate indications are present, the test should be done despite its limitations.

HCPCS Codes (Alpha numeric, CPT © AMA):

Code	Descriptor
82270	Blood, occult; feces, 1–3 simultaneous determinations.

Indications

1. To evaluate known or suspected alimentary tract conditions that might cause bleeding into the intestinal tract.

2. To evaluate unexpected anemia.

3. To evaluate abnormal signs, symptoms, or complaints that might be associated with loss of blood.

4. To evaluate patient complaints of black or red-tinged stools.

Limitations

1. Code 82270 is reported once for the testing of up to three separate specimens (comprising either one or two tests per specimen).

2. In patients who are taking non-steroidal anti-inflammatory drugs and have a history of gastrointestinal bleeding but no other signs, symptoms, or complaints associated with gastrointestinal blood loss, testing for occult blood may generally be appropriate no more than once every three months.

3. When testing is done for the purpose of screening for colorectal cancer in the absence of signs, symptoms, conditions, or complaints associated with gastrointestinal blood loss, HCPCS code G0107 (Colorectal cancer screening; fecal-occult blood test, 1–3 simultaneous determinations) should be used. Coverage of colorectal cancer screening is described in HCFA Program Memorandum Transmittal No. AB–97–24 (November, 1997).

ICD–9–CM Codes Covered by Medicare Program

Code	Description
004.0–.9	Shigellosis.
005.0–.9	Other food poisoning (bacterial).
006.0–.9	Amebiasis.
007.0–.9	Other protozoal intestinal diseases.
008.41–.49	Intestinal infections due to other specified bacteria.
009.0–.3	Ill defined intestinal infections.
014.00–.86	Tuberculosis of intestines, peritoneum, and mesenteric glands.
022.2	Gastrointestinal anthrax.
040.2	Whipple's disease.
123.0–.9	Other cestode infection.
124	Trichinosis.
127.0–.9	Other intestinal helminthiases.
150.0–157.9	Malignant neoplasm of digestive organisms.
176.3	Kaposi's sarcoma, gastrointestinal sites.
197.4–.5	Secondary malignant neoplasm of intestines.
197.8	Secondary malignant neoplasm of other digestive organs and spleen.
199.0	Disseminated malignant neoplasm.
204.00–.91	Lymphoid leukemia.
205.00–208.91	Leukemia.
211.0–.9	Benign neoplasm of other parts of digestive system.
228.04	Hemangioma of intra-abdominal structures.
230.2–.9	Carcinoma in situ of digestive organs.

Code	Description
235.2	Neoplasm of uncertain behavior of stomach, intestines, and rectum.
235.5	Neoplasm of uncertain behavior of other and unspecified digestive organs.
239.0	Neoplasm of unspecified nature, digestive system.
280.0–.9	Iron deficiency anemias.
285.0–.9	Other and unspecified anemias.
286.0–.9	Coagulation defects.
287.0–.9	Purpura and other hemorrhagic conditions.
448.0	Hereditary hemorrhagic telangiectasia.
455.0–.8	Hemorrhoids.
456.0–.21	Esophageal varices with or without mention of bleeding.
530.10–535.61	Diseases of the esophagus, stomach, and duodenum.
536.2	Persistent vomiting.
536.8–.9	Dyspepsia and other specified and unspecified functional disorders of the stomach.
537.0–.4	Other disorders of stomach and duodenum.
537.82–.83	Angiodysplasia of stomach and duodenum.
537.89	Other specified disorders of stomach and duodenum.
555.0–558.9	Non-infectious enteritis and colitis.
560.0–.39	Intestinal obstruction/impaction without mention of hernia.
562.10–.13	Diverticulosis/diverticulitis of colon.
564.0–.9	Functional digestive disorders, not elsewhere classified.
565.0–.1	Anal fissure and fistula.
569.0	Anal and rectal polyp.
569.1	Rectal prolapse.
569.3	Hemorrhage of rectum and anus.
569.41–.49	Other specified disorders of rectum and anus.
569.84–.85	Angiodysplasia of intestine with or wihout mention of hemorrhage.
571.0–.9	Chronic liver disease and cirrhosis.
577.0	Acute pancreatitis.
577.0–.9	Diseases of the pancreas.
578.0–.9	Gastrointestinal hemorrhage.
579.0	Celiac disease.
579.8	Other specified intestinal malabsorption.
617.5	Endometriosis of intestine.
780.71	Chronic fatigue syndrome.
780.79	Other malaise and fatigue.
783.0	Anorexia.
783.2	Abnormal loss of weight.
787.01–.03	Nausea and vomiting.
787.1	Heartburn.
787.2	Dysphagia.
787.7	Abnormal feces.
787.91	Diarrhea.
787.99	Other symptoms involving digestive system.
789.00–.09	Abdominal pain.
789.30–.39	Abdominal or pelvic swelling, mass, or lump.
789.40–.49	Abdominal rigidity.
789.5	Ascites.
789.60–.69	Abdominal tenderness.
790.92	Abnormal coagulation profile.
792.1	Nonspecific abnormal findings in stool contents.
793.6	Nonspecific abnormal findings on radiological and other examination, abdominal area, including retroperitoneum.
794.8	Nonspecific abnormal results of function studies, liver.
863.0–.90	Injury to gastrointestinal tract.
864.00–.09	Injury to liver without mention of open wound into cavity.
864.11–.19	Injury to liver with open wound into cavity.
866.00–.03	Injury to kidney without mention of open wound into cavity.
866.10–.13	Injury to kidney with open wound into cavity.
902.0 –.9	Injury to blood vessels of abdomen and pelvis.
926.11–.19	Crushing injury of trunk, other specified sites.
926.8	Crushing injury of trunk, multiple sites.
926.9	Crushing injury of trunk, unspecified site.
964.2	Poisoning by agents primarily affecting blood constituents, anticoagulants.
995.2	Unspecified adverse effect of drug, medicinal, and biological substance.
V10.00–.09	Personal history of malignant neoplasm, gastrointestinal tract.
V12.00	Personal history of unspecified infectious and parasitic disease.
V12.72	Personal history of colonic polyps.
V58.61	Long term (current) use of anticoagulants.
V58.69	Long term (current) use of other medications.
V67.51	Following treatment with high risk medication, not elsewhere specified.

Reasons for Denial

Note: This section was not negotiated by the Negotiated Rulemaking Committee. This section includes HCFA's interpretation of its longstanding policies and is included for informational purposes.

• Tests for screening purposes that are performed in the absence of signs, symptoms, complaints, or personal history of disease or injury are not covered except as explicitly authorized by statute. These include exams required by insurance companies, business establishments, government agencies, or other third parties.

• Tests that are not reasonable and necessary for the diagnosis or treatment of an illness or injury are not covered according to the statute.

• Failure to provide documentation of the medical necessity of tests may result in denial of claims. Such documentation may include notes documenting relevant signs, symptoms or abnormal findings that substantiate the medical necessity for ordering the tests. In addition, failure to provide independent verification that the test was ordered by the treating physician (or qualified nonphysician practitioner) through documentation in the physician's office may result in denial.

• A claim for a test for which there is a national coverage or local medical review policy will be denied as not reasonable and necessary if it is submitted without an ICD–9–CM code or narrative diagnosis listed as covered in the policy unless other medical documentation justifying the necessity is submitted with the claim.

• If a national or local policy identifies a frequency expectation, a claim for a test that exceeds that expectation may be denied as not reasonable and necessary, unless it is submitted with documentation justifying increased frequency.

• Tests that are not ordered by a treating physician or other qualified treating nonphysician practitioner acting within the scope of their license and in compliance with Medicare requirements will be denied as not reasonable and necessary.

• Failure of the laboratory performing the test to have the appropriate Clinical Laboratory Improvement Act of 1988 (CLIA) certificate for the testing performed will result in denial of claims.

• Tests that require an FDA approval or clearance will be denied as not reasonable and necessary if FDA approval or clearance has not been obtained, except for those having a Category B Investigational Device Exemption (IDE). Coverage of Category B IDE devices is left to contractor discretion. (See 60 FR 48425, Sept. 19, 1995)

ICD–9–CM Codes Denied

Code	Description
798.0–798.9	Sudden death, cause unknown.
V15.85	Exposure to potentially hazardous body fluids.
V16.1	Family history of malignant neoplasm, trachea, bronchus, and lung.
V16.2	Family history of malignant neoplasm, other respiratory and intrathoracic organs.
V16.4	Family history of malignant neoplasm, genital organs.
V16.5	Family history of malignant neoplasm, urinary organs.
V16.6	Family history of malignant neoplasm, leukemia.
V16.7	Family history of malignant neoplasm, other lymphatic and hematopoietic neoplasms.
V16.8	Family history of malignant neoplasm, other specified malignant neoplasm.
V16.9	Family history of malignant neoplasm, unspecified malignant neoplasm.
V17.0–V17.8	Family history of certain chronic disabling diseases.
V18.0–V18.8	Family history of certain other specific conditions.
V19.0–V19.8	Family history of other conditions.
V20.0–V20.2	Health supervision of infant or child.
V28.0–V28.9	Antenatal screenings.
V50.0–V50.9	Elective surgery for purposes other than remedying health states.
V53.2	Fitting and adjustment of hearing aid.
V60.0–V60.9	Housing, household, and economic circumstances.
V62.0	Unemployment.
V62.1	Adverse effects of work environment.
V65.0	Healthy persons accompanying sick persons.
V65.1	Persons consulting on behalf of another person.
V68.0–V68.9	Encounters for administrative purposes.
V70.0–V70.9	General medical examinations.
V73.0–V73.99	Special screening examinations for viral and chlamydia diseases.
V74.0–V74.9	Special screening examinations for bacterial and spirochetal diseases.
V75.0–V75.9	Special screening examination for other infectious diseases.
V76.0	Special screening for malignant neoplasms, respiratory organs.
V76.3	Special screening for malignant neoplasms, bladder.
V76.42–V76.9	Special screening for malignant neoplasms,(sites other than breast, cervix, and rectum).
V77.0–V77.9	Special screening for endocrine, nutrition, metabolic, and immunity disorders.
V78.0–V78.9	Special Screening for disorders of blood and blood-forming organs.
V79.0–V.79.9	Special screening for mental disorders.
V80.0–V80.3	Special screening for neurological, eye, and ear diseases.
V81.0–V81.6	Special screening for cardiovascular, respiratory, and genitourinary diseases.
V82.0–V82.9	Special screening for other conditions.

ICD–9–CM Codes That Do Not Support Medical Necessity

Code: Description

Any ICD–9–CM code not listed in either of the ICD–9–CM sections above

Sources of Information

Ahlquist, D.A., ''Approach to the patient with occult gastrointestinal bleeding,'' in Tadatake, Y. (ed.), *Textbook of Gastroenterology* (2nd ed.), 1995, J.B. Lippincott, pp. 699–717.

Tietz, N.W. (ed.), *Clinical guide to Laboratory Tests* (3rd ed.), 1995, pp.452–454.

Schleisenger, M.H., Wall, S.D., *et al.,* ''Part X. Gastrointestinal Diseases'' in Wyngaarden, J.B., and Smith, L.H. (eds.), *Cecil Textbook of Medicine* (18th ed.), 1988, W.B. Saunders, pp. 656–807.

Harrison's Principles of Internal Medicine (14th ed.), 1998, McGraw Hill.

Wallach, J., *Interpretation of Diagnostic Tests,* 1996, Little Brown and Co.

Illustrated Guide to Diagnostic Tests (2nd ed.), 1997, Springhouse Corporation.

Sleisenger and Fordtrans's Gastrointestinal and Liver Disease (6th ed.), 1997, W.B. Saunders.

Coding Guidelines

1. Any claim for a test listed in ''HCPCS CODES'' above must be submitted with an ICD–9–CM diagnosis code or comparable

narrative. Codes that describe symptoms and signs, as opposed to diagnoses, should be provided for reporting purposes when a diagnosis has not been established by the physician. (Based on Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 43.)

2. Screening is the testing for disease or disease precursors so that early detection and treatment can be provided for those who test positive for the disease. Screening tests are performed when no specific sign, symptom, or diagnosis is present and the patient has not been exposed to a disease. The testing of a person to rule out or to confirm a suspected diagnosis because the patient has a sign and/or symptom is a diagnostic test, not a screening. In these cases, the sign or symptom should be used to explain the reason for the test. When the reason for performing a test is because the patient has had contact with, or exposure to, a communicable disease, the appropriate code from category V01, Contact with or exposure to communicable diseases, should be assigned, not a screening code, but the test may still be considered screening and not covered by Medicare. For screening tests, the appropriate ICD–9–CM screening code from categories V28 or V73–V82 (or comparable narrative) should be used. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1996, pages 50 and 52)

3. A three-digit code is to be used only if it is not further subdivided. Where fourth-digit and/or fifth-digit subclassifications are provided, they must be assigned. A code is invalid if it has not been coded to the full number of digits required for that code. (From Coding Clinic for ICD–9–CM. Fourth Quarter, 1995, page 44.)

4. Diagnoses documented as ''probable,'' ''suspected,'' ''questionable,'' ''rule-out,'' or ''working diagnosis'' should not be coded as though they exist. Rather, code the condition(s) to the highest degree of certainty for that encounter/visit, such as signs, symptoms, abnormal test results, exposure to communicable disease or other reasons for the visit. (From Coding Clinic for ICD–9–CM, Fourth Quarter 1995, page 45.)

5. When a non-specific ICD–9 code is submitted, the underlying sign, symptom, or condition must be related to the indications for the test above.

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Federal Register

Friday,
March 10, 2000

Part III

Department of the Interior

Bureau of Indian Affairs

Higher Education Workforce Project; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Higher Education Workforce Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Intent to Implement Demonstration Project.

SUMMARY: The Bureau of Indian Affairs is announcing the intent to implement a demonstration project. Public Law 105–337, Haskell Indian Nations University (HINU) and Southwestern Indian Polytechnic Institute (SIPI) Administrative Systems Act of 1998, Oct. 31, 1998, allows HINU to conduct a demonstration project to test the feasibility and desirability of new personnel management policies and procedures.

DATES: Implementation of this demonstration project will begin on October 1, 2000. To be considered, written comments must be submitted on or before April 10, 2000: an informal public hearing will be scheduled as follows: April 24, 2000 10 a.m. to 12 Noon in Lawrence, Kansas. At the hearing, parties may present their comments on the project. However, anyone wishing to testify should contact the person listed under the **FOR FURTHER INFORMATION CONTACT** section, so that HINU can plan the hearing and provide sufficient time for all parties to be heard. Priority will be given to those on the schedule, with others speaking during any remaining time. Each speaker will be limited to 10 minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

ADDRESSES: You may send comments to Eddie Lehman, Haskell Indian Nations University, Office of the President, Lawrence, Kansas, 66046; e-mail address: elehman@ross1.cc.haskell.edu.

A public hearing will be held at the following location: Lawrence, Kansas—Haskell Indian Nations University, Haskell Auditorium, 155 Indian Ave., Lawrence Kansas 66046.

FOR FURTHER INFORMATION CONTACT: On proposed demonstration project and public hearings: Eddie Lehman, Haskell Indian Nations University, Lawrence, Kansas 66046, 785–749–8407; e-mail address: elehman@ross1.cc.haskell.edu.

SUPPLEMENTARY INFORMATION: Public Law 105–337 finds that the provision of culturally sensitive curricula for higher education programs at Haskell Indian Nations University is consistent with the commitment of the Federal Government to the fulfillment of treaty obligations to Indian tribes through the principle of self-determination and the use of Federal resources. It further finds that giving a greater degree of autonomy to the institution while maintaining it as an integral part of the Bureau of Indian Affairs will facilitate the transition of Haskell Indian Nations University to a 4-year university.

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: March 2, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

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I. Executive Summary

The project was designed by an Alternative Personnel System (APS) Team, under the authority of the Interim President of HINU and the Office of Indian Education Programs, Bureau of Indian Affairs. There are three major areas of change: (a) Institution-controlled rapid hiring; (b) a contribution-based compensation system; (c) and a simplified assignment process. The project will cover all employees at HINU. The Department of Interior will perform extensive evaluation of the project.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that greater managerial control over personnel processes and functions at the worksite can enhance the effectiveness of a higher education workforce and, at the same time, expand the opportunities available to employees through a more responsive personnel system. This demonstration project will provide managers at the lowest practical level the authority, control, and the flexibility they need to provide quality educational opportunities for American Indian students. This project not only provides a system that recognizes, rewards, and retains employees for their contribution, but it also supports their personal and professional growth.

B. Problems With the Present System

Haskell Indian Nations University, a Federal higher education institution, provides post-secondary education to Native American students from across the United States. To do this effectively and efficiently, the institution must employ top-quality faculty, administrators, support staff, and technical/specialist workforce. The current personnel system must be re-engineered to provide incentives and rewards to employees who exhibit characteristics of educational mastery, enthusiasm, and innovation, and who increase their contribution to the higher education mission accordingly. Hiring restrictions and overly complex job classifications unduly exhaust valuable resources (staff, time, and budget), and unnecessarily detract attention from the institution's educational mission. Managers must be able to compete with the private sector for the best talent and be able to make timely and competitive job offers to potential employees. Those same managers need the tools to reward employees for continuing excellence so that the higher education system reflects a quality workforce. The current personnel system does not provide an environment that motivates employees to continue to increase their contribution to the institution and its mission. A contribution-based compensation system will help managers acquire motivational tools and provide a forum in which to apply them. The higher education process is continually changing and depends on shared expertise of a highly educated faculty and staff; therefore, managers can implement most effective strategies through local control of positions and

their classification. Managers need the ability to move employees freely within their institution to meet the educational mission and to provide developmental opportunities for employees. Managers at present have only limited tools to shape the workforce to ensure continued growth of new ideas, strategies, and state-of-the-art skills for the 21st century.

The inflexibility of many of today's personnel processes and the diffused authority, accountability, and approval chains throughout the system result in a workforce that cannot posture itself for a rapidly changing technological and academic environment. This demonstration is designed (1) to provide an encouraging environment that promotes the growth of all employees; and (2) to improve the local higher education manager's ability and authority to manage the workforce effectively.

C. Changes Required/Expected Benefits

This project will demonstrate that a human resources' system tailored to the mission and needs of a higher education institution will result in: (a) Increased quality in the higher education workforce and the educational outcomes produced; (b) increased timeliness of key personnel processes, especially hiring; (c) increased retention rates of ''excellent contributors'' and separation rates of ''poor contributors'; (d) increased satisfaction of institutional customers with the higher education process and its outcome; and (e) increased satisfaction with the personnel management system by customers/students, employees and tribal communities.

The Higher Education Workforce Project (HEWP) builds on the features of demonstration projects at the Department of Defense Acquisition, Air Force Research Laboratory, Department of the Navy (China Lake), and National Institute of Standards and Technology (NIST). The long-standing Department of the Navy (China Lake) and NIST demonstration projects have produced impressive statistics on job satisfaction for their employees versus that for the Federal workforce in general. Therefore, in addition to the expected benefits mentioned above, it is anticipated that the HEWP will result in more satisfied employees as a consequence of the proposed demonstration project's hiring procedures, classification accuracy, pay equity, and fairness of performance management. A full range of measures will be collected during project evaluation.

D. Participating Institutions

The Higher Education Workforce Project (HEWP) will cover Haskell Indian Nations University, an institution of higher education of the Department of the Interior, Bureau of Indian Affairs. HINU is located in Lawrence, Kansas.

E. Participating Employees

In determining the scope of the demonstration project, primary consideration was given to the number and diversity of occupations within the Higher Education Workforce Project, which includes professional employees and the supporting personnel. The project provides for adequate development and testing of the Contribution-based Compensation and Assessment System (CCAS). The intent of this project is to provide the institution with increased control and accountability for the covered workforce. Therefore, the decision was made to include all General Schedule (GS) and Wage Grade System (WG) positions. Employees covered under the Performance Management and Recognition System Termination Act (pay plan code GM) are General Schedule employees and are covered under the demonstration project.

F. Bargaining Units

Of the 207 HINU employees, all except managerial employees are under union representation by the National Federation of Federal Employees union and are covered by a negotiated National Agreement. At the time of publishing the Indian Educators Federation union had been certified as the bargaining unit, but the certification had not become effective because of appeals by NFFE. The recent NFFE agreement will be recognized as the applicable agreement until such time as the appeal process is completed; a union is identified as the representative; and/or a new agreement is reached in accordance with the specific requirements under Public Law 105–337. All applicants for employment with, all eligibles and employees of, and all positions in or under HINU shall be included in this demonstration project. Any collective-bargaining agreement in effect on the day before this demonstration project commences shall continue to be recognized by HINU until such date of a new negotiated agreement, as may be determined by mutual agreement of the parties.

G. Project Design

In 1996, after several years of planning and research, HINU submitted legislation to Congress for developing a different higher education personnel system. In 1997 SIPI submitted legislation to Congress proposing an alternative personnel system. In 1998, the two pieces of legislation were joined due to the similarity of the two higher education schools' missions and identification of similar problems with acquiring personnel. Public Law 105–337, Oct. 31, 1998, authorized each institution to carry out a demonstration project for developing a higher education alternative personnel system. A joint Steering Committee was established in September 1999 as the governing body for the project. Members on the Steering Committee represented both institutions and the Office of Indian Education Programs, BIA. An Alternative Personnel System Team was established in October 1999, made up of employees from SIPI and HINU to design and develop the demonstration project that would test a new personnel system for use at SIPI and HINU. The APS team presented recommendations for a new system to the Steering Committee in December 1999 for approval. BIA, OIEP subsequently determined that the two institutions could develop individual alternative personnel systems and the Steering Committee was disbanded. HINU continued to use its APS team to design this project. The APS team developed an alternative personnel system that represents sweeping changes in the entire spectrum of human resources management for HINU. Several of the initiatives are designed to assist the institution in hiring the best people to fulfill mission requirements. Others focus on developing, motivating, and equitably compensating employees based on their contribution to the mission. Initiatives to effectively manage workforce turnover and maintain institutional excellence were also developed.

Public Law 105–337 authorizes HINU to test alternative benefits systems. Though no changes have been made to the existing benefits systems in this publication, HINU reserves the right to test alternative benefits systems in the future in accordance with the provisions of Public Law 105–337.

A. Hiring and Appointment Authorities

1. Simplified, Accelerated Hiring

The complexity of the current system and various hiring restrictions create delays; hamper management's ability to hire, develop, realign, and retain a quality workforce that is reflective of the institution's mission statement; and inhibit a quick response to the technological, economic and

educational needs of tribal communities. Line managers, departmental and divisional managers find the complexity limiting as they attempt to accomplish timely recruitment of needed personnel with appropriate knowledge and skills. To compete with the private sector and institutions of higher learning for the best talent available and be able to make expeditious job offers, managers need a process that is streamlined and easy to administer. In order to create a human resources management system that facilitates meeting HINU's mission and institutional excellence, this demonstration project will respond to today's dynamic environment by obtaining, developing, motivating, and retaining high-performing employees. The project will provide a flexible system that can restructure or renew the workforce quickly to meet diverse mission needs, respond to workload needs, and contribute to quality educational infrastructure.

Specifically, this part of the demonstration project will provide simplified, accelerated hiring of quality personnel by providing HINU full authority to appoint individuals to positions. Appropriate recruitment methods and resources will include those that are likely to yield quality candidates with the knowledge, skills, and abilities necessary to perform the duties of the position.

(a) Delegated Examining Authority

This demonstration project establishes a streamlined applicant examining process. This process will be used to fill all positions at HINU. Basic eligibility factors will be determined, using any and all available resources, linking applicants' knowledge, skills, and abilities to those required in each position. Minimum eligibility requirements will be those at the lowest equivalent GS or WG grade of the appropriate broadband level. Selective placement factors may be established when judged to be critical to successful job performance. These factors will be determined by the HINU selecting officials and communicated to applicants for basic eligibility. Qualified candidates who meet the basic ''minimum'' qualifications will be further evaluated based on Knowledge, Skills, and Abilities that are directly linked to the position(s) to be filled. Applicants who meet Indian Preference qualifications will receive preference in hiring. Based on assessment, other candidates will receive numerical scores of 70, 80 or 90. No intermediate scores will be granted except for those eligibles that are entitled to veterans' preference. Veteran's preference eligibles meeting basic (minimum) qualifications will receive an additional five or ten points (depending on their preference eligibility) added to the minimum scores identified above. Applicants will be placed in one of the following quality groups based on their numerical score including any preference points: Basically Qualified (score of 70 to 79); Highly Qualified (score of 80 to 89); or Superior (score of 90 and above). The names of veterans' preference eligibles will be entered ahead of others having the same numerical score. The names of Indian preference eligibles will be placed at the top of the Superior quality group.

For professional positions at the basic rate of pay equivalent to GS–9 and above, applicants will be referred by quality groups in the order of the numerical ratings, including any veterans' preference points. For all other positions, (*i.e.,* other than professional positions at the equivalent of GS–9 and above), veterans' preference eligibles with a compensable service-connected disability of ten percent or more who meet basic (minimum) eligibility will be listed at the top of the highest group certified.

For GS–9 academic and administrative positions, hiring committees will convene to review the applications on the certification list. In accordance with academic procedures, hiring committees will recommend a ranked preference list to the hiring officials.

All applicants in the highest group will be certified. If there is an insufficient number of applicants in the highest group, applicants in the next lower group may then be certified; should this process not yield a sufficient number, groups will be certified sequentially until a selection is made or the qualified pool is exhausted. When two or more groups are certified, applicants will be identified by quality group (*i.e.,* Superior, Highly Qualified, Basically Qualified) in the order of their numerical scores. Indian preference eligibles will be placed at the top of the Superior group. Passing over any veteran's preference eligible(s) to select a non-preference eligible requires approval under current pass-over or objection procedures.

The on-site Personnel Director will serve as a consultant during the hiring process, overseeing Indian and veterans' preference, timely processing of paperwork, and other procedures that ensure lawful and equitable procedures for all applicants. The hiring process will reflect the merit principles.

(b) Scholastic Achievement Appointment

This demonstration project establishes a Scholastic Achievement Appointment that provides the authority to appoint candidates with degrees to positions with positive education requirements. Candidates may be appointed under this procedure if: (1) They meet the minimum standards for the positions as published in OPM's Operating Manual ''Qualification Standards for General Schedule Positions,'' plus any selective factors stated in the vacancy announcement; (2) the occupation has a positive education requirement; (3) the candidate has a cumulative grade point average (GPA) of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the Qualification Standards for the occupational series and an overall undergraduate GPA of at least 3.0 on a 4.0 scale; and (4) the appointment is into a position at a pay level lower than the top step of GS–7. Appointments may also be made at the equivalent of GS–9 through GS–11 on the basis of graduate education and experience, but with the requirement of a GPA of at least 3.7 on a scale of 4.0 for graduate courses in the field of study required for the occupation. Indian preference and veterans' preference procedures will apply when selecting candidates under this authority. Preference eligibles who meet the above criteria will be considered ahead of non-preference eligibles. Passing over any preference eligibles(s) to select a non-preference eligible requires OPM approval under current objection procedures. This authority allows for competitive appointment to positions at the broadband level II.

2. Permanent and Contingent Appointment Authorities

The educational work environment is seriously affected by variable workload and mission changes that require flexibility not only in workforce numbers but required skills and knowledge. The current personnel system is unable to adapt the workforce rapidly to these changes. This demonstration project provides a method to adjust the workforce as needed. Under this demonstration project there are two appointment options: permanent and contingent appointments. The permanent appointment replaces the existing career and career-conditional appointments. The contingent appointment is a new appointment authority that is based roughly on the existing term

appointment to provide flexible hiring practices for HINU. All contingent appointments will be temporary. All employees under these two appointments will be eligible for benefits under the guidelines of the demonstration project, provided the appointment is the duration of at least one year. Benefits are the same as those currently afforded permanent employees. An academic year is considered equivalent to a calendar year for academic appointments.

Institutions may make a contingent appointment for a period that is expected to last up to a year, but not to exceed four years. Reasons for making a contingent appointment include, but are not limited to, carrying out special project work; staffing new or existing programs of limited duration; filling a position in activities undergoing review for reduction or closure; and replacing permanent employees who have been temporarily assigned to another position, are on extended leave, or have entered military service. Selections for contingent appointments for less than one year will be non-competitive. Selections for contingent appointments of one year or more will be made under competitive examining processes. Employees hired under a one-year or more, contingent appointment authority are temporary, but may be eligible for conversion to permanent appointment. To be converted, the employee must (1) have been selected for the 1 year or more contingent position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the contingent position(s) may be eligible for conversion to permanent appointment at a later date; (2) must have participated in at least one cycle of the contribution-based assessment process; and (3) be selected under merit promotion procedures for the permanent position. Service under a contingent appointment immediately prior to a permanent appointment may be applied toward the probationary period at the discretion of the manager, provided contribution is adequate and the permanent position is in the same career path as the contingent appointment. The institution may place a contingent employee in any other contingent position, provided the employee meets the qualifying requirements of that position. However, such reassignment will not serve to extend the appointment beyond the original contingent appointment time period. Professional conversions will require review by appropriate peers. Contingent and permanent appointments may be used for part-time and full-time purposes. The contingent appointment may not be used to replace or substitute for work performed by employees occupying regular positions required to perform the mission of the institution, but may be used to supplement regular positions work activities.

3. Modified Probationary Period

For employees in the Professional and Technical/Specialist career paths, the current one-year probationary period does not always provide managers the time needed to properly assess the contribution and conduct of new hires in the higher education environment. New hires may be involved in extended training, degree completion and/or educational assignments away from their normal institution. A means of extending the opportunity for management to review and evaluate the contribution and potential of new hires is needed. Expansion of the current one-year probationary period affords management better control over the quality of employees required to meet mission needs and provide sufficient opportunity to evaluate contribution during the beginning of a career. Permanent employees will fulfill a maximum of three years probation that may be decreased to not less than one year. All newly hired employees may be subject to an extension of their probationary period equal to the length of any educational/training assignment that places the employee outside normal supervisory review. The modified probationary period applies to new hires or those who do not have reemployment or reinstatement eligibility. Aside from extending the probationary period, all other features of the current probationary period are retained. Probationary employees will be terminated when they fail to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When a supervisor decides to terminate an employee serving a probationary period because his/her work contribution or conduct during that period fails to demonstrate fitness or qualifications for continue employment, the supervisor shall terminate the employee's services by written notification thirty days prior to the effective date of the action. Probationary employees will receive all the benefits of the non-probationary permanent employees, with the exception that they may be separated without due cause. After fulfilling the probationary requirements, an employee will not be separated without full substantive and procedural rights.

4. Voluntary Emeritus Program

Under the demonstration project, the President of HINU has the authority to offer retired or separated individuals voluntary assignments in the institution and to accept the gratuitous services of those individuals. Voluntary Emeritus Program assignments are not considered employment by the Federal Government (except as indicated below). Thus, such assignments do not affect an employee's entitlement to buy-outs or severance payments based on earlier separation from Federal Service. This program may not be used to replace or substitute for work performed by employees occupying regular positions required to perform the mission of the institution.

The Voluntary Emeritus Program will ensure continued quality higher education by allowing retired employees to retain a presence in the HINU education community. Experienced workers will be available to enrich the institution's educational mission through mentorships and other service.

To be accepted into the Voluntary Emeritus Program, a volunteer must be recommended to the President by one or more HINU education managers. No one who applies is entitled to an emeritus position. The President must document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for two years.

To ensure success and encourage participation, the volunteer's Federal retirement pay (whether military or civilian) will not be affected while the volunteer is serving in emeritus status. Retired or separated Federal employees may accept an emeritus position without a ''break in service'' or mandatory waiting period.

Voluntary Emeritus Program volunteers will not be permitted to monitor contracts on behalf of the Government but may participate on any contract if no conflict of interest exists. The volunteer may be required to submit a financial disclosure form annually and will not be permitted to participate on any contracts where a conflict of interest exists.

An agreement will be established by the volunteer, the President, and the Personnel/Human Resources Office. The agreement must be finalized before the assumption of duties and shall include:

(a) a statement that the service provided is gratuitous, does not constitute an appointment in the Civil

Service, is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government because of the service are waived by the volunteer;

(b) a statement that the volunteer will be considered a Federal employee for the purposes of:

(I) Subchapter I of Chapter 81 of Title 5, U.S.C. (using the formula established in 10 U.S.C. 1588 for determination of compensation) (work-related injury compensation);

(ii) Chapter 171 of title 28, U.S.C. (tort claims procedure);

(iii) Section 552a of Title 5, U.S.C. (records maintained on individuals); and

(iv) Chapter 11 of title 18, U.S.C. (conflicts of interest).

(c) the volunteer's work schedule;

(d) length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) support provided by the activity (travel, administrative, office space, supplies, etc.);

(f) a one-page statement of duties and experience; a statement specifying that no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the Voluntary Emeritus Program a provision allowing either party to void the agreement with ten days' written notice and;

(I) the level of security access required.

B. Broad banding

1. Broadband Levels

Broad banding system will replace the current General Schedule (GS) and Wage Grade structure. Currently, the 15 grades of the General Schedule are used to classify positions and, therefore, to set pay. The General Schedule covers all white-collar work—administrative, technical, clerical, and professional. The Wage Grade System covers all blue-collar work — mechanical, technical, and manual labor.

Occupations with similar characteristics will be grouped together into three career paths with broadband levels designed to facilitate pay progression and to allow for more competitive recruitment of quality candidates at differing rates. Professional, Technical/Specialist and Support designate career paths as depicted in TABLE I. Competitive promotions will be less frequent, and movement through the broadband levels will be a more seamless process than under current procedures. Like the broadband systems used at the Department of the Navy (China Lake) and the National Institute of Standards and Technology (NIST) permanent demonstration projects, advancement within the system is contingent on merit.

There will be five broadband levels in the demonstration project, labeled I, II, III, IV, and V. Levels I through IV will include the current grades of GS–01 through GS–15. These are the grades in which the workforce employees are currently found. Wage grade compensation levels were converted to GS grade, then the GS grades was used in setting the upper and lower dollar limits of the broadband levels; however, once the employees are moved into the demonstration project, GS and WG grades will no longer apply. Broadband level V is reserved for the position of President of HINU and is limited by compensation equivalent to Executive Level III. The three career paths and their associated broadband levels are shown in TABLE I.

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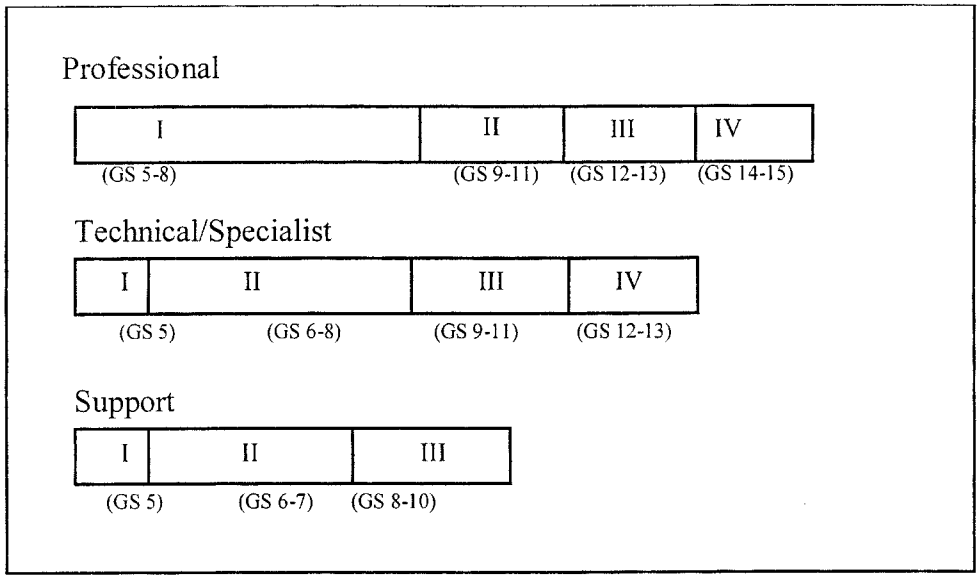

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Generally, employees will be converted into the broadband level that includes their permanent GS and WG grade of record. Each employee is assured an initial place in the system without loss of pay. As the rates of the General Schedule and/or Executive Schedule are increased due to general pay increases, the minimum and maximum rates of the broadband levels will also move up. Individual employees receive pay increases based on their assessments under the Contribution-based Compensation and Assessment System (CCAS). Since pay progression through the levels depends on contribution, there will be no scheduled within-grade increases (WGIs) or scheduled general pay increases for employees once the Broad banding system is in place. Currently no special salary rates are in effect at HINU. However, if a position is created that falls under a special salary rate, that rate will be converted to a broadband level comparable to the special salary rate and that special salary rate will no longer be applicable to the demonstration project employee.

Employees will receive the locality pay of their geographical area.

Newly hired personnel entering the system will be employed at a level consistent with the expected basic qualifications for the level, as determined by rating against qualification standards. Salaries of individual candidates will be based on academic qualifications and/or work experience. The hiring official will determine the starting salary based upon available labor market considerations relative to special qualifications requirements, scarcity of qualified applicants, programmatic urgency, and education/experience of the new candidates. In addition to the flexibility available under the Broad banding system, the authorities for retention, recruitment, and relocation payments granted under the Federal Employees' Pay Comparability Act of 1990 (FEPCA) can also be used.

The use of Broad banding provides a stronger link between pay and contribution to the mission of the institutions. It is simpler, less time consuming, and less costly to maintain. In addition, such a system is more easily understood by managers and employees, is easily delegated to managers, coincides with recognized career paths, and complements the other personnel management aspects of the demonstration project.

2. Simplified Assignment Process

Today's environment of downsizing and workforce transition mandates that the institution has maximum flexibility to assign individuals. Broad banding enables the institution to have the maximum flexibility to assign an employee within broad descriptions, consistent with the needs of the institutions and the individual's qualifications. Assignments may be accomplished as realignments and do not constitute a position change. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or institution consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

C. Classification

1. Occupational Series

The present General Schedule classification system has 434 occupational series that are divided into 22 occupational groups. The present Federal Wage classification system has 39 key ranking jobs. The HEWP currently covers numerous series and key ranking jobs in the 22 occupational groups and Federal Wage System. These occupational series and key ranking jobs will be maintained throughout the demonstration project.

2. Classification Standards

The present system of OPM classification standards will be used for identification of proper series and occupational titles of positions within the demonstration project. References in the position classification standards to grade criteria will not be used as part of the demonstration project. Rather, the CCAS broadband level factors, as aligned in the three career paths, will be used for the purpose of broadband level determination. Under the demonstration project, each broadband level will be represented by a set of descriptors.

3. Classification Authority

Under the HEWP, the President (or equivalent) will have delegated classification authority and may re-delegate this authority to subordinate management levels. Re-delegated classification approval must be exercised at least one management level above the first-line supervisor of the position under review, except in the case of those employees reporting directly to the president or equivalent. First-line supervisors will provide classification recommendations. The Personnel Director will provide on-going consultation and guidance to managers and supervisors throughout he classification process.

4. Statement of Duties and Requirements

Under the demonstration project's classification system, a new statement of duties and requirements (SDR) will replace the current position description. The SDR will combine the position information, staffing requirements, and contribution expectations into a single document. The new SDR will include a description of job-specific information, reference the CCAS broadband level descriptors for the assigned broadband level, and provide other information pertinent to the job. Supervisors may use a computer-assisted process to produce the SDR. The objectives in developing the new SDR are to: (a) Simplify the descriptions and the preparation process through automation; (b) provide more flexibility in work assignments; and '' provide a more useful tool for other functions of personnel management, *e.g.,* recruitment, assessment of contribution, employee development, and reduction in force.

5. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption or non-exemption determinations will be made consistent with criteria found in 5 CFR (Code of Federal Regulations) part 551.

All employees are covered by the FLSA unless they meet criteria for exemption. Positions will be evaluated as needed by comparing the duties and responsibilities assigned the broadband level descriptors for each broadband level, and the 5 CFR part 551 FLSA criteria.

6. Classification Appeals

An employee may appeal the occupational series, title, or broadband level of his/her own position at any time. An employee must formally raise the areas of concern to supervisors in the immediate chain of command, either verbally or in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the Haskell Classification Appeals Panel. Time periods for case processing under 5 CFR 511.605 apply.

An employee may not appeal the accuracy of the SDR document, the demonstration project classification criteria, or the pay-setting criteria; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project is based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the personnel/human resources office and will include copies of appropriate demonstration project criteria.

D. Contribution-Based Compensation and Assessment System

1. Overview

The purpose of the Contribution-based Compensation and Assessment System (CCAS) is to provide an equitable and flexible method for assessing and compensating the higher education workforce. CCAS allows for more employee involvement in the performance assessment process, increases communication between supervisors and employees, promotes a clear accountability of contribution by each employee, facilitates employee progression tied to institutional contribution, and provides an understandable basis for salary changes.

CCAS goes beyond a performance-based rating system. It measures the employee's contribution to the mission and goals of the institution, rather than how well the employee performed a job as defined by a performance plan. Past experience with the existing performance appraisal system indicates that performance plans are often tailored to the individual's level of previous performance. Hence, an employee may have been rewarded by salary step increases for accomplishing a satisfactory level of performance against a diminishing set of responsibilities. CCAS promotes salary adjustment decisions made on the basis of an individual's overall annual contribution when compared to all other employees and level of compensation. Therefore, larger-than-average salary increases are possible for employees who are determined to be ''under compensated—below the rails'' and smaller-than-average increases are permitted for employees who are deemed to be ''over compensated—above the rails'' in relationship to their institutional contributions.

An employee's performance is a synthesis of contributions that determines the overall contribution score (OCS). Contribution is measured by using a set of six factors, each of which is relevant to the success of the educational institution. The description for each factor will have five levels. Criteria for achieving these levels will be determined by each organizational unit, such as an academic department, within the school. Taken together, these factors capture the critical content of jobs in each career path. The factors may not be modified or supplemented. These factors are the same as those used to classify a position at the appropriate broadband level. Variable weights may be applied to the six factors for different job categories.

The total compensation or pay system is an important indicator of what an organization believes is important to its success. A well-designed compensation system provides a battery of tools to support organizational goals and outcomes. The design should be strategic, flexible, and customer-focused. The current compensation system, because it was implemented in a piecemeal fashion for a hierarchical organization, does not relate to educational needs and is cumbersome. The demonstration project will test a compensation system that is able to change based on the needs of the entire organization, of the taxpayer, and of the student being served.

Employees in all five broadband levels will have the same factors, with applications relevant to the SDR. The six factors are: (1) Primary Duty and Requirements (defined in the SDR); (2) Customer/Student Service; (3) Department and Institutional Service; (4) Teamwork/Supervision; (5) Professional Development Activity; (6) Communications/Research and Publications. These factors were chosen for assessing the yearly contribution of HINU employees in the three career paths (1) Professional, (2) Technical/Specialist, and (3) Support. Each factor has multiple levels of increasing contribution corresponding to the broadband levels within the relevant career paths. These levels will be delineated in the Operations Manual.

Factor 1: Primary Duty and Requirements refers to the activities that relate to the position description title, such as ''Carpenter'' relating to levels of achievement of carpenter duties; or ''Instructor'' relating to achievement of levels related to classroom instruction. The individual factor will relate to the activity described by the title.

Factor 2: Customer/Student Service pertains to activities that relate to direct and indirect contact with customers/students, and will cover areas related to advising, tutoring, mentoring, club sponsorship, and other activities that serve the students outside the classroom.

Factor 3: Departmental and Institutional Service refers to committee work, curriculum development, institutional programs (graduation, powwows), public presentations, academic lectures, and other activities that contribute to the worker's organizational unit and the institution as a whole.

Factor 4: Teamwork/Supervision refers to non-managerial employees (Teamwork) or managers (Supervision and Teamwork). Teamwork is a factor that describes any worker's contribution to the mission and goals of the organizational unit, through interactions with other employees. Additional managerial criteria includes supervision of workers. Management of resources is also part of this factor for supervisors.

Factor 5: Professional Development Activity refers to any training, academic course work, instructional conferences, or activity that contributes to the employee's ability to perform duties for the benefit of the institution of higher learning.

Factor 6: Communications/Research and Publications refers to ability to communicate, both receiving and transmitting information, in the workplace, through meetings, written documentation, electronic tools, and other appropriate means. Research and Publication refers to researching relevant sources for curriculum and instructional topic area purposes, and in some cases publishing the results of research.

2. Normal Pay Range (NPR)

The Contribution-based Compensation and Assessment System (CCAS) pay schedule provides a direct link between increasing levels of contribution and increasing salary. This is shown by the graph in Figure 1. The horizontal axis spans from 0 to the maximum overall contribution score (OCS) of 100, with a notional ''very high'' score of 115 for those employees who are capped at the top of their broadband level. The vertical axis spans from zero dollars to the dollar equivalent of Executive Schedule Level III. With the exception of the president's pay rate, this range encompasses the full salary (excluding locality pay) paid under this demonstration, from GS–1, step 1, through GS–15, step 10, for Calendar Year 2000 (CY00). The president's position is currently a GS–14/15. The salary range for the president's position has been extended to Executive Service Level III. The president's salary is the only salary that may increase beyond GS–15 step 10. Each year the rails for the NPR are adjusted upward on the general pay increase under 5 U.S.C. 5303.) The area between the upper and lower rail is considered the normal pay range (NPR). Employees whose annual overall contribution score (OCS) plotted against their base salary falls on or within the rails are considered ''appropriately compensated.'' Employees whose salaries fall below the NPR for their overall contribution score (OCS) are considered ''under compensated—below the rails (B),'' and those falling above the NPR are considered ''overcompensated—above the rails (A).'' The goal of CCAS is to make pay consistent with employees' contributions to the HINU mission.

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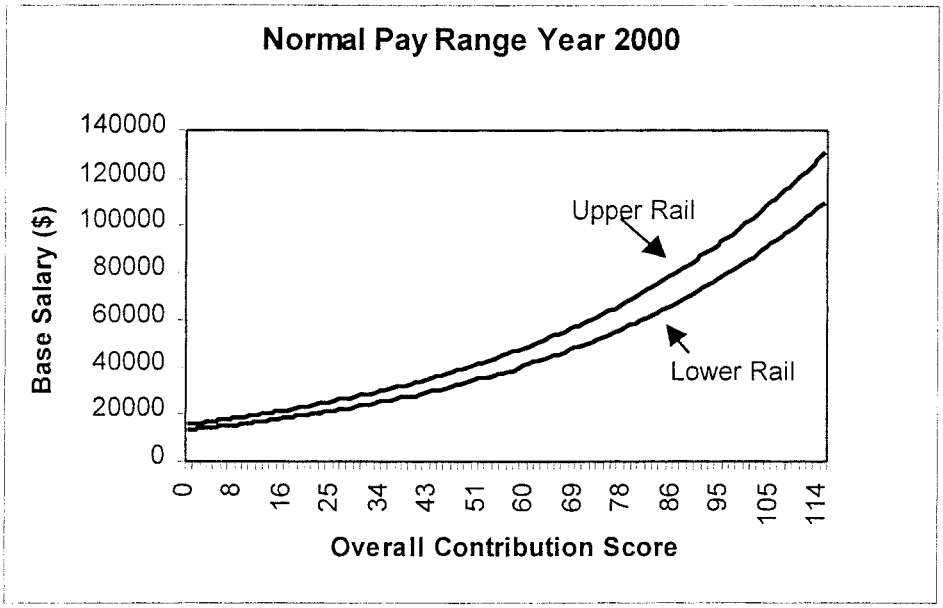

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The NPR was established using the following parameters:

1. The lowest possible score is an OCS score of 0, which equates to the lowest base salary paid under this demonstration, GS–1, step 1.

2. The OCS of 100 equates to the highest base salary paid employees under the president, GS-15, step 10. A ''very high'' score of 115 may be awarded for employees in the Professional Career Path. There is not a point range in the ''very high'' category; 115 points are awarded or the individual is not rated ''very high''. The same is true for the other two career paths: Technical/Specialist with a ''very high'' score of 95; Support with a ''very high'' score of 70.

3. Changes in OCS correspond to a constant percentage change in salary along the rails.

4. The upper and lower rails encompass an area of ±4.0 OCS points or ±8.0 percent in terms of salary, relative to the points established in parameters 1 and 2, above.

Given these constraints, the formulae for the rails found in Figure 1 are:

Salary upper rail = (GS–1 Step 1)*(1.0800)*(1.020043)) OCS;

Salary lower rail = (GS–1 Step 1)*(0.9200)*(1.020043)) OCS.

Formula results were normalized using a 100 point scale. The pay schedule and the NPR are the same for all the career paths. What varies among the career paths are the beginnings and endings of the broadband levels. The minimum and maximum numerical OCS values and associated base salaries for each broadband level by career path are provided in TABLE II. These minimum and maximum breakpoints represent the lowest and highest General Schedule (GS) salary rate for the grades banded together and, therefore, the minimum and maximum salaries possible for each level. Each year, the rails for the NPR are adjusted based on the General Schedule pay increase granted to the Federal workforce.

Employees will enter the demonstration project without a loss of pay and without a CCAS score. The first CCAS score will result from the first annual CCAS assessment process. Until then, no employee is inappropriately compensated. Employees, however, may determine their expect contribution range by locating the intersection of their salary with the rails of the NPR. Future CCAS assessments may alter an employee's position relative to these rails.

TABLE II – OCS and Salary Ranges by Broadband Level*

Support			
Broadband Level	GS Grades	Normal OCS Range	Salary Range
I	1-5	0-25	13,870 - 27,778
II	6-7	23-35	23,820 – 34,408
III	8-10	31-47	29,315 – 46,359

Technical Specialist			
Broadband Level	GS Grades	Normal OCS Range	Salary Range
I	5	18-25	21,370 – 27,778
II	6-8	23-39	23,820 – 38,108
III	9-11	36-51	32,380 – 50,932
IV	12-13	51-66	46,955 - 72,586

Professional			
I	5-8	18-39	21,370 – 38,108
II	9-10	34-49	32,380 – 46,359
III	11-13	42-68	39,178 – 72,586
IV	14-15	64-80	65,983 – 100,897

*Not including locality pay

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The pay schedule and the NPR are the same for all the career paths. What varies among the career paths are the beginnings and endings of the broadband levels. The minimum and maximum numerical OCS values and associated base salaries for each broadband level by career path are provided in TABLE II. These minimum and maximum breakpoints represent the lowest and highest General Schedule (GS), Wage Grade (WG), and Executive Level III salary rates for the grades banded together and, therefore, the minimum and maximum salaries possible for each level. Locality salary adjustments are not included in the NPR but are incorporated in the demonstration participants' pay.

Employees will enter the demonstration project without a loss of pay (see section V, Conversion) and without a CCAS score, or OCS. The first CCAS score will result from the first annual CCAS assessment process. Until the first CCAS assessment process is completed no employee is over or under compensated. However, employees may determine their expected contribution range by locating the intersection of their salary with the rails of the NPR. Future CCAS assessments may alter an employee's position relative to these rails.

3. CCAS Assessment Process

The annual CCAS assessment cycle begins on August 1 and ends on July 30 of the following year, with the exception of the first year of the demonstration project, which will begin at the project's inception on October 1, 2000, and end July 30, 2001. At the beginning of the annual assessment cycle, the broadband level descriptors will be provided to employees so that they know the basis on which their contribution will be assessed for their pay pool. (A pay pool is a group of employees among whom the CCAS dollars are calculated and distributed. The President of the institution determines the pay pool structure (see Section III D 04). At that time, employees will be advised that all factors are critical and weights will be established, if appropriate. Key terms will be defined or clarified. Supervisor and employee discussion of specific work assignments, standards, objectives, and the employee's contributions within the CCAS framework should be conducted on an ongoing basis.

Near the end of the annual (August 1 to July 30) assessment cycle, the immediate supervisor (rating official) meets with employees, requesting them to summarize their contributions for each factor. They will complete the rating of individual employees by September 30.

From employees' inputs and his/her own knowledge from all available sources, the rating official identifies for each employee the appropriate contribution level (1, 2, 3, 4, or 5) for each factor.

HINU will establish a performance feedback system using a 360-degree feedback process. The system will use 360-degree feedback from: (a) An employee's manager, (b) peers, and (c) customers. Performance feedback will provide all employees with information on their contribution to the

organization's performance. It will also help them identify their training and developmental needs for the yearly cycle by pinpointing areas of strength and items needing improvement. This information contributes to Learning Contracts. Every employee will have a Learning Contract that will consider needs identified by employee development measures, the performance feedback system, and a certification/recertification system.

The results of the 360-degree performance feedback will go only to the employee, with group or area results being summarized for the manager. In areas with a single employee, the results will be provided to the manager. If an employee appeals his/her rating, the employee may use 360-degree supporting information in the appeal of the original assessment. Training in the use of the performance feedback system will be provided to all employees.

The rating officials within each pay pool (including second-level supervisors) meet together to ensure consistency and equity of the contribution assessments. Then the rating officials calculate the final overall contribution score (OCS) and inform employees of OCSs by October 30. Payout occurs the first full pay period of January. The project's first payout will be the first full pay period of January 2002.

To determine the OCS, numerical values are assigned based on the contribution levels of individuals, using the ranges shown in TABLE II. Generally, the OCS is calculated by averaging the numerical values assigned for each of the six factors. (All OCS values will be rounded to the nearest whole number.) However, at the discretion of the rating official, different weights may be applied to the factors to produce a weighted average, provided that the weights are applied uniformly across the pay pool and employees are advised in advance, *i.e.,* at the beginning of the rating period. Weighting may not result in any factor becoming zero.

The rating officials (including second-level supervisors) meet again to review the OCS for all employees, correcting any inconsistencies identified and making the appropriate adjustments in the factor assessments, and placing the employees in rank order.

The pay pool panel (pay pool manager and the rating officials in the pay pool who report directly to him/her) conducts a final review of the OCS and the recommended compensation adjustments for pay pool members. The pay pool panel has the authority to make OCS adjustments, after discussion with the initial rating officials, to ensure equity and consistency in the ranking of all employees. Final approval of OCS rests with the pay pool manager. The OCS approved by the pay pool manager becomes the final OCS. Rating officials will communicate the factor scores and OCS to each employee and discuss the results by November 30.

If on August 1, the employee has served under CCAS for less than six months, the rating official will wait for the subsequent annual cycle to assess the employee. The first CCAS assessment must be rendered within 18 months after entering the demonstration project.

When an employee cannot be evaluated readily by the normal CCAS assessment process due to special circumstances that take the individual away from normal duties or duty station (*e.g.,* long-term full-time training, active military duty, extended sick leave, leave without pay, union activities, etc.), the rating official will document the special circumstances on the assessment form. The rating official will then determine which of the following options to use:

(a) Re-certify the employee's last OCS; or

(b) Presume the employee is contributing consistently with his/her pay level and will be given minimally the full general increase.

Pay adjustments will be made on the basis of the CCAS assessment (OCS) or substitute determination and the employee's rate of basic pay. Pay adjustments are subject to payout rules discussed in section III D 4. Final pay determinations will be made by the pay pool manager. CCAS scores can only be adjusted after discussion with the rating official.

Pay adjustments will be documented by SF–50, Notification of Personnel Action. For historical evaluation and analytical purposes, dates on the effective date of CCAS assessments, actual assessment scores, the actual salary increases, amounts contributed to the pay pool, and applicable ''bonus'' amounts will be maintained for each demonstration project employee.

4. Pay Pools

The pay pool structure and allocated funds are under the authority of the President of HINU. The following minimal guidelines will apply to pay pool determinations: (a) A pay pool(s) is based on the institution's organizational structure and should include a range of salaries and contribution levels; (b) a pay pool must be large enough to include a second level of supervision, since the CCAS process uses a group of supervisors in the pay pool to determine OCS and recommended salary adjustments; and—neither the pay pool manager nor the supervisors within a pay pool will recommend or set their own individual pay levels.

The amount of money available in the pay pool fund is determined by (1) the amount of the annual general pay increase (G): And an Incentive amount (I), made up of money that would have been available for quality step increases, within grade in creases, promotions between grades encompassed in the same broadband level, and other appropriate factors. The amount of I will be determined each year by the President, and will be 2.4 percent for the first year. The amount of I may be adjusted as necessary each year to maintain cost discipline. The dollar amount of I will be computed each year based on a percentage of the base pay. Salaries of employees in the pay pool as of September 30. Though not all funds within a pay pool must be distributed each year as pay or bonuses a pool of funds are to be set aside for pay purposes and may not be used for other purposes before annual pay calculations are made.

5. Salary Adjustment Guidelines

After the initial conversion into the CCAS, employees' yearly contributions will be determined by the CCAS process described above, and their overall contribution scores versus their current rate of basic pay will be plotted on a graph along with the NPR. Refer back to Figure 1. The position of those points relative to the upper and lower rails of the NPR gives a measure of the employee's compensation (salary) versus contribution (OCS). Employees fall into one of three categories: Overcompensated—above the upper rail; appropriately compensated—between the rails; or inappropriately compensated—below the lower rail. Depending on the category into which an employee falls, he/she may be eligible for up to three forms of additional compensation. The pay pool panel has the option of awarding the employee up to the full general pay increase (as authorized by Congress and the President), a contribution rating increase (an increase in base salary), and/or a contribution award (a lump-sum payment that does not affect base salary). Employees on retained rate in the demonstration plan will receive pay adjustments in accordance with 5 U.S.C. 5363 and 5 CFR part 536. An employee receiving a retained rate is not eligible for a contribution rating increase, since such increases are limited by the maximum salary rate for the employee's broadband level.

An employee designated as overcompensated, above-the-upper-rail, could have his/her general pay increase reduced or denied and would not be eligible for a contribution rating increase. An employee designated as appropriately compensated, between-the-rails, will receive the general increase and a contribution rating increase provided the increase does not exceed the upper rail of the NPR for the employee's OCS or maximum salary for current broadband level. An employee designated as inappropriately compensated, below-the-lower-rail, would be eligible for the general pay increase and a contribution rating increase. The contribution rating increase may not exceed 6% above the lower rail of the maximum salary for the current broadband level.

A contribution rating increase greater than 20% requires the president's approval. Employees in the categories (1) appropriately compensated and (2) inappropriately compensated, below-the-lower-rail, are eligible for contribution awards up to $10,000 with the approval of the pay pool manager. Amounts exceeding $10,000 require the president's approval.

Basic pay plus locality pay may not exceed Executive Level III basic pay; upper rail of NPR for employee's OCS; or maximum salary for current broadband level. A pay adjustment may not exceed 6% above the lower rail, or the maximum salary for current broadband level. A pay adjustment over 20% requires the President's approval. The pay pool manager approves any increase up to $10,000. Amounts exceeding $10,000 require the president's approval.

In general, those employees who fall in the inappropriately compensated (B, below-the-rails) category of the NPR should expect to receive greater percentage salary increases than those who fall in the inappropriately compensated (A, above-the-rails) category. Over time, all employees outside the rails will migrate closer to the normal pay range and receive a salary appropriate for their level of contribution.

Employees whose OCS would result in a base pay increase such that the salary exceeds the maximum salary for their current broadband level may receive a contribution bonus equaling the difference. This bonus will be paid as a lump sum payment, and will not add to base pay.

HINU will establish Total Awards Budget (TAB) for the institution. The TAB will be set at not less than one percent of the institution's total salary budget calculated on September 30 of each year. The awards budget is separate from Pay Pool funds. Awards budget includes funds formerly spent for performance awards and incentive awards. The awards budget will be available for use as contribution awards and all other incentive awards. Not more than 90 percent of the TAB may be spent for contribution awards each year. This will allow funds for incentive awards not related to CCAS contributions. TAB funds will be paid as lump sum amounts and will not add to base pay. For the first year of the project, the total awards budget will be set at 1.3 percent of total salaries.

Each pay pool manager will set the necessary guidelines for pay adjustments in the pay pool. Decisions will be consistent within the pay pool, reflect cost discipline over the life of the demonstration project, and be subject to Administrative review. The maximum available pay rate under this demonstration project will be the rate for a Executive Level III. Notwithstanding any other provision of this demonstration project, if General Schedule employees receive an increase under 5 U.S.C. 5303 that exceeds the amount otherwise required by that section on the date of this notice, the excess portion of such increase shall be paid to demonstration project employees in the same manner as to General Schedule employees. The excess portion of such increase shall not be distributed through the pay pool process.

6. Movement Between Broadband Levels

It is the intent of the demonstration project to have career growth accomplished through the broadband levels. Movement within a broadband level will be determined by contribution and salary increases following the CCAS process. Movement to a higher broadband level is a competitive action. Movement to a lower broadband level may be voluntary or involuntary.

Broadband levels derive from salaries of the banded GS grades and equivalent Wage Grades. The lowest salary of any given broadband level is that for step 1 of the lowest GS grade in that broadband level. Likewise, the highest salary of any given broadband level is that for step 10 of the highest GS grade in that broadband level. There is a natural overlap in salaries in the GS grades that also occurs in the broadband system. Since the OCS is directly related to salaries, there is also an overlap between OCS across broadband levels.

Under the demonstration project, managers are provided greater flexibility in assigning duties by moving employees among positions within their broadband level. If there are vacancies at higher levels, employees may be considered for promotion to those positions in accordance with competitive selection procedures.

Under competitive selection procedures, the selecting official(s) may consider candidates from any source based on job-related, merit-based methodology. Similarly, if there is sufficient cause, an employee may be demoted to a lower broadband level position according to the contribution reduction-in-pay or removal procedures discussed in section III E 2.

7. Implementation Schedule

The 2000 employee annual appraisal will be done according to the performance plan rules in effect at the time of the 2000 close-out. Employees will be moved by personnel action into the demonstration project and into the appropriate broadband level on October 1, 2000, or as specified in the institution's implementation plan. The first CCAS assessment cycle will run from October 1 2000 to July 30, 2001. Overall assessment scores and pay adjustments resulting from the 2001 assessment cycle will be paid out the first full pay period of January 2002.

8. CCAS Grievance Procedures

Bargaining unit employees who are covered under a collective bargaining agreement may grieve CCAS pay determinations under the grievance-arbitration provisions of the agreement. Other employees not included in a bargaining unit may utilize the appropriate administrative grievance procedures to raise a grievance against CCAS pay decisions (5 CFR Part 771), with supplemental instructions as described below.

An employee may grieve the OCS (rating of record) If an employee is covered by a negotiated grievance procedure that includes grievances over appraisal scores, then the employee must use that procedure. If an employee is not in a bargaining unit, or is in a bargaining unit but grievances over assessment scores are not covered under a negotiated grievance procedure, then the employee may use the administrative grievance procedure (5 CFR Part 771) with supplemental actions described in the following below.

The employee will submit the grievance initially to the first line supervisor, the rating official, who will submit a recommendation to the pay pool panel. The pay pool panel may accept the rating official's recommendation or reach an

independent decision. In the event that the pay pool panel's decision is different from the rating official's recommendation, appropriate justification will be provided. The pay pool panel's decision is final unless the employee requests reconsideration by the next higher official to the pay pool manager. The pay-pool manager will render the final decision on the grievance.

Table IV will be used for the CCAS rating, which will determine additional years of retention service credit during Reduction in Force, according to BIA procedures.

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TABLE IV - RETENTION SERVICE CREDIT ASSOCIATED WITH ASSESSMENT RESULTS

Professional

Broadband Level	OCS Range				
	OCS Normal Range	Years of Retention Service Credit			
		20	16	12	0
I	21 - 48	41 or above	31 - 40	21 - 30	20 or lower
II	41 - 60	53 or above	48 - 52	41 - 47	40 or lower
III	51 - 84	75 or above	63 - 74	51 - 82	50 or lower
IV	79 - 100	94 or above	86 - 93	79 - 85	78 or lower

Technical/Specialist

Broadband Level	OCS Range				
	OCS Normal Range	Years of Retention Service Credit			
		20	16	12	0
I	22 - 30	27 or above	24 - 26	22 - 24	21 or lower
II	44 - 63	42 or above	35 - 41	28 - 34	27 or lower
III	44 - 63	58 or above	51 - 57	44 - 50	43 or lower
IV	63 - 81	77 or above	70 - 76	63 - 69	62 or lower

Support

Broadband	OCS	OCS Range			
		Years of Retention Service Credit			
Level	Normal Range	20	16	12	0
I	0 - 30	21 or above	11 - 20	1 - 10	0
II	28 - 42	40 or above	35 - 39	23 - 34	28 or lower
III	38 - 58	53 or above	46 - 52	39 - 45	38 or lower

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9. Contribution-Based Reduction-in-Pay or Removal Actions

CCAS is an assessment system that goes beyond a performance-based rating system. Contribution is measured against the CCAS factors for the three career paths, each having multiple levels of increasing contribution. (For the purposes of this section, these factors are considered critical and are synonymous with critical elements as referenced in 5 U.S.C. Chapter 43.) This section applies to reduction-in-pay or removal of demonstration project employees based solely on inadequate contribution. Inadequate contribution in any one factor at any time during the assessment period is considered grounds for initiation of reduction-in-pay or removal action. The following procedures replace those established in 5 U.S.C. 4303 pertaining to reductions in grade or removal for unacceptable performance except with respect to appeals of such actions. 5 U.S.C. 4303(e) provides the statutory authority for appeals of contribution-based actions. As is currently the situation for performance-based actions taken under 5 U.S.C. 4303, contribution-based actions shall be sustained if the decision is supported by substantial evidence and the Merit Systems Protection Board shall not have mitigation authority with respect to such actions. The separate statutory authority to take contribution-based actions under 5 U.S.C. 75, as modified in the waiver section of this notice (section IX), remains unchanged by these procedures.

When an employee's contribution in any factor is at or less than the mid-point of the next lower broadband level (or a factor score of zero for broadband level I employees), the employee is considered to be contributing inadequately. In this case, the supervisor must inform the employee, in writing, that unless the contribution increases to a score above the midpoint of this next lower broadband level (thereby meeting the standards for adequate contribution) and is sustained at this level, the employee may be reduced in pay or removed. For broadband level I employees, a factor score that increases to the midpoint and is sustained at that level is determined to be adequate.

The written notice informing the employee that he/she may be reduced in pay or removed, affords the employee a reasonable opportunity (a minimum of 60 days) to demonstrate acceptable contribution with regard to identifiable factors. As part of the employee's opportunity to demonstrate adequate contribution, he or she will be placed on a Contribution Improvement Plan (CIP). The CIP will state how the employee's contribution is inadequate, what improvements are required, recommendations on how to achieve adequate contribution, assistance that the agency shall offer to the employee in improving inadequate contribution, and consequences of failure to improve.

Additionally, when an employee's contribution plots in the area above the upper rail of the normal pay range, the employee is considered to be contributing inadequately. In this case, the supervisor has two options. The first is to take no action but to document this decision in a memorandum for the record. A copy of this memorandum will be provided to the employee and to higher levels of management. The second option is to inform the employee, in writing, that unless the contribution increases to, and is sustained at, a higher level, the employee may be reduced in pay or removed.

These provisions also apply to an employee whose contribution deteriorates during the year. In such instances, the group of supervisors who meet during the CCAS assessment process may reconvene any time during the year to review the circumstances warranting the recommendation to take further action on the employee.

Once an employee has been afforded a reasonable opportunity to demonstrate adequate contribution but fails to do so, a reduction-in-pay (which may include a change to a lower broadband level and/or reassignment) or removal action may be proposed. If the employee's contribution increases to an acceptable level and is again determined to deteriorate in any factor within two years from the beginning of the opportunity period, actions may be initiated to effect reduction in pay or removal with no additional opportunity to improve. If an employee has contributed acceptably for two years from the beginning of an opportunity period, and the employee's overall contribution once again declines to an inadequate level, the employee will be afforded an additional opportunity to demonstrate adequate contribution before it is determined whether or not

to propose a reduction in pay or removal.

An employee whose reduction in pay or removal is proposed is entitled to a 30-day advance notice of the proposed action that identifies specific instances of inadequate contribution by the employee on which the action is based. The employee will be afforded a reasonable time to answer the notice of proposed action orally and/or in writing.

A decision to reduce in pay or remove an employee for inadequate contribution may be based only on those instances of inadequate contribution that occurred during the two-year period ending on the date of issuance of the proposed action. The employee will be issued written notice at or before the time the action will be effective. Such notice will specify the instances of inadequate contribution on which the action is based and will inform the employee of any applicable appeal or grievance rights.

All relevant documentation concerning a reduction in pay or removal that is based on inadequate contribution will be preserved and made available for review by the affected employee or a designated representative. At a minimum, the records will consist of a copy of the notice of proposed action; the written answer of the employee or a summary when the employee makes an oral reply; and the written notice of decision and the reasons thereof, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate adequate contribution.

E. Special Situations Related to Pay

1. Change in Assignment

The CCAS concept, using the Broad banding structure, provides flexibility in making changes in assignments. In many cases an employee can be reassigned, without change in their rate of basic pay, within broad descriptions, consistent with the needs of the institution, and commensurate with the individual's qualifications. Subsequent institutional assignments to projects, tasks, or functions requiring the same level and area of expertise and the same qualifications would not constitute an assignment outside the scope or coverage of the current level descriptors. In most cases, such assignments would be within the factor descriptors and could be accomplished without the need to process a personnel action. Assignment resulting in series change, broadband level change, or change to KSAs shall be accomplished by official personnel action. Thus, this approach allows for broader latitude in institutional assignments and streamlines the administrative process. Rules for specific types of assignments under CCAS follow:

(a) Promotions. When an employee is promoted to a higher broadband level, the salary upon promotion will be at least six percent, but not more than 20 percent, greater than the employee's current salary. However, if the minimum rate of the new broadband level is more than 20 percent greater than the employee's current salary, then the minimum rate of the new broadband level is the new salary. The employee's salary may not exceed the salary range of the new broadband level. When an employee receiving a retained rate is promoted to a higher broadband level, at a minimum, the employee's salary upon promotion will be set in the higher broadband level at six percent higher than the maximum rate of the employee's existing broadband level; or at the employee's existing retained rate, whichever is greater.

(b) Competitive Selection for a Position with Higher Potential Salary. When an employee is competitively selected for a position with a higher target broadband level than previously held (*e.g.,* Upward Mobility), upon movement to the new position the employee will receive the salary corresponding to the minimum of the new broadband level or the existing salary, whichever is greater.

(c) Voluntary Change to Lower Broadband Level/Change in Career Path (except RIF). A provision exists today for an employee to request a change to lower grade. If that request is totally the employee's choice, then the employee's salary is lowered accordingly. To handle these special circumstances, employees must submit a request for voluntary pay reduction or pay raise declination during the 30-day period immediately following the annual payout, and show reasons for the request. All actions will be appropriately documented. Although the rationale behind such a voluntary request varies under CCAS, a voluntary request for a pay reduction or a voluntary declination of a pay raise would effectively put an overcompensated employee's pay closer to or within the normal pay range. Since an objective of CCAS is to properly compensate employees for their contribution, the granting of such requests is consistent with this goal. Under normal circumstances, all employees should be encouraged to advance their careers through increasing contribution rather than trying to be under compensated at a fixed level of contribution. When an employee accepts a voluntary change to lower broadband level or different career path, salary may be set at any point within the broadband level to which appointed, except that the new salary will not exceed the employee's current salary or the maximum salary of the broadband level to which assigned, whichever is lower.

(d) Involuntary Change to Lower Broadband Level Without Reduction in Pay Due to Contribution-based Action. Due to inadequate contribution, an employee's salary may fall below the minimum rate of basic pay for the broadband level to which he/she is assigned. When an employee is changed to a lower broadband level due to such a situation, this movement is not considered an adverse action.

(e) Involuntary Reduction in Pay, to Include Change to Lower Broadband Level and/or Change in Career Path Due to Adverse Action. An employee may receive a reduction in pay within his/her existing broadband level and career path; be changed to a lower broadband level; and/or be moved to a new position in a different career path due to an adverse action. In these situations, the employee's salary will be reduced by at least 6 percent, but will be set no lower than the minimum salary of the broadband level to which assigned. Employees placed into a lower broadband due to adverse action are not entitled to pay retention.

(f) Reduction-in-Force (RIF) Action (including employees who are offered and accept a vacancy at a lower broadband level or in a different career path). The employee is entitled to pay retention if all Title 5 conditions are met.

(g) Return to Limited or Light Duty from a Disability as a Result of Occupational Injury to a Position in a Lower Broadband Level or to a Career Path with Lower Salary Potential than Held Prior to the Injury. The employee is entitled indefinitely to the salary held prior to the injury and will receive full general and locality pay increases.

2. Academic Ethics

According to the Ethics Reform Act of 1989, Federal employees may not accept outside salaries, stipends, and/or honoraria directly related to work duties. This prevents conflict of interest for employees who would use information acquired through federal employment to seek outside gain. However, normal academic activities fall outside the restrictions of usual government employment. The 1991 Ethics Manual for federal employees (http://www.house.gov/Ethics/

ethicschap3.html) clarifies acceptable guidelines for outside employment: ''The Committee has determined that the following types of compensation are not honoraria: Compensation for activities where speaking, appearing, or writing is only an incidental part of the work for which payment is made (*e.g.,* conducting research) * * * '' Haskell employees, like other Federal employees, may engage in outside activities that follow the guidelines of the 1991 Ethics Manual.

F. Revised Reduction-In-Force (RIF) Procedures

RIF shall be conducted according to the provisions of 5 CFR part 351 and BIA procedures except as otherwise specified below.

Displacement means the movement via RIF procedures of an employee into a position held by an employee of lower retention standing.

Employees are entitled to additional years of retention service credit in RIF, based on assessment results. This credit will be based on the employee's three most recent annual overall contribution scores (OCSs) of record received during the four-year period prior to the issuance of RIF notices. However, if at the time RIF notices are issued, three CCAS cycles have not yet been completed, the annual performance rating of record under the previous performance management system will be substituted for one or more OCSs, as appropriate. An employee who has received at least one but fewer than three previous ratings of record shall receive credit for performance on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received. Employees with three OCS or performance ratings shall receive credit for performance on the basis of the value of the actual ratings of record divided by three. In cases where an individual employee has no annual OCS or performance rating of record, an average OCS or performance rating will be assigned and used to determine the additional service credit for that individual. (This average rating is derived from the current ratings of record for the employees in that individual's career path and broadband level within the competitive area affected by a given RIF.) See TABLE IV, Retention Service Credit Associated with Assessment Results.

When a competing employee is to be released from his/her position, the activity shall establish separate master retention lists for the competitive and excepted services, by type of work schedule and (for excepted service master retention lists) appointing authority. Within the above groups, competing employees shall be listed on the master retention list in compliance with 5 CFR part 3551 and BIA procedures.

Employees will be ranked in order of their retention standing, beginning with the most senior employee. This employee may displace an employee of lower retention standing occupying a position that is at the same or lower broadband level and that is in a series for which the senior employee is fully qualified, to include a series in a different career path. The undue interruption standard of 5 CFR 351.403(a)(1) shall serve as the criterion to determine if an employee is fully qualified. In addition, to be fully qualified. (However, statutory waivers shall continue to apply) The displaced employee must be appointed under the same authority, if excepted service, and in the same work schedule. Offer of assignment shall be to the position that requires no reduction or the least possible reduction in broadband. Where more than one such position exists, the employee must be offered the position encumbered by the employee with the lowest retention standing.

Displacement rights are normally limited to one broadband level below the employee's present position. However, a preference-eligible employee with a compensable service-connected disability of 30 percent or more may displace up to the two broadband levels below the employee's present position (or the equivalent of five General Schedule grades) below the employee's present level.

Employees covered by the demonstration are not eligible for grade retention. Pay retention will be granted to employees downgraded by reduction in force whose rate of basic pay exceeds the maximum salary range of the broadband level to which assigned. Such employees will be entitled to retain the rate of basic pay received immediately before the reduction, not to exceed 150% of the maximum salary of the lower broadband level.

Under the demonstration project, all employees affected by a reduction-in-force action, other than a reassignment, maintain the right to appeal to the Merit Systems Protection Board (MSPB) if they believe the process/procedures were not properly applied.

Prior to RIF, employees may be offered a vacant position in the same broadband as the highest broadband available by displacement. Employees may also be offered placement into vacant positions for which management has waived the qualifications requirements. If the employee is not placed into a vacant position and cannot be made an offer of assignment via displacement, the employee shall be separated.

G. Academic and Certificate Training

Trained and educated personnel are a critical resource in a higher education institution. This demonstration recognizes that training and development programs are essential to improving the performance of individuals in the higher education workforce, and thereby raising the overall level of performance of the higher education workforce, and that a well-developed training program is a valuable tool for recruiting and retaining motivated employees. The HEWP authorizes degree and certificate training for HINU employees, and authorizes payment for these degree and certificate training programs. This authorization will facilitate continuous acquisition of advanced, specialized knowledge essential to the higher education workforce, and provide a capability to assist in the recruiting and retaining of personnel critical to the present and future requirements of the higher education workforce. Funding for training is the responsibility of the institution.

H. Sabbaticals

The president of HINU will have the authority to grant sabbaticals without application to higher levels of authority. These sabbaticals will permit employees to engage in study, research, or work experience that contributes to their development and effectiveness. The sabbatical provides opportunities for employees to acquire knowledge and expertise that cannot be acquired in the normal working environment. These opportunities should result in enhanced employee contribution. The spectrum of available activities under this program is limited only by the constraint that the activity contribute to the institution's mission and to the employee's development. The program can be used for advanced education; employee development; or training with industry or on-the-job work experience with public, private, or nonprofit organizations. It enables an employee to spend time in an academic or work environment or to take advantage of the opportunity to devote full-time effort to technical, academic, or managerial research.

The HEWP sabbatical program will be available to all demonstration project employees who have seven or more years of service in the institution. Each sabbatical will be of three to twelve months' duration and must result in a

product, service, report, or study that will benefit the higher education community as well as increase the employee's individual effectiveness. A process for application for a sabbatical will be established by the mechanism to recommend sabbaticals to the president or equivalent, who has final approval authority, and who must ensure that the program benefits both the higher education workforce and the individual employee. Funding for the employee's salary and other expenses of the sabbatical is the responsibility of the institution.

IV. Training

The key to the success or failure of the proposed demonstration project will be the training provided for all involved. This training will provide not only the necessary knowledge and skills to carry out the proposed changes, but will also lead to participant commitment to the program.

Training prior to of implementation and throughout the demonstration will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include: (1) A description of the personnel system; (2) how employees are converted into and out of the system; (3) the pay adjustment and/or bonus process; (4) the new position requirements document; (5) the new classification system; and (6) the contribution-based compensation and assessment system.

A. Supervisors

The focus of this project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, as well as skills training in using the classification system, position requirements document, and contribution assessment software developed for use in the project.

B. Administrative Services Staff

The Vice President for Administration, the Director of Personnel and the HEWP administrative staff will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will receive training in the procedural and technical aspects of the project.

C. Employees

Prior to implementation, all employees covered under the demonstration project will be trained through various media. This training is intended to fully inform all affected employees of all significant project policies procedures, and processes.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee-protection approach that ensures each employee's initial placement into a broadband level without loss of pay. Automatic conversion from the permanent GS grade and step of record at time of conversion into the new broadband system will be accomplished.

Adjustments to the employee's base pay for step increase and non-competitive career ladder promotion will be computed based on the current value of the step or promotion increase and a prorated share based upon the number of weeks an employee has completed towards the next higher step or grade, per paragraph VIII A. This conversion process ''buy-in is applicable to employees only at the initial entry no the demonstration project in accordance with the approved implementation plan. All HEWP employees will be eligible for the future locality pay increases of their geographic area.

Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary. If the employee's rate of basic pay exceeds the maximum rate of basic pay for the broadband level corresponding to the employee's GS grade, the employee will remain at that broadband level and will receive a retained rate. Employees who enter the demonstration project later by lateral reassignment or transfer will enter at their current basic pay with no loss or gain due to transfer, and will not receive the ''buy-in'' applied during the initial conversion process of their institution into the demonstration project.

B. Conversion Back to the Former System

If a demonstration project employee is moving to a General Schedule (GS) position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedure will be used to convert the employee's project pay band to a GS grade and the employee's demonstration rate of pay to a GS rate of pay. The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral assignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.,* promotion rules, highest previous rate rules, pay retention rules) as if the GS-converted grade and rate were actually in effect immediately before the employee left the demonstration project.

1. Grade-Setting Provisions

An employee is converted to one of the grades in their current broadband level according to the following rules:

(i) The employee's adjusted rate of pay under the demonstration project (including any locality payment) is compared with the step 4 rate in the highest applicable GS rate range. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade-interval series, only odd-numbered grades are considered below GS–11.

(ii) If the employee's adjusted demonstration project rate equals or exceeds the applicable step 4 rate of the highest GS grade in the band, the employee is converted to that grade.

(iii) If the employee's adjusted demonstration project rate is lower than the applicable step 4 rate of the highest grade, the adjusted rate is compared with the step 4 rate of the second-highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds the step 4 rate of the second-highest grade, the employee is converted to that grade.

(iv) This process is repeated for each successively lower grade in the band until a grade is found in which the employee's adjusted demonstration

project rate equals or exceeds the applicable step 4 rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step 4 rate of the lowest grade in the band, the employee is converted to the lowest grade.

(v) Exception: If the employee's adjusted demonstration project rate exceeds the maximum rate of the grade assigned under the above-described step 4 rule but fits in the rate range for the next higher applicable grade (*i.e.,* between step 1 and step 4), then the employee shall be converted to that next higher applicable grade.

(vi) Exception: An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral assignment, or lateral transfer into the demonstration project, unless since that time the employee has undergone a reduction in broadband level, reduction in pay based upon an adverse action, a contribution-based action, a reduction-in-force action, or a voluntary change to lower broadband level.

2. Pay-Setting Provisions

An employee's pay within the converted GS grade is set by converting the employee's demonstration project rate of pay to a GS rate of pay in accordance with the following rules:

(i) The pay conversion is done before any geographic movement or other pay-related action that coincides with the employee's movement or conversion out of the demonstration project.

(ii) An employee's adjusted rate of pay under the project (including any locality payment) is converted to a GS rate on the highest applicable rate range for the converted GS grade. (For this purpose, a GS rate range includes a rate range in (1) the GS base schedule, (2) an applicable locality rate schedule, or (3) an applicable special rate schedule.)

(iii) If the highest applicable GS rate range is a locality pay rate range, the employee's adjusted project rate is converted to a GS locality rate of pay. If this rate falls between two steps in the locality-adjusted schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay would be the GS base rate corresponding to the converted GS locality rate (*i.e.,* same step position). If this employee is also covered by a special rate schedule as a GS employee, the converted special rate will be determined based on the GS step position. This underlying special rate will be basic pay for certain purposes for which the employee's higher locality rate is not basic pay.

(iv) If the highest applicable GS rate range is a special rate range, the employee's adjusted demonstration project rate is converted to a special rate. If this rate falls between two steps in the special rate schedule, the rate must be set at the higher step. The converted GS unadjusted rate of basic pay will be the GS rate corresponding to the converted special rate (*i.e.,* same step position).

3. Employees Receiving a Retained Rate Under the Project

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her broadband level. The institution will confer with the Office of Personnel Management (OPM) to prescribe a procedure for determining GS-equivalent pay rates for employees receiving retained rates.

4. Years of Retention Service Credit and Contribution Provisions

Employees leaving the demonstration project will be assigned ratings of record that conform with pattern E of 5 CFR 430.208(d) based on the years of credit accumulated for the 3 most recent years during the last 4 years while under the demonstration project. Since the demonstration project does not make use of summary level designators (*e.g.,* Outstanding, Level 5. Highly Successful, Level 4; Fully Successful, Level 3; or Unacceptable, Level 1) used in the appraisal system and programs constructed under 5 U.S.C. Chapter 43 and 5 CFR part 430, the retention service credit that is based on the employee's OCS. Employees receiving a Medium or Higher OCS score will convert to a satisfactory rating in the current Federal appraisal system.

5. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. CCAS base salary increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

VI. Project Duration

The project evaluation plan addresses how each intervention will be comprehensively evaluated for at least the first five years of the demonstration project. Major changes and modifications to the interventions can be made through announcement in the **Federal Register**. At the five-year point, the entire demonstration project will be reexamined for: (a) Permanent implementation; (b) modification and additional testing; (c) extension of the evaluation period; or (d) termination.

VII. Evaluation Plan

Demonstration-authorizing legislation (Public Law 105–337) mandates evaluation of the demonstration project to assess the effects of project features and outcomes. The overall evaluation will consist of three phases—baseline, formative, and summary evaluations. The evaluation for the HEWP will be overseen by the Secretary, Department of the Interior, and Office of Indian Education Programs (OIEP). The main purpose of the evaluation is to determine the effectiveness of the personnel system changes to be undertaken. To the extent possible, strong direct or indirect relationships will be established between the demonstration project features, outcomes, and mission-related changes and personnel system effectiveness criteria. The evaluation approach uses an intervention impact model that specifies each personnel system change as an intervention, the expected effects of each intervention, the corresponding measures, and the data sources for obtaining the measures.

The specific measures to be collected using the different methods are determined from the goals and objectives stated for each intervention. Both qualitative and quantitative measures will be obtained. Most of the potential measures can be grouped around three major effectiveness criteria: speed, cost, and quality. Collectively, the outcomes of the interventions are hypothesized to lead to institution personnel management improvements, as reflected by timeliness, cost effectiveness, and quality.

Baseline measures will be taken prior to project implementation. Then, repeated post-implementation measurements will be taken to allow longitudinal comparisons by intervention within HINU A comparison group will be selected and compared to the demonstration project group to determine the effects and outcomes of the project.

The effectiveness of each intervention and of the demonstration project as a whole in meeting stated objectives will be addressed using a multi-approach method. Some methods will be unobtrusive in that they do not require reactions to inputs from employees or managers. These methods include analysis of archival workforce data and

personnel office data, review of logs maintained by site historians documenting contextual events, and assessments of external economic and legislative changes. Other methods, such as periodic attitude surveys, structured interviews, and focus groups, will be used to assess the perceptions of employees, managers, supervisors, and personnel regarding the personnel system changes and the performance of their institutions in general. Evaluation activities will also take into account the unique nature of this project in terms of institutional diversity.

In addition to the intervention impact model, a general context model will be used to determine the effects of potential intervening variables (*e.g.,* downsizing, regionalization of the personnel function, and the state of the economy in general). Potential unintended outcomes will also be monitored, and an attempt will be made by the evaluation team to link the outcomes of demonstration project interventions to institutional effectiveness. In addition to assessing the impact of the individual demonstration project features, the evaluation will also assess the impact of the project as a whole, along with possible context effects and effects of intervening variables.

The evaluation will also monitor impact on veterans and EEO groups, adherence to the merit systems principles and avoidance of prohibited personnel practices. In addition, the evaluation will attempt to link the demonstration project effects and outcomes to institutional outcomes such as mission accomplishment and productivity.

The initial evaluation effort will consist of three main phases—baseline, formative, and summary evaluation covering five (5) years. Baseline will collect workforce data to determine the ''as-is'' state. The formative evaluation phase will include baseline data collection and analyses, implementation evaluation, and interim assessments. Periodic reports and annual summaries will be prepared to document the findings. The summary evaluation phase will focus on an overall assessment of the demonstration project outcomes, looking initially at the first four (4) years, with a follow-on report covering the first five (5) years. The rationale for summary evaluation after the first four years is to assess whether the demonstration will continue after the fifth year. If the analysis indicates that the interventions show a positive effect towards meeting the goals of the demonstration, then documentation will be generated to support a request that the demonstration progress further. If the analysis indicates that the interventions do not meet the stated objectives, or if HINU does not wish to continue in the demonstration, then documentation and planning for conversion back to the existing personnel system must be prepared. The fifth-year summary evaluation, used in reporting to Congress, will provide overall assessment of all initiatives individually and as a whole. It will also provide recommendations on broader Federal Government application.

VIII. Demonstration Projects Costs

A. Step and Promotion Buy-Ins

Under this demonstration project, implementation of the broad banding pay structure eliminates the step increments of the current GS pay structure. To facilitate conversion to this system without loss of pay, employees will receive a basic pay increase for that portion of the next step corresponding to the time in-step they have completed up to the effective date of the employee conversion. As under the current system, supervisors will be able to withhold these partial increases (step) if the employee's performance has fallen below fully successful.

Rules governing within-grade increases (WGI) within DOI will remain in effect until the employee conversion date. Adjustments to employees' base pay for WGI equity will be computed effective the first pay period in which the employee is reassigned into the demonstration project. WGI equity shall be acknowledged by increasing base salaries by a prorated share based upon the actual number of weeks an employee has completed towards the next higher step. Employees at step 10, or receiving retained pay at the time of conversion, will not be eligible for this equity adjustment. For those employees in career-ladder promotion programs who are scheduled to be promoted to a higher grade and whose performance is at least fully successful, base pay will be increased by a prorated share of the current value of the next scheduled promotion increase based upon the actual number of weeks the employee has completed towards the next scheduled promotion. No WGI equity adjustment will be made if the employee's pay is adjusted for a promotion that would be effective before the next scheduled WGI.

B. Out-Year Project Costs

The overall demonstration cost strategy will be to balance projected costs with benefits of the demonstration to bring about the projected improvements to the institution. The project evaluation results will be used to ensure that out-year project costs will not outweigh the derived benefits to the demonstration. A baseline will be established at the start of the project, and salary expenditures will be tracked yearly. Implementation costs, including the step and grade buy-in costs detailed above, will not be included in the cost evaluations, but will be accounted for separately.

The amount of money available for contribution increases in the out-years will be determined as part of the annual project evaluation process, starting with a review of the prior year's data for HINU by the Personnel Policy Board, and then will be reported to the president of the institution The funds determination will be based on a balancing of appropriate factors, including the following: (1) Historical spending for WGI, quality step increases, and in-level career promotions; (2) labor market conditions and the need to recruit and retain a skilled workforce to meet the business needs of the institution; and (3) the fiscal condition of the institution. Given the implications of base pay increases for long-term pay and benefit costs, the compensation levels will be determined after cost analysis with documentation of the mission-driven rationale for the amount. As part of the evaluation of the project, HINU will track the base pay costs (including average salaries) under the demonstration project and compared to the base pay costs under similar demonstration projects and under a simulation model that replicates General Schedule spending. These evaluations will balance costs incurred against benefits gained, so that both fiscal responsibility and project success are given appropriate weight.

C. Personnel Policy Boards

It is envisioned that HINU shall establish a Personnel Policy Board for the demonstration project that will be representative of the employee population and chaired by the president of the institution or delegated representative. The board is tasked with the following:

(a) Overseeing the pay budget;

(b) Determining the composition of the CCAS pay pool in accordance with the established guidelines and statutory constraints;

(c) Reviewing operation of the Institution's CCAS pay pools;

(d) Providing guidance to pay pool managers;

(e) Administering funds to CCAS pay pool managers;

(f) Reviewing hiring and promotion salaries;

(g) Monitoring award pool distribution by pay pool; Assessing the need for changes to the demonstration project, procedures or policies.

D. Developmental Costs

Costs associated with the development of the demonstration system include software automation, training, and project evaluation. Site-specific costs for follow-on training, employee salary conversion, and any in-house software automation will be borne by the institution from such additional sums as may be necessary for the operation of HINU pursuant to Public Law 105–337. The projected annual expenses for each area are summarized in TABLE V. Project evaluation costs will continue for at least the first five (5) years and may continue beyond that point. TABLE V is an example of the format used. Costs will be determined once an actual plan is selected.

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TABLE V - PROJECTED DEVELOPMENTAL COST (THEN YEAR DOLLARS ($K))

	FY00	FY01	FY02	FY03	F704	FY05	FY06
Training	285	3465	0	0	0	0	0
Project Evaluation	310	449	308	307	534	378	378
Automation	25	70	25	25	25	25	25
Data Systems	100	350	0	0	0	0	0
Total	720	4334	308	307	534	378	378

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IX. Required Waivers to Law and Regulations

A. Waivers to Title 5, United States Code

Chapter 5, Section 552a: Records maintained on individuals. This section is waived only to the extent required to clarify that volunteers under the Voluntary Emeritus Program are considered employees of the Federal Government for purposes of this section.

Chapter 31, Section 3111: Acceptance of volunteer service. This section is waived only to the extent required to allow volunteer service under provisions of the voluntary emeritus program.

Chapter 33, Section 3308: Competitive service; examinations; education requirements prohibited; exceptions (to the extent necessary to accommodate the Scholastic Achievement Appointment's requirement for a college degree).

Chapter 33, Section 3317 (a): Competitive service; certification from registers (insofar as ''rule of three'' is eliminated under the demonstration project).

Chapter 33, Section 3318 (a): Insofar as ''rule of three'' is eliminated under the demonstration project. Veterans' preference provisions remain unchanged.

Chapter 41, Section 4107 (a): Prohibition of training for academic degrees.

Chapter 43, Sections 4301–4305 except for 4303 (e) and (f): Related to performance appraisal. In turn, 4303 (3) and (f) are waived only to the extent necessary to (a) substitute ''broadband'' for ''grade'' and (2) provide that moving to a lower broadband as a result of not receiving the full amount of a general pay increase because of inadequate contribution is not an action covered by the provisions of section 4303.

Chapter 51, Sections 5101–5102 and Sections 5104–5107: Related to classification standards and grading.

Chapter 53, Sections 5301; 5302 (8) and (9); and 5303–5305 and 5331–5336: Related to special pay and pay rates and systems (Sections 5301, 5302 (8) and (9), and 5304 are waived only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay).

Chapter 53, Section 5362: Grade retention.

Chapter 53, Section 5363: Pay retention. This waiver applies only to the extent necessary to: (1) allow demonstration project employees to be treated as General Schedule employees; (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and (3) replace the term ''grade'' with ''broadband level.''

Chapter 71, to the extent its provisions (e.g. 5 U.S.C. 7103(a)(12) and 7116) would prohibit management or the union from unilaterally terminating negotiations over whether the project will apply to employees represented by the union.

Chapter 75, Sections 7512(3): Related to adverse action (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay and replace ''grade'' with ''broadband level'') and 7512(4): Related to adverse action (but only to the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay).

B. Waivers to Title 5, Code of Federal Regulations

Part 300, Sections 300.601 through 300.605: Time-in-grade restrictions.

Part 308, Volunteer service: Waived to allow volunteer service under the provisions of the voluntary emeritus program.

Part 315, Sections 315.801 and 315.802: Probationary period.

Part 316, Section 316.301: Term appointment (the extent that modified term appointments may cover a maximum period of 6 years).

Part 316, Section 316.303: Tenure of term employees (to the extent that term employees may compete for permanent status through local merit promotion plans).

Part 316, Section 316.305: Eligibility for within-grade increases.

Part 332, Section 332.402: ''Rule of three'' will not be used in the demonstration project.

Part 332, Section 332.404: Order of selection is not limited to highest three eligible.

Part 351, Sections 351.402 through 351.403: Competitive Area and Competitive Levels; Section 351.504 (a) and (c): Credit for Performance; and Section 351.601 through .608: References to competitive levels are eliminated.

Part 351, Sections 351.701 (b) and (c): Assignment rights (bump and retreat): To the extent that the distinction between bump and retreat is eliminated and the placement of demonstration project employees is limited to one broadband level below the employee's present level, except that a preference-eligible employee with a compensable service-connected disability of 30 percent or more may displace up to the two b broadband levels below the employee's present position (or the equivalent of five General Schedule grades) below the employee's present level.

Part 410, Section 410.308(a): Prohibition of training for academic degrees.

Part 430, Subpart A and Subpart B: Performance management; performance appraisal.

Part 432, Sections 432.101, 432.102, 432.106 and 432.107: (Only to the extent necessary to (a) substitute ''broadband'' for ''grade'' and (2) provide that moving to a lower broadband as a result of not receiving the full amount of a general pay increase because of inadequate contribution is not an action covered by the provisions of section 4303).

Part 432, Section 432.103 through 432.105: Performance-based reduction-in-grade and removal actions.

Part 451, Sections 451.106(b) and 451.107(b): Awards.

Part 511, Section 511.201: Coverage of and exclusions from the General Schedule (To the extent that professional positions are covered by broad banding.)

Part 511, Subpart A; Subpart B; subpart F, Sections 511.601 through 511.612: Classification within the General Schedule; and Subpart G: Effective Dates of Position Classification Actions or Decisions.

Part 530, Subpart C: Special salary rates.

Part 531, Subpart B, Subpart D, Subpart E: Determining rate of pay; within-grade increases and quality step increases.

Part 536, Grade and Pay Retention (only to the extent necessary to eliminate grade retention and to provide that, for the purposes of applying pay retention provisions: (1) Demonstration project employees are to be treated as General Schedule employees; (2) grade is replaced by ''Broadband level'; and (3) pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced).

Part 550, Sections 550.703: Severance Pay, definition of ''reasonable offer'' (by replacing ''two grade or pay levels'' with ''one broadband level'' and ''grade or pay level'' with broadband level'').

Part 575, Sections 575.102(a)(1), 575.202(a)(1), 575.302(a)(1), and Subpart D: Recruitment and relocation bonuses, and retention allowances, and supervisory differentials (only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule positions).

Part 752, Sections 752.401(a)(3): Reduction in grade and pay (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay and to replace ''grade'' with ''broadband level'') and 752.401(a)(4) (but only to the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay).

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Federal Register

Friday,
March 10, 2000

Part IV

Department of Housing and Urban Development

Indian Tribes and Alaska Native Villages; Fiscal Year 2000 Notice of Funding Availability; Community Development Block Grant Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4548–N–01]

Community Development Block Grant Program for Indian Tribes and Alaska Native Villages; Fiscal Year 2000 Notice of Funding Availability

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year 2000.

SUMMARY: This notice announces the availability of up to $67,338,300 for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages (ICDBG Program). This figure consists of $67,000,000 in fiscal year 2000 funds and $338,300 in fiscal year 1999 carryover funds. The primary objective of this program is the development of viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities. The program is targeted principally towards people with low and moderate incomes. This Notice of Funding Availability (NOFA) contains the following information:

(a) The purpose of the NOFA;

(b) Information regarding eligibility and available amounts;

(c) A list of steps involved in the application process, including where and how to apply and what to submit;

(d) A checklist of the exhibits required for the application process; and

(e) A description of how applications are processed, including the selection process and the selection criteria.

APPLICATION DUE DATE: You (the applicant) must submit your completed application no later than 5:00 p.m., local time, on May 24, 2000 to one of the addresses shown below. See below for specific procedures covering the method of application submission (*e.g.,* mailed applications, express mail, overnight delivery, or hand carried).

Mailed Applications. We (HUD) will consider your application to be timely filed if it is postmarked on or before 12 midnight on the application due date and received by the appropriate Area Office of Native American Programs (ONAP) within ten (10) days after the application due date.

Applications Sent By Overnight/Express Delivery. If you send your application by overnight delivery or express mail, we will consider it to be timely filed if we receive it before or on the application due date, or if you submit documentary evidence that you placed your application in transit with the overnight delivery service by no later than the specified application due date and we receive it within five (5) days of the application due date.

Hand Carried Applications. You may hand carry your application to the appropriate Area ONAP during normal business hours before the application due date. On the application due date, we will accept applications until 5:00 p.m., local time.

ADDRESSES FOR SUBMITTING APPLICATIONS

If you are applying from this geographic location then	Send your application to this Area ONAP:
All States East of the Mississippi River, Plus Iowa and Minnesota.	Eastern/Woodlands Office of Native American Programs, Grants Management Staff, 77 West Jackson Blvd., Chicago, IL 60604–3507, Telephone: (312) 886–4532, Ext. 2815.
Louisiana, Kansas, Oklahoma, and Texas, except West Texas.	Southern Plains Office of Native American Programs, Grants Management Staff, Suite 400, 500 W. Main Street, Oklahoma City, OK 73102–3202, Telephone: (405) 553–7525.
Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Northern Plains Office of Native American Programs, Grants Management Staff, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, Telephone: (303) 672–5457.
Arizona, California, and Nevada	Southwest Office of Native American Programs, Grants Management Staff, Two Arizona Center, Suite 1650, 400 N. Fifth Street, Phoenix, AZ 85004–2361, Telephone: (602) 379–4197.
New Mexico and West Texas	Southwest Office of Native American Programs, Grants Management Staff, Albuquerque Plaza, 201 3rd Street N.W., Suite 1830, Albuquerque, NM 87102–3368, Telephone: (505) 766–1372.
Idaho, Oregon, Washington	Northwest Office of Native American Programs, Grants Management Staff, Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000, Telephone: (206) 220–5271.
Alaska	Alaska Office of Native American Programs, Grants Management Staff, 949 E. 36th Avenue, Suite 401, Anchorage, AK 99508–4135, (907) 271–4603.

FURTHER INFORMATION, APPLICATION KITS, AND TECHNICAL ASSISTANCE:

For Further Information. You should direct general program questions to the Area ONAP serving your area or to Robert Barth, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, P.O. Box 36003, 450 Golden Gate Avenue, San Francisco, CA 94102; telephone (415) 436–8122. The TTY number is (415) 436–6594. (These are not toll-free numbers.)

For Application Kits. You may obtain an application kit from the Area ONAPs identified above. You should make your request for an application kit immediately to ensure sufficient time for application preparation. We will distribute application kits as soon as they become available.

For Technical Assistance. Before the application deadline, we will be available to provide you with general guidance. We cannot, however, provide you with guidance on the actual contents of your application. If applicable, after selection but before award, we will be available to assist you in clarifying or confirming information that is required to address a pre-award requirement or condition.

SUPPLEMENTARY INFORMATION:

Changes From FY 1999 NOFA

1. *Grant Ceilings.* We have changed the grant ceilings for the following offices: Eastern/Woodlands—$500,000 for all; Northwest $350,000 for all.

2. *Alaska Office.* We have determined that this office will return to the receipt, review, and approval of applications on an annual rather than biennial basis as it did for FY 1998–1999.

3. *Eligible Applicants—Tribal Organizations.* We have clarified the

requirement that the determination of eligibility of the organization under title I of the Indian Self-Determination and Education Assistance Act by the Bureau of Indian Affairs or Indian Health Service must be provided to the relevant Area ONAP by the application submission date.

4. *Housing Rehabilitation—Income Status of Grant Recipients.* We have clarified the requirement that proposed recipients of grant assistance must be of low or moderate income status.

5. *Housing Rehabilitation Grant Limits.* We have changed the grant limits for the following offices: Northern Plains—$45,000; Northwest—$30.000.

6. *New Housing Construction Rating Factor 1—Project Need and Design—Subfactor 1.* We have revised this subfactor. We have re-titled it as *Other resources available for new housing assistance* and have replaced the provision of housing assistance from an IHA as the basis of point award with the amount of Indian Housing Block Grant funds received by the applicant (or TDHE for an applicant).

Promoting Comprehensive Approaches to Housing and Community Development

HUD is interested in promoting and supporting comprehensive, coordinated approaches to housing and community development. Economic development, community development, public housing revitalization, homeownership, assisted housing for special needs populations, supportive services, and welfare-to-work initiatives can work better if linked at the local level. Consistent with this effort, you must demonstrate that housing category projects are consistent with, and where possible, are identified in, the Indian Housing Plan (IHP) submitted by, or on behalf of, you under the provisions of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). If you have not submitted the IHP for the Indian Housing Block Grant (IHBG) program year that includes the implementation period for the proposed ICDBG funded activity by the ICDBG application due date, you must submit an assurance that if an IHP is submitted, it will specifically reference the proposed housing category project.

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Additional Information

I. Authority; Purpose; Amounts Allocated; and Eligibility

(A) *Authority.* Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301, *et seq.*); 24 CFR part 1003; Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Public Law 106–74 113 Stat. 1047, approved October 20, 1999) ($67,000,000 in fiscal year 2000 funds); and Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105–276, 112 Stat. 2461, approved October 21, 1998) ($338,300 in fiscal year 1999 carryover funds).

(B) *Purpose.* This notice announces the availability of up to $67,338,300 for the ICDBG Program.

(C) *Amount Allocated.*

(1) *General.* Amendments to title I of the Housing and Community Development Act of 1974 have required that the allocation for Indian Tribes be awarded on a competitive basis in accordance with selection criteria contained in a regulation promulgated by the Secretary after notice and public comment. All grant funds awarded in accordance with this NOFA are subject to the requirements of 24 CFR part 1003. Applicants within an Area ONAP's geographic jurisdiction compete only against each other for that Area ONAP's allocation of funds.

(2) *Allocations.* The requirements for allocating funds to Area ONAPs responsible for program administration are found at 24 CFR 1003.101. Following these requirements, based on the target availability of up to $ 67,338,300, the allocations for FY 2000 are as follows:

Eastern/Woodland	$5,169,533
Southern Plains	12,233,734
Northern Plains	10,318,714
Southwest	28,148,676
Northwest	3,942,513
Alaska	5,525,130
Total	65,338,300

The total allocation includes $338,300 in unused funds from the amount reserved by the Assistant Secretary in Fiscal Year 1999 for imminent threat grants. As indicated in section I.(a)(4) below, $2,000,000 will be retained to fund imminent threat grants.

(3) *Grant Ceilings.* The authority to establish grant ceilings is found at 24 CFR 1003.100(b)(1). Grant ceilings are established for FY 2000 funding at the following levels:

Area ONAP	Population	Ceiling
Eastern/Woodlands	ALL	$500,000
Southern Plains:	ALL	750,000
Northern Plains:	ALL	800,000
Southwest:	50,001+	5,000,000
	10,501–50,000	2,500,000
	7,501–10,500	2,000,000
	6,001–7,500	1,000,000
	1,501–6,000	750,000

Area ONAP	Population	Ceiling
	0–1,500	550,000
Northwest	ALL	3505,000
Alaska	ALL	500,000

For the Southwest Area ONAP jurisdiction, the population used to determine ceiling amounts is the Native American population that resides on a reservation or rancheria. Please contact that office before submitting your application if you are unsure of the population level to use to determine the ceiling amount for your tribe or if you believe that the level used for previous years needs to be revised or corrected. The Southwest ONAP must accept any corrections or revisions before you submit your application.

(4) *Imminent Threats.* (a) The criteria for grants to alleviate or remove imminent threats to health or safety that require an immediate solution are described at 24 CFR part 1003, subpart E. In order to satisfy these criteria, the problem to be addressed must be such that an emergency situation exists or would exist if the problem were not addressed. In addition, you may use funds provided under that subpart only to address imminent threats that are not of a recurring nature and that represent a unique and unusual circumstance that impacts an entire service area. In accordance with the provisions of 24 CFR part 1003, subpart E, we will retain $2,000,000 to meet the funding needs of imminent threat applications submitted to any of the Area ONAPs. The grant ceiling for imminent threat applications for FY 2000 is $350,000. We established this ceiling pursuant to the provisions of § 1003.400(c).

(b) You do not have to submit a request for assistance under the imminent threat set-aside (24 CFR part 1003, subpart E) by the deadline established in this NOFA; the deadline applies only to applications submitted for assistance under 24 CFR part 1003, subpart D, Single purpose grants.

(c) If, in response to a request for assistance, an Area ONAP issues you a letter to proceed under the authority of § 1003.401(a), then your application must be submitted to and approved by the Area ONAP before a grant agreement may be executed. This application must consist of the following components:

(i) Standard Form 424, Application for Federal Assistance;

(ii) Brief description of the proposed project;

(iii) Form HUD–4123, Cost Summary;

(iv) Form HUD–4125, Implementation Schedule;

(v) Form HUD–2880, Applicant/Recipient Disclosure/Update Report;

(vi) Form HUD–4126, Certifications;

(vii) Certification for a Drug-Free Workplace (form HUD 50070); and

(viii) Certification regarding lobbying activities (24 CFR part 87) and SF–LLL (if applicable).

(D) *Eligible Applicants.* (1) *General.* To apply for funding you must be eligible as an Indian Tribe (or as a tribal organization) by the application submission date.

(2) *Tribal Organizations.* Tribal organizations are permitted to submit applications under 24 CFR 1003.5(b) on behalf of eligible tribes when one or more eligible tribe(s) authorize the organization to do so under concurring resolutions. As is stated in this regulatory section, the tribal organization must itself be eligible under title I of the Indian Self-Determination and Education Assistance Act. A determination of such eligibility must be made by the Bureau of Indian Affairs or the Indian Health Service, as appropriate. This determination must be provided to the relevant Area ONAP by the application submission date.

(3) *Successors to Eligible Entities.* If a tribe or tribal organization claims that it is a successor to an eligible entity, the Area ONAP must review the documentation to determine whether it is in fact the successor entity.

(4) *Alaska Tribal Entities.* (a) Due to the unique structure of tribal entities eligible to submit ICDBG applications in Alaska, and as only one ICDBG application may be submitted for each area within the jurisdiction of an entity eligible under 24 CFR 1003.5, a tribal organization that submits an application for activities in the jurisdiction of one or more eligible tribes or villages must include a concurring resolution from each such tribe or village authorizing the submittal of the application. Each such resolution must also indicate that the tribe or village does not itself intend to submit an ICDBG application for that funding round. The hierarchy for funding priority continues to be the IRA Council, the Traditional Village Council, the Village Corporation, and the Regional Corporation.

(b) On December 30, 1998 (63 FR 71941), the Bureau of Indian Affairs published a **Federal Register** notice entitled ''Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs.'' This notice provides a listing of Indian Tribal Entities in Alaska found to be Indian Tribes as the term is defined and used in 25 CFR part 83. Additionally, pursuant to title I of the Indian Self-Determination and Education Assistance Act, ANCSA Village Corporations and Regional Corporations are also considered tribes and therefore eligible applicants for the ICDBG program.

(c) Any questions regarding eligibility determinations and related documentation requirements for entities in Alaska should be referred to the Alaska Area ONAP prior to the application submission date. (See 24 CFR 1003.5 for a complete description of eligible applicants.)

Please note: When used in this NOFA the word ''tribe'' means an Indian tribe, band, group or nation, including Alaska Indians, Aleuts, Eskimos, Alaska Native Villages, ANCSA Village Corporations, and Regional Corporations.

(E) *Eligible Activities.* Activities that are eligible for ICDBG funds are identified at 24 CFR part 1003, subpart C.

II. Program Requirements

(A) *Statutory and Regulatory Requirements.* All applicants must meet and comply with all statutory and regulatory requirements. Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), contains the applicable program specific statutory requirements for this program. The applicable program specific regulatory requirements are in 24 CFR part 1003. Copies of these regulations are available from the HUD Community Connections Information Clearinghouse.

(B) *Nondiscrimination and Compliance with Civil Rights Laws.* Under the authority of section 107(e)(2) of the Housing and Community Development Act of 1974, as amended, the Secretary has waived the requirement that recipients comply with the anti-discrimination provisions in section 109 of the Act with respect to race, color, and national origin. As a recipient you must comply with the other prohibitions against discrimination in section 109 (HUD's regulations for section 109 are in 24 CFR part 6); the Indian Civil Rights Act (Title

II of the Civil Rights Act of 1968, 24 U.S.C. 1001–1303); the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (HUD regulations are at 24 CFR part 146); and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (HUD regulations are at 24 CFR part 8). You must comply with the substantial rehabilitation and new construction requirements in addition to the other requirements of 24 CFR part 8.

(C) *Relocation.* If your proposed activities involve the relocation or displacement of persons, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the government-wide implementing regulations at 49 CFR part 24 apply to funding under this NOFA.

(D) *Debarred or Suspended Contractors.* The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, contractors, or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(E) *Indian Preference.* HUD has determined that programs funded under this NOFA are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). The provisions and requirements for implementing this section are in 24 CFR 1003.510.

(F) *Conflict of Interest.* In addition to the conflict of interest requirements with respect to procurement transactions found in 24 CFR 85.36 and 84.42, as applicable, the provisions of 24 CFR 1003.606 apply to such activities as the provision of assistance by the recipient or sub-recipients to businesses, individuals, and other private entities under eligible activities that authorize such assistance.

(G) *Certifications and Assurances.* The specific certifications and assurances that you must provide are included under section IV. of this NOFA.

(H) *Economic Opportunities for Low and Very Low Income Persons.* You must comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulations at 24 CFR part 135. You must ensure that training, employment, and other economic opportunities are directed, to the greatest extent feasible, toward low and very low income persons, particularly those persons who receive government assistance for housing and to business concerns that provide economic opportunities to low and very low income persons. You must comply with the reporting and recordkeeping requirements found at 24 CFR part 135, subpart E. Tribes that receive HUD assistance described in this part must comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

III. Application Selection Process

(A) *Rating and Ranking.*

(1) *Screening for Acceptance.* Each Area ONAP will screen applications for single purpose grants. The Area ONAP will reject an application that fails this screening and will return the application unrated. Area ONAPs will accept your application if it meets all the criteria listed below as items (a) through (f):

(a) Your application is received or submitted in accordance with the requirements set forth under **APPLICATION DUE DATE** in this NOFA;

(b) You are eligible;

(c) The proposed activities are eligible. Activities assisted with ICDBG funds are subject to the requirements of section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8;

(d) Your application contains substantially all the components specified in section IV.(D) of this notice;

(e) At least 70% of the grant funds are to be used for activities that benefit low and moderate income persons, in accordance with the requirements of 24 CFR 1003.208; and

(f) Your application is for an amount that does not exceed the grant ceilings that are established by the NOFA.

(2) *Application Review Process.*

(a) *Threshold review.* The Area ONAP will review each application that passes the screening process to ensure that each applicant and each proposed project meets the applicable threshold requirements set forth in 24 CFR 1003.301(a) and 1003.302, as implemented by this NOFA. *The Area ONAP will not accept your application for rating and ranking if you fail to meet any of the applicant-specific thresholds. The Area ONAPs will not rate and rank project(s) that do not meet the community development appropriateness or applicable project-specific thresholds.*

(b) *Rating Team.* An Area ONAP rating team of at least three voting members will review and rate each project that meets the acceptance criteria and threshold requirements. The Area ONAP rating team will examine each project to determine in which one of the rating categories set forth in 24 CFR 1003.303(a) the project most appropriately belongs. The project will be rated on the basis of the criteria identified in the rating category component to which the project has been assigned. The total points for a rating component are 100, which is the maximum any project can receive.

(c) *Public service projects.* Because there is a statutory 15 percent cap on public services activities, you may not receive a single purpose grant solely to fund public services activities. Your application, however, may contain a public services component for up to 15 percent of the total grant. This component may be unrelated to the other project(s) included in your application. If your application does not receive full funding, we will reduce the public services allocation proportionately so that it comprises no more than 15 percent of the total grant award. In making such reductions, the feasibility of the proposed project will be taken into consideration. If a proportionate reduction of the public services allocation renders such a project infeasible, the project will not be funded.

(d) *Final ranking.* (i) We will rank all projects against each other according to the point totals they receive, regardless of the rating category or component under which the points were awarded. We will select projects for funding based on this final ranking, to the extent that funds are available. We will determine individual grant amounts in a manner consistent with the considerations set forth in 24 CFR 1003.100(b)(2). Specifically, an Area ONAP may approve a grant amount less than the amount requested. In doing so, the Area ONAP may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives, and the administrative capacity of the applicant to complete the activities in a timely manner.

(ii) If the Area ONAP determines that there are not enough funds available to fund a project as proposed by the applicant, it may decline to fund that project and may fund the next highest ranking project or projects for which adequate funds are available. The Area ONAP may select, in rank order, additional projects for funding if one of the higher ranking projects is not funded or if additional funds become available.

(e) *Tiebreakers.* When rating results in a tie among projects and insufficient resources remain to fund all tied projects, Area ONAPs will approve projects that can be fully funded over those that cannot be fully funded. When that does not resolve the tie, the Area ONAP will use the following factors in the order listed to resolve the tie:

(i) *Eastern/Woodlands Office.*

(*1*) The applicant with the fewest active grants.

(*2*) The applicant that has not received an ICDBG grant over the longest period of time.

(*3*) The project that would benefit the highest percentage of low and moderate income persons.

(ii) *Southern Plains Office.*

(*1*) The applicant that has not received an ICDBG grant over the longest period of time over the last 8 years.

(*2*) The applicant with the fewest active grants.

(*3*) The project that would benefit the highest percentage of low and moderate income persons.

(iii) *Northern Plains and Southwest Offices.*

(*1*) The applicant that has not received an ICDBG grant over the longest period of time.

(*2*) The applicant with the fewest active grants.

(*3*) The project that would benefit the highest percentage of low and moderate income persons.

(iv) *Northwest Office.*

(*1*) The applicant that has not received an ICDBG grant over the longest period of time.

(*2*) The applicant that has received the fewest ICDBG dollars since the inception of the program.

(*3*) The project that would benefit the highest percentage of low and moderate income persons.

(v) *Alaska Office*

(*1*) The applicant that has not received an ICDBG grant over the longest period of time.

(*2*) The project that would benefit the highest percentage of low and moderate income persons.

(*3*) The project that would benefit the most low and moderate income persons.

(f) *Pre-award requirements.*

(i) *Technical Deficiencies.* If there are technical deficiencies in successful applications, you must satisfactorily address these deficiencies before we can make a grant award. Please see section VI. of this NOFA for a definition of such a deficiency and a description of the process to address and correct the deficiency. You must correct all technical deficiencies within the timeframe established by HUD; if they are not corrected, we will not make the grant award and will reject your application.

(ii) We also may require a successful applicant to provide supporting documentation concerning the management, maintenance, operation, or financing of proposed projects before a grant agreement can be executed. We will normally give you no less than thirty (30) calendar days to respond to these requirements. If you do not respond within the prescribed time period or you make an insufficient response, the Area ONAP may determine that you have not met the requirements and may withdraw the grant offer. The Area ONAP requires you to submit supporting documentation if:

(*1*) Specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; or

(*2*) You have not provided information verifying the commitment of other resources required to complete, operate, or maintain the proposed project.

(iii) You may not substitute new projects for those originally proposed in your application.

(iv) We will award, in accordance with the provisions of this NOFA, grant amounts that had been allocated for applicants unable to meet pre-award requirements.

(3) *General threshold requirements.*

(a) *General.* Two types of general thresholds are set forth in 24 CFR 1003.301(a): those that relate to applicants, and those that address the overall community development appropriateness of the project(s) included in the application. Project-specific thresholds are set forth in 24 CFR 1003.302.

(b) *Applicant Thresholds.* (i) *General.* Applicant thresholds focus on the administrative capacity of the applicant to undertake the proposed project on its past performance in the ICDBG program and on its provision of housing assistance to low and moderate income tribal members.

(ii) *Applicant-Specific Thresholds: Capacity.* The Area ONAP will assume, absent evidence to the contrary, that you possess or can obtain the managerial, technical, or administrative capability necessary to carry out the proposed project. Your application should address who will administer the project and how you plan to handle the technical aspects of executing the project. If the Area ONAP determines, based on substantial evidence (which will include information provided by the most recent Risk Assessment conducted by the Area ONAP Grants Evaluation Division), that you do not have or cannot obtain the capacity to undertake the proposed project, it will not consider your application any further.

(iii) *Applicant-Specific Thresholds: Performance.* (*1*) *Community Development.* (*a*) If you have previously participated in the ICDBG Program, the Area ONAP will determine whether you have performed adequately in grant administration and management. This determination will include an evaluation of the most recent risk analysis conducted by the Area ONAP for you.

(*b*) To assess whether or not a recipient is making satisfactory progress in completing previously approved programs, we will measure actual progress against the most recent implementation schedule(s) for the recipient's program(s). We will do this assessment with our evaluation of the risk analysis and other relevant information, *e.g.,* monitoring reports that document or reflect a recipient's performance. We will determine that a recipient which is more than *sixty days* behind schedule is performing inadequately with respect to this aspect of grant administration.

(*c*) If you have been found to be performing inadequately, the Area ONAP will determine whether you have corrected the deficiency or are following a schedule to correct performance to which you and the Area ONAP have agreed. In cases of previously documented deficient performance, the Area ONAP must determine that you have taken appropriate corrective action to improve your performance before the application due date.

(*d*) *The Area ONAP will inform in writing any potential applicant that has been determined not to meet this performance threshold no later than 30 days prior to the application due date.* In its letter, the Area ONAP will specify what actions would have to be taken by the potential applicant to address the identified performance deficiency. If you have not met the performance threshold by the application submission deadline, we will not accept your application for rating and ranking.

(*2*) *Housing assistance.* (*a*) If you have taken any action to prevent or obstruct the provision or operation of assisted housing for low and moderate income persons, we will evaluate that action to determine if it constitutes inadequate performance by you. If you have established or joined an Indian Housing Authority (IHA), and this IHA has obtained housing assistance from HUD, we will take into consideration your

performance in meeting your obligations and responsibilities to the IHA in the development and operation of housing units assisted under the United States Housing Act of 1937 in evaluating your housing assistance performance. This evaluation will include a review of your compliance with the provisions of the documents that created your relationship with the IHA and the requirements of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). In addition, if you have designated another entity (a tribally designated housing entity [TDHE]) to be the recipient of Indian Housing Block Grant Assistance on your behalf, we will also consider in our evaluation your compliance with your agreement with the TDHE.

(*b*) We will not hold you accountable for the poor performance of your IHA (or TDHE) *unless* we find this inadequate performance to be a direct result of your action or inaction. If you are a member of a multi-tribal IHA or are associated with a multi-tribal TDHE, we will judge you only on your individual performance and will not hold you accountable for the poor performance of other tribes that are members of the IHA or that are also associated with the TDHE.

(*c*) If you have received ICDBG funds to provide new housing through a Community Based Development Organization (CBDO), the Area ONAP will consider the following in making its determination regarding housing assistance performance:

(*i*) Whether the proposed units were constructed;

(*ii*) Whether housing assistance was provided to the beneficiaries identified in the funded application, and if not, why not;

(*iii*) Whether the provisions of your housing plan and procedures have been followed; and

(*iv*) Whether there were sustained complaints from tribal members regarding provision and/or distribution of ICDBG housing assistance.

(*d*) *The Area ONAP will inform in writing any potential applicant that has been determined not to meet the housing assistance performance threshold no later than 30 days before the application deadline.*

(iv) *Audits.* The thresholds described in paragraphs (3)(b)(ii) and (3)(b)(iii) of this section III.(A) require you to meet the following performance criteria:

(*1*) You cannot have an outstanding ICDBG obligation to HUD or to an ICDBG program that is in arrears or you must have agreed to a repayment schedule. If you have an outstanding ICDBG obligation that is in arrears or have not agreed to a repayment schedule, you will be disqualified from the current competition and from subsequent competitions until your obligations are current. If a recipient that was current at the time of application submission becomes delinquent during the review period, we may reject the application.

(*2*) You cannot have an overdue or unsatisfactory response to an audit finding pertaining specifically to an ICDBG program. If you have an overdue or unsatisfactory response to an audit finding, you will be disqualified from the current and subsequent competitions until you have taken final action necessary to close the audit finding. The Area ONAP Administrator may provide exceptions to this disqualification if you have made a good faith effort to clear the audit finding. When funds are due HUD or an ICDBG program as a result of a finding, the Area ONAP Administrator may grant an exception only if you have made a satisfactory arrangement to repay the debt and payments are current.

(c) *Community Development Appropriateness.* In order to rate and rank a project contained in an application that has passed the screening tests outlined in section III.(A) of this NOFA, Area ONAPs must determine that the proposed project meets the community development appropriateness thresholds set forth below:

(i) *Costs are reasonable.* The project must be described in sufficient detail so that the Area ONAP can determine:

(*1*) That costs are reasonable; and

(*2*) That the funds requested from the ICDBG program and all other sources are adequate to complete the proposed activity(ies) described in the application.

(ii) *Project is Appropriate.* The project is appropriate for the intended use.

(iii) *Project is Usable or Achievable.* The project is usable or achievable in a timely manner, generally within a two year period. The timetable for project implementation and completion must be set forth on the form HUD 4125, Implementation Schedule, included in the application. A period of more than two years is acceptable in certain circumstances, if it is established that such circumstances are beyond your control.

(B) *Factors for Award Used To Evaluate and Rate Applications.* The factors for rating and ranking applications and the points for each factor are provided below. The maximum number of points for a rating component is 100, which is the maximum any project can receive.

(1) *Summary of Rating Factors and Point Awards.*

	Maximum points
HOUSING	
Sec. III.(B)(3)	
(c) Rehabilitation	
(i) Project Need and Design	
(*1*) percent of funds for standard rehab	20
(*2*) Applicant's selection criteria	5
(*3*) Housing survey	15
(ii) Planning and Implementation	
(*1*) Rehabilitation policies	
(*a*) Rehabilitation standards	10
(*b*) Selection policies and procedures	10
(*c*) Project implementation policies and procedures	10
(*2*) Post rehab maintenance	5
(*3*) Cost estimates	15
(*4*) Cost effectiveness	5
(iii) Leveraging	5
Total points	100

	Maximum points
(e) Land to Support New Housing	
(i) Project Need	40
(ii) Planning and Implementation	
(*1*) Suitability of the land	20
(*2*) Housing resources	10
(*3*) Supportive services	5
(*4*) Commitment of households	5
(*5*) Land to trust status	5
(*6*) Infrastructure commitment	10
(*7*) Land meets need and is reasonably priced	5
Total points	100
(g) New Housing Construction	
(i) Project Need and Design	
(*1*) IHA member/assistance	15
(*2*) Housing policies and plan	25
(*3*) Beneficiary identification	5
(ii) Planning and Implementation	
(*1*) Occupancy standards	10
(*2*) Site acceptability	15
(*3*) Energy conservation design	5
(*4*) Housing survey	10
(*5*) Cost effectiveness	5
(iii) Leveraging	10
Total points	100
COMMUNITY FACILITIES	
Sec. III.(B)(4)	
(a) Infrastructure	
(i) Project Need and Design	
(*1*) Meets an essential need	20
(*2*) Benefits the neediest	15
(*3*) Provides infrastructure/health and safety	25
(ii) Planning and Implementation	
(*1*) Maintenance and operation plan	15
(*2*) Appropriate and effective design scale and cost	15
(iii) Leveraging	10
Total points	100
(c) Buildings	
(i) Project Need and Design	
(*1*) Meets an essential need	20
(*2*) Benefits the neediest	15
(*3*) Provides building/health and safety	25
(ii) Planning and Implementation	
(*1*) Maintenance and operation plan	15
(*2*) Appropriate and effective design scale and cost	15
(iii) Leveraging	10
Total points	100
ECONOMIC DEVELOPMENT	
Sec. III.(B)(5)	
(b) Economic Development	
(i) Organization	8
(ii) Project Success	
(*1*) Market analysis	15
(*2*) Management capacity	15
(*3*) Financial analysis	15
(iii) Leveraging	12
(iv) Jobs	
(*2*) ICDBG cost/job	15
(*3*) Quality of jobs/training	5
(v) Additional considerations	15
Total points	100

(2) Definitions.

Adopt means to approve by formal tribal resolution.

Assure means to comply with a specific NOFA requirement. As an applicant, you should state your compliance or your intent to comply in your application.

Document means to supply supporting written information and/or data in the application that satisfies the NOFA requirement.

Leverage means resources that you will use in conjunction with ICDBG funds to achieve the objectives of the project. Resources include, but are not limited to:

(1) Tribal trust funds;

(2) Loans from individuals or organizations;

(3) State or Federal loans or guarantees;

(4) Other grants; and

(5) Noncash contributions and donated services.

(See section IV.(E) of this NOFA for documentation requirements for point award for leveraged resources).

Project Cost means the total cost to implement the project. Project cost includes both ICDBG and non-ICDBG funds and resources.

Section 8 standards means housing quality standards contained in 24 CFR 982.401 (Section 8 Tenant-Based Assistance: Unified Rule for Tenant-Based Assistance Under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program).

Standard Housing/Standard Condition means housing that meets the housing quality standards (HQS) adopted by the applicant.

(1) The HQS adopted by the applicant must be at least as stringent as the Section 8 standards unless the Area ONAP approves less stringent standards based on a determination that local conditions make the use of Section 8 standards infeasible.

(2) You may submit, before the application due date, a request for the approval of standards less stringent than Section 8 standards. If you submit the request with your application, you should not assume automatic approval by the Area ONAP.

(3) The adopted standards must provide for the following:

(i) That the house is safe, in a physically sound condition with all systems performing their intended design functions;

(ii) A livable home environment;

(iii) An energy efficient building and systems that incorporate energy conservation measures; and

(iv) Adequate space and privacy for all intended household members.

Housing

(3) *Project Specific Thresholds and Rating Factors for Housing.*

(a) *Specific thresholds for housing category projects.* (i) You must provide an assurance that households that have been evicted from HUD-assisted housing within the past five years will not be assisted by the proposed project except in emergency situations. The Area ONAP Administrator will review each emergency situation proposed by an applicant on a case-by-case basis to determine whether an exception is warranted.

(ii) *Consistency with Indian Housing Plan (IHP).* You must provide an assurance that the housing category project proposed is consistent with, and to the extent possible, identified in the Indian Housing Plan (IHP) submitted by you or on your behalf under the provisions of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). (If the IHP for the IHBG program year that coincides with the implementation of the ICDBG proposed project has not been submitted, you must provide an assurance that when submitted, the IHP will specifically reference the proposed housing category project).

(b) *Rehabilitation Thresholds and Grant Limits.* (i) *Thresholds. Please note that all households to receive grant assistance under a housing rehabilitation project must be of low or moderate income status.* If you are applying for a housing rehabilitation grant, you must adopt rehabilitation standards and rehabilitation policies before you submit an application. *You must submit these standards and policies with the application.* You must provide an assurance that:

(*1*) Any house to be rehabilitated will be the permanent non-seasonal residence of the occupants; the residents will live in the unit at least nine months per year.

(*2*) Houses designated for eventual replacement will only receive repairs essential for the health and safety of the occupants.

(*3*) Project funds will be used to rehabilitate HUD-assisted houses only when the tenant/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the Area ONAP. In emergency situations the Area ONAP administrator may grant exceptions to this requirement on a case-by-case basis.

(*4*) Houses that have received comprehensive rehabilitation assistance from any ICDBG or other Federal grant program within the past 8 years will not be assisted with ICDBG funds to make the same repairs if the repairs are needed as a result of abuse or neglect.

(ii) *Grant limits.* Rehabilitation grant limits for each Area ONAP jurisdiction are as follows:

(1) Eastern/Woodlands: $20,000
(2) Southern Plains: $15,000
(3) Northern Plains: $45,000
(4) Southwest: $40,000
(5) Northwest: $30,000
(6) Alaska: $50,000

(c) *Rating Factors for Rehabilitation Projects.*

(i) *Rating Factor 1: Project Need and Design.* **(40 points)**

(*1*) The percentage of ICDBG funds committed to bring the houses to be assisted up to a standard condition as defined by the applicant. Administrative, planning, and technical assistance expenditures are excluded in computing the percentage of ICDBG funds committed to bring the houses up to a standard condition. The percentage of ICDBG funds not used to bring the houses up to a standard condition must be used for emergency repairs, demolition of substandard units, or another purpose closely related to the housing rehabilitation project.

Percentage of ICDBG funds committed to bring houses to be assisted up to a standard condition:

91–100%: 20 points
81–90.9% 15 points
80.9 and less: 0 points

(*2*) Your selection criteria, which are included in your application, give first priority to the neediest households. ''Neediest households'' means households whose houses are in the greatest disrepair (but still suitable for rehabilitation treatment) in the project area, or very low-income households.

Yes: 5 points
No: 0 points

(*3*)(*a*) Documentation of project need with a housing survey of all of the houses to be rehabilitated with ICDBG funds. This survey should include standard housing data on each house surveyed (e.g., age, size, type, number of rooms, number of habitable rooms, number of bedrooms/sleeping rooms, type of heating). The survey should indicate the deficiencies for each house. *The survey must include a definition of ''suitable for rehabilitation.''* At a minimum, this definition must not include houses that need only minor repairs or houses that need such major repairs that rehabilitation is structurally or financially infeasible.

(*b*) The application contains all the required survey data and the required definition of ''suitable for rehabilitation.'' **(15 points)**

(*c*) The application does not contain the required definition of ''suitable for rehabilitation'' and/or all the survey data, but does contain sufficient data to enable the project to proceed effectively. **(10 points)**

(*d*) The application does not contain survey data *or* the survey data it does contain is not sufficient to enable the project to proceed effectively. **(0 points)**

(ii) *Rating Factor 2: Planning and Implementation.* **(55 points)**

(*1*) *Rehabilitation Policies and Procedures including:*

(*a*) *Adopted rehabilitation standards.* The rehabilitation standards adopted by you, the applicant, will assure that after rehabilitation the houses assisted will be in a standard condition as defined in this NOFA. In addition, these standards include specific requirements that address child safety measures to be incorporated in all appropriate rehabilitation work. Such measures may include, but are not limited to, child safety latches on cabinets, hot water protection devices, and window guards to prevent children from falling.

The standards you adopt will ensure that after rehabilitation the houses assisted will be in a standard condition as defined in this NOFA and that, where applicable, a safer living environment for children has been created. **(10 points)**

The standards you adopt will ensure that after rehabilitation the houses assisted will be in a standard condition as defined in this NOFA but they do not address applicable specific child safety measures. **(5 points)**

The standards do not meet requirements for point award. **(0 points)**

(*b*) *Rehabilitation selection policies and procedures.* (*i*) The rehabilitation selection policies and procedures contained in the application include:

(*A*) Property selection standards;

(*B*) Cost limits;

(*C*) Type of financing (e.g., loan or grant);

(*D*) Homeowner costs and responsibilities;

(*E*) Procedures for selecting households to be assisted; and

(*F*) Income verification procedures.

(*ii*) The application contains all the rehabilitation selection policies and procedures listed above. **(10 points)**

(*iii*) The application does not contain all the rehabilitation selection policies and procedures listed above, but contains sufficient data to enable the project to proceed effectively *or* the application contains all the rehabilitation selection policies and procedures listed above, but in insufficient detail. **(5 points)**

(*iv*) The application does not contain the rehabilitation selection policies and procedures listed above *or* if it does contain policies and procedures, they are not sufficient to enable the project to proceed effectively. **(0 points)**

(*c*) *Project implementation policies and procedures.* (*i*) These policies and procedures must include a description of the following items:

(*A*) The qualifications that will be required of the inspector;

(*B*) The inspection procedures to be used;

(*C*) The procedures to be used to select the contractor or contractors;

(*D*) The manner in which the households to be assisted will be involved in the rehabilitation process;

(*E*) How disputes between the households to be assisted, the contractors, and the applicant will be resolved; and, if applicable;

(*F*) The repayment provisions that will be required if sale of the assisted house occurs prior to 5 years after the rehabilitation work has been completed.

(*ii*) The application contains all the policies and procedures listed above and they will enable the project to be effectively implemented. **(10 points)**

(*iii*) The application contains some but not all of the policies and procedures listed above and these policies and procedures are sufficient for the project to proceed effectively. **(5 points)**

(*iv*) The application does not contain the policies and procedures listed above. **(0 points)**

(*2*) *Post rehabilitation maintenance policies that address counseling and training assisted households on maintenance.* (*a*) The policies included in the application contain a well-planned counseling and training program. Training will be provided for assisted households and provision is made for households unable to do their own maintenance (e.g., elderly and persons with disabilities).

(*b*) The policies include follow-up inspections after rehabilitation is completed to ensure the house is being maintained. **(5 points)**

(*c*) The policies contain a well-planned home maintenance training and counseling program but fail to adequately address all of the items listed above. **(3 points)**

(*d*) Your application does not contain a well-planned home maintenance training and counseling program. **(0 points)**

(3) *Quality of cost estimates.* (*a*) Cost estimates have been prepared by a qualified individual. (You must include qualifications of the estimator in the application). You have documented costs of rehabilitation on a per house basis and are supported by a work write-up for each house to be assisted. The work write-ups are based upon making those repairs necessary to bring the houses to a standard condition in a manner consistent with adopted construction codes and requirements. You must submit the write-ups with the application. If national standards (e.g., the Uniform Building Code) have been locally adopted as the construction codes and requirements, they must be referenced. If you used locally developed and adopted codes and requirements, you must submit them. **(15 points)**

(*b*) You have prepared cost estimates for each house to be rehabilitated to determine the total rehabilitation cost and have included the cost estimates in your application. Costs to rehabilitate each house are documented by a deficiency list. **(12 points)**

(*c*) You have prepared cost estimates and have included them in your application but the estimates are based on surveys and not on individual house deficiency lists. **(5 points)**

(*d*) You have not included cost estimates in your application *or* the basis for the cost estimates included is inappropriate or not provided. **(0 points)**

(*4*) *Cost effectiveness of the rehabilitation program.* (*a*) This is a measure of how efficiently and effectively funds will be used under the proposed program. Applicants must demonstrate how the proposed rehabilitation will bring the houses to be assisted to a standard condition in an efficient and cost effective manner.

(*b*) Rehabilitation project is cost effective. **(5 points)**

(*c*) Rehabilitation project is not cost effective. **(0 points)**

(iii) *Rating Factor 3: Leveraging.* **(5 points)**

We will award points under this component in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG % of Project Cost	Points
25 and over	5
20–24.9	4
15–19.9	3
10–14.9	2
5–9.9	1
0–4.9	0

(d) *Thresholds for Land to Support New Housing.* (i) The application contains information and documentation, such as a preliminary plot plan or its equivalent that establishes that there is a reasonable ratio between the number of net usable acres to be acquired and the number of low and moderate income households

with documented housing needs. A clear objective of the applicant must be to make the most effective and economic use of the land proposed for acquisition.

(ii) Housing assistance needs must be clearly demonstrated and documented with either a survey that identifies the households to be served, their size, income levels, and the condition of current housing or an IHA, or if applicable, the waiting list approved by the IHA or TDHE Board. *The survey or waiting list must be submitted with the application.*

(e) *Rating Factors for Land to Support New Housing.*

(i) *Rating Factor 1: Project Need and Design.* **(40 Points)**

Information included in the application establishes that:

(*1*) The applicant has no suitable land for the construction of new housing and the necessary infrastructure and amenities for this housing. **(40 points);** or

(*2*) The applicant has land suitable for housing construction and needed infrastructure and amenities, but the land is officially dedicated to another purpose. **(30 points);** or

(*3*) The applicant will be acquiring land for housing construction and the construction of needed infrastructure and amenities for both new and existing housing. **(25 points);** or

(*4*) The applicant will be acquiring land for the construction of amenities for existing housing. **(15 points);** or

(*5*) The reason for the land acquisition does not meet any of the criteria listed above. **(0 points)**

(ii) *Planning and Implementation.* **(60 points)**

(*1*) *Suitability of land to be acquired.* You had a preliminary investigation (*a copy of which must be submitted with your application*) conducted by a qualified independent entity. Based on the judgment of this entity, the land meets all applicable requirements:

(*a*) Soil conditions appear to be suitable for individual and/or community septic systems or other acceptable methods for waste water collection and treatment have been identified.

(*b*) The land has adequate:

(*i*) Availability of drinking water;

(*ii*) Access to utilities;

(*iii*) Vehicular access; and

(*iv*) Drainage.

(c) The land appears to comply with environmental requirements. Future development costs are expected to be consistent with other subdivision development costs in the area (subdivision development costs include the costs of the land, housing construction, water and sewer, electrical service, roads, and drainage facilities if required).

Yes: 20 points

No: 0 points

(*2*) *Commitment and availability of housing resources.*

(*a*) The application includes evidence of a commitment and an ability to construct at least 25 percent of the housing units to be built on the land proposed for acquisition. This evidence consists of one (or more) of the following.

(*i*) a firm or conditional commitment to construct (or to finance the construction of) the units;

(*ii*) documentation that an approvable application for the construction of these units has been submitted to a funding source or entity; or

(*iii*) documentation that these units are specifically identified in the Indian Housing Plan submitted on or on behalf of the applicant as an affordable housing resource with a commensurate commitment of Indian Housing Block Grant (IHBG) resources. **(10 points)**

(*b*) Your application does not include evidence required for the award of 10 points. **(0 points)**

(*3*) *Availability/accessibility of supportive services and employment opportunities.* The application includes documentation indicating that, upon completion of construction of the housing to be built on the land to be acquired, fire and police protection will be available to the site and medical and social services, schools, shopping, and employment opportunities will be accessible from the site according to the community's established norms.

Yes: 5 points

No: 0 points

(*4*) *Commitment that households will move into the new housing.* The application includes a documented commitment from households that they will move into the new housing to be built on the land to be acquired.

Yes: 5 points

No: 0 points

(*5*) *Land to trust status.* (*a*) Land can be taken into trust or provisions have been made for taxes and fees. There must be a written assurance from the BIA that the land will be taken into trust or the applicant must demonstrate the financial capability and commitment to pay the property taxes and fees on the land for any period of time during which it anticipates it will own the property in fee. This commitment must be in the form of a resolution by the governing body of the applicant that indicates that the applicant will pay or guarantee that all taxes and fees on the land will be paid.

(*b*) Your application includes documentation from the BIA that land can be taken into trust or the required governing body resolution. **(5 points)**

(*c*) Your application does not include either the assurance or the resolution or they are inadequate. **(0 points)**

(*6*) Infrastructure commitment. (*a*) Your application includes a plan or commitment for any infrastructure needed to support the housing to be built on the land to be acquired. The plan or commitment must address water, waste water collection and treatment, electricity, roads, and drainage facilities necessary to support the housing to be developed.

(*b*) Your application includes financial commitments for all necessary infrastructure or includes documentation demonstrating that all necessary infrastructure is in place. **(10 points)**

(*c*) The application includes a plan to provide all necessary infrastructure but you have not submitted all financial commitments required to implement the plan. **(5 points)**

(*d*) The application does not include either a financial commitment or plan. **(0 points)**

(*7*) *The extent to which the site proposed for acquisition meets the housing needs of the applicant and is reasonably priced.* Your application includes documentation indicating that you have examined and assessed the appropriateness of alternative sites and demonstrating that the site proposed for acquisition best meets the documented housing needs of tribal households. Your application must include comparable sales data that show that the cost of the land proposed for acquisition is reasonable.

Yes: 5 points

No: 0 points

(f) *Thresholds for New Housing Construction.* The following thresholds and the rating factors set forth in paragraph (g) of this section apply to new housing construction to be implemented through a Community-Based Development Organization (CBDO) as provided for under 24 CFR 1003.204. *Please note that all households to be assisted under a new housing construction project must be of low or moderate income status.*

(i) New housing construction can only be implemented through a CBDO. Eligible CBDOs are described in 24 CFR 1003.204(c). You must provide an assurance that you will comply this requirement.

(ii) *You must include in the application documentation supporting the following determinations:*

(*1*) No other housing is available in the immediate reservation area that is suitable for the households to be assisted.

(*2*) No other funding sources including an Indian Housing Block Grant can meet the needs of the household(s) to be served.

(*3*) The house occupied by the household to be assisted is not in standard condition and rehabilitation is not economically feasible, the household is currently in an overcrowded house (sharing house with another household(s)), or the household to be assisted has no current residence.

(iii) Before you submit an application for new housing construction projects, you must adopt construction standards and construction policies. You must identify the building code to be used when constructing the houses and must document that this code has been adopted. The building code may be a tribal building code or a nationally recognized model code. If it is a tribal code it must regulate all of the areas and sub-areas identified in 24 CFR 200.925b and it must be reviewed and approved by the Area ONAP. If the code is recognized nationally, it must be the latest edition of one of the codes incorporated by reference in 24 CFR 200.925c.

(iv) You must provide an assurance that any house to be constructed will be the permanent non-seasonal residence of the household to be assisted; this household must live in the house at least nine months per year.

(g) *Rating Factors for New Housing Construction.*

(i) *Rating Factor 1: Project Need and Design.* **(45 points)**

(*1*) *Other resources available for new housing construction.*

(a) Funds provided to the applicant (or to a Tribally Designated Housing Entity (TDHE) for the applicant) under the Indian Housing Block Grant (IHBG) Program are not sufficient to have a significant impact on identified housing needs of low and moderate income households. (All amounts stated under the point award categories represent the amount of HUD funds received in the most recent Indian Housing Block Grant).

(*b*) The applicant (or TDHE for the applicant) received the minimum IHBG allocation ($25,000). **(15 points)**

(*c*) The applicant (or TDHE for the applicant) received more than $25,000 but less than $75,000 in IHBG funds. **(10 points)**

(*d*) The applicant (or TDHE for the applicant) received more than $75,000 but less than $150,000 in IHBG funds. **(5 points)**

(e) The applicant (or TDHE for the applicant) received more than $150,000 in IHBG funds. **(0 points)**

(*2*) *Adopted housing construction policies and plan.* (*a*) The plan must include a description of the proposed CBDO and its relationship (or proposed relationship) to the applicant. In addition, the policies and plan must include:

(*i*) A selection system that gives priority to the neediest households. ''Neediest households'' means households whose current residences are in the greatest disrepair, very low-income households, or households without permanent housing. ''Very low-income households'' refers to households whose income does not exceed 50% of the median income for the area as determined by HUD with adjustments for smaller and larger households.

(*ii*) A system effectively addressing long-term maintenance of the constructed houses.

(*iii*) Estimated costs and identification of the entity responsible for paying utilities, fire hazard insurance, and other normal maintenance costs.

(*iv*) Policies governing ownership of the houses, including the status of the land.

(*v*) Description of a comprehensive plan or approach being implemented by the tribe to meet the housing needs of its members.

(*vi*) Policies governing disposition or conversion to non-dwelling uses of substandard houses that will be vacated when a replacement house is provided.

(*b*) The policies and plan include all of the information listed above and, in addition, they specifically address the incorporation of child safety measures in the housing to be constructed. These measures may include, but are not limited to, child safety latches on cabinets, hot water protection devices, and window guards to prevent children from falling. **(25 points)**

(*c*) The policies and plan include all of the information listed above but do not specifically address the incorporation of child safety measures. **(20 points)**

(*d*) The policies and plan do not include all of the information listed above, but do include sufficient information to allow the project to proceed effectively or all of the information is included, but in insufficient detail. **(10 points)**

(*e*) The information included in the application is not sufficient to meet the requirements for the award of 10 points. **(0 points)**

(*3*) *Beneficiary identification.* (*a*) Your application identifies households to be assisted and documents their income eligibility and household size. **(5 points)**

(*b*) Your application does not identify households to be assisted or, if identified, does not document their income eligibility and household size. **(0 points)**

(ii) *Rating Factor 2: Planning and Implementation.* **(45 points)**

(*1*) *Occupancy Standards.* (*a*) The proposed housing will be designed and built according to adopted reasonable standards that govern the size of the housing in relation to the size of the occupying household (minimum and maximum number of persons allowed for the number of sleeping rooms); the minimum and maximum square footage allowed for major living spaces (bedrooms, living room, kitchen and dining room). *You must submit the standards with your application.*

(*b*) You have adopted reasonable occupancy standards and they are included in your application. **(10 points)**

(*c*) You have not adopted reasonable occupancy standards or did not include the standards in your application. **(0 points)**

(*2*) *Site Acceptability.* (*a*) You (or the proposed beneficiary household) have control of the land upon which the houses will be built. Either: (*i*) the application includes documentation that all housing sites are in trust or documentation from the BIA that the sites will be taken into trust within one year of the date of the ICDBG approval notification. If the sites are not in trust by the date of ICDBG approval notification, you must provide documentation that they are in trust to the Area ONAP before ICDBG funds may be obligated for construction; or

(*ii*) If you cannot provide documentation that the site(s) are in trust or will be taken into trust in the timeframe established, you have provided a formal tribal assurance. This assurance states that deed restrictions (or legal equivalents) will be imposed so that the owner of the site upon which the ICDBG assisted house will be built cannot sell the house without your permission and that the owner must reimburse you for the appraised value of the house at the time of sale (or the value of the ICDBG assistance provided, whichever is less). You must provide evidence that these restrictions have been recorded to the Area ONAP before you may obligate ICDBG funds for construction. You must treat any funds reimbursed to you as the result of future

sales as program income as defined and regulated in 24 CFR 1003.503.

(*b*) You had a preliminary investigation of the site(s) conducted by a qualified independent entity. Based on this investigation (*which must be included in the application*) the site(s) appear to meet all applicable requirements:

Soil conditions appear to be suitable for individual or community septic systems or other acceptable methods for waste water collection and treatment have been identified.

(*i*) Each site has adequate:

(*A*) Availability of drinking water;

(*B*) Access to utilities;

(*C*) Vehicular access;

(*D*) Drainage; and

(*ii*) Each site appears to comply with environmental requirements.

Yes: 15 points

No: 0 points

(*3*) *Energy Conservation Design.* Your application includes documentation demonstrating that the proposed houses have been designed in a manner that will ensure that energy use will be no greater than that for comparable houses in the same general geographic area that have been constructed in accordance with applicable state energy conservation standards for residential construction. Your application describes any special design features, materials, or construction techniques which enhance energy conservation.

Yes: 5 points

No: 0 points

(4) *Housing Survey.* (*a*) You have completed a survey of housing conditions and housing needs of your tribal members. You completed this survey within the twelve months before the application submission deadline (or if an earlier survey, you updated it during this period). *You must submit the survey with your application.* You included the following descriptive data for each household surveyed:

(*i*) Size of the household, including age and gender of any children.

(*ii*) Is the household occupying permanent housing or is it homeless?

(*iii*) Annual household income.

(*iv*) Owner or renter.

(*v*) Number of habitable rooms and number of sleeping rooms.

(*vi*) Physical condition of the house—standard/substandard. If substandard, is it suitable for rehabilitation? *The survey must include a definition of ''suitable for rehabilitation.''*

(*vii*) Number of distinct households occupying the house/degree of overcrowding.

(*viii*) If there is a need for a replacement house, what are the housing preferences of the household, *e.g.,* ownership or rental; location; manufactured or stick-built.

(*b*) You submitted an acceptable survey. **(10 points)**

(*c*) You did not submit a survey or the survey is not acceptable. **(0 points)**

(*5*) *Cost effectiveness of new housing construction.* (a) This is a measure of how efficiently and effectively funds will be used under the proposed program. You must demonstrate how the proposed housing activities will be accomplished in an efficient and cost effective manner.

(*b*) You have demonstrated that the proposed activities are cost effective. **(5 points)**

(*c*) You have not demonstrated that the proposed activities are cost effective. **(0 points)**

(iii) *Rating Factor 3: Leveraging.* **(10 points)**

We will award points under this component in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG % of project cost	Points
25 and over	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

Community Facilities

(4) *Project Specific Thresholds and Rating Factors for Community Facilities.*

(a) *Rating Factors for Infrastructure.*

(*i*) *Rating Factor 1: Project Need and Design.* **(60 points)**

(*1*) *Meets an essential need.* (*a*) Your application includes documentation demonstrating that the proposed project meets an essential community development need by fulfilling a function that is critical to the continued existence or orderly development of the community.

(*b*) The proposed project will fulfill a function that is critical to the continued existence or orderly development of the community. **(20 points)**

(*c*) The proposed project will fulfill a function that is not critical to the continued existence or orderly development of the community. **(0 points)**

(*2*) *Benefits the neediest.* (*a*) The proposed project benefits the neediest segment of the population, as identified below. You must include information demonstrating that income data were collected in a statistically reliable and independently verifiable manner and that:

(*b*) 85 percent or more of the beneficiaries are low and moderate income. **(15 points)**

(*c*) Between 75–84.9 percent of the beneficiaries are low and moderate income. **(10 points)**

(*d*) Between 55–74.9 percent of the beneficiaries are low and moderate income. **(5 points)**

(*e*) Less than 55 percent of the beneficiaries are low and moderate income. **(0 points)**

(*3*) *Provides infrastructure/health and safety.*

(*a*) The application includes documentation demonstrating that the proposed project will provide infrastructure that does not currently exist for the area to be served *or* it will eliminate or substantially reduce a health or safety threat or problem *or* it will replace existing infrastructure that no longer functions adequately to meet current needs.

(*b*) The infrastructure does not exist *or* the existing infrastructure no longer functions *or* the existing infrastructure does not contribute to the elimination of, or causes, a verified health or safety threat or problem. **(25 points)**

(*c*) The existing infrastructure no longer functions adequately to meet current needs *or* is unreliable. **(20 points)**

(*d*) The proposed project will replace or supplement existing infrastructure that is adequate for current needs but that will not meet acknowledged future needs. **(12 points)**

(*e*) The proposed project will replace or supplement existing infrastructure that is adequate to meet current needs and future needs that have not been acknowledged or documented. **(0 points)**

(*f*) If the project is intended to address a health or safety threat or problem, you must provide documentation consisting of a signed study or letter from a qualified independent authority that verifies that:

(*i*) A threat to health or safety (or a health or safety problem) exists that has caused or has the potential to cause serious illness, injury, disease, or death; and

(*ii*) The threat or problem can be completely or substantially eliminated if the proposed project is undertaken.

(ii) *Rating Factor 2: Planning and Implementation.* **(30 points)**

(*1*) *A viable plan for maintenance and operation.* (*a*) If you are to assume responsibility for maintenance and operation of the proposed facility, you must adopt a maintenance and operation plan that addresses maintenance, repair and replacement of items not covered by insurance, and that

clearly identifies operating responsibilities and resources. *You must include this plan and the adopting resolution in your application.* The plan must identify a funding source to ensure that the facility will be properly maintained and operated. The resolution adopting the plan must identify the total annual dollar amount you will commit.

(*b*) If an entity other than you commits to pay for maintenance and operation, you must include a letter of commitment that identifies the responsibilities the entity will assume in your application. You are not required to submit a maintenance and operations plan. If this entity is not an established organization or agency, this letter must also identify its financial ability to assume the indicated responsibilities. The Area ONAP will award points only if it is able to determine that the entity is financially able to assume the costs of maintenance and operation.

(*c*) Your application includes an acceptable maintenance and operation plan and adopting resolution (or letter of commitment). **(15 points)**

(*d*) Your application does not include either the plan and resolution or the commitment letter or, if included, they are not acceptable. **(0 points)**

(*2*) *Appropriate and effective design, scale, and cost.* (*a*) Your application includes information demonstrating that the proposed project is the most appropriate and cost effective approach to address the identified need. This information demonstrates that you have considered the use of existing facilities and resources and alternatives, including method of implementation and cost. If only one approach is feasible (there are no alternatives to the proposed project), the application must include an explanation.

(*b*) Your application includes the required information. **(15 points)**

(*c*) Your application does not include the required information or, if included, it is unacceptable. **(0 points)**

(iii) *Rating Factor 3: Leveraging.* **(10 points)**

We will award points under this component in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG % of Project cost	Points
25 and over	10
20–24.9	8
5–19.9	6
10–14.9.	4
5–9.9	2
0–4.9	0

(b) *Threshold for Buildings.* If you propose a facility that would provide health care services funded by the Indian Health Service (IHS), you must assure that the facility meets all applicable IHS facility requirements. We recognize that tribes that are contracting services from the IHS may establish other facility standards. These tribes must assure that these standards at least compare to nationally accepted minimum standards.

(c) *Rating Factors for Buildings.*

(i) *Rating Factor 1: Project Need and Design.* **(60 points)**

(*1*) *Meets an essential need.* (*a*) Your application includes documentation that the proposed building meets an essential community development need by providing space so that a service or function that is critical to the continued existence or orderly development of the community can be provided.

(*b*) The proposed building will provide space for a service or function that is essential to the continued existence or orderly development of the community. **(20 points)**

(*c*) The proposed building will provide space for a service or function that is not critical to the continued existence or orderly development of the community. **(0 points)**

(*2*) *Benefits the neediest.* The proposed project benefits the neediest segment of the population, as identified below. Your application must include information demonstrating that income data was collected in a statistically reliable and independently verifiable manner and that:

(*a*) 85 percent or more of the beneficiaries are low and moderate income. **(15 points)**

(*b*) Between 75–84.9 percent of the beneficiaries are low and moderate income. **(10 points)**

(*c*) Between 55–74.9 percent of the beneficiaries are low and moderate income. **(5 points)**

(*d*) Less than 55 percent of the beneficiaries are low and moderate income. **(0 points)**

(*3*) *Provides building/health and safety.* (*a*) Your application includes documentation demonstrating that the proposed building will be used to provide services or functions that are not currently being provided to service area beneficiaries *or* it will replace a building that does not meet health or safety standards that are currently being used to provide the service or function *or* it will replace a building that is no longer able to provide the space or amenities to meet the current need for the services or functions.

(*b*) The services or functions to be provided in the proposed building do not exist for the service area population *or* the building currently being used does not meet health or safety standards. **(25 points)**

(*c*) The building to be replaced by the proposed building is not able to provide the space or amenities for the services or functions so that current needs cannot be entirely met. **(20 points)**

(*d*) The building to be replaced is able to provide adequate space and current needs are being met but it cannot provide space for acknowledged future needs. **(10 points)**

(*e*) The proposed building is not necessary since current needs and acknowledged future needs can be met through the use of existing facilities. **(0 points)**

(*f*) If the proposed building is intended to replace an existing building that does not meet health or safety standards, your application must include documentation consisting of a signed letter from a qualified independent authority that specifically identifies the standard or standards that are not being met by the existing building.

(ii) *Rating Factor 2: Planning and Implementation.* **(30 points)**

(*1*) *A viable plan for maintenance and operation.* (*a*) If you are to assume responsibility for the maintenance and operation of the proposed building, you must adopt a maintenance and operation plan that addresses maintenance, repair and replacement of items not covered by insurance, and that clearly identifies operating responsibilities and resources. *You must include this plan and the adopting resolution in your application.* The plan must identify a funding source to ensure that the building will be properly maintained and operated. The resolution adopting the plan must identify the total annual dollar amount you will commit.

(*b*) If an entity other than the applicant commits to pay for maintenance and operation, you must include a letter of commitment identifying the responsibilities the entity will assume in your application. You are not required to submit a maintenance and operation plan. If this entity is not an established organization or agency, this letter must also identify its financial ability to assume the indicated responsibilities. The Area ONAP will award points only if it is able to determine that the entity is financially able to assume the costs of maintenance and operation.

(*c*) Your application includes an acceptable maintenance and operation plan and adopting resolution (or letter of commitment). **(15 points)**

(*d*) Your application does not include either the plan and resolution or the commitment letter, or if included, they are not acceptable. **(0 points)**

(*2*) *An appropriate and effective design, scale, and cost.* (*a*) Your application includes information demonstrating that the proposed building is the most appropriate and cost effective approach to address the identified need(s). This information demonstrates that you have considered the use of existing facilities and resources and alternatives, including method of implementation and cost. If only one approach is feasible (there are no alternatives to the proposed building), the application must include an explanation.

(*b*) Your application includes the required information. **(15 points)**

(*c*) Your application does not include the required information or, if included, it is unacceptable. **(0 points)**

(iii) *Rating Factor 3: Leveraging.* **(10 points)**

We will award points under this component based on the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG % of project cost	Points
25 or more	10
20–24.9	8
15–19.9	6
10–14.9	4
5–9.9	2
0–4.9	0

Economic Development

(5) *Project Specific Thresholds and Rating Factors for Economic Development.*

(a) *Thresholds for Economic Development.* (i) Economic development assistance may be provided only when a financial analysis is provided that shows public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project.

(ii) The analysis should also establish that to the extent practicable: Reasonable financial support will be committed from non-Federal sources prior to disbursement of Federal funds; any grant amount provided will not substantially reduce the amount of non-Federal financial support for the activity; not more than a reasonable rate of return on investment is provided to the owner; and that grant funds used for the project will be disbursed on a pro-rata basis with amounts from other sources. In addition, it must be established that the project is financially feasible and has a reasonable chance of success.

(b) *Rating Factors for Economic Development.*

(i) *Rating Factor 1: Organization.* **(8 points)**

(*1*) The application contains information and documentation that addresses all of the following three elements. **(Maximum: 8 points):**

(*a*) You (or entity to be assisted) have an established organization system for operation of a business, (*e.g.,* adopted tribal ordinances, articles of incorporation, Board of Directors in place, tribal department).

(*b*) Formal provisions exist for separation of government functions from business operating decisions. An operating plan has been established and is submitted.

(*c*) The Board of Directors consists of persons who have prior business experience. A staffing plan has been developed and is submitted.

(*2*) The application contains all of the first element listed above and some of the items in the second and third elements *or* the application contains all of the elements listed above, but in insufficient detail. The business should be able to operate effectively. **(Moderate: 5 Points)**

(*3*) The application does not meet the criteria for the award of moderate points. **(Unsatisfactory: 0 Points)**

(ii) *Rating Factor 2: Project Success.* **(45 points)**

We will rate the project on the adequacy and quality of the information included in the application that addresses the following criteria: *We will not consider any project for funding unless it receives at least moderate points in each of the following three rating factors.*

(*1*) *Market analysis.* (*a*) A feasibility/market analysis, generally not older than two years, identifying the market and demonstrating that the proposed activities are highly likely to capture a fair share of the market. *You must submit the analysis with your application.* **(Maximum: 15 points)**

(*b*) A feasibility/market analysis identifying the market and demonstrating that the proposed activities are reasonably likely to capture a fair share of the market. *You must submit the analysis with your application.* **(Moderate: 10 points)**

(*c*) Your submission does not meet the criteria for the award of moderate points. **(Unsatisfactory: 0 points)**

(*2*) *Management capacity.* (*a*) You have identified a management team with qualifying specialized training or technical/managerial experience in the operation of a similar business. *You must submit with your application job descriptions of key management positions as well as resumes showing qualifying specialized technical/managerial training or experience of the identified management team.* **(Maximum: 15 points)**

(*b*) You will hire a management team with qualifying general business training or experience if the grant is approved. *You must submit with your application job descriptions of key management positions.* **(Moderate: 12 points)**

(*c*) The submission does not meet the criteria for the award of 12 points. **(Unsatisfactory: 0 points)**

(*3*) *Financial Analysis of the Business.* (*a*) We will determine the financial viability of a project by analyzing financial and other project related information. *You must submit the following for all proposed projects:*

(*i*) A detailed cost summary for the project;

(*ii*) Evidence of funding sources; and

(*iii*) Five year operating or cash flow financial projections. If the project involves the expansion of an existing business, you must also submit with your application financial statements for the most recent three year period for the business (financial statements include the balance sheet, income statement and statement of retained earnings). For start-up businesses that will not be owned by the recipient, you must also submit with your application current financial or net worth statements of principal business owners or officers.

(*b*) The Area ONAP will review the information derived from the analysis and compare it to local or national industry standards to assess reasonableness of development costs, financial need, profitability, and risk as factors in determining overall financial viability. In determining whether a project is financially viable, the Area ONAP will also consider current and projected market conditions and profitability measures such as cash flow return on equity, cash flow return on total assets, and the ratio of net profit before taxes to total assets. Sources of industry standards include Marshall and Swift Publication Company, Robert Morris Associates, Dun and Bradstreet, the Chamber of Commerce, etc. You may also use local standards. *If you cite one of these standards, you must submit the appropriate data with your application.*

(*c*) Based on the analysis:

(*i*) The project has an excellent chance of achieving financial success. **(Maximum: 15 points)**

(*ii*) The project has an average chance of achieving financial success. **(Moderate: 8 points)**

(*iii*) The project has a minimal prospect of achieving financial success. **(Unsatisfactory: 0 points)**

(iii) *Rating Factor 3: Leveraging.* We will award points under this component in a manner consistent with the definition of ''Leverage'' included in this NOFA and the following breakdown:

Non-ICDBG % of project cost	Points
30% or more	12
20–29.9%	8
10–19.9%	4
Less than 10%	0

(iv) *Rating Factor 4: Permanent Full-Time Equivalent Job Creation and Training.* **(20 points).** (*1*) You must identify or include in your application the total number of permanent full-time equivalent jobs expected to be created and/or retained as a result of the project as well as a summary of job descriptions. We will not count retained jobs unless you have provided clear evidence that these jobs would be lost without the project. You must identify the number and kind(s) of jobs expected to be available to low and moderate income persons.

(*2*) *ICDBG cost per job:*

$30,000 or less: 15 points
$30,001–40,000: 12 points
$40,001–45,000: 8 points
$45,001+: 0 points

(*3*) *Quality of jobs and/or training targeted to low and moderate income persons:*

(*a*) The jobs offer wages and benefits comparable to area wages and benefits for similar jobs, provide opportunity for advancement, and teach a transferable skill; *or*

(*b*) The employer commits to provide training opportunities. *You must submit a description of the planned training program with your application.*

Yes: 5 points
No: 0 points

(v) Rating Factor 5: Additional Considerations. **(15 points)**

A project must meet three of the following factors to receive 15 points. **(Maximum: 15 points)**

(*1*) Use, improve, or expand members' special skills. Special skills are those that members have developed through education, training, or traditional cultural experiences.

Yes: 5 points
No: 0 points

(*2*) Provide spin-off benefits beyond the initial economic development benefits to employees or to the community.

Yes: 5 points
No: 0 points

(*3*) Provide special opportunities for residents of Federally-assisted housing.

Yes: 5 points
No: 0 points

(*4*) Provide benefits to other businesses owned by Indians or Alaska Natives.

Yes: 5 points
No: 0 points

(*5*) Loan Repayment/Reuse of ICDBG funds. If the business is not tribally owned, at least 50% of the ICDBG assistance to the business will be repaid to the grantee within a 10 year period. If the business is tribally owned, the tribe agrees (by submission of a tribal resolution) within a 10 year period to use funds equal to 50% of the ICDBG assistance for eligible activities that meet a national objective. These funds should come from the profits of the tribally owned business.

Yes: 5 points
No: 0 points

IV. Application Submission Requirements and Checklist

(A) *General.* You must submit your completed application (*one originally signed and two copies*) to the appropriate Area ONAP listed above. You may access any of the telephone numbers listed via TTY by calling the Federal Information Relay Service at 1–800–877–8339. To be eligible for consideration, your application must be received by or be submitted to the appropriate Area ONAP in accordance with the requirements set forth under **APPLICATION DUE DATE** above. You may submit only one application; however, an application may include more than one eligible project (*e.g.,* housing and public facilities). In any event, the ICDBG grant amount requested may not total more than the grant ceiling. We will rate separately each project within your application.

(B) *Demographic data.* You may submit data that are unpublished and not generally available in order to meet the requirements of this section. You must certify that:

(1) Generally available, published data are substantially inaccurate or incomplete;

(2) Data provided have been collected systematically and are statistically reliable;

(3) Data are, to the greatest extent feasible, independently verifiable; and

(4) Data differentiate between reservation and BIA service area populations, when applicable.

(C) *Publication of Community Development Statement.* You must prepare and publish or post the community development statement portion of your application according to the citizen participation requirements of § 1003.604.

(D) *Application Submission.* Your application must include:

(1) Standard Form 424—Application for Federal Assistance;

(2) Community Development Statement that includes:

(a) Components that address the relevant selection criteria;

(b) A brief description or an updated description of community development needs;

(c) A brief description of projects proposed to address needs, including scope, magnitude, and method of implementing the project;

(d) A schedule for implementing the project (form HUD–4125, Implementation Schedule); and

(e) Cost information for each separate project, including specific activity costs, administration, planning, technical assistance, and total HUD share (form HUD–4123, Cost Summary);

(3) Certifications—form HUD 4126;

(4) Certification for a Drug-Free Workplace (form HUD 50070);

(5) Certification regarding lobbying (24 CFR part 87) and SF–LLL (if applicable);

(6) Applicant/Recipient Disclosure/ Update Report—form HUD 2880, as required under subpart A of 24 CFR part 4, Accountability in the Provision of HUD Assistance;

(7) A map showing project location, if appropriate;

(8) If the proposed project will result in displacement or temporary relocation, a statement that identifies:

(a) The number of persons (families, individuals, businesses, and nonprofit organizations) occupying the property on the date of the submission of the application (or date of initial site control, if later);

(b) The number to be displaced or temporarily relocated;

(c) The estimated cost of relocation payments and other services;

(d) The source of funds for relocation; and

(e) The organization that will carry out the relocation activities;

(9) If applicable, evidence of the disclosure required by 24 CFR 1003.606(e) regarding conflict of interest.

(10) If applicable, the demographic data certification described in Section IV(B) of the NOFA. The data accompanying the certification must identify the total number of persons benefiting from the project and the total number of low-and-moderate persons

benefiting from the project. Supporting documentation should include a sample copy of a completed survey form and an explanation of the methods used to collect the data, and a listing of incomes by household.

(11) If the application has been submitted by a tribal organization as defined in 24 CFR 1003.5(b), on behalf of an Indian tribe, band, group, or nation, you must submit concurring resolutions from these entities.

(E) *Documentation requirements for point award for leveraged resources.*

(1) *General.* For your own resources, you must include in your application a council resolution (or legal equivalent) that identifies and commits the resources. For resources to be provided by another entity, you must include in your application written verification of an application or request for the leveraged resources.

(2) *Resources contributed by a public agency, foundation, or other private party.* (a) In addition to the requirement described in section IV.E.(1), above, for grants or other contributed resources from a public agency, foundation, or other private party, you must submit a *written commitment*, which may be contingent on approval of the ICDBG award, and it must be *received* by the Area ONAP no later than *30 days* after the application deadline. This commitment must specifically identify or indicate:

(i) The dollar amount committed (or dollar value of the noncash resource and the basis for the valuation);

(ii) That the resources are currently available or will be available when necessary for successful project implementation; and

(iii) The project.

(b) If the nature of the funding cycle of the contributing entity prevents the entity from making a firm funding commitment in the 30 days, we will consider these resources in the award of points if the entity provides a written statement that identifies the project and the dollar amount under consideration, indicates that the entity has received the application or request for assistance from the ICDBG applicant, and states the date by which its funding determination will be made. This date cannot be more than six months from the anticipated date of grant approval notification by HUD.

(c) If the proposed project rates high enough for funding consideration, we will establish a special condition in the grant agreement for the project. This condition will indicate that, if a firm funding commitment for the leveraged resources is not provided within six months of the date of grant approval, we will recapture the grant funds approved and will use them in accordance with the requirements of § 1003.102.

(d) The Area ONAP must receive the statement described in paragraph (c)(2)(ii) of this section no later than *30 days* after the application deadline. If the commitment or statement is not received in the required timeframe or if the required information is not included, we will not award points for the proposed contribution.

(e) If the proposed project still rates high enough to be approved, we will establish a pre-award condition that will require the applicant to provide evidence of firmly committed resources to cover the entire non-ICDBG project cost. If you do not meet this condition, we will not make the grant award.

(3) *Contributions of goods and services.* In addition to the above requirements for point award, you must include in your application special documentation for certain contributions. We will consider the contribution of goods and services for point award if your application meets the applicable requirements listed above; if you demonstrate and we determine that the items or services are necessary to the actual development of the project; and you have submitted comparable cost and/or time estimates that support the donation.

(4) *Contributions of land.* We will consider land to be contributed for point award when its use and area are integral to the development of the project. In addition, you must verify the value of the land by any of the following means or methods and must include this documentation in your application:

(a) A site specific appraisal no more than two years old;

(b) An appraisal of a nearby comparable site also no more than two years old; and

(c) A reasonable extrapolation of land value based on current area realtors value guides.

(5) *Indirect costs.* We will not consider the contribution of indirect administrative costs as identified in OMB Circular A–87, attachment A, section F, as a leveraged resource for purposes of point award.

(6) *Operations and maintenance expenditures.* We will not consider the contribution of resources to pay for the anticipated operations and maintenance costs of any proposed project to be leveraged resources for purposes of point award.

V. Clarifying Information

After the application due date, Area ONAPs may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from you. The Area ONAP may however, but is under no obligation to, contact you to clarify an item in the application. You should note, however, that the Area ONAP may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. The Area ONAP will make any requests for clarifying information in writing and will specify the item, or items, that need clarification and a timeframe for response. Failure on your part to provide such requested information will result in the rejection of the application.

VI. Correction of Technical Deficiencies

A technical deficiency is an error or oversight that, if corrected, would not alter, either in a positive or negative fashion, the review and rating of an application. Examples of technical deficiencies include the failure to submit the proper certifications or the failure to have an original signature of an authorized official, as required, on an application form. As indicated under Section III(A)(2)(f) above, only successful applicants will be required to address technical deficiencies and this must be done before we make a grant award. If you do not provide the information necessary to address the deficiency within the time allowed, we will not award you the grant and will reject your application. The Area ONAP will notify you in writing and will describe the technical deficiency, what must be done to correct it, and the date by which you must submit this information. The Area ONAP will notify you by facsimile or by return receipt requested. Your response must be submitted (postmarked) by no later than the date established by the Area ONAP. The Area ONAP must provide you at least 14 calendar days to respond to the request.

VII. Error and Appeals

Rating panel judgments made within the provisions of this NOFA and the program regulations (24 CFR part 1003) are not subject to claims of error. You may bring arithmetic errors in the rating and ranking of applications to the attention of an Area ONAP within 30 days of being informed of your score. If an Area ONAP makes an arithmetic error in the application review and rating process that, when corrected, would result in the award of sufficient points to warrant the funding of an otherwise approvable project, the Area ONAP may fund that project in the next funding round without further competition.

VIII. Findings and Certifications

(A) *Paperwork Reduction Act Statement.* The information collection requirements contained in this Notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0191. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

(B) *Environmental Finding.* This NOFA provides funding under, and does not alter the environmental requirements of, regulations in 24 CFR part 1003. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and a Finding of No Significant Impact (FONSI) is not required.

(C) *Recipient Compliance with Environmental Requirements.* In accordance with 24 CFR 1003.605, a recipient must comply with the environmental review requirements of 24 CFR part 58, including limitations on the commitment of ICDBG or non-HUD funds on an ICDBG project before HUD approval of the Request for Release of Funds and Certification. If you commit or expend ICDBG or non-HUD funds on a project activity that requires environmental review before HUD approves your certification that the review is complete and your Request for the Release of Funds, ICDBG funding for the project may be denied.

(D) *Federalism, Executive Order 13132.* Executive Order 13132 (captioned ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. While this NOFA will provide financial assistance to Indian tribes, none of its provisions will have federalism implications and they will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

(E) *Prohibition Against Lobbying Activities.* Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Applicants are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, applicants must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts.

(F) *Section 102 of the HUD Reform Act; Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(G) *Section 103—HUD Reform Act.* HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact HUD's Ethics Law Division (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate Area ONAP or Headquarters counsel.

(H) *Catalog of Federal Domestic Assistance Number.* The Catalog of Federal Domestic Assistance Number for the ICDBG Program is 14.862.

Dated: March 2, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–5722 Filed 3–9–00; 8:45 am]

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Federal Register

Friday,
March 10, 2000

Part V

Department of Transportation

Federal Transit Administration

Job Access and Reverse Commute Competitive Grants; Availability of Funds; Solicitation for Grant Applications; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Job Access and Reverse Commute Competitive Grants

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of funds: Solicitation for grant applications.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the second round of competitive grants under the Job Access and Reverse Commute grant program, authorized under section 3037 of the Transportation Equity Act for the 21st Century (TEA–21). This announcement describes the conditions under which applications will be received for the FY 2000 Job Access and Reverse Commute competitive grants program and how FTA will determine which projects it will fund. It includes all of the information needed to apply for Job Access and Reverse Commute competitive grants. The announcement also contains information needed to apply for projects specifically allocated funding by Congress.

This announcement is available on the U.S. Department of Transportation's FTA website at *http://www.fta.dot.gov/wtw/*. The website also has commonly asked questions and answers. FTA will announce final selections on the website and in the **Federal Register**.

DATES: FTA will make funding commitments for competitively selected Job Access and Reverse Commute projects through a two-stage process. All proposals must be submitted to the appropriate FTA regional office (see Appendix A) by the close of business May 9, 2000. After evaluation and selection, successful applicants will be required *to submit supplementary documentation demonstrating compliance with all of FTA's Section 5307, ''Urbanized Area Formula Grants'' requirements.* If the applicant so elects, a proposal and final application documenting standard FTA Section 5307 requirements may be submitted at the same time. Applications for congressionally-designated projects may be submitted as soon as they are completed, but not later than May 9, 2000. A single application containing the proposal and documentation of Section 5307 requirements is required.

ADDRESSES: Comments on, or questions about, the Job Access and Reverse Commute program or the application process may be made at the email address: [JobAccess@fta.dot.gov]. Or they may be mailed or faxed to the following address: *Doug Birnie, Federal Transit Administration, Room 9409, 400 7th Street, S.W., Washington, D.C. 20590 (FAX (202) 366–3765).*

FOR FURTHER INFORMATION: Contact the appropriate FTA Regional Administrator (see Appendix A) for application-specific information and issues. For general program information, contact Doug Birnie, Office of Research Management, TRI–30, (202) 366–0176, email *douglas.birnie@fta.dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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I. Background

The Job Access and Reverse Commute Program has two major goals: to provide transportation services in urban, suburban and rural areas to assist welfare recipients and other low-income individuals in accessing employment opportunities, and to increase collaboration among the regional transportation providers, human service agencies and related service providers, employers, metropolitan planning organizations (MPOs), states, and affected communities and individuals.

The Job Access and Reverse Commute grant program is intended to establish a regional approach to job access challenges through the establishment of an area-wide Job Access and Reverse Commute Transportation Plan. This plan is to be developed through a coordinated transportation/human services planning process. Projects derived from this plan support the implementation of a variety of transportation services that may be needed to connect welfare recipients and other low-income individuals to jobs and related employment activities. All projects funded under the Job Access and Reverse Commute grant program must be derived from such an area-wide plan.

While the projects must be planned in coordination with traditional transit authorities, Metropolitan Planning Organizations and State Departments of Transportation, other interested organizations could take the lead in establishing the collaborative planning process or in submitting a project application.

The Job Access and Reverse Commute grant program will support projects that are implemented by a wide range of transportation providers, but projects should be integrated within or coordinated with the existing transportation system and make efficient and effective use of existing transportation providers.

FTA is placing special emphasis on consultation with the community to be served, including welfare recipients and low-income individuals, individuals with disabilities, migrant workers, Native Americans and community-based, faith-based and other organizations addressing the interests of such individuals.

A Job Access project is designed to transport welfare recipients and low-income individuals in urban, suburban, or rural areas to and from jobs and activities related to their employment. Job Access projects implement new transportation services or extend existing services to fill the gaps that exist in many areas between where welfare recipients and low-income persons live and employment opportunities. Job Access and Reverse Commute grants funded under this program may not be used for planning or coordinating activities and cannot supplant existing sources of funding. Only new or expanded services are eligible for funding.

Funding for Job Access and Reverse Commute grants is authorized at $150 million annually. The Transportation Equity Act for the 21st Century (TEA–21) provided guaranteed funding starting at $50 million in fiscal year (FY) 1999, increasing by $25 million a year, and reaching the full authorized $150 million in FY 2003. Funding above the guaranteed level depends on congressional appropriations. No more than $10 million annually can be used for grants designated as Reverse Commute projects.

Program funding is divided in the following manner: sixty percent (60%) for areas with populations 200,000 and above, twenty percent (20%) for areas between 50,000–200,000 population, and twenty percent (20%) for areas below 50,000 population.

Congress has appropriated $75 million for the Job Access and Reverse Commute grants in FY 2000. Of this amount, Congress has allocated $49.57 million for specific states and localities.

The remaining $25.4 million plus $4.2 million in unobligated FY 1999 funding is available for competitive award. The following chart provides information on the amounts available for competitive projects in each funding category, as well as the amounts reserved for specific areas by each funding category.

	Approximate amounts for projects in areas with population—(funding in millions)			
	>200,000	50–200,000	>50,000	Totals for all areas
FY 2000 Funds Available	$45.0	$15.0	$15.0	$75.0
Amounts Reserved for Specific Projects	30.2	9.0	10.4	49.6
FY 2000 Funds Available for Competitive Award	14.8	6.0	4.6	25.4
FY 1999 Funds Not Allocated	1.0	2.8	.4	4.2
Total Funds Available for Competitive Award	15.8	8.8	5.0	29.6

A 50 percent non-DOT match is required. Other Federal funds that are eligible to be used for transportation costs can be used as part of the match. *Applicants should submit projects that can be started within six months, but no later than within one year.*

II. Changes in the Fiscal Year 2000 Solicitation

A. Area-Wide Job Access and Reverse Commute Transportation Plan

In FY 1999, it was not clear to some what the difference was between the Regional Job Access and Reverse Commute Plan and the Regional Transportation Plan developed by Metropolitan Planning Organizations in urbanized areas as required by the FHWA/FTA Joint Planning regulations. The plans required for the Job Access and Reverse Commute program are short-term, operational service plans that are meant to address gaps in current transit service that impede welfare recipients and low-income persons from reaching jobs and employment support services. The Regional Transportation Plan is a long-range plan that identifies area transportation needs in light of projected growth patterns and broadly charts major capital investments for transportation system development to meet these projected needs. To avoid confusion, we have renamed job access plans as *Area-Wide Job Access and Reverse Commute Transportation Plans.*

B. Persons With Disabilities

Because of high employment experienced by persons with disabilities and their more dispersed residential patterns, the Job Access and Reverse Commute Plans are now required to identify projects which address the mobility needs of this population in reaching employment sites and support activities. Applicants also must submit with their proposals a certification that the requirements of the Americans with Disabilities Act (ADA) will be met. (See Appendix E)

C. Multi-Year Commitments

In FY 1999, a number of applicants sought multi-year commitments from FTA. Because of limited funding available, recipients of FY 1999 Job Access and Reverse Commute funding seeking second year funding must compete with other applicants. They will be evaluated based on demonstrated progress in meeting the goals of their project, as well as on the general evaluation criteria. A full application must be submitted, including the transmittal memo, the proposal narrative and plan and any relevant updates, and documentation of demonstrated progress towards meeting project goals.

D. One-Step Application Process

In fiscal year 1999, FTA required applications to be submitted in two stages: The project proposal, including the Job Access and Reverse Transportation Plan, to be submitted first, and for applications approved for funding, the supplementary documentation necessary to meet the requirements of FTA's Section 5307 program. Some applicants wished to have a one-step instead of a two-step application process. This year, applicants may submit the entire application simultaneously, including project proposal and the supplementary documentation, if they choose to. (See Sections II and III) Those wishing to submit a single application should work closely with the appropriate FTA regional office. (See Appendix A for Regional Contacts)

E. Projects for Congressionally-Designated Areas

Applicants for projects supporting the development of local transportation services and related promotional activities in congressionally-selected areas must submit applications responding to the same program selection criteria as applications for competitive selection. Such applications shall demonstrate conformity with the requirements of the Job Access and Reverse Commute program and will provide information to demonstrate sound project management.

III. General Program Information

A. Authority

Section 3037 of the Transportation Equity Act for the 21st Century (TEA–21).

B. Background

While two-thirds of all new jobs are in the suburbs, three-quarters of welfare recipients live in rural areas or in central cities. In metropolitan areas with extensive transit systems, studies have shown that less than half of the jobs are accessible by transit. Even fewer jobs are accessible by transit in areas with limited transit systems. Many entry-level workers have difficulty reaching jobs during evening or weekend shifts when transit services are frequently diminished or non-existent. Work trips can also be complex, involving several destinations including childcare providers. The problems can be more challenging in rural areas where approximately 40 percent of rural counties lack public transit systems and commuting distances generally are longer than in urban areas.

Auto ownership among welfare recipients and low-income persons is low. Most welfare recipients do not own cars and nearly 40 percent of workers with annual incomes below $10,000 do not commute by car. In 1991, the median price of a new car was equivalent to 25 weeks of salary for the average worker and considerably more for the low-income worker.

Transportation is clearly a key barrier to those moving from welfare to work. Providing a variety of new or expanded transportation options for low-income workers, especially those who are receiving or who have recently received welfare benefits, will increase the

likelihood that those workers will get and retain jobs.

In FY 1999, $75 million was appropriated and FTA awarded approximately $71 million, $67.5 million for job access projects and $3.4 million for reverse commute projects. Successful applicants in the first round were announced on May 13, 1999 and included a variety of services ranging from extended bus routes and specialized van services reaching new employment sites to guaranteed ride home programs and late night and weekend service providing additional hours of service. Project descriptions can be found on the FTA website at (*www.fta.dot.gov/wtw*). The remaining uncommitted funds are added to the FY 2000 appropriation.

C. Scope

Improving mobility and advancing economic development are key strategic goals of the U.S. Department of Transportation. Job Access funds help improve mobility and economic opportunity for welfare recipients and other low-income people through implementing new or expanded transportation activities. Reverse Commute funds help improve mobility to suburban employment opportunities for the general public, as well as for welfare recipients and low-income people.

D. Eligible Applicants

Consistent with Section 3037 (b)(4)(A) & (B), local agencies and authorities, non-profit organizations and designated recipients under other FTA programs (usually a state entity or a regional transit authority) are eligible applicants for Job Access and Reverse Commute grant program funds. Local agencies and authorities include states, local governments, metropolitan planning organizations (MPOs), public transit agencies and tribal governments.

In urbanized areas with 200,000 population or more, MPOs select the applicant(s). FTA urges MPOs to designate a single recipient to submit a consolidated application in urbanized areas with such populations.

In small urbanized areas under 200,000 population and in non-urbanized, rural areas, states select the applicant. For areas between 50,000–200,000 population, applications forwarded to the state for selection must be endorsed by the area MPO as projects that the MPO would be willing to program in the Transportation Improvement Program if the projects were selected for funding States are urged to serve as the designated recipient for grants to small urbanized and non-urbanized areas. The selected grant recipient can sub-allocate funds to other project participants.

Tribal governments must go through the state selection process but, once selected, can choose to be sub-recipients of the state or, as sovereign governments, can apply directly to FTA. States are encouraged to work closely and expeditiously with tribal applicants. FTA regional offices are available to facilitate this process.

E. Eligible Projects

1. In General

Job Access or Reverse Commute projects derived from an Area-Wide Job Access and Reverse Commute Transportation Plan are eligible. Please note that grants awarded under the Job Access and Reverse Commute program may *not* be used for planning or coordinating activities. (Section 3037(e)) However, metropolitan and statewide planning funds made available under the FTA Section 5303 and 5313(b) programs and FHWA/FTA Joint Planning, Section 49 CFR part 613, Section 23 CFR part 420, and state planning and research funds (SPR) can be used to fund welfare to work transportation planning activities at a 100 percent Federal share. Other funds, including the U.S. Department of Health and Human Services' Temporary Assistance for Needy Families (TANF) and the Department of Labor's Welfare-to-Work (WtW) administrative funds, can also be used for transportation planning activities consistent with the allowable uses of those resources. Lead applicants submitting consolidated applications on behalf of a number of subrecipients may apply for administrative costs up to ten percent of the grant request.

2. Job Access Project

A Job Access project is directed at implementing new or expanded transportation services. These services are targeted at filling transportation gaps and designed to transport welfare recipients and low-income individuals to and from jobs and other employment-related support services such as childcare and job readiness, training and retention services. The Job Access Grant Program funds the capital and operating costs of new or expanded transportation services.

Localities have wide flexibility in selecting service strategies that are appropriate for their areas, including, but not limited to:

(a) Adding late night and weekend service;

(b) Providing a guaranteed ride home service;

(c) Initiating shuttle service;

(d) Extending fixed route mass transit service;

(e) Providing demand responsive van service;

(f) Sponsoring ridesharing and carpooling activities; and

(g) Encouraging bicycling.

To improve customer service and operating efficiency, localities are encouraged to:

(a) Establish regional mobility managers or transportation brokerage activities;

(b) Apply Geographic Information System (GIS) tools;

(c) Implement Intelligent Transportation Systems (ITS), including customer trip information technologies;

(d) Integrate automated regional public transit and human service transportation, including health services, information, scheduling and dispatch functions; and

(e) Deploy vehicle position monitoring systems.

Job Access and Reverse Commute grants also may be used for promoting the use of:

(a) Transit by workers with non-traditional work schedules,

(b) The purchase of transit vouchers by appropriate agencies for welfare recipients and eligible low-income individuals;

(c) The development of employer-provided transportation such as shuttles, ridesharing, carpooling; or

(d) The use of transit pass programs and benefits under Section 132 of the Internal Revenue Code of 1986.

Marketing and advertising are examples of promotional activities that could be undertaken to increase awareness of these transportation options and their benefit to welfare recipients and low-income individuals. Other locality-specific actions, strategies and linkages that further the program goals also may be eligible.

While the marketing and promotion of transit pass programs are eligible expenses under the Job Access and Reverse Commute Program, *the funding of individual transit passes is not an eligible expense.* Additionally, the construction of child care centers and other employment support facilities at transit hubs *are not eligible for Job Access grants.* Transit-oriented construction activities are eligible under FTA's Section 5307, 5309 and 5311 Formula Grant programs. Transit passes are eligible expenses under Temporary Assistance for Needy Families (TANF) and Welfare-to-Work (WtW) programs.

Programs for private automobile ownership and repair are not legally eligible under this grant funding

program. However, programs supporting carpooling and other forms of mass transportation and shared-ride use, such as jitneys or special paratransit service, are eligible. In cases where vehicle acquisition is part of the program, vehicles must remain under the continuing control of the agency receiving the grant.

3. Reverse Commute Project

A Reverse Commute project facilitates the provision of new or expanded public mass transportation services for the general public from urban areas, suburban and rural areas to suburban work places. Reverse Commute services include, but are not limited to:

(a) Bus, train, car and van pooling services, van routes, and

(b) The purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences and transit transfer points to a suburban work place and back again.

F. Cost Sharing

The Job Access and Reverse Commute grant program is intended to fill gaps in existing services and leverage other Federal, state and local transportation-related funding to address the unmet needs of individuals moving from welfare to work and other low-income populations. Neither funds awarded under this grant program, nor funds used to match the grants, can be used to replace any existing source of funds.

The maximum DOT share of a grant under the Job Access and Reverse Commute program may not exceed 50 percent of the total project cost. The non-DOT share shall be provided in cash. If funds are matched from other Federal programs, the funds must be applied directly to project expenses. Revenues from service agreements are an eligible match, *but revenues from individual fares cannot be used as a match.*

Transportation-eligible funding from Federal programs other than the Department of Transportation may be used to match DOT funds. These funds include but are not limited to:

a. Temporary Assistance for Needy Families (TANF);

b. Community Services Block Grants (CSBG) and Social Services Block Grants (SSBG) administered by the U.S. Department of Health and Human Services;

c. Welfare-to-Work (WtW) formula and competitive grants administered by the U.S. Department of Labor; and

d. Community Development Block grants (CDBG) and HOPE VI grants administered by the U.S. Department of Housing and Urban Development.

The prohibitions on the use of WtW funds for matching requirements under section 403(a)(5)(C)(ii) of the Social Security Act do not apply to Federal or state funds that provide transportation services. TANF and WtW grants, when used as a match, may be expended only for new or expanded transportation services and cannot be used for construction or to subsidize current transit operating expenses. Such funds also must supplement rather than supplant other state expenditures on transportation.

Under the TANF Final Rule, investment in transportation services for families who are employed, including the purchase of transit vouchers, and investments used as match for the Job Access and Reverse Commute program, do not constitute ''assistance'' and, therefore, do not trigger the 60-month lifetime limit on receipt of Federal benefits nor the reporting requirements of families receiving ''assistance.'' The Secretaries of Transportation, Labor, and Health and Human Services released revised joint guidance on the use of WtW and TANF funds on December 23, 1998, which is currently being updated to reflect the changes in the final TANF rule. Guidance on TANF funds, including specific examples of eligible transportation investments, is available on the web at [http://www.acf.dhhs.gov/programs/ofa/funds2.htm]. (''Child Support Performance and Incentives Act of 1998,'' Pub.L. 105–200, Sec. 403, ''Limitations on Use of TANF Funds for Matching Under Certain Federal Transportation Programs.'').

More extensive guidance on the use of TANF and WtW funds for transportation can be found on the FTA web site——– *http://www.fta.dot.gov/wtw.*

G. Planning

1. Coordinated Transportation/Human Services Planning Process

Proposed Job Access and Reverse Commute projects must be derived from an Area-Wide Job Access and Reverse Commute Transportation Plan (see below) which results from a coordinated public transit and human services transportation planning process. Any interested stakeholder group in the area may initiate the planning process. FTA encourages MPOs to serve as the regional forum in urbanized areas.

The planning process must include transportation planning officials from state and metropolitan transportation planning organizations; representatives from local transit agencies and other existing human service, private, non-profit transportation operators; the agencies administering TANF and WtW formula and competitive grants, and the community to be served. Stakeholders within the community to be served include welfare recipients and low-income residents as well as, community and faith-based organizations, disability groups, farm and migrant worker organizations and other groups representing the interests of low-income persons.

The planning process also should include other stakeholders organized transit labor representatives; employment, human service, and child care support service providers; a variety of local and state workforce development organizations including One-Stop Career Center; public and assisted housing providers and community development agencies; economic development agencies; employers and employer groups (such as transportation management organizations and Chambers of Commerce); elected representatives including tribal officials, and state officials including mayors, county supervisors, state legislators, governors and other state and local officials or their designates, and other interested public citizens.

2. Area-Wide Job Access and Reverse Commute Transportation Plan

The purpose of collaboration is to develop a comprehensive area-wide approach to providing transportation services to welfare recipients and low-income persons regardless of jurisdictional boundaries. In general, the Job Access and Reverse Commute program should be viewed as a catalyst to provide long-term mobility and access to jobs for welfare recipients and low-income individuals. Any project proposed for funding should be identified in the Area-Wide Job Access Transportation Plan resulting from the above process. The Plan is not meant to supersede, but to build upon existing area welfare-to-work transportation planning activities. The Area Wide Job Access and Reverse Commute Transportation Plan must:

a. Identify the geographic distributions of welfare recipients and low-income people in the region;

b. Identify the geographic distributions of employment centers and employment-related activities in the region;

c. Identify existing public, private, non-profit and human service transportation services in the region;

d. Identify transportation gaps between the geographic distributions of

people, as specified in section ''a,'' and employment, as specified in section ''b,'' which are not currently served by the transportation services, as specified in section ''c,''

e. Identify projects to address the gaps identified in section ''d.'' Each project identification must include:

(1) the goals and objectives of the project

(2) the cost of the project;

(3) An explanation of how the project will maximize use of existing transportation service providers and what mechanisms will be used to integrate or coordinate the project services with the existing transportation network; and

(4) Identification of any employer-provided or employer-assisted transportation service strategies incorporated in the project.

Prioritize the project(s) identified in section ''e'' for funding and implementation. *This is a requirement.*

The Area-Wide Job Access and Reverse Commute Transportation Plan should build on and incorporate existing welfare to work transportation planning activities.

In addition, since low-income persons with disabilities tend to be more disbursed throughout the community than other low-income groups that are geographically more concentrated, the Plan should include specific identification of projects that will address the employment-related needs of this population.

3. The Role of Metropolitan Planning Organizations

MPOs are comprised of elected officials representing local governments and transportation service providers within the metropolitan area. They are responsible for adopting transportation plans and improvement programs to address a region's unique transportation needs and working with states to include these priorities in statewide plans.

In regions with populations of more than 200,000, MPOs are responsible for selecting applicants to be considered for Federal Job Access and Reverse Commute grants. In regions with populations between 50,000 and 200,000, MPOs will recommend projects to the state, which will select the applicants to be considered for Federal Job Access and Reverse Commute grants.

This means that MPOs are responsible for the following:

(a) Determining that Job Access and Reverse Commute projects are consistent with the regional long-range transportation plan.

(b) Ensuring that the submitted application contains prioritized projects based on local need. Local priorities can be ascertained through the collaborative human services/transportation planning process and through consultation with the affected stakeholders.

(c) Endorsing and subsequently programming Job Access and Reverse Commute projects into the area Transportation Improvement Program in urbanized areas of over 50,000 population.

(d) Conducting the locally-developed public participation process as required by Joint FHWA/FTA Planning Rule (23 CFR part 450, 49 CFR part 613).

In all regions with MPOs, individual Job Access and Reverse Commute projects must be adopted into the MPO's Transportation Improvement Program (TIP) prior to receiving a grant. Because this entails a formal review and project approval by the MPO Policy Board, FTA strongly urges the partners developing the Area-Wide Job Access and Reverse Commute Transportation Plan to communicate with the MPO at an early stage. Further, as financial sustainability of a project is one of the evaluation criteria, coordination with the agencies participating in the MPO forum could be a critical factor in ensuring long-term support for Job Access and Reverse Commute activities.

4. Statewide Transportation Planning Requirements

In all regions with populations of less than 200,000, the state is responsible for selecting applicants, based on the recommendation of the MPO in areas between 50,000–200,000 population. In addition, Job Access and Reverse Commute projects selected for funding must be endorsed by the state and incorporated into the statewide transportation improvement program (STIP). *Because this requires state approval, FTA strongly urges the partners to communicate with state officials, including the state DOT, at an early stage.* In selecting projects in rural areas, states should give priority to projects providing service to places that are not currently served or are underserved by public transit systems. States must prioritize the projects for funding based on their analysis of local needs and service effectiveness, as well as the collaboration achieved among stakeholders. Given the sovereign nature of tribal governments, tribal projects need not be included in the state's prioritization of projects, though they must be included in the State Transportation Improvement Program (STIP).

5. Improved Transportation Planning

The statewide and metropolitan transportation planning processes mandated by TEA–21 promote ongoing, cooperative, and active involvement of public transportation providers; the public; and state, metropolitan and local government agencies in the development of state-wide and metropolitan transportation plans and improvement programs. DOT expects that the Job Access and Reverse Commute grant program will be a catalyst for broadening the transportation planning process to better integrate employment and social equity considerations.

J. General Grant Requirements

In addition to the project proposal based on the program-specific requirements outlined in this notice, the applicant will be required to submit appropriate certifications, assurances, and other documentation necessary to meet the requirements of FTA's Urbanized Area Formula Grant Program (Section 5307 program under Title 49, United States Code). These include planning, environmental, school bus, charter, procurement, labor protections and civil rights requirements, including the Americans with Disabilities Act, Title VI, Environmental Justice and Disadvantaged Business Enterprise, and drug and alcohol testing requirements.

Applicants are encouraged to coordinate with affected transit labor unions and to gather all information required by the U.S. Department of Labor for labor certification as soon as possible to avoid delay in the certification process upon grant selection. (See Appendix F for a description of required information). Applicants must have the financial, legal, and technical capacity to apply for and administer projects. Copies of the Section 5307 program guidance (circular FTA 9030.1B ''Urbanized Area Formula Program: Grant Application Instructions,'' Oct. 10, 1996) can be obtained from any FTA Regional Office or electronically through the FTA website. (See Appendix D for summary list.)

K. Performance Monitoring

FTA requires grant recipients to monitor the performance of their Job Access and Reverse Commute services and to cooperate with the FTA and General Accounting Office (GAO) national evaluations mandated by law. Performance measures on: (1) Increasing access between welfare recipients and low-income populations and employment sites; and (2) job access/

reverse commute service effectiveness and efficiency will be sought. The required performance measures for FY 1999 grants may be found on FTA's web site (www.fta.dot.gov/wtw). Similar measures will be required for FY 2000 grantees. Performance monitoring primarily will take place through FTA standard project quarterly progress reports. Quarterly reports and other information must be reported in accordance with FTA's standard reporting requirements which are: (1) For projects in non-urbanized areas, reporting requirements for the 5311 Program (FTA C 9040.1E, page VI–6) annual status reports, annual financial status reports, and annual Disadvantaged Business Enterprise (DBE) reports; (2) for projects in urbanized areas, reporting requirements for the 5307 Program, Transit Database Reporting, annual audits and triennial review.

IV. Guidelines for Preparing Grant Application

FTA is conducting a national solicitation for applications under the Job Access and Reverse Commute Program. Grant awards will be made on a competitive basis. FTA encourages both traditional transportation recipients and a variety of new program entrants non-traditional grantees in urban, suburban, and rural areas to participate in the development of projects. To assist new program applicants in particular, a two-step application process is available. Applicants must submit a proposal that describes the proposed project for which funding is sought and responds to the requirements outlined in this Notice. If selected, the applicant must then document compliance with the standard FTA requirements listed in Appendix D as well as complete the securement of the financial match for the grant. Applicants may elect to submit a single application containing both the proposal and documentation of FTA standard requirements. Contact the appropriate FTA regional office for guidance on meeting standard FTA program requirements.

A. Grant Funding Amounts

Suggested grant sizes are identified below. (Applicants may request smaller amounts from FTA.)

1. For urbanized areas with populations of over one million, FTA expects to make grants of no more than $1 million. (Places with populations of above 5 million may request funding above $1 million.)

2. For urbanized areas with populations greater than 200,000 and less than one million, FTA expects to make grants of no more than $500,000.

3. For urbanized areas with populations between 50,000 and 200,000, FTA expects to make grants of no more than $200,000. States should not submit applications that collectively exceed $1 million for this category.

4. For rural areas (areas with populations of less than 50,000), individual area grant applications generally should not exceed $150,000. Collective grant applications by states for rural areas should not exceed $1 million. Tribal applications may be considered separately from the state funding limitation.

B. Project Scope

Proposed projects must be drawn from an Area-Wide Job Access and Reverse Commute Transportation Plan and focus on new or expanded transportation services. Applicants should focus on projects that *can be started* within six months, but no later than within one year of grant award.

V. Application Development and Submission

To promote collaboration and reduce administrative paperwork, FTA strongly encourages the submission of a consolidated application by a single entity in urbanized areas and the submission of a consolidated application by the state for rural areas. In both cases, funds may be passed on to sub-recipients. Tribal governments submitting projects that are selected by the state may choose to allow the state to include their project(s) in the state's application or, as sovereign governments, may apply directly to FTA. Since existing FTA grantees may have already met or have on file information that will satisfy many of the FTA requirements that apply to this program, FTA encourages states and local transit agencies to serve as the single entity by submitting applications on behalf of other entities.

Applicants must submit an original and two paper copies of the application proposal to the appropriate FTA regional office. Additionally, the application proposal is to be submitted via e-mail to the FTA at: (JobAccess@fta.dot.gov). If an applicant is unable to submit the application electronically via e-mail, the proposal should be submitted on a 3.5 formatted disk for use on a personal computer (PC). Documents should be submitted in Word or Rich Text Format (RTF). Tables should be submitted in an Excel, or Tab Delimited Format. Submissions must be postmarked by, as well as electronically sent, where feasible, to FTA by May 9, 2000.

Applicants with access to TEAM, FTA's electronic grant making and management system, should enter standard grant information into TEAM once projects have been selected. For those applicants with access to TEAM that choose the one-step application process and submit a single comprehensive application (application proposal and standard section 5307 requirements), all standard grant requirement information also should be entered into TEAM.

The application proposal should provide detailed information on each project for which FY 2000 funds are being requested. The application should include the following elements:

A. Transmittal Memo

Include the following information:

1. The Name of Applicant(s) and the Type of Agency (See Appendix G for list of agency types).

2. A List of Sub Recipients and the Types of Agencies (See Appendix G).

3. Name, Address and Telephone Number of a Person to be Contacted for Additional Information.

4. Name, Title, and Complete Address of Person to be Notified if Grant is Awarded.

5. Area(s) to be Served: Cities, Counties, Tribal Lands and States.

6. Project Summary. Two paragraphs to be used for press purposes should the application be selected for funding. The summary should contain: a brief description and list of the planning partners; a brief overview of the transportation challenges in the area; a brief description of the services to be funded; the intended project beneficiaries and the identification of any employment support services (*e.g.,* training, child care, or housing) that will be coordinated with the proposed transportation services.

7. A Brief Description of the Applicant's Organizational Capability to Carry Out the Project.

8. Identification of the Area as a Designated Empowerment Zone, Enterprise Community, or Champion Community, if applicable.

9. Total Federal Project Funding Requested:

Major Urbanized Area (Over 200,000 population)
- Job Access Amount: $
- Reverse Commute Amount: $

Medium Urbanized Area (50,000 to 200,000 Population)
- Job Access Amount: $
- Reverse Commute Amount: $

Non-urbanized Area (Rural and Small Urban—less than 50,000 Population)

• Job Access Amount: $
• Reverse Commute Amount: $
10. Total Funds Requested
Job Access Amount: $
• Reverse Commute Amount: $
• Total Requested: $
11. Source(s) and Dollar Amount of Matching Funds.

B. Proposal Narrative

Provide the information identified below to support your application for new or expanded services.

1. Document the coordinated human services and transportation planning process. This should include:

a. A brief description (*no more than three pages—double spaced*) of the collaborative transportation/human services process used in developing the Area-Wide Job Access and Reverse Commute Transportation Plan, including the coordination and consultation process with the organizations that have been specified by law: the community to be served, states and MPOs, existing transportation providers and transit agencies, agencies administering the TANF and WtW funds.

b. A list of the above organizations and other participants in the Job Access and Reverse Commute planning process.

c. A description of the results of the local Job Access and Reverse Commute Plan consultation process with the community to be served, including welfare recipients and low-income individuals, individuals with disabilities, migrant workers, Native Americans and community-based, faith-based and other organizations addressing the interests of such individuals.

d. Letters of endorsement or objections from planning partners.

e. Applicant responses to any letters of objections.

2. Document the unmet transportation needs on a region-wide basis from the Area-Wide Job Access and Reverse Commute Plan and provide project specific information on how the proposed services meet these needs. Where possible, provide maps depicting the information listed below (2a, 2b). Please provide the following information:

a. Describe the unmet need for additional transportation services to transport those leaving welfare and low-income individuals to jobs, training and other employment services on an area-wide and project-specific basis. This should include:

• A definition of the proposed project service areas, the communities to be served and the geographic area covered by the area-wide job access and reverse commute plan.

• The number of welfare recipients and low-income persons and the percentage of the population that they represent within the proposed project service area and the percentage of the population that they represent within the geographic and project/s service area.

• A description of major employment opportunities.

• A description of the existing transportation network, including human services, nonprofit, private and public transportation providers.

• A description of transportation gaps in existing services for welfare recipients and low-income populations seeking to reach jobs and employment support services.

• For reverse commute projects, information on the need for additional transportation services

b. MPOs and states should list projects in priority order for funding implementation and describe how each proposed project(s) will meet the unmet needs described above. Tribal projects do not have to be prioritized because they represent the projects of an independent sovereign government, not subject to state funding priorities. Include or address the following:

• Describe the applicant's organizational capacity to implement the project.

• Specify project goals and objectives.

• Provide indicators that will be used to monitor project performance and to make subsequent adjustments in project implementation.

• Describe the project.

• Provide operation-specific data (*e.g.* miles/hours of service, new routes, route extensions, reduced travel time for target population where appropriate, etc.).

• Estimate capital and operating project costs Estimate annualized cost per rider of proposed project. For job access projects, estimate low-income and welfare recipient ridership and total annual ridership.

• For reverse commute projects, estimate annual ridership.

• Percentage of target population to be served.

• Describe how the project will address the mobility needs of persons with disabilities and provide certification that the ADA requirements will be met. (Certification language—see Appendix E).

• Identify employment potential in the proposed project's service area, including the new jobs and/or job and employment support sites reached.

• Specify how existing service providers will be used to provide proposed services.

• Describe mechanisms to coordinate or integrate new transportation services within existing needs of target populations.

• For applicants who already have received Job Access and Reverse Commute grants in FY 1999, provide a report depicting progress toward meeting project goals/objectives and performance information on the items described above.

3. Document financial commitments, including prospects for sustainability.

• Document sources, or expected sources, of matching funds.

• Provide letters of financial commitment, or intent to commit, that document local match.

• Identify how TANF, WtW, other Federal, state or local financial resources will be leveraged.

• Identify the financial commitment of existing transportation providers.

• Identify employer-provided resources.

• Identify long-term financing that may be proposed or available to support continuation of the proposed project or other aspects of the regional plan, including continued transit, human service and employer provided financial resources.

4. For application for continuation of services previously funded in FY 1999, applicants must provide information on financial commitments plus information drawn from their progress reports that demonstrates achievements in meeting project objectives, including the number of:

• New employment sites reached.
• New employers reached.
• New jobs reached.
• New employment support facilities reached.
• New residential areas served with target populations.
• Ridership on new services, including, if available, number of welfare recipients and low-income persons served, [these figures may be generated by periodic surveys].
• Cost per rider.
• Additional vehicle hours of services provided.
• Other progress and results toward meeting project goals.

C. Project Budget

Provide a project budget for each project. (see Appendix C).

VI. Grant Review Process

Applications for competitive funding are to be submitted to the appropriate FTA Regional Office by the close of business TBD. FTA will screen all applications to determine whether all required eligibility elements, as

described in the following checklist, are present. FTA will select projects based on what is most advantageous to the government, considering, in addition to the award criteria, the time frame in which projects can be implemented, Empowerment Zone or Enterprise Community status, use of innovative approaches, such as transportation mobility management/brokerage institutional arrangements and the application of Geographic Information Systems (GIS) and Intelligent Transportation Systems (ITS) technologies, and geographic distribution of project funding.

A. Project Eligibility Checklist—include the following:

This checklist is provided for the applicant to use to ensure that the required documentation has been provided in the application. *Failure to provide the documentation listed below will make an applicant's proposal non-responsive and it will not be evaluated further.*

(1) A description of the applicant's organizational capacity to implement the proposed project(s).

(2) A brief description and documentation of a coordinated transportation/human services planning process.

(3) An Area-Wide Job Access and Reverse Commute Transportation Plan. The plan must prioritize and rank projects for funding. Tribal projects are exempted for prioritization.

(4) A brief description of each project proposed.

(5) Documentation of matching funds.

(6) Documentation of approval by affected transit authorities.

(7) For urbanized areas with populations over 200,000, documentation of the MPO selection and intention to amend the Transportation Improvement Plan (TIP) if the project is selected for funding.

(8) For urbanized areas with populations between 50,000 and 200,000, documentation of the state selection and MPO intention to amend the TIP if project is selected for funding.

(9) For areas with populations below 50,000, documentation of the state selection and intention to amend the state-wide transportation improvement plan (STIP) if project is selected for funding.

(10) Description of the results of the consultation process with the community to be served.

B. Award Criteria for Competitive Grants:

Once eligibility is established, the merit of each application will be evaluated based on the following factors. (The number of points in parentheses indicates the maximum level of points for a given factor.)

1. A coordinated human services/transportation planning process. (25 points). Evaluated based on the extent to which the applicant demonstrates a collaborative planning process and the extent to which the organizations listed below demonstrate support for the projects. The entities include the following:

- Existing transportation service providers;
- The state or local agencies that administer the state program funded under Part A of Title IV of the Social Security Act (TANF and WtW grant programs);
- Public housing agencies (including Indian tribes and their tribally designated housing entities as defined by the Secretary of Housing and Urban Development), especially those applying for Welfare to Work Housing Vouchers from the U.S. Department of Housing and Urban Development
- Other human service and employment service agencies and providers;
- The community to be served, including welfare recipients and low-income residents, community-based and faith-based organizations, disability groups, farm and migrant organizations, tribal associations and other organizations representing the interests of low-income persons;
- Employers and their organizations; and
- Other area stakeholders.

An Area-Wide Job Access and Reverse Commute Transportation Plan addressing the transportation needs of welfare recipients and low-income individuals (60 pts.)

a. *Demonstrated need for additional transportation services* (30 Points)

Evaluated based on the extent to which the applicant demonstrates:

- For a job access project, the relative need for additional services in the area to be served to transport welfare recipients and eligible low-income individuals to and from jobs, training and other employment support services; and
- For a reverse commute project, the need for additional services to transport individuals to suburban employment opportunities. b.

b. *Extent to which proposed services will meet the need for services* (30 Points)—Evaluated based on the extent to which:

- The proposed service will meet needs, including those associated with accessing jobs and employment-related services such as training and child care.
- The applicant demonstrates the maximum use of existing transportation service providers and how services will be coordinated with existing the transportation network.

3. *Financial commitments* (15 points)

Evaluated based on the extent to which the applicant identifies:

- Long-term financing strategies to support proposed services.
- Commitment of financial match by source, e.g.

—human service agencies and providers.
—employers.
—existing transportation providers.

C. Notification for Competitive Selections

FTA will notify applicants of selection decisions. Those selected must then submit appropriate certifications, assurances, and other documentation necessary to meet the applicable FTA Section 5307 Urbanized Area Formula Grant Program requirements and be included in the TIP or STIP as appropriate, if these requirements had not been met. Technical assistance regarding these requirements is available in each FTA regional office.

FTA is committed to obligating FY 2000 Job Access and Reverse Commute funding expeditiously. Therefore, FTA urges applicants to develop documentation in accordance with the Section 5307 program guidance as soon as possible. This allows the information necessary for grant approval to be readily available for submission to FTA when projects are selected for funding. FTA will approve final applications as soon as they are complete.

Issued on: March 3, 2000.

Nuria I. Fernandez,

Acting Administrator.

Appendix A: (FTA) Regional Offices

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine
Richard H. Doyle, FTA—Regional Administrator, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093,
(617) 494–2055

Region II—New York, New Jersey, Virgin Islands,
Letitia Thompson, FTA—Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, (212) 668–2170

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington D.C.
Sheldon Kinbar, FTA—Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico
Susan Schruth, FTA—Regional Administrator, 61 Forsyth Street, S.W., Suite 17T50, Atlanta, GA 30303–8917, (404) 562–3500

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan
Joel Ettinger, FTA—Regional Administrator, 200 West Adams Street, Suite 2410, Chicago, IL 60606–5232, (312) 353–2789

Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma
Lee Waddleton, FTA—Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102–9003, (817) 978–0550

Region VII—Iowa, Nebraska, Kansas, Missouri
Mokhtee Ahmad, FTA—Regional Administrator, 901 Locust Street, Suite 404, Kansas City, M0 64106, (816) 329–3920

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah
Louis Mraz, FTA—Regional Administrator, Columbine Place, Suite 650, 216 Sixteenth Street, Denver, CO 80202–5120, (303) 844–3242

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam
Leslie Rogers, FTA—Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105–1839, (415) 744–3133

Region X—Washington, Oregon, Idaho, Alaska
Helen Knoll, FTA—Regional Administrator, Jackson Federal Building, Suite 3142, 915 Second Avenue, Seattle, WA 98174–1002, (206) 220–7954.

Appendix B: Definitions

1. *Welfare Recipient*—An individual who receives or received aid or assistance under a state program funded under Part A of Title IV of the Social Security Act (whether in effect before or after the effective date of the amendments made by Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193); (110 Stat. 2110)) at any time during the three-year period before the date on which the applicant applies for a grant.

2. *Eligible Low-Income Individual*—An individual whose family income is at or below 150 percent of the poverty line (as that term is defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) including any revisions required by that section for a family of the size involved, as calculated by HHS. The 1999 guidelines were published in the March 18, 1999, (Volume 64, Number 52) **Federal Register**, page 13428–13430, and are available on the web at [http://www.aoa.gov/network/99hhspov.html].

3. *Existing Transportation Service Providers*—Public transportation providers including public, private and non-profit fixed route and paratransit operators, and governmental agencies and nonprofit organizations that receive assistance from Federal, state, or local sources for non-emergency transportation services.

4. *Human Services Providers*—Agencies and organizations involved in helping welfare recipients and low-income populations to make the transition to work and providing supportive employment services. These agencies and organizations include state and local workforce development organizations, agencies administering TANF and WtW formula and competitive funds, public and assisted housing providers and community development agencies, and, where appropriate, faith-based and community-based organizations providing employment support services.

5. *Qualified Entity*—(A) With respect to any proposed eligible project in an urbanized area with a population of at least 200,000, the applicant(s) selected by the appropriate Metropolitan Planning Organization that meets the program eligibility requirements, including planning and coordination requirements, from among local governmental authorities and agencies and nonprofit organizations and; (B) With respect to any proposed eligible project in an urbanized area with a population of greater than 50,000 and less than 200,000, or an area other than an urbanized area, the applicant(s) selected by the chief executive officer of the state in which the area is located that meets the program eligibility requirements, including the planning and coordination requirements, from among local governmental authorities and nonprofit organizations.

6. *Transit Capital and Operating Assistance Projects*—Projects to finance acquisition, construction, improvement, and operating costs of facilities, equipment and associated capital maintenance items used in mass transportation service, including crime prevention and security of and for such equipment and facilities. Direct administrative expenses associated with the provision of job access and reverse commute services are also eligible operating expenses.

7. *Community to be Served—neighborhoods and geographic areas with a disproportionate number of welfare recipients and low-income residents as compared to the general population, and population groups such as tribes, migrant workers, and persons with disabilities who experience a disproportionate number of welfare recipients and low-income persons within them.*

Appendix C: Sample Project Budget (One for each project)

FISCAL YEAR 2000 FUNDING

Applicant	Area size	
	Federal amount	Total amount
A. Job Access Project		
Capital Costs	.....	.....
Activity	.....	.....
Quantity	.....	.....
Activity	.....	.....
Quantity	.....	.....
Example:	.....	.....
Activity Vans	.....	.....
Quantity 4	.....	.....
Operating Costs:	.....	.....
Activity	.....	.....
Activity	.....	.....
Example:	.....	.....
Activity Late Night	.....	.....
Service (3 Routes):	.....	.....
Total	.....	.....
B. Reverse Commute Project		
Capital Costs:	.....	.....
Activity	.....	.....

FISCAL YEAR 2000 FUNDING—Continued

Applicant	Area size	
	Federal amount	Total amount
Quantity		
Activity		
Quantity		
Example:		
Activity Vans		
Quantity 4		
Operating Costs:		
Activity		
Activity		
Example:		
Activity Two new routes		
Total		
Grand Total (A or B or A & B)		

For those applicants seeking a multi-year commitment, provide this information for subsequent years or reference budget material from your Area-wide Job Access Transportation Plan.

Appendix D: Summary of FTA'S Section 5307 Requirements

This is the full range of 5307 requirements. Some of these items are covered in the application, in which case you will not need to submit information twice.

Approval Prerequisites

(On file with FTA, or to be submitted with application and updates as appropriate)
Opinion of Counsel
Authorizing Resolution
Current annual Certification and Assurances
Civil rights submissions up-to-date
  Title VI
  Annual DBE Goal
  DBE Program
  EEO Program
  ADA
National Transit Database reports up-to-date
Any outstanding oversight findings resolved or resolution plan and schedule set

Additional Information

Project Budget
Project Description
Project Justification/Supporting Information as necessary
Project Milestone Schedule
Labor Union Description(s) (See Appendix F for a description of required information)
Environmental Review
  Date of FTA's signing of FONSI (Finding of No Significant Impact), or
  Date of FTA's signing of ROD (Record of Decision) closing out the EIS process, or
  Grant applicant's Categorical Exclusion recommendation if neither (a) nor (b) above applies
Air Quality
  Date of project level conformity determination by FTA, or
  Applicant's recommendation concerning list of exemptions in the conformity regulation (40 CFR Part 51)
STIP—Date of Approval by FTA
Request for copy of Master Agreement (If applicant does not have latest one on file)

Appendix E: ADA Certification

Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR part 27, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT 29 U.S.C. 794, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.* At 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

Appendix F: Information Required by the U.S. Department of Labor for Labor Certification

I. Background

Federal Transit law requires that fair and equitable arrangements must be made, as determined by the U.S. Department of Labor (DOL), to protect the interests of employees affected by Job Access and Reverse Commute grants. These interests include the preservation of rights, privileges, and benefits under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions related to employment, assurances of employment to employees of acquired mass transportation systems, priority of reemployment, and paid training or retraining.

DOL processes the employee protection certifications required under section 5333(b) in accordance with procedural Guidelines published at 29 CFR 215.3 (July 28, 1999 **Federal Register**). The DOL will process Job Access grants serving populations of 200,000 or more by referring a copy of the grant application to labor organizations representing affected employees and seeking the views of organized labor and the grant recipients on proposed certification terms. For grants serving populations under 200,000, DOL will issue its certification without seeking the views of the parties. In either case, the certification terms will be based on existing protective arrangements used for prior FTA grants, if any, or standard operating and/or capital arrangements developed by the DOL where there are no existing arrangements. (Such existing arrangements do not include the Special Section 13(c) Warranty that is used for projects funded under the Section 5311 program.)

It is essential where there are questions regarding the DOL certification process and/or information needed by DOL to obtain a labor certification that the applicant contact the appropriate Regional Office immediately. Where information lacks specificity, is unclear or is missing, DOL will place the grant application in an ''incomplete'' status until the necessary information is received. Conceptual terms such as ''collaborative effort'' or ''working in conjunction with * * *'' or ''services will be provided to assist * * *'' do not provide the specificity necessary for DOL to process a grant.

Upon receipt of a grant application, DOL will determine whether there is sufficient information to process the grant application. Because it is DOL's responsibility to address the protections afforded employees through the certification of appropriate protections, it must examine the activities of each subrecipient under the grant in order to frame a protective arrangement appropriate to the activity funded. The following information is needed by DOL to process all Job Access and Reverse Commute grant

applications (including those areas under 200,000).

II. Description of Required Information

DOL needs the following information to process a grant application for labor certification.

a. *Project Description (Brief).* This section should contain a brief, succinct description of what is in the project. This generally would cover the major budget line items.

b. *Project Description (Detail).* This section should provide a complete description of each activity to be undertaken. It should include funding information, what the project application is for, how and where line items will be used whether the project is new service, and a description of the operating service area of the recipient or subrecipient. If there is more than one subrecipient under a grant, this information must be developed for each subrecipient's portion of the project.

c. *Grantee Contact Person.* This information is not contained in the TEAM application. Under ''Project Details'' please enter the name of a contact person for the grantee. In addition, if the grant will ''pass through'' funding to one or more subrecipients or other public entities, enter the full name of the subrecipient or other public entity, a contact name, mailing address, telephone number and facsimile number for each of these.

d. *Union Information.* This information is not contained in the TEAM application. Under ''Project Details'' please (1) identify all the labor organizations that represent transit employees of the recipient and each subrecipient, and (2) identify any other transportation providers which operate in the service area of the recipient and the subrecipients and all labor organizations that represent employees of these other transportation providers. Because employee protections are not limited to the employees of the grant recipient, other service area providers must be identified. Please note that a useful reference for obtaining labor union information is contained in *Directory of U.S. Labor Organizations, 1999 edition.* This may be purchased from the Bureau of National Affairs Books, P.O. Box 7814, Edison, N.J. 08810–7814. Telephone orders: 1–(800)–960–1220.

For each local of a nationally affiliated union, the applicant must provide the name of the national organization and the number or other designation of the local union. (For example, Amalgamated Transit Union Local 1258.) Since DOL makes its referral to the national union's headquarters, there is no need to provide a local contact in these situations.

However, for each independent labor organization (*i.e.,* a union that is not affiliated with a national or international organization) the local contact information will be necessary (name of organization, contact person, mailing address, telephone number, facsimile number).

e. *Extended Budget Descriptions.* This must provide a project description and project justification for most line items. There are few line items that need no additional description and/or justification. If there are subreceipients under a grant, indicate which subrecipient will receive funds under each budget description.

If you have any questions, please contact the U.S. Department of Labor, Division of Statutory Programs, at (202) 693–0126

Appendix G: Agency Classifications

State Government
- State DOT
- State Human Services
- State Labor/Employment
- Other State Agencies

Indian Tribe

Transportation Providers
- Public Transportation Providers
- Regional Public Transit Authority
- State Transit Agency
- City Transit Agency
- County Transit Agency
- Private for Profit Companies
- Bus
- Taxi
- Specialized Service (*e.g.,* Medicaid Operator)
- Other
- Non-Profit Organizations
- Human Services Transportation Provider
- Community-Based Organization
- Other

Transportation Planning Organizations
- MPO
- Council of Governments
- Other

Local governments—General Purpose
- County Government
- City Government

Human Sevice Agencies
- Local County/City Public Human Svcs Agency
- Local County/City Welfare Agency
- Local County/City Workforce Development Agency
- Local Public Housing Agency
- Non-Profit Service Providers
- Human Support Services (*e.g.,* Child Care, Substance Abuse)
- Employment (*e.g.,* Job Training, Job Placement)

Economic Development Agencies
- Local/County Government
- Non-Profit Corporations

Private Nonprofit Agencies
- Community Action Agencies & Organizations
- Community-Based Organizations
- Faith-Based Organizations
- Other private nonprofit organizations

Business Organizations
- Chamber of Commerce
- Transportation Management Organization

Other Organizations

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Friday,
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Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing; Fair Share Allocation of Incremental Voucher Funding for Fiscal Year 2000; Funding Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4570–N–01]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Funding Availability; Fair Share Allocation of Incremental Voucher Funding Fiscal Year 2000

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability (NOFA).

SUMMARY: *Purpose of the Program.* The purpose of this NOFA is to invite public housing agencies (PHAs) to apply for vouchers on a fair share allocation basis under the Section 8 Housing Choice Voucher Program. The vouchers are for issuance to families on a PHA's Section 8 waiting list to enable these families to rent decent, safe, and affordable housing of their choice on the private rental market.

Available Funds. Approximately $346,560,000 in one-year budget authority for approximately 60,000 Section 8 vouchers.

Eligible Applicants. Public housing agencies (PHAs). Indian Housing Authorities (IHA), Indian tribes and their tribally designated housing entities are not eligible applicants. The Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new Section 8 annual contributions contracts (ACC) with IHAs after September 30, 1997.

Application Due Date. April 24, 2000.

Match. None.

Additional Information

If you are interested in applying for funding under this NOFA, please read the balance of this NOFA which will provide you with detailed information regarding the submission of an application, Section 8 program requirements, the application selection process to be used by HUD in selecting applications for funding, and other valuable information relative to a PHA's application submission and participation in the program covered by this NOFA.

I. Application Due Date, Application Kits, Further Information, and Technical Assistance

Application Due Date. Your completed application (an original and two copies) is due on or before April 24, 2000 at the addresses shown below.

Address for Submitting Applications. Submit your original application and one copy to Michael E. Diggs, Director of the Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, DC 20024.

Submit the second copy of your application to the local HUD Field Office Hub, Attention: Director, Office of Public Housing, or to the local HUD Field Office Program Center, Attention: Program Center Coordinator.

The Grants Management Center is the official place of receipt for all applications in response to this NOFA. For ease of reference, the term ''local HUD Field Office'' will be used throughout this NOFA to mean the local HUD Field Office Hub and local HUD Field Office Program Center.

Delivered Applications. If you are hand delivering your application, your application is due on or before 5:00 pm, Eastern time, on the application due date to the Office of Public and Indian Housing's Grants Management Center (GMC) in Washington, DC A copy is also to be submitted by the applicant to the local HUD Field Office Hub or local HUD Field Office Program Center.

This application deadline is firm as to date and hour. In the interest of fairness to all competing PHAs, HUD will not consider any application that is received after the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Mailed Applications. Applications sent by U.S. mail will be considered timely filed if postmarked before midnight on the application due date and received within ten (10) days of that date.

Applications Sent By Overnight Delivery. Applications sent by overnight delivery will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

For Application Kit. An application kit is not available and is not necessary for submitting an application for funding under this NOFA. This NOFA contains all of the information necessary for the submission of an application for voucher funding in connection with this NOFA.

For Further Information and Technical Assistance. You may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Room 4216, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1872, ext. 4064, or you may contact the Grants Management Center at (202) 358–0273. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

II. Authority, Purpose, Fair Share Allocation Amount, Voucher Funding, and Eligibility

(A) *Authority.* Authority for the approximately $346,560,000 in one-year budget authority for Section 8 vouchers for low-income families is found in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, FY 2000 (Pub.L. 106–74, approved October 20, 1999, referred to as the FY 2000 HUD Appropriations Act. The allocation of housing assistance budget authority for Section 8 vouchers, by State based on fair share factors, is pursuant to the provisions of 24 CFR part 791, subpart D, implementing section 213(d) of the Housing and Community Development Act of 1974, as amended.

(B) *Purpose.* The purpose of the Section 8 voucher funding being made available under this NOFA is to provide housing assistance to low-income families to enable them to rent decent, safe, and affordable housing of their choice on the private rental market.

(Note: Due to the lack of funding in FY 2000 for a Family Unification Program (FUP), PHAs may wish to consider using some portion of their fair share funding under this NOFA to either establish or expand upon their existing FUP. Requirements relative to the operation of a FUP may be found in the FY 1999 FUP NOFA, published under Docket No. FR–4414-N–01, on March 5, 1999, in the **Federal Register**.)

(C) *Fair Share Allocation Amount.* This NOFA announces the availability of approximately $346,560,000 in one-year budget authority for a fair share formula allocation which will provide rental assistance to approximately 60,000 low-income families.

(1) *Fair Share Allocation For Each State.* Attachment 1 lists the allocation of housing assistance budget authority for vouchers for each State, based on fair share factors. Attachment 1 also provides an estimate of the total number of vouchers that could be funded from the housing assistance available for each State based on the weighted local

average costs of voucher assistance for a two-bedroom unit. The actual number of units assisted within each State will vary from the estimates prepared by Headquarters since the actual costs of voucher assistance for each PHA vary from the average.

(2) *Potential additional funding.* If additional voucher funding becomes available for fair share use during FY 2000, HUD plans to distribute any additional funding to States using the same percentage distribution as reflected in Attachment 1 to this NOFA. Any additional funding will be used under the competitive requirements of this NOFA to fund PHA applications which were approvable but not funded, or approved and funded at less than 100 percent of the requested amount for which the PHA was eligible under this NOFA.

(3) *Underfunding Corrections.* The last prior year in which fair share funding was provided to PHAs was in 1994. HUD Headquarters will be funding the only case brought to its attention of a PHA which did not receive fair share funding in FY 1994 due to an error by the local HUD Field Office; *i.e.*, the city of Oceanside, California Housing Authority (OHA). The Grants Management Center will, in coordination with the local HUD Field Office and the OHA, determine the number of units that should have been awarded the OHA under the FY 1994 NOFA and the funding amount that would currently be appropriate under the voucher funding procedures in Section II.(D) of this FY 2000 Fair Share NOFA. The correction of the FY 1994 error will not affect the OHA's ability to compete, nor the amount of funding for which it may be eligible, in FY 2000 under the FY 2000 Fair Share NOFA.

(D) *Voucher Funding.*

(1) *Determination of Funding Amount for the PHA's Requested Number of Vouchers.* HUD will determine the amount of funding that a PHA will be awarded under this NOFA based upon an actual annual per unit cost using the following three step process (as may be modified based upon a percentage of annual per unit cost if necessary to produce the 60,000 vouchers provided for under this NOFA):

(a) HUD will extract the total expenditures for all the PHA's Section 8 tenant-based assistance programs and the unit months leased information from the most recent approved year end statement (form HUD–52681) that the PHA has filed with HUD. HUD will divide the total expenditures for all of the PHA's Section 8 tenant-based assistance programs by the unit months leased to derive an average monthly per unit cost.

(b) HUD will multiply the monthly per unit cost by 12 (months) to obtain an annual per unit cost.

(c) HUD will multiply the annual per unit cost derived under paragraph (b) above by the Section 8 Housing Assistance Payments Program Contract Rent Annual Adjustment Factor (with the highest cost utility included) to generate an adjusted annual per unit cost.

(E) *Eligible Applicants.* A PHA established pursuant to State law may apply for funding under this NOFA. A regional (multi-county) or State PHA is eligible to apply for funding. Indian Housing Authorities (IHA), Indian tribes and their tribally designated housing entities are not eligible to apply because the Native American Housing Assistance and Self-Determination Act of 1996 does not allow HUD to enter into new Section 8 annual contributions contracts (ACC) with IHAs after September 30, 1997. Applicants are limited to those PHAs currently administering Section 8 vouchers or certificates.

Some PHAs currently administering the Section 8 voucher and certificate programs have, at the time of publication of this NOFA, major program management findings from Inspector General audits, HUD management reviews, or independent public accountant (IPA) audits that are open and unresolved or other significant program compliance problems. HUD will not accept applications for additional funding from these PHAs as contract administrators if, on the application due date, the findings are either not closed, or sufficient progress toward closing its findings has not been made to HUD's satisfaction. The PHA must also, to HUD's satisfaction, be making satisfactory progress in addressing any program compliance problems. If the PHA wants to apply for funding under this NOFA, the PHA must submit an application that designates another housing agency, nonprofit agency, or contractor, that is acceptable to HUD. The PHA's application must include an agreement by the other housing agency, nonprofit agency, or contractor to administer the new funding increment on behalf of the PHA, and a statement that outlines the steps the PHA is taking to resolve the program findings and the program compliance problems. *Immediately after the publication of this NOFA, the local HUD Field Office will notify, in writing, those PHAs that are not eligible to apply without such an agreement. Concurrently, the local HUD Field Office will provide a copy of each such written notification to the GMC.* The PHA may appeal the decision, in writing, if HUD has mistakenly classified the PHA as having outstanding management or compliance problems. Any appeal must be accompanied by conclusive evidence of HUD's error and must be received prior to the application deadline. The appeal should be submitted to the local HUD Field Office where a final determination shall be made. Concurrently, the local HUD Field Office shall provide the GMC with a copy of its written response to the appeal, along with a copy of the PHA's written appeal. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new Section 8 voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(F) *Eligible Participants.* Eligible participants include very low-income families, and on an exception basis some low-income families, who are on the PHA's Section 8 waiting list and who are determined to be eligible for rental assistance under the Section 8 regulations at 24 CFR part 982 and part 5. The families must be income eligible under 24 CFR 982.201(b) in order to receive a voucher.

III. General Program Requirements

(A) *General Program Requirements.* (1) *Compliance With Fair Housing and Civil Rights Laws.* All applicants must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If an applicant: (a) Has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, the applicant's application will not be evaluated under this NOFA if, prior to the application deadline, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken necessary to address allegations of ongoing discrimination in the policies or

practices involved in the charge, lawsuit, or letter of findings.

(2) *Additional Nondiscrimination Requirements.* In addition to compliance with the civil rights requirements listed at 24 CFR 5.105(a), each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 *et seq.*), Title IX of the Education Amendments Act of 1972, and Titles I and V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*).

(3) *Affirmatively Furthering Fair Housing.* Each successful applicant will have a duty to affirmatively further fair housing. Applicants will be required to identify the specific steps that they will take to:

(a) Address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(b) Remedy discrimination in housing; or

(c) Promote fair housing rights and fair housing choice. Further, applicants have a duty to carry out the specific activities cited in their responses to address affirmatively furthering fair housing under this NOFA.

(4) *Certifications and Assurances.* Each applicant is required to submit signed copies of Assurances and Certifications. The standard Assurances and Certifications are on Form HUD–52515, Funding Application, which includes the Equal Opportunity Certification, Certification Regarding Lobbying, and Certification Regarding Drug-Free Workplace Requirements.

(5) *PHA Responsibilities and Rental Assistance Requirements.*

(a) *Section 8 Regulations.* PHAs must administer the Section 8 vouchers received under this NOFA in accordance with HUD regulations and requirements governing the Section 8 Housing Choice Voucher Program.

(b) *Section 8 Admission Requirements.* Section 8 assistance must be provided to eligible applicants in conformity with regulations and requirements governing the Section 8 Housing Choice Voucher Program and the PHA's administrative plan.

(c) *Turnover.* When a voucher under this NOFA becomes available for reissue (e.g., the family initially selected for the program drops out of the program or is unsuccessful in the search for a unit), the voucher may be used only for the next eligible family on the PHA's Section 8 waiting list.

IV. Fair Share Application Rating Process

(A) *Selection Criteria.* The GMC will use the Selection Criteria shown below for the rating of applications submitted in response to this NOFA. The maximum score under the selection criteria for fair share funding is 160 points.

(1) Selection Criterion 1: Housing Needs (30 points).

(a) Description: This criterion assesses the housing need in the primary market area specified in the PHA's application compared with the housing need for the State. Housing need is defined as the number of very low-income renter households with severe rent burden, based on 1990 Census data. Very low-income is defined as income at or below the Section 8 very low-income limits. Severe rent burden is defined as a household paying 50 percent or more of its gross income for rent.

(b) Needs Data: For the purpose of this criterion, housing needs are based on a tabulation of 1990 Census data prepared for the Department by the Bureau of the Census. Data on housing needs are available for all States, all counties (county equivalents), and places with populations of 10,000 or more as of 1990. Information will be posted on the HUD Home Page site on the Internet's world wide web (http://www.hud.gov) indicating the proportion of each State's housing needs for primary markets.

(c) Rating and Assessment: The number of points assigned is based on the percentage of the State's housing need that is within the PHA's primary market area. The primary market area is defined as the jurisdiction (or its closest equivalent in terms of areas for which housing needs data are available) in which the PHA is authorized to operate and where the vouchers will be used, as described in its application. (See paragraph VI(C) of this NOFA regarding regional (multi-county) and State PHAs.)

(1) The GMC will assign one of the following point totals:

- 30 points. If the PHA's housing need is 3 percent or more of the State's need.
- 25 points. If the PHA's housing need is equal to or less than 2.99 percent but equal to or greater than 1 percent of the State's need.
- 20 points. If the PHA's housing need is less than 1 percent of the State's need.

(2) A State, regional or multi-county PHA will receive points based on the areas it serves where the vouchers will be used, *e.g.,* the entire State or the sum of the housing needs for the counties and/or localities comprising its primary market area.

(3) A PHA with a primary market area that is a community with a population of 10,000 or less, or a PHA for which housing needs data are not available, will receive 20 points.

(2) Selection Criterion 2: Efforts of PHA to Provide Area-Wide Housing Opportunities for Families (60 points).

(a) Description: Many PHAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this selection criterion must be beyond those required by federal law or regulation such as the portability provisions of the Section 8 voucher program. The GMC will assign points to PHAs that have established cooperative agreements with other PHAs or created a consortium of PHAs in order to facilitate the transfer of families and their rental assistance between PHA jurisdictions. In addition, the GMC will assign points to PHAs that have established relationships with non-profit groups to provide families with additional counseling, or have directly provided counseling, to increase the likelihood of a successful move by the families to areas that do not have large concentrations of poverty.

(b) Rating and Assessment: The GMC will assign point values for any of the following assessments for which the PHA qualifies and add the points for all the assessments (maximum of 60 points) to determine the total points for this Selection Criterion:

- 10 Points—Assign 10 points if the PHA documents that it participates in an area wide exchange program where all PHAs absorb portable Section 8 families.
- 10 Points—Assign 10 points if the PHA certifies that its administrative plan does not include a ''residency preference'' for selection of families to participate in its voucher program or the PHA certifies that it will eliminate immediately any ''residency preference'' currently in its administrative plan.
- 10 Points—Assign 10 points if the PHA documents that it has established a contractual relationship with a non-profit agency or the local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas. The five PHAs approved for the FY 93 Moving to Opportunity (MTO) for Fair Housing Demonstration, PHAs participating in the Regional Opportunity Counseling (ROC) Program, and any other PHAs that receive counseling funds from HUD in connection with the demolition of public housing, public housing vacancy consolidation, or settlement of litigation

involving desegregation may qualify for points under this assessment. However, these PHAs must identify all activities undertaken, other than those funded and required under the MTO Demonstration, ROC Program, or the court-ordered plans or plans for relocating public housing families, to expand housing opportunities.

• 10 Points—Assign 10 points if the PHA documents that it participates with other PHAs in using a metropolitan wide or combined waiting list for selecting participants in the program.

• 10 Points—Assign 10 points if the PHA documents that it has implemented other initiatives that have resulted in expanding housing opportunities in areas that do not have undue concentrations of poverty or minority families.

• 10 Points—Assign 10 points if the PHA has formed a consortium or joint venture with other PHAs to administer its voucher program.

(3) Selection Criterion 3: Local Initiatives (20 points).

(a) Description: The application must describe the extent to which the PHA demonstrates locally initiated efforts in support of its voucher and certificate programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by whether the locality is able to provide services, cash contributions, or tax abatements to rental property owners leasing to Section 8 families, or demonstrates its intention to provide this kind of support in the future.

(b) Rating and Assessment: The GMC will assign one of two point-values, as follows:

• 20 points: The State or locality provides local support (*e.g.,* financial, manpower for inspection services) to its voucher or certificate program.

• 0 points: The State or locality does not provide support to the PHA's voucher or certificate program.

(4) Selection Criterion 4: Disabled Families (20 points).

(a) Description: The GMC will assign 20 points to PHAs that indicate at least 15 percent or more of the vouchers they are requesting (or funded by HUD) under this NOFA will be used to house disabled families. The PHA's application must be specific as to the exact percentage of vouchers that will be issued solely to disabled families. Disabled families are defined as follows:

(i) *Disabled Family.* A family whose head, spouse, or sole member is a person with disabilities. The term ''disabled family'' may include two or more such persons with disabilities living together, and one or more such persons with disabilities living with one or more persons who are determined essential to the care and well-being of the person or persons with disabilities (live-in aides).

(ii) *Person with disabilities.* A person who—

a. Has a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or

b. Is determined to have a physical, mental or emotional impairment that:

1. Is expected to be of long-continued and indefinite duration;

2. Substantially impedes his or her ability to live independently; and

3. Is of such a nature that such ability could be improved by more suitable housing conditions, or

c. Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term ''person with disabilities'' does not exclude persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome (HIV).

(**Note:** While the above definition of a ''person with disabilities'' is to be used for purposes of determining a family's eligibility for a Section 8 voucher designated as being for a disabled family under this NOFA, the definition of a person with disabilities contained in section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of meeting the requirements of Fair Housing laws, including providing reasonable accommodations.)

No individual shall be considered a person with disabilities for the purpose of determining eligibility solely on the basis of any drug or alcohol dependence.

(b) Rating and Assessment: The GMC will assign one of two point values, as follows:

• 20 points: The PHA will use not less than 15 percent of the vouchers being requested (or funded by HUD) to house disabled families.

• 0 points: The PHA will use less than 15 percent of the vouchers it is requesting (or funded by HUD) to house disabled families.

(5) Selection Criterion 5: Medicaid Home and Community Based Services Waivers Under Section 1915(c) of the Social Security Act (10 points).

(a) Description: This selection criterion is for PHAs interested in the provision of Section 8 voucher assistance to families within their jurisdiction who are disabled and also covered under a waiver of Section 1915(c) of the Social Security Act. Section 1915(c) waivers are approved by the Health Care Financing Administration within the Department of Health and Human Services (HHS) for the agency within each State responsible for the administration of the medicaid program. Contacting the responsible State agency (for example, the Agency for Health Care Administration in the State of Florida) will assist the PHA in determining how many, if any, individuals are covered by a Section 1915(c) waiver in the PHA's legal area of operation. These waivers allow medicaid-eligible individuals at risk of being placed in hospitals, nursing facilities or intermediate care facilities the alternative of being cared for in their homes and communities. These individuals are thereby assisted in preserving their independence and ties to family and friends at a cost no higher than that of institutional care.

While a Section 1915(c) waiver may cover individuals other than those who are disabled, the focus of Selection Criterion 5 is on disabled families only. The definition of disabled families listed under Selection Criterion 4 will be used by PHAs for purposes of the issuance of vouchers to disabled families in connection with Selection Criterion 5; i.e., only those individuals that meet the definition of a disabled family in this announcement are to be considered in connection with a PHA determining how many such disabled families are covered by a Section 1915(c) waiver in their legal area of operation and whether to try to qualify for the 10 points available under Selection Criterion 5. The PHA's application must be specific as to the percentage of vouchers that will be issued to such disabled families.

Any PHA attempting to qualify for the 10 points available under Selection Criterion 5 should also include information within its application indicating the collaborative efforts already undertaken with the responsible State agency to identify eligible families, as well as agreements reached with that agency for future referrals of such families. HUD reserves the right at some future point in time to conduct an evaluation of the success of the PHA's efforts to collaborate with the State agency and to successfully house individuals that meet the requirements of being covered by a Section 1915(c) waiver, qualify as a disabled family under this announcement, and are otherwise eligible for a Section 8 voucher.

(b) Rating and Assessment: The GMC will assign one of two point values as follows:

• 10 points: The PHA will use not less than 3 percent of the vouchers being requested (or funded by HUD) to house Section 8 eligible, disabled families covered by a waiver under Section 1915(c) of the Social Security Act.

• 0 points: The PHA will use less than 3 percent of the vouchers it is requesting (or funded by HUD) to house Section 8 eligible, disabled families covered by a waiver under Section 1915(c) of the Social Security Act.

(c) Prohibition Against Double Counting. The number (percentage) of disabled families that a PHA indicates it will issue vouchers to when qualifying for the 10 points available under Selection Criterion 5 cannot be used to also qualify for the 20 points available under Selection Criterion 4 or conversely.

(6) Selection Criterion 6: Portability (20 Points).

(a) Description: The GMC will assign 20 points to a PHA certifying that it is billing another PHA(s) for portable families comprising not less than 5 percent of the certificates and vouchers being administered by it and will use 20 percent of the funds it is requesting (or funded by HUD) to absorb portable families for which it is currently billing another PHA(s).

(b) Rating and Assessment: The GMC will assign one of two point values, as follows:

• 20 points: The PHA certifies that it is billing another PHA(s) for portable families for not less than 5 percent of the certificates and vouchers it administers and will use 20 percent of the funds being requested (or funded by HUD) to absorb portable families for which it is currently billing another PHA(s).

• 0 points: The PHA has no portables for which it is billing another PHA, or is billing another PHA(s) for less than 5 percent of the certificates and vouchers it administers and will use less than 20 percent of the funds being requested (or funded by HUD) to absorb portable families for which it is currently billing another PHA(s).

V. Fair Share Application Selection Process

(A) *Maximum Funding Allowed.* The GMC may recommend for approval the maximum funding for a PHA under this NOFA that does not exceed the lesser of 25 percent of the PHA vouchers and certificates on the latest HUD-approved budget or 25 percent of the number of vouchers available in the State, whichever is less.

(B) *Funding Procedure.* HUD seeks to maximize, insofar as practical, the number of PHAs awarded funding under this NOFA. The GMC will recommend applications for approval in rank order (highest to lowest score) within each State. No PHA shall be eligible to request or be funded at more than the lesser of 25 percent of the units in its latest HUD-approved budget for certificates and vouchers or 25 percent of the vouchers available for the State. The number of vouchers for which a PHA will first receive consideration by the GMC for funding will be based upon initially using the lesser of a 10 percent calculation for those units in the PHA's latest HUD-approved budget or 25 percent of the vouchers available for the State, whichever is lesser. If funding remains available within the State, the percentage used for the units in the PHAs' latest HUD-approved budget will increase to the percent required to use all funding within the State, not to exceed 25 percent.

Where the GMC finds it has some number of vouchers left but not enough to fully fund the next ranked application or applications receiving the same score, funding will be recommended by the GMC for the application indicating it will accept the lesser number of vouchers (see Section VI(B)of this NOFA). In the event there are two or more PHAs ranked at the same position (same number of rating points) indicating they will accept the lesser number of vouchers, the PHA whose application is eligible for the largest number of vouchers among these PHAs will be recommended by the GMC for funding.

(C) *Reallocations Between States.*

The GMC will make every reasonable effort to use all available funds. It may be necessary, however, to reallocate funds from one State to another when the funds cannot be used in the State to which they were initially assigned. In such cases, the GMC will re-allocate funds to the State having the largest number of approvable vouchers remaining unfunded due to lack of sufficient fair share funding.

(D) *Applications Recommended by the GMC for Funding.* After the GMC has screened PHA applications and disapproved any applications found unacceptable for further processing, the GMC will review all acceptable applications to ensure that they are technically adequate and responsive to the requirements of the NOFA. As PHAs are selected, the cost of funding the applications will be subtracted from the funds available. Applications will be funded for the total number of units recommended for approval by the GMC in accordance with this NOFA.

VI. Fair Share Application Submission Requirements

(A) *Form HUD–52515.* All PHAs must complete and submit form HUD–52515, Funding Application, for Section 8 tenant-based assistance (dated January 1996). This form includes all necessary certifications for Fair Housing, Drug Free Workplace and Lobbying Activities. Attachment 1 to this notice lists the estimate of the number of vouchers and budget authority available for each State. PHAs should limit their applications for the ''fair share'' program to a reasonable number of vouchers based on the capacity of the PHA to lease-up within 12 months of ACC execution. The number of vouchers on the PHA application may not exceed the lesser of: (a) Twenty-five percent (25%) of the total vouchers and certificates on the most recent HUD-approved budget for the PHA; or (b) twenty-five percent (25%) of the number of units available for the State. Section C of the form should be left blank. Copies of form HUD–52515 may be obtained from the local HUD Field Office or may be downloaded from the HUD Home Page site on the Internet's world wide web (http://www.hud.gov). (On the HUD website click on ''handbooks and forms,'' then click on ''forms'', then click on ''HUD–5'' and click on ''HUD–52515''.) The form must be completed in its entirety, with the exception of Section C, signed and dated.

(1) A PHA may submit only one application (Form HUD–52515) for a State.

(2) The GMC will reduce the number of vouchers requested in any application that exceeds the established application limit in Section VI(A) above.

(B) *Letter of Intent and Narrative.* The PHA must state in its cover letter to the application whether it will accept a reduction in the number of vouchers, and the minimum number of vouchers it will accept, since the funding is limited and HUD may only have enough funds to approve a smaller amount than the number of vouchers requested. The application should include a narrative description of how the application meets, or will meet, the application selection criteria. Failure to submit a narrative description is not cause for application rejection; however, the GMC can only rate and rank the application based on information it has on-hand.

(C) *Description of Primary Market Area.* A Regional (multi-county) or State PHA must specify in the application its primary market area; *i.e.*, the area in which it is authorized to operate and in which the Section 8 vouchers will be

used. This information may be different than that entered by such a PHA on the form HUD–52515, as the form calls for the PHA to identify its ''legal area of operation'' which may be far more geographically expansive than the specific city, county, or area within a State where a regional or State PHA intends to use the fair share vouchers.

(D) *Statement Regarding the Steps the PHA Will Take to Affirmatively Further Fair Housing.* The areas to be addressed in the PHA's statement should include, but not necessarily be limited to: (a) Elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice; (b) remedy discrimination in housing; or (c) promote fair housing rights and fair housing choice.

(E) *Program Summary.* Provide a separate, one paragraph statement describing how the vouchers being applied for will address the local housing needs of eligible families in renting decent, safe, and affordable housing. Describe, where applicable, how the vouchers will be used to expand existing housing choices, and whether the PHA intends to use the vouchers to establish or expand upon its existing Family Unification Program, partnerships with local government, nonprofit agencies, or private industry groups. Also address any related notable local program activities, best practices, or accomplishments.

(F) *Application Checklist.* Attachment 2 to this NOFA is an Application Checklist to assist applicants in assembling complete applications. The Application Checklist must be submitted as part of the PHA's application.

VII. Corrections to Deficient Applications

(A) *Acceptable Applications.* An acceptable application is one which meets all of the application submission requirements in Section VI of this NOFA and does not fall into any of the categories listed in Section VII(B) of this NOFA. The GMC will initially screen all applications and notify PHAs of technical deficiencies by letter.

With respect to correction of deficient applications, HUD may not, after the application due date and consistent with HUD's regulations in 24 CFR part 4, subpart B, consider any unsolicited information an applicant may want to provide. HUD may contact an applicant to clarify an item in the application or to correct technical deficiencies. Please note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of a response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case under this NOFA, the GMC will notify the applicant in writing by describing the clarification or technical deficiency. The applicant must submit clarifications or corrections of technical deficiencies in accordance with the information provided by the GMC within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding.

(B) *Unacceptable Applications.*

(1) After the 14-calendar day technical deficiency correction period, the GMC will disapprove all PHA applications that it determines are not acceptable for processing. The GMC's notification of rejection letter must state the basis for the decision.

(2) Applications from PHAs that fall into any of the following categories will not be processed:

(a) Applications from PHAs that do not meet the requirements of Section III(A)(1) of this NOFA, Compliance With Fair Housing and Civil Rights Laws.

(b) The PHA has major program management findings in an Inspector General audit, HUD management review, or independent public accountant (IPA) audit for its voucher or certificate programs that are not closed or on which satisfactory progress in resolving the findings is not being made; or program compliance problems for its voucher or certificate programs on which satisfactory progress is not being made. The only exception to this category is if the PHA has been identified under the policy established in Section II.(E) of this NOFA and the PHA makes application with a designated contract administrator. Major program management findings are those that would cast doubt on the capacity of the PHA to effectively administer any new Section 8 voucher funding in accordance with applicable HUD regulatory and statutory requirements.

(c) The PHA has failed to achieve a lease-up rate of 90 percent for its combined certificate and voucher units under contract for its fiscal year ending in 1998. Category (c) may be passed, however, if the PHA achieved a combined certificate and voucher budget authority utilization rate of 90 percent or greater for its fiscal year ending in 1998. In the event the PHA is unable to meet either of these percentage requirements, it may still pass category (c) if it submits information to the GMC, as part of its application, demonstrating that it was able to either increase its combined certificate and voucher lease-up rate to 90 percent or greater for its fiscal year ending in 1999, or was able to increase combined certificate and voucher budget authority utilization to 90 percent or more for its fiscal year ending in 1999. PHAs that have been determined by HUD to have passed either the 90 percent lease-up, or 90 percent budget authority utilization requirement for their fiscal year ending in 1998 will be listed on the HUD Home Page site on the Internet's world wide web (http://www.hud.gov). A PHA not listed must either submit information in its application supportive of its 90 percent lease-up or 90 percent budget authority utilization performance for its fiscal year ending in 1999, or submit information as part of its application supportive of its contention that it should have been included among those PHAs HUD listed on the HUD Home Page as having achieved either a 90 percent lease-up rate or 90 percent funding utilization rate for fiscal years ending in 1998. Attachment 3 of this NOFA indicates the methodology and data sources used by HUD to calculate the lease-up and budget authority utilization percentage rates for PHAs with fiscal years ending in 1998. Any PHA wishing to submit information to the GMC in connection with its 1998 fiscal year or 1999 fiscal year for the purposes described immediately above (so as to be eligible under category (c) to submit an application) will be required to use the same methodology and data sources indicated in Attachment 3.

(d) The PHA is involved in litigation and HUD determines that the litigation may seriously impede the ability of the PHA to administer the rental vouchers.

(e) A PHA's application that does not comply with the requirements of 24 CFR 982.102 and this NOFA after the expiration of the 14-calendar day technical deficiency correction period will be rejected from processing.

(f) The PHA's application was submitted after the application due date.

(g) The application was not submitted to the official place of receipt as indicated in the paragraph entitled ''Official Place of Application Receipt'' at the beginning of this NOFA.

(h) The applicant has been debarred or otherwise disqualified from providing assistance under the program.

VIII. Findings and Certifications

(A) Paperwork Reduction Act Statement

The Section 8 information collection requirements contained in this NOFA have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Environmental Impact

In accordance with 24 CFR 50.19(b)(11) of the HUD regulations, tenant-based rental activities under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under the related laws and authorities. This NOFA provides funding for these activities under 24 CFR part 982, which does not contain environmental review provisions because of the categorical exclusion of these activities from environmental review. Accordingly, under 24 CFR 50.19(c)(5), issuance of this NOFA is also categorically excluded from environmental review under NEPA.

(C) Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance number for this program is 14.857.

(D) Federalism Impact

Executive Order 13132 (captioned ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. None of the provisions in this NOFA will have federalism implications and they will not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. As a result, the notice is not subject to review under the Order.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(F) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(G) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF-LLL disclosing such payments must be submitted.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

Dated: March 7, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

ATTACHMENT 1.—FAIR SHARE ALLOCATIONS TO STATES BASED UPON HOUSING NEEDS

State	Amount	Units
Alabama	$2,998,660	754
Alaska & Washington	7,431,525	1,241
Arizona	3,891,871	713
Arkansas	1,685,154	453
California	59,653,051	8,428
Colorado	4,344,651	717
Connecticut	4,676,595	708
Delaware	663,416	112
District of Columbia & Maryland	7,250,808	1,221
Florida	13,396,457	2,397
Georgia	6,522,548	1,271
Hawaii & Pacific Island	2,395,085	315
Idaho	790,875	188
Illinois	16,635,009	2,797
Indiana	4,820,548	1,038
Iowa	2,636,009	623
Kansas	1,964,068	481
Kentucky	3,003,250	777
Louisiana	4,117,360	1,002
Maine	1,304,156	263
Massachusetts	12,456,208	1,754
Michigan	10,673,680	2,041
Minnesota	4,248,602	794
Mississippi	1,894,043	515
Missouri	4,419,025	1,028
Montana	799,469	186
Nebraska	1,509,926	343
Nevada	1,611,636	262
New Hampshire	1,162,548	186
New Jersey	12,981,233	1,716
New Mexico	1,276,507	283
New York	57,048,267	7,707
North Carolina	5,908,423	1,232
North Dakota	584,150	139
Ohio	12,346,480	2,570
Oklahoma	2,370,698	610
Oregon	4,050,157	732
Pennsylvania	14,791,053	2,786
Puerto Rico & Virgin Islands	2,902,466	765
Rhode Island	1,753,494	284
South Carolina	2,713,819	614
South Dakota	729,568	166
Tennessee	4,026,565	922
Texas	18,465,474	3,598
Utah	1,525,394	284
Vermont	771,380	138
Virginia	5,404,073	1,113
West Virginia	1,430,622	385
Wisconsin	6,178,218	1,267
Wyoming	349,048	81

Attachment 2.—Fair Share Voucher Application Checklist

PHA Name:
City/State:
PHA Code #:

Delivered by the due date, or mailed and postmarked before midnight on due date, or placed in transit with overnight delivery service before due date.

Original and one copy of application submitted to Michael E. Diggs, Director of the Grants Management Center, Department of Housing and Urban Development, 501 School St., SW, Suite 800, Washington, D.C., 20024; and one copy sent to local HUD Field Office Hub, Attn: Director, Office of Public Housing, or to the local HUD Field Office Program Center, Attention: Program Center Coordinator.

If applicable, PHA designates another housing agency, nonprofit agency, or contractor to administer new funding.

Copy of letter from local HUD Field Office requiring contract administrator.

Agreement from contract agency to administer funding on behalf of applicant.

Copy of PHA letter to local HUD Field Office appealing requirement for contract administrator.

Copy of written response to appeal from local HUD Field Office.

PHA listed on HUD Home Page Internet site as passing 90% lease-up OR 90% budget authority utilization -or-

PHA *not* listed as meeting 90% thresholds. PHA includes information confirming 90% lease-up or budget authority utilization for 1998 or 1999 using same methodology and data sources indicated in Attachment 3 to the Fair Share NOFA.

PHA is in compliance with all fair housing and civil rights laws (refer to Sect. III. General Program Requirements).

PHA has not been debarred or otherwise disqualified from providing assistance under the Section 8 Housing Choice Voucher Program.

Form HUD–52515, Funding Application (January 1996 version), completed in its entirety, except Section C. (See Section VI.(A) of the NOFA and form HUD–52515 regarding information to be entered thereon.)

Letter of Intent and Narrative

Includes statement of acceptance of a reduction in the number of vouchers.

Includes minimum number of vouchers PHA will accept: .

Includes a narrative description of how the application meets, or will meet, the application selection criteria.

Housing Needs (Criterion 1). Areas PHA is authorized to operate in (HUD–52515).

Efforts of PHA to Provide Area-Wide Housing Opportunities for Families (Criterion 2).

Evidence of participation in area-wide exchange program where all PHA absorb portable Section 8 families.

Certification that administrative plan does not include or will immediately eliminate residency preferences.

PHA contract to provide housing counseling for families moving to low-poverty/non-minority areas.

Is an approved PHA for FY 1993 Moving to Opportunity (MTO) Fair Housing Demonstration, or

Is a participant in the Regional Opportunity Counseling (ROC) Program, or.

Receives counseling funds related to public housing demolition, vacancy consolidation, or litigation.

Describes other activities expanding housing opportunities (not MTO, ROC, or litigation efforts).

Documentation of PHA's Participation With Other PHAs in Using Metropolitan-Wide/Combined Waiting List.

Documentation of Other Initiatives Resulting in Expansion of Housing Opportunities.

Documentation of Consortium or Joint Venture with other PHAs to administer its voucher program.

Local Initiatives (Criterion 3). Narrative description of locally initiated efforts in support of the PHA's voucher and certificate programs.

Disabled Families (Criterion 4). Includes a narrative description indicating the PHA will use 15 percent or more of the vouchers being requested/funded to house disabled families.

Medicaid Home and Community Based Services Waivers Under Section 1915(c) of the Social Security Act (Criterion 5). Includes narrative description indicating the percentage of vouchers to be issued to disabled families covered by a Section 1915(c) waiver, and the collaborative efforts undertaken with the State agency to identify eligible families/agreements for future referrals of such families from that agency.

Portability (Criterion 6). Certification statement from PHA indicating it is billing another PHA(s) for portable families for not less than 5 percent of the certificates and vouchers it administers and will use 20 percent of the funds provided by HUD to absorb portable families for which it is currently billing another PHA(s).

Description of Primary Market Area. Regional (multi-county) and State PHAs clearly identify which cities and counties they will use the vouchers in that are within their legal area of operation.

Statement Regarding Steps PHA Will Take To: (Affirmatively Further Fair Housing)

Eliminate impediments to fair housing identified in local Analysis of Impediments (AI) to Fair Housing Choice,

Remedy discrimination in housing, or

Promote fair housing rights and fair housing choice.

Program Summary. Provide a separate, *one paragraph* statement describing how the vouchers being applied for will address the local housing needs of eligible families in renting decent, safe, and affordable housing. Describe, where applicable, how the vouchers will be used to expand existing housing choices, and whether the PHA intends to use the vouchers to establish or expand upon its existing Family Unification Program, partnerships with local government,

nonprofit agencies, or private industry groups. Also address any related notable local program activities, best practices, or accomplishments.

Application Checklist. A copy of this Checklist has been included as part of the PHA's application.

Attachment 3.—Methodology for Determining Lease-Up and Budget Authority Utilization Percentage Rates

Using data from the HUDCAPS system, HUD determined which PHAs met the 90% budget authority utilization or 90% lease-up criteria. The data used in the determination was based on PHA fiscal years ending in 1998. The budget authority utilization and lease-up rates were determined based upon the methodology indicated below.

Budget Authority Utilization

Percentage of budget authority utilization was determined by comparing the total contributions required to the annual budget authority (ABA) available for the PHA 1998 year combining the certificate and voucher programs.

Total contributions required were determined based on the combined actual costs approved by HUD on the form HUD–52681, Year End Settlement Statement. The components which make up the total contributions required are the total of housing assistance payments, ongoing administrative fees earned, hard to house fees earned, and IPA audit costs. From this total any interest earned on administrative fees is subtracted. The net amount is the total contributions required.

ABA is the prorated portion applicable to the PHA 1998 year for each funding increment which had an active contract term during all or a portion of the PHA year.

Example

PHA ABC
Fiscal year 10/1/97 through 9/30/98

HUD 52681 Approved Data:	
HAP	$2,500,000
Administrative Fee	250,000
Hard to House Fee	1,000
Audit	2,000
Total	2,753,000
Interest earned on administrative fee	(2,500)
Total contributions required	2,750,500

Calculation of Annual Budget Authority

Increments	Contract term	Total BA	ABA
001	11/01/97–10/31/98	$1,300,000	$1,191,667
002	01/01/98–12/31/98	1,200,000	900,000
0030	04/01/98–03/31/99	950,000	475,000
004	07/01/98–06/30/99	1,500,000	375,000
Totals		4,950,000	2,941,667

Budget Authority Utilization

Total contributions required	$2,750,000
divided by	
Annual budget authority	$2,941,667
equals	
Budget Authority Utilization	93.5%

Lease-Up Rate

The lease-up rate was determined by comparing the contract units (funding increments active as of the end of the PHA 1998 year) to the unit months leased (divided by 12) reported on the combined HUD 52681, Year End Settlement Statement(s) for 1998.

Active funding increments awarded by HUD for special purposes such as litigation, relocation/replacement, housing conversions, etc. were excluded from the contract units as the Department recognizes that many of these unit allocations have special requirements which require extended periods of time to achieve lease-up.

Example

Increments	Contract term	Units
001	11/01/97–10/31/98	242
002	01/01/98–12/31/98	224
003	04/01/98–03/31/99	178
004	07/01/98–06/30/99	280
Totals		924
Increment 003 litigation		(178)
Adjusted contract units		746
Unit months leased reported by PHA		8,726
divided by 12		727
Units Leased		727

Lease-Up Rate

Units leased 727
divided by adjusted contract units 746
equals
Lease-Up Rate 97.4%

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Federal Register

Friday,
March 10, 2000

Part VII

The President

Executive Order 13147—White House Commission on Complementary and Alternative Medicine Policy

Federal Register
Vol. 65, No. 48
Friday, March 10, 2000

Presidential Documents

Title 3—

The President

Executive Order 13147 of March 7, 2000

White House Commission on Complementary and Alternative Medicine Policy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to establish the White House Commission on Complementary and Alternative Medicine Policy, it is hereby ordered as follows:

Section 1. *Establishment.* There is established in the Department of Health and Human Services (Department) the White House Commission on Complementary and Alternative Medicine Policy (Commission). The Commission shall be composed of not more than 15 members appointed by the President from knowledgeable representatives in health care practice and complementary and alternative medicine. The President shall designate a Chair from among the members of the Commission. The Secretary of Health and Human Services (Secretary) shall appoint an Executive Director for the Commission.

Sec. 2. *Functions.* The Commission shall provide a report, through the Secretary, to the President on legislative and administrative recommendations for assuring that public policy maximizes the benefits to Americans of complementary and alternative medicine. The recommendations shall address the following:

(a) the education and training of health care practitioners in complementary and alternative medicine;

(b) coordinated research to increase knowledge about complementary and alternative medicine practices and products;

(c) the provision to health care professionals of reliable and useful information about complementary and alternative medicine that can be made readily accessible and understandable to the general public; and

(d) guidance for appropriate access to and delivery of complementary and alternative medicine.

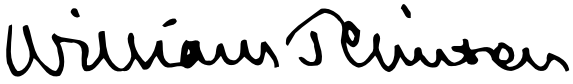
Sec. 3. *Administration.* (a) To the extent permitted by law, the heads of executive departments and agencies shall provide the Commission, upon request, with such information and assistance as it may require for the purpose of carrying out its functions.

(b) Each member of the Commission shall receive compensation at a rate equal to the daily equivalent of the annual rate specified for Level 1V of the Executive Schedule (5 U.S.C. 5315) for each day during which the member is engaged in the performance of the duties of the Commission. While away from their homes or regular places of business in the performance of the duties of the Commission, members shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707).

(c) The Department shall provide the Commission with funding and with administrative services, facilities, staff, and other support services necessary for the performance of the Commission's functions.

(d) In accordance with guidelines issued by the Administrator of General Services, the Secretary shall perform the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), with respect to the Commission, except that of reporting to the Congress.

(e) The Commission shall terminate 2 years from the date of this order unless extended by the President prior to such date.



THE WHITE HOUSE,
March 7, 2000.

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Federal Register

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Commodity pool operators and commodity trading advisors:

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H.R. 1451/P.L. 106–173

Abraham Lincoln Bicentennial Commission Act (Feb. 25, 2000; 114 Stat. 14)

S. 632/P.L. 106–174

Poison Control Center Enhancement and Awareness Act (Feb. 25, 2000; 114 Stat. 18)

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