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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 178

RIN 3206–AJ13

Procedures for Settling Claims

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to amend its regulation on procedures for settling claims. The amendments reflect the recent transfer within OPM of the authority to settle claims by advising individuals where they now may file such claims.

EFFECTIVE DATE: Effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, (202) 606–1700.

SUPPLEMENTARY INFORMATION: The United States General Accounting Office originally settled claims concerning federal employees'compensation and leave, compensation of deceased employees, and proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries. On June 30, 1996, the Legislative Branch Appropriations Act of 1996 transferred the authority to settle these claims from the General Accounting Office to the Director of the Office of Management and Budget. See Sec. 211, Pub. L. 104–53, 109 Stat. 535. On June 28, 1996, the Acting Director of the Office of Management and Budget issued a determination order redelegating to OPM the authority to settle claims against the United States involving federal employees' compensation and leave, deceased employees' compensation, and proceeds of canceled checks for veterans' benefits payable to deceased beneficiaries. Congress subsequently codified these changes through additional legislation. See Pub.L. 104–316, 110 Stat. 3826.

The Director of OPM initially delegated the claims settlement authority to the Office of General Counsel. On April 10, 2000, the Director of OPM transferred the claims settlement authority to the Office of Merit Systems Oversight and Effectiveness. Consequently, OPM is amending section 178.102(e)(1), as well as section 178.207(b) and (c), to reflect that individuals should file Part 178 claims with the Office of Merit Systems Oversight and Effectiveness rather than with the Claims Adjudication Unit, Office of the General Counsel.

Waiver of Notice of Proposed Rulemaking

I find, under 5 U.S.C. 553(b)(3)(B), that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because these amendments merely reflect an organizational change within OPM and do not affect the rights of federal employees to file claims for settlement under Part 178. In addition, potential claimants must know, as soon as possible, where they now should file their claims.

Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 178

Administrative practice and procedure, Claims, Compensation, Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

For the reasons set forth in the preamble, OPM is amending 5 CFR part 178 as follows:

PART 178—PROCEDURES FOR SETTLING CLAIMS

Subpart A—Administrative Claims—Compensation and Leave, Deceased Employees' Accounts and Proceeds of Canceled Checks for Veterans' Benefits Payable to Deceased Beneficiaries

1. The authority citation for subpart A continues to read as follows:

Authority: 31 U.S.C. 3702; 5 U.S.C. 5583; 38 U.S.C. 5122; Pub. L. No. 104–53, § 211, 109 Stat. 535 (Nov. 19, 1995); E.O. 12107.

2. In § 178.102, revise paragraph (e)(1) to read as follows:

§ 178.102 Procedures for submitting claims.

* * * * *

(e) *Where to submit claims.* (1) All claims under this section should be sent to the Program Manager, Office of Merit Systems Oversight and Effectiveness, Room 7671, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415. Telephone inquiries regarding these claims may be made to (202) 606–7948.

* * * * *

Subpart B—Settlement of Accounts for Deceased Civilian Officers and Employees

1. The authority citation for subpart B continues to read as follows:

Authority: 5 U.S.C. 5581, 5582, 5583.

§ 178.207 [Amended]

2. In § 178.207, remove the words ''Claims Adjudication Unit, Office of General Counsel'' from paragraph (b) and the words ''Claims Adjudication Unit'' from paragraph (c). Add in their place the words ''Office of Merit Systems Oversight and Effectiveness.''

[FR Doc. 00–16708 Filed 6–30–00; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV00–958–1 FR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) under Marketing Order No. 958 for the 2000–2001 and subsequent fiscal periods from $0.09 to $0.08 per hundredweight of onions handled. The

Committee is responsible for local administration of the marketing order which regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess Idaho-Eastern Oregon onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Idaho-Eastern Oregon onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning on July 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods from $0.09 per hundredweight to $0.08 per hundredweight of onions handled.

The order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members, four handler members and one public member, each of whom is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.09 per hundredweight that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on April 6, 2000, and unanimously recommended 2000–2001 expenditures of $1,047,637 and an assessment rate of $0.08 per hundredweight of onions handled during the 2000–2001 and subsequent fiscal periods. The Committee estimated that the 2000–2001 onion crop will approximate 9,600,000 hundredweight of onions. In comparison, the 1999–2000 fiscal period budget was established at $1,133,785 on an estimated assessable onion crop of 9,200,000 hundredweight of onions. The Committee recommended the decreased assessment rate to help offset the negative effects of the currently depressed onion market.

The Committee anticipates that assessment income during the 2000–2001 fiscal period will be approximately $768,000, which is $60,000 less than the $828,000 assessment income estimated for its 1999–2000 budget. The Committee now projects a total income of approximately $944,372 and expenditures of about $1,025,098 by June 30, 2000. At the time the 1999–2000 fiscal period budget was recommended, the Committee had estimated that it would draw up to $260,785 from its operating reserve. However, since current assessment income is greater than anticipated and expenditures are less than budgeted, the operating reserve may actually be depleted by about $80,726. Thus, the Committee has estimated that its operating reserve will be approximately $859,793 on July 1, 2000, and, if it requires an estimated $234,637 from its monetary reserve as budgeted during the 2000–2001 fiscal period, approximately $625,156 on July 1, 2001. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate operating reserve.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include $235,105 for marketing order administration, which includes salary, office, travel and Committee expenses, $58,532 for production research, $675,000 for market promotion including paid advertising, $54,000 for export market development, and $25,000 for marketing order contingencies. Budgeted expenses for these items in the 1999–2000 fiscal period were $224,685, $69,100, $750,000, $60,000, and $30,000, respectively.

The Committee has based its recommended assessment rate decrease on the 2000–2001 crop estimate and fiscal period expenditures estimate, the current condition of the onion market, and the current and projected size of its monetary reserve. The decreased assessment rate should provide $768,000 in income, which, when combined with interest income of $45,000 and operating reserve funds of $234,637, would be adequate to cover budgeted expenses. As noted above, the

Committee estimates it will have approximately $859,793 in its operating reserve at the end of the 1999–2000 fiscal period, which should be adequate to cover any income shortages. This amount is within the maximum permitted by the order of approximately one fiscal period's expenditures (§ 958.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department and are locally published. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary.

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

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

There are approximately 34 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 270 onion producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

The Committee estimates that all of the handlers of Idaho-Eastern Oregon onions ship under $5,000,000 worth of onions on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of onion producers in the regulated production area, the average gross annual producer revenue from onions is about $230,000. Based on this information, it can be concluded that the majority of Idaho-Eastern Oregon onion handlers and producers may be classified as small entities, excluding receipts from other sources.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.09 per hundredweight to $0.08 per hundredweight of onions handled. Both the $0.08 assessment rate and the 2000–2001 budget of $1,047,637 were unanimously recommended by the Committee at its April 6, 2000, meeting. The $0.08 assessment rate is $0.01 lower than the 1999–2000 rate. The Committee recommended a decreased assessment rate to help offset the negative effects of the currently depressed onion market. The anticipated 2000–2001 crop of 9,600,000 hundredweight is approximately 400,000 hundredweight larger than the crop estimate used to establish the 1999–2000 budget. The $0.08 rate should provide $768,000 in assessment income, which, when combined with estimated interest income of $45,000 and up to $234,637 from the operating reserve, should be adequate to meet the 2000–2001 fiscal period's budgeted expenses.

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $1,047,637 which include increases in administrative expenses, salaries, and committee expenses, and decreases in production research, market promotion, export market development, and contingency fund expenses. Prior to recommending this budget, the Committee considered information from various sources, including the Idaho-Eastern Oregon Onion Executive, Research, Promotion and Export Market Development Committees. Alternative expenditure levels were discussed and rejected by these subcommittees, and ultimately by the full Committee, based upon the relative value of various research and promotion projects to the Idaho-Eastern Oregon onion industry.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include $235,105 for marketing order administration, which includes salary, office, travel and Committee expenses, $58,532 for production research, $675,000 for market promotion including paid advertising, $54,000 for export market development, and $25,000 for marketing order contingencies. Budgeted expenses for these items in the 1999–2000 fiscal period were $224,685, $69,100, $750,000, $60,000, and $30,000, respectively.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the F.O.B. price for the 2000–2001 onion season could average $5.50 per hundredweight of onions. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period ($768,000) as a percentage of the projected total F.O.B. revenue ($52,800,000) would be 0.0145 percent. This figure indicates that the $0.08 assessment rate will have a relatively insignificant impact on the Idaho-Eastern Oregon onion industry.

This action decreases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 6, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on May 15, 2000 (65 FR 30920). A copy of the proposed rule was mailed to the Committee office, which in turn notified Committee members and industry members. The proposed rule was also made available on the Internet by the Office of the Federal Register. A 30-day comment period ending June 14, 2000, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 2000–2001 fiscal period begins on July 1, 2000, and the order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (4) a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 958

Onions, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 958.240 is revised to read as follows:

§ 958.240 Assessment rate.

On and after July 1, 2000, an assessment rate of $0.08 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: June 27, 2000.

Robert C. Keeney

Deputy Administrator, Fruit and Vegetable Programs

[FR Doc. 00–16741 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV00–982–1 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1999–2000 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which established interim and final free and restricted percentages for domestic inshell hazelnuts for the 1999–2000 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

EFFECTIVE DATE: July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 115 and Marketing Order No. 982, both as amended (7 CFR Part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is intended that this action apply to all merchantable hazelnuts handled during the 1999–2000 marketing year (July 1, 1999, through June 30, 2000). This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect percentages which allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. The Board also computes and announces preliminary free and restricted percentages for that year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three ''normal'' years trade acquisitions of inshell hazelnuts, rounded to the nearest whole number. The Board may increase the

three-year average by up to 25 percent, if market conditions warrant an increase. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

The National Agricultural Statistics Service (NASS) estimated hazelnut production at 38,000 tons for the Oregon and Washington area. The majority of domestic inshell hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

The quantity marketed is broken down into free and restricted percentages to make available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled or otherwise disposed of by handlers (restricted). The preliminary free percentage releases 80 percent of the adjusted inshell trade demand. The adjusted inshell trade demand used by the Board was the average of the past three years' sales (4,136 tons), plus an additional 10 percent for market development (414 tons), minus the declared carryin from last year's crop (110 tons).

The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

Based on the NASS crop estimate of 38,000 tons, the Board computed and announced preliminary free and restricted percentages of 10 percent and 90 percent, respectively, at its August 31, 1999, meeting. This action initially released 3,552 tons of hazelnuts from the 1999 supply for domestic inshell use as the preliminary free percentage. The preliminary restricted percentage of the 1999 supply for export and kernel markets thus initially totaled 31,143 tons.

A special meeting of the Board was held on October 26, 1999, to increase the percentage of free product released for market development from 10 percent (414 tons) to 20 percent (827 tons) which is 120 percent of the three-year average trade acquisitions of inshell hazelnuts. The Board took this action because it determined that the demand for domestic inshell hazelnuts was greater than previously thought. Based upon the new adjusted trade demand of 4,854 tons, the Board computed revised preliminary free and restricted percentages of 11 percent and 89 percent, respectively. This revised preliminary free percentage (11 percent) released 3,883 tons of hazelnuts from the 1999 supply for domestic inshell use rather than the initially computed 3,552 tons. The revised preliminary restricted percentage (89 percent) of the 1999 supply for export and kernel markets thus totaled 30,720 tons, rather than 31,143 tons.

Under the order, the Board must meet on or before November 15 to recommend interim final and final percentages. The Board uses current crop estimates to calculate interim final and final percentages. The interim final percentages are calculated in the same way as the preliminary percentages and release the remaining 20 percent (to total 100 percent of the inshell trade demand) previously computed by the Board. Final free and restricted percentages may release up to an additional 15 percent of the average of the preceding three years' trade acquisitions to provide an adequate carryover into the following season (*i.e.,* desirable carryout). The order requires that the final free and restricted percentages shall be effective 30 days prior to the end of the marketing year, or earlier, if recommended by the Board and approved by the Secretary. Revisions in the marketing policy can be made until February 15 of each marketing year, but the inshell trade demand can only be revised upward, consistent with § 982.40(e).

The Board met on November 15, 1999, and reviewed and approved an amended marketing policy and recommended the establishment of interim final and final free and restricted percentages. The interim final free and restricted percentages were recommended at 15 percent free and 85 percent restricted. Final percentages, which included an additional 15 percent of the average of the preceding three-years' trade acquisitions for desirable carryout, were recommended at 16 percent free and 84 percent restricted effective March 1, 2000. The final percentages release 5,474 tons of inshell hazelnuts from the 1999 supply for domestic use.

The final marketing percentages are based on the Board's final production estimate (36,548 tons) and the following supply and demand information for the 1999–2000 marketing year:

	Tons
Inshell Supply:	
(1) Total production (Board's estimate)	36,548
(2) Less substandard, farm use (disappearance)	3,271
(3) Merchantable production (Board's adjusted crop estimate; Item 1 minus Item 2)	33,277
(4) Plus undeclared carryin as of July 1, 1999, subject to regulation	4
(5) Supply subject to regulation (Item 3 plus Item 4)	33,281
Inshell Trade Demand:	
(6) Average trade acquisitions of inshell hazelnuts for three prior years	4,136
(7) Increase to encourage increased sales (20 percent of Item 6)	827
(8) Less declared carryin as of July 1, 1999, not subject to regulation	109
(9) Adjusted Inshell Trade Demand	4,854
(10) Desirable carryout on August 31, 2000 (15 percent of Item 6)	620
(11) Adjusted Inshell Trade Demand plus desirable carryout (Item 9 plus Item 10)	5,474

	Free	Restricted
Percentages:		
(12) Interim final percentages (Item 9 divided by Item 5)	15	85
(13) Final percentages (Item 11 divided by Item 5) × 100	16	84

In addition to complying with the provisions of the order, the Board also considered the Department's 1982 ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) when making its

computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell hazelnuts available for sale in domestic markets. The Guidelines provide that the domestic inshell market has available a quantity equal to 110 percent of prior years' shipments before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion, while retaining the mechanism for dealing with oversupply situations. At its October 26 and November 15, 1999, meetings the Board recommended that an increase of 20 percent (827 tons) for market expansion be included in the inshell trade demand which was used to compute the interim percentages. The established final percentages are based on the final inshell trade demand, and made available an additional 620 tons for desirable carryout effective March 1, 2000. The total free supply for the 1999–2000 marketing year is 4,756 tons of hazelnuts, which is the final trade demand of 4,136 tons plus the 620 tons for desirable carryout. This amount is 135 percent of prior years' sales and exceeds the goal of the Guidelines.

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

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

There are approximately 800 producers of hazelnuts in the production area and approximately 22 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. Using these criteria, virtually all of the producers are small agricultural producers and an estimated 19 of the 22 handlers are small agricultural service firms. In view of the foregoing, it can be concluded that the majority of hazelnut producers and handlers may be classified as small entities, excluding receipts from other sources.

Board meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

Many years of marketing experience led to the development of the current volume control procedures. These procedures have helped the industry solve its marketing problems by keeping inshell supplies in balance with domestic needs. The current volume control procedures fully supply the domestic inshell market while preventing oversupplies in that market.

Inshell hazelnuts sold to the domestic market provide higher returns to the industry than are obtained from shelling. The inshell market is inelastic and is characterized as having limited demand and being prone to oversupply.

Industry statistics show that total hazelnut production has varied widely over the last 10 years, from a low of 13,000 tons in 1989 to a high of 47,000 tons in 1997. Average production has been around 27,000 tons. While crop size has fluctuated, the volume regulations contribute toward orderly marketing and market stability, and help moderate the variation in returns for all producers and handlers, both large and small. For instance, production in the shortest crop year (1989) was 48 percent of the 10-year average (1989–1998). Production in the biggest crop year (1997) was 173 percent of the 10-year average. The percentage releases provide all handlers with the opportunity to benefit from the most profitable domestic inshell market. That market is available to all handlers, regardless of handler size.

NASS statistics show that the producer price per pound has increased over the last 5 years, from $.32 in 1993 to $.49 in 1998.

The Board discussed not regulating. However, without any regulations in effect, the Board believes that the industry would oversupply the inshell domestic market.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though hazelnut supplies fluctuate widely from season to season.

Hazelnuts produced under the order comprise virtually all of the hazelnuts produced in the United States. This production represents, on average, less than 5 percent of total U.S. tree nut production, and less than 5 percent of the world's hazelnut production.

This volume control regulation provides a method for the U.S. hazelnut industry to limit the supply of domestic inshell hazelnuts available for sale in the United States. Section 982.40 of the order establishes a procedure and computations for the Board to follow in recommending to the Secretary release of preliminary, interim final, and final quantities of hazelnuts to be released to the free and restricted markets each marketing year. The program results in plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations.

Currently, U.S. hazelnut production can be successfully allocated between the inshell domestic and secondary markets. One of the best secondary markets for hazelnuts is the export market. Inshell hazelnuts produced under the marketing order compete well in export markets because of quality. Europe, and Germany in particular, is historically the primary world market for U.S. produced inshell hazelnuts. A third market is for shelled hazelnuts (kernels) sold domestically. Domestically produced kernels generally command a higher price in the domestic market than imported kernels. The industry is continuing its efforts to develop and expand secondary markets, especially the domestic kernel market. Small business entities, both producers and handlers, benefit from the expansion efforts resulting from this program.

There are some reporting, recordkeeping, and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The information collection requirements have been previously approved by the Office of Management and Budget under OMB No. 0581–0178. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This final rule does not change those requirements. In addition, as noted in the initial

regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this regulation.

Further, the Board's meetings were widely publicized throughout the hazelnut industry and all interested persons were invited to attend the meetings and encouraged to participate in Board deliberations. Like all Board meetings, those held on August 31, October 26, and November 15, 1999, were open to the public and all entities, both large and small, were able to express their views on this issue. The Board itself is composed of 10 members, of which 4 are handlers, 5 are producers, and one is a public member. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on January 19, 2000. Copies of the rule were mailed by the Board's staff to all Board members and hazelnut handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended March 20, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (65 FR 2841, January 19, 2000), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The percentages continued herein apply to all merchantable hazelnuts handled during the 1999–2000 marketing year; (2) the 1999–2000 marketing year ends June 30, 2000; and (3) handlers are aware of this action and are prepared to comply with the marketing percentages.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 982—HAZELNUTS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 982 which was published at 65 FR 2841 on January 19, 2000, is adopted as a final rule without change.

Dated: June 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–16740 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV00–985–4 FIR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the Spearmint Oil Administrative Committee (Committee) for the 2000–2001 and subsequent marketing years from $0.10 per pound to $0.09 per pound of spearmint oil handled. The Committee is responsible for local administration of the marketing order which regulates the handling of spearmint oil produced in the Far West. Authorization to assess spearmint oil handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The marketing year begins June 1 and ends May 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable spearmint oil beginning June 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Committee for the 2000–2001 and subsequent marketing years from $0.10

per pound to $0.09 per pound of spearmint oil handled.

The spearmint oil order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of spearmint oil. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1995–1996 and subsequent marketing years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on February 23, 2000, and unanimously recommended 2000–2001 expenditures of $212,900 and an assessment rate of $0.09 per pound of spearmint oil handled. In comparison, last year's budgeted expenditures were $219,028. The assessment rate of $0.09 is $0.01 lower than the rate in effect prior to this action. The Committee discussed assessment rates both lower and greater than $0.09 per pound. However, the Committee decided that an assessment rate of less than $0.09 would not generate the income necessary to administer the program with an adequate reserve. The Committee recommended the decreased assessment rate to help offset the negative effects the current depressed spearmint oil market is having on the industry.

Expenditures recommended by the Committee for the 2000–2001 marketing year include $178,500 for Committee expenses and $34,400 for administrative expenses. For 2000–2001, a total of $156,000 is budgeted for agency fees, $21,000 is budgeted for Committee per diem and travel, $16,500 is budgeted for agency staff travel, and $10,700 is budgeted for copying, mail handling, postage, telephone and fax, cellular phone charges, officer liability insurance, and auditing. Actual expenses for these items in 1999–2000 are estimated to total $165,000, $22,133, $16,843, and $10,900. For 2000–2001, funds also are budgeted for market development ($5,000) and for compliance ($1,000). Expenditures for these items in 1999–2000 are expected to total $5,000.

The Committee estimates that spearmint oil sales for the 2000–2001 marketing year will be approximately 2,058,474 pounds, which should provide $185,263 in assessment income. This assessment income, when combined with $13,029 from the monetary reserve, $3,500 in interest income, and $11,108 from the sale of certain assets should be adequate to meet this year's expenses of $212,900. The Committee estimates that its monetary reserve will be approximately $156,757 at the beginning of the 2000–2001 marketing year. It is not anticipated that the reserve fund will exceed the maximum permitted by the order of approximately one marketing year's operational expense (§ 985.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary.

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

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

There are 7 spearmint oil handlers subject to regulation under the marketing order and approximately 119 producers of Scotch spearmint oil and 105 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent marketing years from $0.10 per pound to $0.09 per pound of spearmint oil handled. The Committee estimates that spearmint oil sales will total 2,058,474 pounds in the 2000–2001 marketing year. The $0.09 per pound assessment rate should provide an estimated income of $185,263, which, when combined with $13,029 from the monetary reserve, $3,500 in interest income, and $11,108 from the sale of certain assets should be adequate to meet this year's expenses of $212,900. The Committee estimates that its monetary reserve will be approximately $156,757 at the beginning of the 2000–2001 marketing year and that the fund will not exceed the maximum permitted by the order of approximately one marketing year's operational expense (§ 985.42).

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $212,900 which is $6,128 less than approved for last year. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee and the current marketing year's actual and anticipated expenditures. Alternative expenditure levels and assessment rates were discussed by the Committee officers prior to presentation to the full Committee for approval. The Committee

decided that an assessment rate of less than $0.09 would not generate the income necessary to administer the program with an adequate reserve. The Committee recommended the decreased assessment rate to help offset the negative effects the current depressed spearmint oil market is having on the industry.

Expenditures recommended by the Committee for the 2000–2001 marketing year include $178,500 for Committee expenses and $34,400 for administrative expenses. For 2000–2001, a total of $156,000 is budgeted for agency fees, $21,000 is budgeted for Committee per diem and travel, $16,500 is budgeted for agency staff travel, and $10,700 is budgeted for copying, mail handling, postage, telephone and fax, cellular phone charges, officer liability insurance, and auditing. Actual expenses for these items in 1999–2000 are estimated to total $165,000, $22,133, $16,843, and $10,900. For 2000–2001, funds also are budgeted for market development ($5,000) and for compliance ($1,000). Expenditures for these items in 1999–2000 are expected to total $5,000.

Based on 1999 prices, the average price paid to producers for both Scotch and Native spearmint oils during the 2000–2001 marketing year could be about $9.80 per pound. Therefore, the estimated assessment revenue for the 2000–2001 marketing year as a percentage of total producer revenue could be about 0.92 percent.

This action continues to decrease the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Far West spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 23, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on April 5, 2000 (65 FR 17756). A copy of the rule was mailed to the Committee office, which in turn provided copies for Committee members and industry members. Further, the interim final rule was made available on the Internet by the Office of the Federal Register. A 30-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on May 5, 2000, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

Accordingly, the interim final rule amending 7 CFR part 985 which was published at 65 FR 17756 on April 5, 2000, is adopted as a final rule without change.

Dated: June 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–16738 Filed 6–30–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV00–989–4 FIR]

Raisins Produced From Grapes Grown In California; Final Free and Reserve Percentages for 1999–2000 Crop Natural (Sun-Dried) Seedless and Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule that established final volume regulation percentages for 1999–2000 crop Natural (sun-dried) Seedless raisins (Naturals) and Zante Currant raisins (Zantes) covered under the Federal marketing order for California raisins (order). The volume regulation percentages are 85 percent free and 15 percent reserve for Naturals and 51 percent free and 49 percent reserve for Zantes. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

EFFECTIVE DATE: August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989),

both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues in effect final free and reserve percentages for Naturals and Zantes for the 1999–2000 crop year, which began August 1, 1999, and ends July 31, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect final volume regulation percentages for 1999–2000 crop Naturals and Zantes covered under the order. The volume regulation percentages are 85 percent free and 15 percent reserve for Naturals and 51 percent free and 49 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. Final percentages for Zantes were recommended by the Committee on January 13, 2000, and for Naturals on February 11, 2000.

Computation of Trade Demands

Section 989.54 of the order prescribes the procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 12, 1999, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year and by adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for each varietal type is equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one-half of October. In accordance with these provisions, the Committee computed and announced 1999–2000 trade demands for Naturals and Zantes at 254,475 and 1,855 tons, respectively, as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	Naturals	Zantes
Prior year's shipments	[1] 314,013	3,542
Multiplied by 90 percent	0.90	0.90
Equals adjusted base	282,612	3,188
Minus carryin inventory	101,946	1,906
Plus desirable carryout	73,809	573
Equals computed trade demand	254,475	1,855

[1] Pursuant to § 989.54(a), 1996–97 shipments were utilized to compute trade demand because 1998–99 shipments were limited.

Computation of Preliminary Volume Regulation Percentages

As required under § 989.54(b) of the order, the Committee met on October 1, 1999, and announced a preliminary crop estimate of 294,519 tons for Naturals. This estimate was almost 15 percent lower than the 10-year average of 346,325 tons. Naturals are the major varietal type of California raisins. Combining the carryin inventory of 101,946 tons with the 294,519-ton crop estimate resulted in a total available supply of 396,465 tons, which was much higher than the 254,475-ton trade demand. Thus, the Committee determined that volume regulation for Naturals was warranted. The Committee announced preliminary free and reserve percentages for Naturals which released 65 percent of the computed trade demand since the field price had not yet been established. The preliminary percentages were 56 percent free and 44 percent reserve. The Committee authorized its staff to modify the preliminary percentages to release 85 percent of the trade demand once the field price was established. The field price was established on October 22, 1999, and the preliminary percentages were thus modified to 73 percent free and 27 percent reserve.

Also at its October 1, 1999, meeting, the Committee announced a preliminary crop estimate for Zantes at 4,187 tons, which is comparable to the 10-year average of 4,463 tons. Combining the carryin inventory of 1,906 tons with the 4,187-ton crop estimate resulted in a total available supply of 6,093 tons, which is significantly greater the 1,855-ton trade demand. Thus, the Committee determined that volume regulation for Zantes was warranted. The Committee

announced preliminary free and reserve percentages for Zantes which released 65 percent of the computed trade demand since field price had not yet been established. The preliminary percentages were 29 percent free and 71 percent reserve. Like Naturals, the Committee authorized its staff to modify the preliminary percentages to release 85 percent of the trade demand once the field price was established. The field price was established on October 12, 1999, and the preliminary percentages were thus modified to 38 percent free and 62 percent reserve. As in past seasons, the Committee submitted its marketing policy to the Department for review. In addition, the Committee determined that volume regulation was not warranted for the other varietal types of raisins covered under the order.

Computation of Final Volume Regulation Percentages

Pursuant to 989.54(c) and (d) of the order, the Committee met on January 12, 2000, and announced interim percentages for Zantes at 50.75 percent free and 49.25 percent reserve. These interim percentages were based on a revised Zante crop estimate of 3,650 tons. At that meeting, the Committee also computed final percentages for Zantes which, when applied to the final 3,650-ton crop estimate, tend to release the full Zante trade demand. Final percentages compute to 51 percent free and 49 percent reserve.

The Committee met on February 11, 2000, and announced interim percentages for Naturals at 84.75 percent free and 15.25 percent reserve. These interim percentages were based on a revised crop estimate of 298,477 tons. The Committee also computed final percentages for Naturals which, when applied to the final 298,477-ton crop estimate, tend to release the full trade demand. Final percentages compute to 85 percent free and 15 percent reserve. The Committee's calculations to arrive at final percentages for Naturals and Zantes are shown in the table below.

FINAL VOLUME REGULATION PERCENTAGES

[Tonnage as natural condition weight]

	Naturals	Zantes
Trade demand	254,475	1,855
Divided by crop estimate	298,477	3,650
Equals free percentage	85	51
100 minus free percentage equals reserve percentage	15	49

In addition, the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal was met for Naturals and Zantes by the establishment of final percentages that released 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the ''10 plus 10 offers.'' As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins that are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

For Naturals, both 10 plus 10 offers were held in May 2000 where a total of about 44,000 tons of raisins were made available to handlers. This quantity is less than the amount specified in the order. As previously stated, the Committee utilized 1996–97 shipments of 314,013 tons as a base to compute trade demand because 1998–99 shipments were limited. Similarly, as specified in § 989.54(g), 1996–97 shipments were used as a base to compute the amount of tonnage to be made available in the 10 plus 10 offers. Thus, 31,402 tons should have been made available in each of the 10 plus 10 offers (62,804 tons total). However, this amount was not available in the reserve. Thus, all of the reserve pool raisins were made available to handlers for free use through the 10 plus 10 offers. A total of 265 tons of reserve Naturals were purchased in the offers.

Adding the 265 tons of 10 plus 10 raisins to the 254,475-ton trade demand figure, plus 101,946 tons of 1998–99 carryin inventory equates to about 356,686 tons natural condition raisins, or 334,835 tons packed raisins, made available for free use, or to the primary market thus far this season. This is 121 percent of the quantity of Naturals shipped during the 1998–99 crop year (295,401 natural condition tons or 277,305 packed tons).

For Zantes, both Zante 10 plus 10 offers were made available simultaneously in early February 2000 and 708 tons of raisins were purchased by handlers. Adding the 708 tons of 10 plus 10 raisins to the 1,855 ton trade demand figure, plus 1,906 tons of 1998–99 carryin inventory equates to 4,469 tons natural condition raisins, or about 3,985 tons packed raisins, made available for free use, or to the primary market. This is 126 percent of the quantity of Zantes shipped during the 1998–99 crop year (3,542 natural condition tons or 3,158 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, these additional offers of reserve raisins make even more raisins available to primary markets, which is consistent with the Department's Guidelines.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts

of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities, excluding receipts from other sources.

Pursuant to § 989.54(d) of the order, this rule continues in effect final volume regulation percentages for 1999–2000 crop Natural and Zante raisins. The volume regulation percentages are 85 percent free and 15 percent reserve for Naturals and 51 percent free and 49 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation is warranted this season for Naturals because the final crop estimate of 298,477 tons combined with the carryin inventory of 101,946 tons results in a total available supply of 400,423 tons, which is about 57 percent higher than the 254,475-ton trade demand. Volume regulation is warranted for Zantes this season because the crop estimate of 3,650 tons combined with the carryin inventory of 1,906 tons results in a total available supply of 5,556 tons which is about 200 percent higher than the 1,855-ton trade demand. The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help prevent oversupplies in the domestic market.

Raisin-variety grapes can be marketed as fresh grapes, crushed for use in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. These supply fluctuations can cause producer price instability and disorderly market conditions. Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, excluding the 1997–98 season for which complete data is not yet available, producer prices for Naturals have remained fairly steady between the 1992–93 through the 1998–99 seasons, although production has varied. As shown in the table below, production has varied from a low of 240,469 tons in 1998–99 to a high of 387,007 tons in 1993–94, or 61 percent. According to Committee data, during years of Natural volume regulation, the total producer return per ton, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or 16 percent.

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Production (natural condition tons)	Producer prices
1998–99	240,469	[1] $1,290
1997–98	382,448	[2] 925.50
1996–97	272,063	1,049
1995–96	325,911	1,007
1994–95	378,427	928
1993–94	387,007	904
1992–93	371,516	901

[1] No volume regulation.
[2] Return to date, reserve pool still open.

In addition, the Committee is implementing an export program for Naturals. Through this program, the Committee hopes to export more Naturals thereby helping to build and maintain export markets, and ultimately improve producer returns. Volume regulation helps the industry not only to manage its supply of raisins, but also maintain market stability.

Regarding Zantes, Zante production is much smaller than that of Naturals. Volume regulation has been implemented for Zantes during the 1994–95, 1995–96, 1997–98, and 1998–99 seasons. Various programs to utilize reserve Zantes were implemented when volume regulation was in effect during those seasons. As shown in the table following this paragraph, although production varied during those years, volume regulation helped to reduce inventories, and helped to strengthen total producer prices (free tonnage plus reserve Zantes) from $412.56 per ton in 1994–95 to an estimated high of $730 per ton in 1997–98. The Committee is implementing an export program for Zantes, in addition to Naturals. Through this program, the Committee hopes to export more Zantes, thereby continuing to reduce the industry's oversupply, helping to build export markets, and ultimately improve producer returns. Volume regulation helps the industry not only to manage oversupplies of raisins, but also maintain market stability.

ZANTE CURRANT INVENTORIES AND PRODUCER PRICES DURING YEARS OF VOLUME REGULATION

[*Natural condition tons]

Crop year	Production*	Inventory*		Total season average producer price (per ton)
		Desirable	Physical	
1998–99	3,880	573	1,906	([1])

ZANTE CURRANT INVENTORIES AND PRODUCER PRICES DURING YEARS OF VOLUME REGULATION—Continued

[*Natural condition tons]

Crop year	Production*	Inventory*		Total season average producer price (per ton)
		Desirable	Physical	
1997–98	4,826	694	1,188	[2] $730.00
1996–97	4,491	987	549	[3] 1,150.00
1995–96	3,294	782	2,890	711.32
1994–95	5,377	837	4,364	412.56

[1] Data not yet available, reserve pool open.
[2] Estimate.
[3] No volume regulation.

Free and reserve percentages are established by variety, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. However, volume regulation may also be utilized in short crop years so that the industry may utilize its export program as described to maintain its export markets and provide stability in the domestic market. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, the Committee recommended only two of the nine raisin varieties defined under the order for volume regulation this season.

The free and reserve percentages release the full trade demands and apply uniformly to all handlers in the industry, regardless of size. For Naturals, with the exception of the 1998–99 crop year, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. All handlers are regulated based on the quantity of raisins that they acquire from producers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action will not impose any additional reporting or recordkeeping burdens on either small or large handlers. The forms require information that is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

An interim final rule concerning this action was published in the **Federal Register** on April 10, 2000 (65 FR 18871). Copies of the rule were mailed by the Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period, which ended June 9, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab/html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 69 FR 18871 on April 10, 2000, is adopted as a final rule without change.

Dated: June 27, 2000

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–16739 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 925 and 950

[No. 2000–30]

RIN 3069–AA94

Amendment of Membership Regulation and Advances Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting as final, with several changes, the Interim Final Rule that: Amended its Membership Regulation and Advances Regulation to conform certain provisions to the requirements of the

Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act); and made certain technical revisions to the Membership Regulation that are not related to the Modernization Act, in order to clarify the treatment of *de novo* members that fail to meet the 10 percent residential mortgage loans requirement within the required one-year time frame.

DATES: This final rule shall be effective on July 3, 2000.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director, (202) 408–2821, Jennifer R. Salamon, Program Analyst, (202) 408–2974, or Patricia L. Sweeney, Program Analyst, (202) 408–2872, Office of Policy, Research and Analysis; or Sharon B. Lake, Senior Attorney-Advisor, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under the Federal Home Loan Bank Act (Bank Act), the Finance Board is responsible for the supervision and regulation of the 12 Federal Home Loan Banks (Banks), which provide advances and other financial services to their member institutions. *See* 12 U.S.C. 1422a(a) (1994). Institutions, including those not meeting the Qualified Thrift Leader (QTL) test, may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Bank Act and the Finance Board's implementing Membership Regulation. *See id.* secs. 1424, 1426, 1430(e)(3) (1994); 12 CFR part 925.[1] Members may obtain advances from a Bank subject to certain statutory and regulatory requirements. *See* 12 U.S.C. 1430(a) (1994). Prior to recent amendments to the Bank Act, discussed further below, access to advances by non-QTL members was restricted in various ways. *See id.* sec. 1430(e).

The recently enacted Modernization Act[2] amended certain membership eligibility provisions, and repealed certain stock purchase and non-QTL advances provisions, in the Bank Act. *See* Pub. L. No. 106–102, secs. 602, 603, 604(c), (d)(1), 605, 608 (1999). Accordingly, the Finance Board adopted the Interim Final Rule, which amended its regulations to conform them to the Modernization Act amendments. *See* 65 FR 13866 (March 15, 2000). The Finance Board also took the opportunity in the Interim Final Rule to make certain technical revisions to the Membership Regulation that are not related to the Modernization Act, in order to clarify the treatment of *de novo* members that fail to meet the 10 percent residential mortgage loans requirement within the required one-year time frame. *See id.*

The Interim Final Rule provided for a 30-day public comment period, which closed on April 14, 2000. The Finance Board received a total of 7 comment letters on the Interim Final Rule. Commenters included 4 Banks and three financial institutions trade associations. Commenters generally focused their comments on how the three-year average total assets number for community financial institutions (CFIs) should be calculated. These comments are discussed below.

II. Analysis of the Final Rule

A. Removal of the 10 Percent Residential Mortgage Loans Requirement For Community Financial Institution Applicants For Membership; Definition of ''Community Financial Institution''—§§ 925.1(ff), 925.6(b), 925.10, 925.14(a)(3)

Section 4(a)(2)(A) of the Bank Act formerly provided that an insured depository institution may become a member of a Bank only if it has at least 10 percent of its total assets in residential mortgage loans (10 percent requirement). *See* 12 U.S.C. 1424(a)(2)(A) (1994). Section 4(a)(2) also provided that an insured depository institution commencing business operations after January 1, 1989 (*de novo* institution), may become a member of a Bank if at least 10 percent of its total assets are in residential mortgage loans, within one year after the commencement of its operations. *See id.* sec. 1424(a)(2). Section 4(a)(2) is implemented by §§ 925.6(b), 925.10 and 925.14(a)(3) of the Finance Board's Membership Regulation. *See* 12 CFR 925.6(b), 925.10, 925.14(a)(3).

The Modernization Act amended section 4(a)(2) of the Bank Act to exempt from the 10 percent requirement any applicants, including *de novo* institutions, that qualify as ''community financial institutions'' *See* Modernization Act, sec. 605 (*to be codified at* 12 U.S.C. 1424(a)(2)(A)(4)). The Modernization Act defines a ''community financial institution'' to mean an institution whose deposits are insured under the Federal Deposit Insurance Act (FDIA) and that has, as of the date of the transaction at issue, less than $500 million in average total assets, based on an average of total assets over the three years preceding that date. *See id.* sec. 602 (*to be codified at* 12 U.S.C. 1422(13)). Accordingly, the Interim Final Rule amended §§ 925.6(b), 925.10 and 925.14(a)(3) of the Membership Regulation to include an exemption from the 10 percent requirement for CFIs, and added a definition of ''community financial institution'' in new § 925.1(ff) that mirrored the statutory definition. A definition of ''community financial institution'' that predates the Modernization Act, in § 925.1(n)(1)(iii), also was removed. The Finance Board requested comments in the Interim Final Rule on what source of data should be used in calculating the average of total assets over the three preceding years.

The issue of how to calculate an institution's average total assets over the three preceding years also arises in the context of the new authority under the Modernization Act allowing CFI members to pledge secured loans for small business or agriculture, or securities representing a whole interest in such secured loans, as security for advances. *See* Modernization Act, section 604(a)(5)(C). The Finance Board recently issued a proposed rule to implement this new advances collateral authority (Advances Collateral Rule). *See* 65 FR 26518 (May 8, 2000). A number of commenters on the Interim Final Rule recommended that the Banks be allowed to calculate average total assets of all of their member institutions on an annual basis, based on calendar year-end financial data available from the institutions' regulatory financial reports filed with their regulators or, in the alternative, based on data available from the institutions' quarterly regulatory financial reports for the preceding three years. Commenters stated that it would be confusing to determine CFI status on a quarterly or monthly basis when § 925.22(b)(1) of the Membership Regulation requires the Banks to calculate annually each member's minimum capital stock requirement using calendar year-end financial data. Commenters stated that calculation of CFI status on a quarterly or monthly basis would result in unnecessary administrative burdens and expense. Other commenters supported quarterly calculations of average total assets based on the institutions' quarterly regulatory financial reports over the three preceding years.

[1] The Finance Board recently reorganized and redesignated all of its regulations. *See* 65 FR 8253 (Feb. 18, 2000). The Membership Regulation, which formerly was part 933 of the Finance Board's regulations, 12 CFR part 933 of the Finance Board's regulations, 12 CFR part 933 (1999), was redesignated as part 925. *See* 65 FR 8253, 8260 (to be codified at 12 CFR part 925).

[2] The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 113 Stat. 1338, enacted into law on November 12, 1999.

Commenters also stated that calculation of CFI status on a quarterly or monthly basis would cause some members' CFI status to fluctuate more frequently, which, for members approaching the CFI asset cap, could have a chilling effect on their reliance on Bank funding secured by CFI-eligible collateral.

For membership eligibility purposes, the determination of whether an institution applying for Bank membership is a CFI and, therefore, exempt from the 10 percent requirement, is only required to be made by the Bank one time, during the membership application evaluation process. Therefore, the comments regarding the administrative burden and cost of performing more frequent periodic calculations, coordinating with the annual stock purchase calculation, and the effect on use of Bank funding, are inapposite for membership eligibility purposes. Rather, these comments appear to be directed at how CFI status should be calculated for purposes of allowing CFI members to use the expanded collateral authority under the Modernization Act. These comments, and the definition of CFI for advances collateral purposes, are more appropriately addressed in the Finance Board's final Advances Collateral Rule.

Under the Membership Regulation, the calculation of the 10 percent requirement is based on the applicant's total assets and residential mortgage loans drawn from its most recent quarterly regulatory financial report filed with its appropriate regulator. *See* 12 CFR 925.10. Since the calculation of average total assets to determine CFI status is necessary in order to determine whether the 10 percent requirement applies, it would be consistent with the current membership application review process at the Banks to use the same total assets data from the applicant's most recent quarterly regulatory financial report for the CFI calculation. In addition, since an average of total assets over three years is required for the CFI calculation, it also would be reasonable to include in the calculation the total assets data from the quarterly regulatory financial reports filed with the applicant's appropriate regulator for the immediately preceding 11 calendar quarters.

Because the calculation of the three-year total assets average affects the determination of CFI status for both membership and advances purposes, the definition of CFI belongs in § 900.1, which contains general definitions applying to all Finance Board regulations. Accordingly, this final rule removes the definitions of ''community financial institution'' and ''community financial institution asset cap'' (§ 925.1(ff) and (gg)) from the Membership Regulation. The final Advances Collecteral Rule will add the calculation for membership purposes as described above, as well a the calculation for advances purposes, to a definition of ''community financial institution'' in § 900.1. The final Advances Collateral Rule also will add the definition of ''community financial institution asset cap'' to § 900.1.

B. Readmission to Membership—§ 925.30

The final rule makes technical revisions to the language on readmission to membership in § 925.30 of the Interim Final Rule for greater clarity.

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act, U.S.C. 601 *et seq.*, do not apply.

IV. Paperwork Reduction Act

For the reasons stated in the Interim Final Rule, the Finance Board adopted the Interim Final Rule on an expedited basis to conform provisions of its regulations to the recently enacted statutory amendments to the Bank Act. Due to the expedited nature of this rulemaking, the Finance Board has not completed its analysis of the information collection requirements contained in the final rule. The amendments in the final rule may result in a reduction in the information collection burden for institutions that qualify as community financial institutions, and an increase in the number of respondents that apply for Bank membership. The Finance Board intends to submit to the Office of Management and Budget the information collection requirements contained in this final rule in accordance with the requirements of section 3507(d) of the Paperwork Reudction Act of 1995, 44 U.S.C. 3507(d).

List of Subjects in Parts 925 and 950

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Interim Final Rule amending title 12, chapter IX, parts 925 and 950, Code of Federal Regulations, which was published at 65 FR 13866 (March 15, 2000), is adopted as final with the following changes:

PART 925—MEMBERS OF THE BANKS

1. The authority citation for part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

§ 925.1 [Amended]

2. Amend § 925.1 by removing paragraphs (ff) and (gg).

3. Revised § 925.30 to read as follows:

§ 925.30 Readmission to membership.

(a) *In general.* An institution that has withdrawn from membership, or otherwise terminated its membership, may not be readmitted to membership in any Bank for a period of 5 years from the date on which its membership terminated.

(b) *Exceptions.* An institution that transfers membership between two Banks without interruption shall not be deemed to have withdrawn from Bank membership. Any institution that withdrew from Bank membership prior to December 31, 1997, and for which the 5-year period has not expired, may apply for membership in a Bank at any time, subject to the approval of the Finance Board and the requirements of 12 CFR part 925.

Dated: June 23, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–16790 Filed 6–30–00; 8:45 am]

BILLING CODE 6725–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–15–AD; Amendment 39–11800; AD 2000–13–01]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company, Inc. AE 3007A and AE 3007C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines. This AD requires the removal from service of certain turbine wheels before exceeding new, reduced cyclic life limits. This amendment is prompted by a refined life analysis that was performed by the manufacturer.

The actions specified by this AD are intended to prevent an uncontained turbine wheel failure, which could result in damage to the airplane.

DATES: Effective date September 1, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 1, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce Allison, P.O. Box 420, Indianapolis, IN 46206–0420; telephone: (888) 255–4766. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) applicable to Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines was published in the **Federal Register** on August 5, 1999 (64 FR 42622). That action proposed to require the removal of certain turbine wheels from service before exceeding new, reduced cyclic life limits listed in Rolls-Royce Alert Service Bulletin (ASB) AE 3007A–A–72–105/AE 3007C–A–72–105, dated January 29, 1999.

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

Support for the Rule

One commenter supports the proposed rule as written.

Part Numbers

One commenter requests the addition of part numbers (P/N) to the compliance section. The commenter states that the way the NPRM is written, paragraphs (a)(2) and (b)(2) could be interpreted to mean that all stage 1 and stage 2 turbine wheels, respectively, should have lower lives. In fact, the life reduction is limited to a few part numbers. The addition of the affected part numbers would prevent confusion.

The FAA agrees. To eliminate confusion, paragraph (a)(2) of the compliance section of the final rule has been revised to specify P/Ns 23065891 and 23062373. Paragraph (b)(2) of the compliance section of the final rule has been revised to specify P/Ns 23065892 and 23063462.

Conclusion

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

Economic Analysis

There are approximately 325 engines of the affected design in the worldwide fleet. The FAA estimates that 260 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 63 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. The estimated cost of the lost cycles due to the reduction of the engine cycle life limit is $57,800 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $15,028,000. The manufacturer of the affected turbine wheels has advised the FAA that it may defray the cost of the reduced life limits, thus reducing the overall cost to operators.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–13–01 Allison Engine Company, Inc.: Amendment 39–11800. Docket No. 99–NE–15–AD.

Applicability

Allison Engine Company, Inc. AE 3007A and AE 3007C series turbofan engines, installed on, but not limited to, Cessna Aircraft Company 750 series airplanes and Empresa Brasileira de Aeronautica S.A. (Embraer) EMB–145 series airplanes.

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

Compliance

Required as indicated, unless accomplished previously.

To prevent an uncontained turbine wheel failure, which could result in damage to the airplane, accomplish the following:

Remove and Replace

(a) Remove stage 1 turbine wheels, part numbers (P/Ns) 23065891 and 23062373, and replace with new or serviceable parts as follows:

(1) For stage 1 turbine wheels with serial numbers (SNs) listed in Table 5 of Rolls-Royce Alert Service Bulletin (ASB) AE 3007A–A–72–105 and AE 3007C–A–72–105, dated January 29, 1999, replace before accumulating 9,000 engine cycles since new (CSN).

(2) For all other stage 1 turbine wheel SNs with P/Ns 23065891 and 23062373, replace before accumulating 13,100 engine CSN.

(b) Remove stage 2 turbine wheels, P/Ns 23065892 and 23063462, and replace with new or serviceable parts as follows:

(1) For stage 2 turbine wheels with SNs listed in Table 6 of Rolls-Royce ASB AE 3007A–A–72–105 and AE 3007C–A–72–105, dated January 29, 1999, replace before accumulating 7,800 engine CSN.

(2) For all other stage 2 turbine wheel SNs with P/Ns 23065892 and 23063462, replace before accumulating 8,400 engine CSN.

Alternative Life Limits

(c) This AD establishes new cyclic life limits for the turbine wheels identified in paragraphs (a) and (b) of this AD. Except in accordance with paragraph (d) of this AD, no alternative life limits may be approved for the turbine wheels identified in paragraphs (a) and (b) of this AD.

Alternative Method of Compliance

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

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

Special Flight Permits

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

Documents Incorporated by Reference

(f) This AD references Rolls-Royce Alert Service Bulletin AE 3007A–A–72–105/AE 3007C–A–72–105, dated January 29, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Allison, P.O. Box 420, Indianapolis, IN 46206–0420; telephone: (888) 255–4766. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on September 1, 2000.

Issued in Burlington, Massachusetts, on June 19, 2000.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–16232 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–05–AD; Amendment 39–11804; AD 2000–13–05–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc. RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce plc. (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. This action requires initial and repetitive ultrasonic inspections for cracks in fan blade dovetail roots, and if necessary, replacement with serviceable parts. This amendment is prompted by reports of fan blade failures due to dovetail root cracks. The actions specified in this AD are intended to prevent possible multiple fan blade failures, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective August 2, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 2, 2000.

Comments for inclusion in the Rules Docket must be received on or before September 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–05–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.gov.'' Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: 011–44–1332–249428; fax 011–44–1332–249223. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7176; fax 781–238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the FAA that an unsafe condition may exist on Rolls-Royce plc. (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines with fan blade part numbers (P/N's) FK22580, FK23411, FK25441, and FK25968 installed. The CAA received a report of multiple fan blade root cracks in a factory engine. A recent inspection of a set of fan blades from a factory fleet leader test engine has identified small cracks in the blade roots on the convex root flank. To date, this is the only engine that has exhibited the blade root cracks. This condition, if not corrected, could result in possible multiple fan blade failures, which could result in an uncontained engine failure and damage to the airplane.

Manufacturer's Service Information

Rolls-Royce plc (RR) has issued service bulletin (SB) No. RB.211–72–C878, Revision 1, dated December 10, 1999, that specifies procedures for ultrasonic inspections for cracks in fan blade dovetail roots. The CAA classified this SB as mandatory and issued airworthiness directive (AD) 003–11–99 in order to assure the airworthiness of these engines in the U.K.

Differences Between This AD and the Manufacturer's Service Information

This AD applies only to those engines with fan blades having four specific part numbers. The manufacturer's service bulletin is not limited in that fashion. The FAA expects that future changes in the design of the affected fan blades will eliminate the need for the required inspections and that those newer fan blades will have different part numbers. The installation of the newer part number will therefore have the effect of removing the engine from the applicability of this AD.

Bilateral Airworthiness Agreement

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

for products of this type design that are certificated for operation in the United States.

Requirements of This AD

Although none of these affected engine models are used on any airplanes that are registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Because an unsafe condition has been identified that is likely to exist or develop on other RR RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 series turbofan engines of the same type design, with fan blade P/N's FK22580, FK23411, FK25441, and FK25968 installed, this AD requires:

- Initial ultrasonic inspections within 200 cycles after the effective date of this AD, or within 200 cycles of achieving 2,800 cycles since new, whichever is later; and
- Repetitive ultrasonic inspection of the fan blade root within 340 cycles since the last inspection.

The actions are required to be completed in accordance with the service bulletin described previously.

Immediate Adoption

Since there are currently no domestic operators of this engine model, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–05–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–13–05 Rolls-Royce plc: Amendment 39–11804. Docket 2000–NE–05–AD.

Applicability

This AD is applicable to Rolls-Royce plc. (RR) RB211 Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines with fan blade part numbers (P/N's) FK22580, FK23411, FK25441, and FK25968 installed. These engines are installed on but not limited to Airbus A330–341 and A330–342 series airplanes.

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

Compliance

Compliance with this AD is required as indicated below, unless already completed.

To prevent possible multiple fan blade failures, which could result in an uncontained engine failure and damage to the airplane, do the following:

Ultrasonic Inspections

(a) Ultrasonically inspect the dovetail roots of all fan blade P/N's FK22580, FK23411, FK25441, and FK25968 with more than 2800 cycles since new (CSN), for cracks as follows:

Initial Inspection

(1) Initially inspect the fan blade in accordance with paragraph 3.A.(1) or paragraph 3.B.(1) through paragraph 3.B.(8) of RR service bulletin (SB) No. RB.211–72–C878, revision 1, dated December 10, 1999, at the later of the following:

(i) Within 200 fan blade cycles in service (CIS) after the effective date of this AD; or

(ii) Within 200 fan blade CIS of achieving 2800 CSN.

Repetitive Inspections

(2) Thereafter, inspect at intervals not to exceed 340 CIS, since last inspection, in accordance with paragraph 3.A.(1) or paragraph 3.B.(1) through paragraph 3.B.(8) of RR SB No. RB.211–72–C878, revision 1, dated December 10, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall

submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

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

Incorporation by Reference Material

(d) The actions required by this AD shall be performed in accordance with the following service documents:

Document No.	Pages	Revision	Date
RB.211–72–C878	1–2	1	December 10, 1999
	3–4	Original	November 19, 1999
	Appendix	Original	November 19, 1999
Total pages: 7.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: 011–44–1332–249428; fax: 011–44–1332–249223. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date of This AD

(e) This amendment becomes effective on August 2, 2000.

Issued in Burlington, Massachusetts, on June 21, 2000.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–16231 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–196–AD; Amendment 39–11806; AD 2000–13–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This AD requires repetitive detailed visual and ultrasonic inspections of the main landing gear (MLG) to detect fatigue cracks, and repair if necessary; replacement of certain nose landing gear (NLG) handwheel controllers and certain placards with new placards; installation of steering angle recording software; and corrective action for exceeding certain steering angles. This AD also requires an AFM revision to limit the nose wheel steering angle for pushback and towing and to limit the nose wheel steering for powered turns. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent MLG failure due to fatigue cracking, which could result in reduced structural capability of the airplane and collapse of the MLG.

DATES: Effective August 7, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 7, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on January 12, 2000 (65 FR 1833). That action proposed to require repetitive detailed visual and ultrasonic inspections of the main landing gear (MLG) to detect fatigue cracks, and repair if necessary; replacement of certain nose landing gear (NLG) handwheel controllers and certain placards with new placards; installation of steering angle recording software; corrective action for exceeding certain steering angles; and an AFM revision to limit the nose wheel steering angle for pushback and towing and to limit the nose wheel steering for powered turns.

Comments

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

Request To Exclude Certain Airplanes From Proposed Actions

The commenter (an operator) requests that certain airplanes be excluded from the actions specified in the proposed AD. (Although the proposed rule identifies no affected U.S.-registered airplanes, the commenter has since taken delivery of several Model A330 series airplanes.) Subsequent to issuance of the proposed rule, the manufacturer developed the following production modifications for Model A330 and A340 series airplanes (all of which have been installed on the commenter's airplanes):

Modification 47487: Introduces scallop on the growth main fitting of the main landing gear (MLG)

Modification 47500: Introduces brake steering and control unit (BSCU) S8D for the MLG

Modification 47701: Provides for application of markings for maximum turning angle (±65 degrees) for towing and pushback of the nose landing gear doors

Modification 47787: Introduces ACMS software to record nose wheel steering angles exceeding 67 degrees during towing and pushback

FAA Response

The FAA concurs with the request. The Direction Generale de l'Aviation

Civile (DGAC), which is the airworthiness authority for France, advises that the four production modifications are acceptable alternative means of compliance with all requirements of the parallel French airworthiness directives. Based on the data presented, the FAA has revised the applicability of the final rule to remove the inspection and modification requirements for airplanes on which all four of the referenced production modifications have been installed.

Conclusion

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

Cost Impact

None of the airplanes affected by this action is on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to inspect the main landing gear; approximately 7 work hours to replace the controller; approximately 1 work hour to replace the placards; approximately 1 work hour to install the software program; and approximately 1 work hour to revise the AFM. The average labor rate is $60 per work hour. The manufacturer has previously committed to bearing the cost of the necessary parts to accomplish the actions. Based on these figures, the cost impact of the inspections required by this AD would be $60 per airplane, per inspection cycle, and $660 per airplane for the remaining actions.

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

Should an operator elect to modify the functional software of the brake steering and control unit (BSCU) rather than replace the nose wheel steering handwheel controllers, the modification would take approximately 1 work hour. Based on this figure, the cost impact of the optional modification would be $60 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–13–07 Airbus Industrie: Amendment 39–11806. Docket 99–NM–196–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category, except those on which Airbus Modifications 47487, 47500, 47701, and 47787 have been installed in production.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent main landing gear (MLG) failure due to fatigue cracking, which could result in reduced structural capability of the airplane and collapse of the MLG, accomplish the following:

Inspection of the MLG

(a) Prior to the accumulation of 800 total landings on the MLG, or within 120 landings after the effective date of this AD, whichever occurs later, perform detailed visual and ultrasonic inspections of the MLG to detect fatigue cracks, as specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model A330 series airplanes: Accomplish the detailed visual and ultrasonic inspections in accordance with Airbus Service Bulletin A330–32A3088, Revision 02, dated June 10, 1999.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Note 3: Detailed visual and ultrasonic inspections accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A330–32A3088, dated October 16, 1998; or Revision 01, dated November 20, 1998; are acceptable methods of compliance for the inspection requirements of paragraph (a)(1) of this AD.

(2) For Model A340 series airplanes: Accomplish the detailed visual and ultrasonic inspections in accordance with Airbus Service Bulletin A340–32A4124, Revision 01, dated November 20, 1998.

Note 4: Detailed visual and ultrasonic inspections accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A340–32A4124, dated October 16, 1998, are acceptable methods of compliance for the inspection requirements of paragraph (a)(2) of this AD.

Repetitive Inspections

(b) If no crack is detected during the inspection required by paragraph (a)(1) or

(a)(2) of this AD: Repeat the detailed visual and ultrasonic inspections thereafter at intervals not to exceed 120 landings.

Corrective Actions

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD: Prior to further flight, perform a detailed magnetic particle inspection of the MLG to detect fatigue cracks, in accordance with Airbus Service Bulletin A330–32A3088, Revision 02, dated June 10, 1999, or Airbus Service Bulletin A340–32A4124, Revision 01, dated November 20, 1998, as applicable; and repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Reporting

(d) Within 10 days after accomplishing any inspection required by paragraph (a), (b), or (c) of this AD, report the inspection results (both positive and negative) to Airbus Industrie at fax 33(0) 5 61 93 32 73. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Replacement of Nose Wheel Steering Handwheel Controllers or Software Modification

(e) Within 20 days after the effective date of this AD, replace the nose wheel steering handwheel controllers with new controllers, or modify the functional software of the brake steering and control unit (BSCU), as specified in either paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For Model A330 series airplanes: Replace the controllers in accordance with Airbus Service Bulletin A330–32–3091, Revision 01, dated December 2, 1998, or modify the functional software of the BSCU in accordance with Airbus Service Bulletin A330–32–3092, Revision 02, dated June 10, 1999.

Note 5: Replacement of nose wheel steering handwheel controllers with new controllers accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A330–32–3091, dated November 19, 1998, is an acceptable method of compliance for the replacement requirements of paragraph (e)(1) of this AD.

Note 6: Modification of the functional software of the BSCU accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A330–32–3092, dated December 18, 1998; or Revision 01, dated February 24, 1999; is an acceptable method of compliance for the software modification requirements of paragraph (e)(1) of this AD.

(2) For Model A340 series airplanes: Replace the controllers in accordance with Airbus Service Bulletin A340–32–4128, Revision 01, dated December 2, 1998, or modify the functional software of the BSCU in accordance with Airbus Service Bulletin A340–32–4131, Revision 01, dated June 10, 1999.

Note 7: Replacement of nose wheel steering handwheel controllers with new controllers accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A340–32–4128, dated November 19, 1998, is an acceptable method of compliance for the replacement requirements of paragraph (e)(2) of this AD.

Note 8: Modification of the functional software of the BSCU accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A340–32–4131, dated February 24, 1999, is an acceptable method of compliance for the software modification requirements of paragraph (e)(2) of this AD.

Replacement of Placards

(f) Within 20 days after the effective date of this AD, replace the placards on the left- and right-hand sides of the aft mechanically-operated nose landing gear doors with new placards, as specified in either paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For Model A330 series airplanes: Replace placards in accordance with Airbus Service Bulletin A330–32–3089, dated November 2, 1998.

(2) For Model A340 series airplanes: Replace placards in accordance with Airbus Service Bulletin A340–32–4126, dated November 2, 1998.

Installation of a Software Program

(g) Within 20 days after the effective date of this AD, accomplish either paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model A330–200 series airplanes: Install a software program that automatically records all nose wheel steering angle exceedance above 63 degrees into the Aircraft Condition Monitoring System (ACMS) [*i.e.*, modify the new setup database software by adding the existing operator customized version; and upload the setup database software to the data management unit (DMU)] in accordance with Airbus Service Bulletin A330–31–3033, dated September 13, 1999.

(2) For Model A330–300 and Model A340 series airplanes: Install a software program that automatically records all nose wheel steering angle exceedance above 67 degrees into the ACMS (*i.e.*, modify the new setup database software by adding the existing operator customized version; and upload the setup database software to the DMU) in accordance with Airbus Service Bulletin A330–31–3033, dated September 13, 1999 (for Model A330–300 series airplanes), or Airbus Service Bulletin A340–31–4047, dated September 13, 1999 (for Model A340 series airplanes); as applicable.

Incorporation of Ground and Crew Operating Procedures

(h) Within 20 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) by inserting the procedures to incorporate ground operating procedures to limit the nose wheel steering angle for pushback and towing and to limit nose wheel steering for powered turns, in accordance with Flight Operations TELEX (FOT) 999.0099/98, Revision 5, dated May 21, 1999.

Corrective Actions for Exceedance of Nose Wheel Steering Angle

(i) For Model A330–200 series airplanes: If, after 20 days from the effective date of this AD, a 63-degree hand wheel steering is exceeded, a 63 degrees is recorded on the ACMS, or a 60-degree steering is exceeded during towing or pushback, within 4 landings after each occurrence, accomplish the actions required by paragraph (a) of this AD.

(j) For Model A330–300 and Model A340 series airplanes: If, after 20 days from the effective date of this AD, a 65-degree hand wheel steering is exceeded, a 67 degrees is recorded on the ACMS, or a 60-degree steering is exceeded during towing or pushback; within 4 landings after each occurrence, accomplish paragraph (j)(1) and (j)(2) of this AD, as applicable.

(1) Accomplish the actions required by paragraph (a) of this AD.

(2) For airplanes on which Airbus Modification 46804 has been accomplished:

Reinstall a positive stop and re-rig the tiller as specified in either paragraph (j)(2)(i) or (j)(2)(ii) of this AD, as applicable.

(i) For Model A330–300 series airplanes: Reinstall a stop and re-rig in accordance with Airbus Service Bulletin A330–32–3091, Revision 01, dated December 2, 1998.

(ii) For Model A340 series airplanes: Reinstall a stop and re-rig in accordance with Airbus Service Bulletin A340–32–4128, Revision 01, dated December 2, 1998.

Alternative Methods of Compliance

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

Note 9: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(m) Except for the repair required by paragraph (c) of this AD: The actions shall be done in accordance with the following Airbus service bulletins and telex, as applicable.

Airbus service bulletin number	Revision level	Service bulletin date
A330–32A3088	02	June 10, 1999.
A340–32A4124	01	November 20, 1998.
A330–32–3091	01	December 2, 1998.
A330–32–3092	02	June 10, 1999.
A340–32–4128	01	December 2, 1998.
A340–32–4131	01	June 10, 1999.
A330–32–3089	Original	November 2, 1998.
A340–32–4126	Original	November 2, 1998.
A330–31–3033	Original	September 13, 1999.
A340–31–4047	Original	September 13, 1999.
Flight Operations TELEX 999.0099/98	Revision 5	May 21, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 10: The subject of this AD is addressed in French airworthiness directives 1998–475–103(B)R1; 1998–473–083(B)R1; and 1999–160–096(B); all dated April 21, 1999.

(n) This amendment becomes effective on August 7, 2000.

Issued in Renton, Washington, on June 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16357 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–18–AD; Amendment 39–11805; AD 2000–13–06]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Model S–61 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for Sikorsky Model S–61 helicopters. That AD requires inspecting certain pylon upper and lower hinge web fittings (web fittings) for corrosion or a crack and either repairing certain web fittings or replacing any unairworthy web fittings with airworthy web fittings. That AD also requires creating a log card or equivalent record and implementing a recurring inspection of the web fittings. This amendment retains the requirements of that AD but corrects an error in paragraph (a)(3) by removing the words ''and 3.E.'' This amendment is prompted by an operator notifying the FAA of that error which requires an unnecessary major inspection within 25 hours time-in-service (TIS). The actions specified in this AD are intended to remove an undue burden on the public by superseding the AD and removing the requirement for the major inspection within 25 hours TIS.

DATES: Effective July 18, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of March 30, 2000 (65 FR 13877, March 15, 2000).

Comments for inclusion in the Rules Docket must be received on or before September 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–18–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9–asw–adcomments@faa.gov.

The service information referenced in this AD may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P. O. Box 9729, Stratford, Connecticut 06497–9129, phone (203) 386–7860, fax (203) 386–4703. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brian K. Murphy, Aviation Safety Engineer, ANE–150, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7739, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On March 6, 2000, the FAA issued AD 2000–05–16, Amendment 39–11626 (65 FR 13877, March 15, 2000). That AD for Sikorsky Model S–61 helicopters with pylon, part number (P/N) S6120–76265–001 or S6120–76266–507, installed, requires inspecting and repairing or, if necessary, replacing certain web fittings and the fitting faying surfaces. The AD also requires making an entry on the log card or equivalent record. That action was prompted by the discovery of extensive cracking in the area of the web fitting. That condition, if not corrected, could result in structural failure of certain web fittings due to stress corrosion, subsequent structural failure of the tailboom and loss of control of the helicopter.

Since the issuance of that AD, an operator notified the FAA of an error. That error is the reference in paragraph (a)(3) of the AD to paragraph 3.E. of the Accomplishment Instructions of Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B20–33, dated September 3, 1999 (ASB). Requiring paragraph 3.E. of the ASB in paragraph (a)(3) of the AD would inadvertently require conducting a major inspection within 25 hours TIS, which is not intended. The Inspection Plan in Chart A of the ASB refers to paragraph 3.E., which specifies a major recurring inspection at 9000 flight hours or 4 years, whichever is less. That inspection is appropriately covered under paragraph (a)(6) of the AD, which requires entering on the log card or equivalent record the recurring inspection intervals in accordance with Chart A of the ASB.

Since requiring the major inspection within 25 hours TIS is not required to correct the unsafe condition, this AD supersedes AD 2000–05–16. This AD would correct the requirement that inadvertently requires conducting the major inspection in 25 hours TIS by removing the words ''and 3.E.'' from paragraph (a)(3) of the AD. The short

compliance time involved is required because the superseded AD is ambiguous and the previously described major inspection requiring unscheduled disassembly of the helicopter is impractical and unnecessary to maintain safety, and creates an undue burden on the public. Therefore, correcting paragraph (a)(3) by removing the words ''and 3.E.'' is required and this AD must be issued immediately.

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

The FAA estimates that 125 helicopters will be affected by this AD, that it will take approximately 115 work hours to accomplish the inspection and replacement of parts, and that the average labor rate is $60 per work hour. Required parts will cost approximately $75,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,237,500 if the parts have to be replaced on the entire fleet.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–18–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11626 (65 FR 13877, March 15, 2000) and by adding a new airworthiness directive (AD), Amendment 39–11805, to read as follows:

2000–13–06 Sikorsky Aircraft Corporation: Amendment 39–11805. Docket No. 2000–SW–18–AD. Supersedes AD 2000–05–16, Amendment 39–11626, Docket No. 99–SW–61–AD.

Applicability: Model S–61 helicopters with pylon, part number (P/N) S6120–76265–001 or S6120–76266–507, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure due to a crack or corrosion of pylon upper and lower hinge web fittings (web fittings), P/N S6120–76261–012, –013 (upper) or S6120–76262–012, –013 (lower), and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS),

(1) Determine the alloy-temper of the web fittings in accordance with Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B20–33, dated September 3, 1999 (ASB), Accomplishment Instructions, paragraph 3.A.

(2) Prepare the web fittings for inspection in accordance with the ASB Accomplishment Instructions, paragraph 3.B.

(3) Inspect the web fitting in accordance with the ASB Inspection Plan, Chart A, and the Accomplishment Instructions, paragraphs 3.C. and 3.D. Nicks, scratches, corrosion pitting or prior rework beyond the limits specified in paragraph 3.C.(5) require approval by the FAA.

(4) Repair or replace web fittings, as necessary, in accordance with the ASB Accomplishment Instructions, paragraph 3.C.(3) through (6). Nicks, scratches, corrosion pitting, or prior rework beyond the limits specified in paragraph 3.C.(5) require approval by the FAA.

(5) If replacing an unairworthy web fitting with an airworthy web fitting, replace it in accordance with the ASB Accomplishment Instructions, paragraph 3.F., prior to further flight.

(6) Create a log card for the pylon, if none exists. Make an entry on the log card or equivalent record implementing recurring inspection intervals in accordance with Chart A of the ASB.

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

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

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

(d) The inspection, repair, and replacement shall be done in accordance with the Inspection Plan, Chart A, and the Accomplishment Instructions of Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B20–33, dated September 3, 1999. This incorporation by reference of that document was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 30, 2000 (65 FR 13877, March 15, 2000). Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P. O. Box 9729, Stratford, Connecticut 06497–9129, phone (203) 386–7860, fax (203) 386–4703. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on July 18, 2000.

Issued in Fort Worth, Texas, on June 19, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–16356 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–12]

Amendment to Class E Airspace; Oelwein, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Oelwein Municipal Airport, Oelwein, IA. The FAA has developed an Area Navigation (RNAV) Runway (RWY) 13 Standard Instrument Approach Procedure (SIAP) to serve Oelwein Municipal Airport, Oelwein, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the RNAV RWY 13 SIAP in controlled airspace.

In addition a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing RNAV RWY 13 SIAP, revise the ARP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 28, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–12, 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 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 13 SIAP to serve the Oelwein Municipal Airport, Oelwein, IA. The amendment to Class E airspace at Oelwein, IA will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Oelwein Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR and revise the ARP. The area will be depicted on appropriate aeronautical charts. Class E 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 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 00–ACE–12.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, 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 Federal Aviation Administration Order 7400.9G Airspace Designations and Reporting Points, dated September 10, 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 IA E5 Oelwein, IA [Revised]

Oelwein Municipal Airport, IA
(Lat. 42°40′51″N., long. 91°58′28″W.)
Hampton NDB
(Lat. 42°41′03″N., long. 91°58′35″W.)

That airspace extending upward from 700 feet above the surface within a 7.3-miles radius of Oelwein Municipal Airport and within 3.5 miles each side of the 302° bearing from the Oelwein NDB extending from the 7.3-mile radius to 10.5 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on June 16, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–16662 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–13]

Amendment to Class E Airspace; Fairfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Fairfield Municipal Airport, Fairfield, IA. The FAA has developed an Area Navigation (RNAV) Runway (RWY) 18 Standard Instrument Approach Procedure (SIAP) to serve Fairfield Municipal Airport, Fairfield, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the RNAV RWY 18 SIAP in controlled airspace.

In addition a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing RNAV RWY 18 SIAP, revise the ARP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, November 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before August 28, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–13, 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 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 18 SIAP to serve the Fairfield Municipal Airport, Fairfield, IA. The amendment to Class E airspace at Fairfield, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Fairfield Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR and revise the ARP. The area will be depicted on appropriate aeronautical charts. Class E 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 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower

altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 00–ACA–13.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, 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 Federal Aviation Administration Order 7400.9G Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6004 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Fairfield, IA [Revised]

Fairfield Municipal Airport, IA
(Lat 41°03′12″ N., long. 91°58′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-miles radius of Fairfield Municipal Airport and within 2.6 miles each side of the 188° bearing from the Fairfield Municipal Airport extending from the 6.4-mile radius to 9.5 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on June 16, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–16661 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 101B]

Staff Accounting Bulletin No. 101B

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: Staff Accounting Bulletin No. 101 (''SAB 101'') was released on December 3, 1999 (64 FR 68936 December 9, 1999) and provides the staff's views in applying generally accepted accounting principles to selected revenue recognition issues. SAB 101A was released on March 24, 2000 (65 FR 16811 March 30, 2000) and delayed for one fiscal quarter the implementation date of SAB 101 for registrants with fiscal years beginning between December 16, 1999 and March 15, 2000. Since the issuance of SAB 101 and SAB 101A, the staff has continued to receive requests from a number of groups asking for additional time to determine the effect, if any, on registrant's revenue recognition practices. This staff accounting bulletin delays the implementation date of SAB 101 until no later than the fourth fiscal quarter of fiscal years beginning after December 15, 1999.

EFFECTIVE DATE: June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Rodgers, Scott Taub, or Eric Jacobsen, Professional Accounting Fellows, Office of the Chief Accountant (202/942–4400) or Robert Bayless, Division of Corporation Finance (202/942–2960), Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549; electronic addresses: RodgersR@sec.gov; TaubS@sec.gov; JacobsenE@sec.gov; or BaylessR@sec.gov.

SUPPLEMENTARY INFORMATION: The statements in the staff accounting bulletins are not rules or interpretations

of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: June 26, 2000.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 101B to the table found in Subpart B.

Staff Accounting Bulletin No. 101B

[The text of Staf Accounting Bulletin No. 101B will not appear in the Code of Federal Regulations.]

The staff hereby amends Question 2 of Section B of Topic 13 of the Staff Accounting Bulletin Series.

Topic 13: Revenue Recognition

* * * * *

B. Disclosures

Question 1

* * * * *

Question 2

Question: Will the staff expect retroactive changes by registrants to comply with the accounting described in this bulletin?

Interpretive Response: All registrants are expected to apply the accounting and disclosures described in this bulletin. The staff, however, will not object if registrants that have not applied this accounting do not restate prior financial statements provided they report a change in accounting principle in accordance with APB Opinion No. 20, *Accounting Changes,* and FASB Statement No. 3, *Reporting Accounting Changes in Interim Financial Statements,* no later than the fourth fiscal quarter of the fiscal year beginning after December 15, 1999. In periods subsequent to transition, registrants should disclose the amount of revenue (if material to income before income taxes) recognized in those periods that was included in the cumulative effect adjustment. If a registrant files financial statements with the Commission before applying the guidance in this bulletin, disclosures similar to those described in Staff Accounting Bulletin Topic 11–M, *Disclosure of the Impact that Recently Issued Accounting Standards Will Have on the Financial Statements of a Registrant When Adopted in a Future Period,* should be provided. With regard to question 10 of Topic 13–A and Topic 8–A regarding income statement presentation, the staff would normally expect retroactive application to all periods presented unless the effect of applying the guidance herein is immaterial.

However, if registrants have not previously complied with generally accepted accounting principles, for example, by recording revenue for products prior to delivery that did not comply with the applicable bill-and-hold guidance, those registrants should apply the guidance in APB Opinion No. 20 for the correction of an error.[1] In addition, registrants should be aware that the Commission may take enforcement action where a registrant in prior financial statements has violated the antifraud or disclosure provisions of the securities laws with respect to revenue recognition.

[FR Doc. 00–16580 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8889]

RIN 1545–AV10

Guidance Regarding Claims for Certain Income Tax Convention Benefits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to treaty withholding rates for items of income received by entities that are fiscally transparent in the United States and/or a foreign jurisdiction. The regulations affect the determination of tax treaty benefits available to foreign persons with respect to such items of income.

DATES: *Effective Dates:* These regulations are effective June 30, 2000.

Applicability Dates: These regulations apply to items of income paid on or after June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn R. Pringle, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations relating to the Income Tax Regulations (CFR part 1) under section 894 of the Internal Revenue Code (Code). On June 30, 1997, the IRS and Treasury issued temporary regulations (TD 8722 [1997–2 C.B. 81]) in the **Federal Register** (62 FR 35673, as corrected at 62 FR 46876, 46877) under section 894 of the Code relating to eligibility for benefits under income tax treaties for payments to entities. A notice of proposed rulemaking ([1997–2 C.B. 646]) cross-referencing the temporary regulations was also published in the same issue of the **Federal Register** (62 FR 35755).

Need for Changes

Since the publication of TD 8722 and proposed regulation § 1.894(d)(REG–104893–97, 62 FR 35755), the IRS and Treasury have received numerous comments. This Treasury decision contains changes made in response to some of those comments.

Explanation of Provisions

I. General

These final section 894 regulations clarify the availability of treaty benefits with respect to an item of U.S. source income paid to an entity that is treated as fiscally transparent under the laws of one or more jurisdictions (including the United States) with respect to that item of income. An entity that is treated as fiscally transparent in one jurisdiction but not another is referred to as a hybrid entity. If an item of U.S. source income is paid to a hybrid entity, the United States may regard the entity as fiscally transparent with respect to the item of income and the foreign treaty jurisdiction may regard the entity as deriving the item of income. Alternatively, the United States may regard the entity as deriving the item of income under U.S. tax principles, but a foreign treaty jurisdiction may regard the entity as fiscally transparent and may therefore regard the interest holders as deriving the item of income. This dual classification may give rise to inappropriate and unintended results under tax treaties, such as double non-taxation or double taxation of the item of income, unless the tax treaties are interpreted to resolve the conflict of laws.

These final regulations clarify how to apply U.S. treaties when the entity classification law of the United States and a foreign treaty jurisdiction conflict by providing that a reduced treaty rate for an item of U.S. source income is available only if the income is derived by a foreign recipient resident in the applicable treaty jurisdiction. This general rule, which has been simplified but not substantially changed from the rule contained in the temporary and

[1] APB Opinion No. 20, ¶ 13 and ¶ 36–37 describe and provide the accounting and disclosure requirements applicable to the correction of an error in previously issued financial statements. Because the term ''error'' as used in APB Opinion No. 20 includes ''oversight or misuse of facts that existed at the time that the financial statements were prepared,'' that term includes both unintentional errors as well as intentional fraudulent financial reporting and misappropriation of assets as described in Statement on Auditing Standards No. 82, *Consideration of Fraud in a Financial Statement Audit.*

proposed section 894 regulations, is discussed in greater detail below.

These final regulations are fully consistent with existing U.S. treaties. They rely on the basic principle that tax treaties are intended to relieve double taxation or excessive taxation. Accordingly, the United States and its treaty partners agree to cede part or all of their taxation rights on income arising from sources within their respective borders on the mutual understanding that the other party is asserting tax jurisdiction over the items of income. This objective is generally achieved through treaty provisions that limit or eliminate the tax that the source state may impose on income arising within its borders to the extent that the income is considered to be derived by a resident of the other jurisdiction. In general, an item of income will be considered derived by a resident for treaty purposes only when the residence country is asserting taxing jurisdiction over the item of income. However, the source state does not necessarily require, as a condition for ceding its taxing jurisdiction, that the income actually be taxed in the residence state or taxed at a rate commensurate with the rate imposed in the source state. The source state and the residence state may come to different conclusions regarding the appropriate taxation principles that apply to a particular type of taxpayer or a particular type of income. Such differences reflect how each state has decided to assert its taxing jurisdiction over that taxpayer or item of income and may or may not affect the source state's willingness to forego its taxing rights in whole or in part during the treaty negotiation process.

The approach adopted in these final regulations is consistent with the evolving multilateral consensus among the member countries of the Organization for Economic Cooperation and Development (OECD) on the appropriate method for source countries to follow to determine if they should provide treaty benefits on items of income paid to fiscally transparent entities, particularly when an entity classification conflict exists between the source and residence states. This evolving multilateral consensus is described in greater detail in the OECD report, ''The Application of the OECD Model Tax Convention to Partnerships'' (OECD Partnership Report). The report generally provides that a source state is required to grant treaty benefits on income paid to an entity only if the income is considered to be derived by a resident of a treaty partner for purposes of the treaty partner's tax laws. IRS and Treasury will continue to coordinate these issues with U.S. tax treaty partners both bilaterally and multilaterally to resolve substantive issues arising from application of the principles set forth in the section 894 regulations and the OECD Partnership Report.

These regulations apply with respect to all U.S. income tax treaties regardless of whether such treaties contain partnership provisions, unless the competent authorities agree otherwise. As with the proposed and temporary regulations, the final regulations address only the treatment of U.S. source income that is not effectively connected with the conduct of a U.S. trade or business. The IRS and Treasury may issue additional regulations addressing the availability of other tax treaty benefits, such as the application of business profits provisions, with respect to the income of fiscally transparent entities, particularly where a conflict in entity classification exists.

II. Objective Versus Subjective Regulatory Approach

The temporary and proposed section 894 regulations adopted an objective approach to determining whether the United States should grant treaty benefits on U.S. source items of income paid to entities. Application of the regulations did not turn on whether there existed a tax avoidance motive for choosing a particular transaction or structure.

Commentators recommended a narrower approach that would deny treaty benefits on items of income paid to an entity only if the entity served a tax avoidance purpose. As part of this approach, commentators requested implementation of a ruling procedure that could be used to claim treaty benefits by rebutting any deemed tax avoidance motive for the items of income paid to an entity. This suggestion was not adopted. These final regulations are intended to provide objective rules regarding eligibility for treaty benefits on certain items of U.S. source income paid to entities. Although a ruling procedure was not adopted, taxpayers may still invoke the Mutual Agreement Procedures under an applicable treaty in appropriate circumstances.

III. Simplified Standard for Determining When U.S. Source Income Is Derived by a Treaty Resident

The proposed and temporary regulations provided that the tax imposed by sections 871(a), 881(a), 1461, and 4948(a) on an item of income received by an entity is eligible for reduction under the terms of an income tax treaty to which the United States is a party if such item of income is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner of the item of income, and all other applicable requirements for benefits under the treaty are satisfied. The proposed and temporary regulations further provided that an item of income received by an entity is treated as derived by a resident only to the extent the item of income is subject to tax in the hands of a resident of such jurisdiction. Numerous comments were received stating that this general rule needed clarification. As a result, the IRS and Treasury are eliminating the use of the terms beneficial ownership and subject to tax from the general rule, as described in greater detail below.

A. Beneficial Ownership

Commentators requested clarification regarding the relationship between beneficial owner and the § 1.881–3 anti-conduit regulations issued under the authority of section 7701(l). The anti-conduit rules under section 7701(l) are incorporated into the U.S. determination of beneficial owner. They are not separate additional requirements.

The concept of beneficial owner was included in the proposed regulations to explain the circumstances under which a hybrid entity may beneficially own an item of income for purposes of an income tax treaty, in light of the then proposed withholding regulations under § 1.1441–1(c)(6)(ii)(B). However, the definition of beneficial owner in § 1.1441–1(c)(6) of the amended final regulations (TD 8881 [2000–23 I.R.B 1158]) does not apply to claims for reduced withholding under an income tax treaty. Accordingly, because there is no longer a need to clarify the meaning of the term under the section 1441 regulations in the treaty context, these final regulations no longer provide specific rules for this determination. The concept of beneficial owner nevertheless remains an important condition for claiming tax treaty benefits that is determined under U.S. tax principles, including the anti-conduit rules.

B. Subject to Tax

Commentators suggested that the term subject to tax in the proposed and temporary regulations was ambiguous and could be misinterpreted. Commentators suggested that the term subject to tax could be interpreted as requiring that an actual tax be paid rather than requiring an exercise of taxing jurisdiction by the applicable treaty jurisdiction, whether or not there

is an actual tax paid. Commentators suggested that such an interpretation would lead to anomalous results, for example, in cases when the applicable treaty jurisdiction provides an exemption from income for U.S. source dividends under its tax laws.

The IRS and Treasury agree that the term subject to tax could cause unintentional confusion and that a more direct and simpler way of ensuring that an item of income is subject to the taxing jurisdiction of the residence country is to determine if the item of income is derived by a resident of a treaty jurisdiction. The concept of derived by a resident is a more useful surrogate for the concept of subject to the taxing jurisdiction of the residence state, the necessary prerequisite for the grant of treaty benefits on an item of income.

C. New General Rule Based on ''Derived By'' Standard

The regulations now provide three specific situations in which income is derived by a resident of a treaty jurisdiction, and thus considered subject to the taxing jurisdiction of the residence jurisdiction and eligible for treaty benefits.

In the first situation, an item of income paid to an entity is considered to be derived by the entity if the entity is not fiscally transparent with respect to the item of income under the laws of the entity's jurisdiction. The entity's jurisdiction is generally the place of the entity's organization, although it may be the place of management and control of the entity if it is a resident in a jurisdiction by reason of such factors.

In the second situation, regardless of whether the entity is found to be fiscally transparent with respect to the item of income under the laws of the entity's jurisdiction, an interest holder in the entity may derive the item of income if that interest holder can establish that, under the laws of the jurisdiction in which the interest holder is a resident, the entity is fiscally transparent with respect to the item of income. Under this test, the interest holder itself must not be considered fiscally transparent with respect to the item of income under the laws of its jurisdiction in order to claim the treaty benefit of that jurisdiction.

In the third situation, an item of income paid to a type of entity specifically listed in a treaty as a resident of that treaty jurisdiction is treated as derived by a resident of that jurisdiction. The reason for this rule is that the two treaty partners reached an explicit agreement on the appropriate treatment of that entity and treaty benefits accordingly should be provided on items of income paid to it.

In some circumstances, both the entity and the interest holders in the entity will be treated as deriving the item of income under the foregoing tests. In that event, both the interest holder and the entity may be entitled to treaty benefits if all other conditions are satisfied. See § 1.1441–6(b)(2) for procedures for dual rate claims under separate income tax treaties.

IV. Determining Fiscal Transparency

A. Generally

The concept of fiscally transparent therefore is critical to the determination of whether an item of income is derived by an entity or an interest holder in an entity. Paragraph (d)(4)(ii) of the proposed and temporary regulations provided that an entity is treated as fiscally transparent by a jurisdiction to the extent the jurisdiction requires interest holders in the entity to take into account separately on a current basis their respective shares of the items of income paid to the entity and to determine the character of such item as if such items were realized directly from the source from which realized by the entity for purposes of the tax laws of the jurisdiction. The proposed and temporary regulations further provided that entities that are fiscally transparent for U.S. federal income tax purposes include partnerships, common trust funds described under section 584, simple trusts, grantor trusts, as well as certain other entities (including entities that have a single interest holder) that are treated as partnerships or as disregarded entities for U.S. federal income tax purposes.

The IRS and Treasury received numerous comments regarding the definition of fiscally transparent under the proposed regulations. The comments stated that it is unclear, in situations when multiple foreign jurisdictions are involved, which jurisdiction's laws apply in determining whether an entity is fiscally transparent. The comments further stated that the requirement that all items of income be separately stated is not consistent with the U.S. tax rules regarding partnerships, which permit partners not to state separately certain items if the outcome is the same whether or not the item is separately stated. Commentators also suggested that the regulations were unclear as to whether fiscal transparency is an item by item determination or a determination made with respect to the entity as a whole.

In response to the comments, several simplifying and clarifying changes were made to the regulations. When an entity is invoking the treaty, paragraph (d)(3)(ii) of the final regulations provides a definition for purposes of determining whether the entity will be treated as fiscally transparent under the laws of the entity's jurisdiction with respect to an item of income received by the entity. When an interest holder in an entity is invoking the treaty, paragraph (d)(3)(iii) of the final regulations provides a definition for purposes of determining whether the entity will be fiscally transparent under the laws of the interest holder's jurisdiction. This clarifies which jurisdiction's laws apply in determining fiscal transparency in cases in which multiple foreign jurisdictions are involved.

Paragraphs (d)(3)(ii) and (iii) of the final regulations generally retain the definition of fiscally transparent as provided by the proposed and temporary regulations, with certain clarifications and modifications. They provide that an entity will be fiscally transparent only if inclusion by the interest holders in the entity is required whether or not an item of income is distributed to such interest holders and, generally, the character and source of the item in the hands of the interest holder are determined as if such item were realized directly from the source from which realized by the entity. They also provide that fiscal transparency is determined on an item of income by item of income basis. Accordingly, for example, an entity can be fiscally transparent with respect to interest income, but not with respect to dividend income. The regulations further provide, however, that if an item of income is not separately taken into account by its interest holders, the entity may still be fiscally transparent with respect to that item of income if failure to take the item of income into account separately does not result in a treatment under the tax laws of the applicable treaty jurisdiction different from that which would be required if the interest holder did separately take the share of such item into account. This is consistent with the U.S. tax provisions with respect to partnerships.

Because the final regulations adopt an item by item determination of fiscal transparency, the provision in the proposed regulations stating that partnerships, common trust funds described in section 584, simple trusts, grantor trusts and certain other entities are fiscally transparent for U.S. federal income tax purposes has been deleted from the final regulations. The foregoing language implied that fiscal transparency is determined with respect to the entity as a whole. Although the

final regulations remove this language, it is anticipated that such entities ordinarily will be fiscally transparent for federal income tax purposes with regard to all items of income received by them.

B. Investment Vehicles

Commentators also requested clarification regarding the treatment of investment vehicles that may be allowed an exclusion or deduction from income for amounts distributed to interest holders. The final regulations clarify that if an entity such as an investment company is not otherwise fiscally transparent as defined in paragraphs (d)(3)(ii) and (iii) of the final regulations, it will not be deemed to be fiscally transparent merely because it is allowed to exclude or deduct from income amounts distributed to interest holders. Examples provide further guidance with respect to foreign investment vehicles, most of which will not be fiscally transparent under the final regulations.

C. Treatment of Tax Exempt Organizations

In addition to the foregoing, several commentators suggested that the regulations undermine reciprocal treaty exemptions for pension funds and other tax exempt organizations by, for example, denying treaty benefits under circumstances when the fund or organization invests in U.S. LLCs that are treated as partnerships for purposes of U.S. tax law and as corporations under the laws of the applicable treaty jurisdiction. Treasury does not believe that the regulations conflict with U.S. treaty obligations to provide reduced treaty rates to pension funds and other tax exempt organizations investing in the United States. In most cases, the denial of benefits described by commentators can be avoided by ensuring that the pension fund or tax exempt organization invests directly or through an entity treated as fiscally transparent under the laws of the jurisdiction of the fund or organization, with the result that the fund or organization will still be able to claim exemptions under the applicable treaty. In addition, treaties may be negotiated that permit pensions and other tax exempt organizations to invest in the United States through nonfiscally transparent entities and still obtain reduced treaty rates. (See for example paragraph 2(b) of Article XXI of the U.S.-Canada treaty, with respect to pension funds). Further, paragraph (d)(4) gives the competent authorities the flexibility, in appropriate circumstances, to enter into a mutual reciprocal understanding that would depart from the rules of paragraph (d) with respect to certain classes of entities.

D. Treatment of Complex Trusts

The proposed and temporary regulations did not specifically address the treatment of section 661 trusts that are permitted to accumulate income from year to year. Commentators suggested that they should be treated as fiscally transparent for U.S. tax purposes because, under section 662, the distributable net income of such trusts retains its character in the hands of the beneficiaries if it is distributed in the current year and not accumulated. The definitions of fiscally transparent as set forth in the final regulations provide that, in order for the entity to be fiscally transparent with respect to an item of income, the interest holder must be required to take that item of income into account in a taxable year whether or not the item is distributed, and generally the character and source of the item in the hands of the interest holder are determined as if such item were realized directly from the source from which realized by the entity.

Thus, to the extent the beneficiaries of a trust are required under section 662 to take an item of the trust's income into account in a taxable year, whether or not the item is distributed, and the character and source of the item in the hands of the beneficiaries are determined as if such item were realized directly from the source from which realized by the entity, the trust will be treated as fiscally transparent for U.S. tax purposes with respect to that item of income. If inclusion by the interest holders is not required whether or not such item of income is distributed, or the character and source of the item in the hands of the interest holder are determined as if such item were realized directly from the source from which realized by the entity, the trust will not be treated as fiscally transparent for U.S. tax purposes. In determining whether a trust, or any other entity, is fiscally transparent with respect to an item of income under the laws of any other jurisdiction, the treatment of that item of income under the laws of that jurisdiction controls, not the treatment under U.S. laws.

E. Effect of Anti-Deferral Regimes

Commentators also argued that controlled foreign corporations should be treated as fiscally transparent to the extent interest holders are required to account for the controlled foreign corporation's net passive income on a current basis. This suggestion was rejected because the nature of an inclusion under an anti-deferral regime is that of a deemed distribution of after-tax profits of the controlled foreign corporation, while an inclusion because an entity is fiscally transparent is in the nature of a share of the item of income itself, as if the interest holder realized the income directly. This follows from the definition of fiscal transparency contained in paragraph (d)(3)(iii), relating to whether an entity is fiscally transparent under the laws of the interest holder's jurisdiction.

V. Treatment of Payments To and From Domestic Reverse Hybrid Entities

Section 1.894–1T(d)(3) provided guidance on the appropriate treatment of items of income paid to an entity that is treated as a domestic corporation for U.S. tax purposes but is treated as fiscally transparent under the laws of an interest holder's jurisdiction (a ''domestic reverse hybrid'' entity). That section provided that § 1.894–1T(d)(1) may not be applied to reduce the amount of federal income tax on U.S. source income received by a domestic reverse hybrid entity through application of an income tax treaty. Commentators expressed concern that this rule did not provide sufficient guidance and could lead to inappropriate results, noting that an item of income paid *by* a domestic reverse hybrid entity could be viewed as neither ''received by'' the interest holder nor ''subject to tax'' because the interest holder's jurisdiction would treat the domestic reverse hybrid entity as fiscally transparent. Thus, the interest holder's jurisdiction would view the interest holder as ''receiving'' the items of income paid to the domestic reverse hybrid entity and as being ''subject to tax'' on those items of income on an immediate basis, but may not recognize the items of income paid by the domestic reverse hybrid entity to the interest holder.

The IRS and Treasury are also aware of certain abusive structures involving domestic reverse hybrid entities, which are designed to manipulate differences in U.S. and foreign entity classification rules to produce inappropriate reductions in U.S. tax. These transactions give rise to some of the same concerns that led to the promulgation of the temporary and proposed regulations and caused Congress to enact section 894(c). Treasury and the IRS expect to issue guidance shortly regarding payments by domestic reverse hybrid entities to their interest holders in a separate regulation package. Thus, these final regulations reserve on the question of eligibility for

treaty benefits with respect to payments by domestic reverse hybrid entities.

Effective Date

The final regulations apply to items of income paid on or after June 30, 2000. Withholding agents should consider the effect of these regulations on their withholding obligations, including the need to obtain a new withholding certificate to confirm claims of treaty benefits for items of income paid on or after the effective date.

Special Analyses

It has been determined that this treasury decision not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information: The principal author of these regulations is Shawn R. Pringle of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, CFR 26 part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 is amended by revising the entry for section 1.894–1 to read in part as follows:

Authority: 26 U.S.C. 7805. * * * Section 1.894–1 also issued under 26 U.S.C. 894 and 7701(l). * * *

Par. 2. In § 1.894–1, paragraph (d) is revised to read as follows:

§ 1.894–1 Income affected by treaty.

* * * * *

(d) *Special rule for items of income received by entities*—(1) *In general.* The tax imposed by sections 871(a), 881(a), 1443, 1461, and 4948(a) on an item of income received by an entity, wherever organized, that is fiscally transparent under the laws of the United States and/or any other jurisdiction with respect to an item of income shall be eligible for reduction under the terms of an income tax treaty to which the United States is a party only if the item of income is derived by a resident of the applicable treaty jurisdiction. For this purpose, an item of income may be derived by either the entity receiving the item of income or by the interest holders in the entity or, in certain circumstances, both. An item of income paid to an entity shall be considered to be derived by the entity only if the entity is not fiscally transparent under the laws of the entity's jurisdiction, as defined in paragraph (d)(3)(ii) of this section, with respect to the item of income. An item of income paid to an entity shall be considered to be derived by the interest holder in the entity only if the interest holder is not fiscally transparent in its jurisdiction with respect to the item of income and if the entity is considered to be fiscally transparent under the laws of the interest holder's jurisdiction with respect to the item of income, as defined in paragraph (d)(3)(iii) of this section. Notwithstanding the preceding two sentences, an item of income paid directly to a type of entity specifically identified in a treaty as a resident of a treaty jurisdiction shall be treated as derived by a resident of that treaty jurisdiction.

(2) *Application to domestic reverse hybrid entities*—(i) *In general.* An income tax treaty may not apply to reduce the amount of federal income tax on U.S. source payments received by a domestic reverse hybrid entity. Further, notwithstanding paragraph (d)(1) of this section, the foreign interest holders of a domestic reverse hybrid entity are not entitled to the benefits of a reduction of U.S. income tax under an income tax treaty on items of income received from U.S. sources by such entity. A domestic reverse hybrid entity is a domestic entity that is treated as not fiscally transparent for U.S. tax purposes and as fiscally transparent under the laws of the interest holder's jurisdiction, with respect to the item of income received by the domestic entity.

(ii) *Payments by domestic reverse hybrid entities.* [Reserved].

(3) *Definitions*—(i) *Entity.* For purposes of this paragraph (d), the term *entity* shall mean any person that is treated by the United States or the applicable treaty jurisdiction as other than an individual. The term *entity* includes disregarded entities, including single member disregarded entities with individual owners.

(ii) *Fiscally transparent under the law of the entity's jurisdiction*—(A) *General rule.* For purposes of this paragraph (d), an entity is fiscally transparent under the laws of the entity's jurisdiction with respect to an item of income to the extent that the laws of that jurisdiction require the interest holder in the entity, wherever resident, to separately take into account on a current basis the interest holder's respective share of the item of income paid to the entity, whether or not distributed to the interest holder, and the character and source of the item in the hands of the interest holder are determined as if such item were realized directly from the source from which realized by the entity. However, the entity will be fiscally transparent with respect to the item of income even if the item of income is not separately taken into account by the interest holder, provided the item of income, if separately taken into account by the interest holder, would not result in an income tax liability for that interest holder different from that which would result if the interest holder did not take the item into account separately, and provided the interest holder is required to take into account on a current basis the interest holder's share of all such nonseparately stated items of income paid to the entity, whether or not distributed to the interest holder. In determining whether an entity is fiscally transparent with respect to an item of income in the entity's jurisdiction, it is irrelevant that, under the laws of the entity's jurisdiction, the entity is permitted to exclude such item from gross income or that the entity is required to include such item in gross income but is entitled to a deduction for distributions to its interest holders.

(B) *Special definitions.* For purposes of this paragraph (d)(3)(ii), an entity's jurisdiction is the jurisdiction where the entity is organized or incorporated or may otherwise be considered a resident under the laws of that jurisdiction. An interest holder will be treated as taking into account that person's share of income paid to an entity on a current basis even if such amount is taken into account by the interest holder in a taxable year other than the taxable year of the entity if the difference is due solely to differing taxable years.

(iii) *Fiscally transparent under the law of an interest holder's jurisdiction*—(A) *General rule.* For purposes of this paragraph (d), an entity is treated as fiscally transparent under the law of an interest holder's jurisdiction with respect to an item of income to the extent that the laws of the interest holder's jurisdiction require the interest holder resident in that jurisdiction to separately take into account on a current basis the interest holder's respective share of the item of income paid to the

entity, whether or not distributed to the interest holder, and the character and source of the item in the hands of the interest holder are determined as if such item were realized directly from the source from which realized by the entity. However, an entity will be fiscally transparent with respect to the item of income even if the item of income is not separately taken into account by the interest holder, provided the item of income, if separately taken into account by the interest holder, would not result in an income tax liability for that interest holder different from that which would result if the interest holder did not take the item into account separately, and provided the interest holder is required to take into account on a current basis the interest holder's share of all such nonseparately stated items of income paid to the entity, whether or not distributed to the interest holder. An entity will not be treated as fiscally transparent with respect to an item of income under the laws of the interest holder's jurisdiction, however, if, under the laws of the interest holder's jurisdiction, the interest holder in the entity is required to include in gross income a share of all or a part of the entity's income on a current basis year under any type of anti-deferral or comparable mechanism. In determining whether an entity is fiscally transparent with respect to an item of income under the laws of an interest holder's jurisdiction, it is irrelevant how the entity is treated under the laws of the entity's jurisdiction.

(B) *Special definitions.* For purposes of this paragraph (d)(3)(iii), an interest holder's jurisdiction is the jurisdiction where the interest holder is organized or incorporated or may otherwise be considered a resident under the laws of that jurisdiction. An interest holder will be treated as taking into account that person's share of income paid to an entity on a current basis even if such amount is taken into account by such person in a taxable year other than the taxable year of the entity if the difference is due solely to differing taxable years.

(iv) *Applicable treaty jurisdiction.* The term *applicable treaty jurisdiction* means the jurisdiction whose income tax treaty with the United States is invoked for purposes of reducing the rate of tax imposed under sections 871(a), 881(a), 1461, and 4948(a).

(v) *Resident.* The term *resident* shall have the meaning assigned to such term in the applicable income tax treaty.

(4) *Application to all income tax treaties.* Unless otherwise explicitly agreed upon in the text of an income tax treaty, the rules contained in this paragraph (d) shall apply in respect of all income tax treaties to which the United States is a party. Notwithstanding the foregoing sentence, the competent authorities may agree on a mutual basis to depart from the rules contained in this paragraph (d) in appropriate circumstances. However, a reduced rate under a tax treaty for an item of U.S. source income paid will not be available irrespective of the provisions in this paragraph (d) to the extent that the applicable treaty jurisdiction would not grant a reduced rate under the tax treaty to a U.S. resident in similar circumstances, as evidenced by a mutual agreement between the relevant competent authorities or by a public notice of the treaty jurisdiction. The Internal Revenue Service shall announce the terms of any such mutual agreement or public notice of the treaty jurisdiction. Any denial of tax treaty benefits as a consequence of such a mutual agreement or notice shall affect only payment of U.S. source items of income made after announcement of the terms of the agreement or of the notice.

(5) *Examples.* This paragraph (d) is illustrated by the following examples:

Example 1. Treatment of entity treated as partnership by U.S. and country of organization. (i) *Facts.* Entity A is a business organization formed under the laws of Country X that has an income tax treaty in effect with the United States. A is treated as a partnership for U.S. federal income tax purposes. A is also treated as a partnership under the laws of Country X, and therefore Country X requires the interest holders in A to separately take into account on a current basis their respective shares of the items of income paid to A, whether or not distributed to the interest holders, and the character and source of the items in the hands of the interest holders are determined as if such items were realized directly from the source from which realized by A. A receives royalty income from U.S. sources that is not effectively connected with the conduct of a trade or business in the United States.

(ii) *Analysis.* A is fiscally transparent in its jurisdiction within the meaning of paragraph (d)(3)(ii) of this section with respect to the U.S. source royalty income in Country X and, thus, A does not derive such income for purposes of the U.S.-X income tax treaty.

Example 2. Treatment of interest holders in entity treated as partnership by U.S. and country of organization. (i) *Facts.* The facts are the same as under *Example 1.* A's partners are M, a corporation organized under the laws of Country Y that has an income tax treaty in effect with the United States, and T, a corporation organized under the laws of Country Z that has an income tax treaty in effect with the United States. M and T are not fiscally transparent under the laws of their respective countries of incorporation. Country Y requires M to separately take into account on a current basis M's respective share of the items of income paid to A, whether or not distributed to M, and the character and source of the items of income in M's hands are determined as if such items were realized directly from the source from which realized by A. Country Z treats A as a corporation and does not require T to take its share of A's income into account on a current basis whether or not distributed.

(ii) *Analysis.* M is treated as deriving its share of the U.S. source royalty income for purposes of the U.S.-Y income tax treaty because A is fiscally transparent under paragraph (d)(3)(iii) with respect to that income under the laws of Country Y. Under Country Z law, however, because T is not required to take into account its share of the U.S. source royalty income received by A on a current basis whether or not distributed, A is not treated as fiscally transparent. Accordingly, T is not treated as deriving its share of the U.S. source royalty income for purposes of the U.S.-Z income tax treaty.

Example 3. Dual benefits to entity and interest holder. (i) *Facts.* The facts are the same as under *Example 2*, except that A is taxable as a corporation under the laws of Country X. Article 12 of the U.S.-X income tax treaty provides for a source country reduced rate of taxation on royalties of 5-percent. Article 12 of the U.S.-Y income tax treaty provides that royalty income may only be taxed by the beneficial owner's country of residence.

(ii) *Analysis.* A is treated as deriving the U.S. source royalty income for purposes of the U.S.-X income tax treaty because it is not fiscally transparent with respect to the item of income within the meaning of paragraph (d)(3)(ii) of this section in Country X, its country of organization. M is also treated as deriving its share of the U.S. source royalty income for purposes of the U.S.-Y income tax treaty because A is fiscally transparent under paragraph (d)(3)(iii) of this section with respect to that income under the laws of Country Y. T is not treated as deriving the U.S. source royalty income for purposes of the U.S.-Z income tax treaty because under Country Z law A is not fiscally transparent. Assuming all other requirements for eligibility for treaty benefits have been satisfied, A is entitled to the 5-percent treaty reduced rate on royalties under the U.S.-X income tax treaty with respect to the entire royalty payment. Assuming all other requirements for treaty benefits have been satisfied, M is also entitled to a zero rate under the U.S.-Y income tax treaty with respect to its share of the royalty income.

Example 4. Treatment of grantor trust. (i) *Facts.* Entity A is a trust organized under the laws of Country X, which does not have an income tax treaty in effect with the United States. M, the grantor and owner of A for U.S. income tax purposes, is a resident of Country Y, which has an income tax treaty in effect with the United States. M is also treated as the grantor and owner of the trust under the laws of Country Y. Thus, Country Y requires M to take into account all items of A's income in the taxable year, whether or not distributed to M, and determines the character of each item in M's hands as if such item was realized directly from the source

from which realized by A. Country X does not treat M as the owner of A and does not require M to account for A's income on a current basis whether or not distributed to M. A receives interest income from U.S. sources that is neither portfolio interest nor effectively connected with the conduct of a trade or business in the United States.

(ii) *Analysis.* A is not fiscally transparent under the laws of Country X within the meaning of paragraph (d)(3)(ii) of this section with respect to the U.S. source interest income, but A may not claim treaty benefits because there is no U.S.-X income tax treaty. M, however, does derive the income for purposes of the U.S.-Y income tax treaty because under the laws of Country Y, A is fiscally transparent.

Example 5. Treatment of complex trust. (i) *Facts.* The facts are the same as in *Example 4* except that M is treated as the owner of the trust only under U.S. tax law, after application of section 672(f), but not under the law of Country Y. Although the trust document governing A does not require that A distribute any of its income on a current basis, some distributions are made currently to M. There is no requirement under Country Y law that M take into account A's income on a current basis whether or not distributed to him in that year. Under the laws of Country Y, with respect to current distributions, the character of the item of income in the hands of the interest holder is determined as if such item were realized directly from the source from which realized by A. Accordingly, upon a current distribution of interest income to M, the interest income retains its source as U.S. source income.

(ii) *Analysis.* M does not derive the U.S. source interest income because A is not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the U.S. source interest income under the laws of Country Y. Although the character of the interest in the hands of M is determined as if realized directly from the source from which realized by A, under the laws of Country Y, M is not required to take into account his share of A's interest income on a current basis whether or not distributed. Accordingly, neither A nor M is entitled to claim treaty benefits, since A is a resident of a non-treaty jurisdiction and M does not derive the U.S. source interest income for purposes of the U.S.-Y income tax treaty.

Example 6. Treatment of interest holders required to include passive income under anti-deferral regime. (i) *Facts.* The facts are the same as under *Example 2.* However, Country Z does require T, who is treated as owning 60-percent of the stock of A, to take into account its respective share of the royalty income of A under an anti-deferral regime applicable to certain passive income of controlled foreign corporations.

(ii) *Analysis.* T is still not eligible to claim treaty benefits with respect to the royalty income. T is not treated as deriving the U.S. source royalty income for purposes of the U.S.-Z income tax treaty under paragraph (d)(3)(iii) of this section because T is only required to take into account its pro rata share of the U.S. source royalty income by reason of Country Z's anti-deferral regime.

Example 7. Treatment of contractual arrangements operating as collective investment vehicles. (i) *Facts.* A is a contractual arrangement without legal personality for all purposes under the laws of Country X providing for joint ownership of securities. Country X has an income tax treaty in effect with the United States. A is a collective investment fund which is of a type known as a Common Fund under Country X law. Because of the absence of legal personality of the arrangement, A is not liable to tax at the entity level in Country X and is not a resident within the meaning of the Residence Article of the U.S.-X income tax treaty. A is treated as a partnership for U.S. income tax purposes and receives U.S. source dividend income. Under the laws of Country X, however, investors in A only take into account their respective share of A's income upon distribution from the Common Fund. Some of A's interest holders are residents of Country X and some of Country Y. Country Y has no income tax treaty in effect with the United States.

(ii) *Analysis.* A is not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the U.S. source dividend income because the interest holders in A are not required to take into account their respective shares of such income in the taxable year whether or not distributed. Because A is an arrangement without a legal personality that is not considered a resident of Country X under the Residence Article of the U.S.-X income tax treaty, however, A does not derive the income for purposes of the U.S.-X income tax treaty. Further, because A is not fiscally transparent under paragraph (d)(3)(iii) of this section with respect to the U.S. source dividend income, A's interest holders that are residents of Country X do not derive the income as residents of Country X for purposes of the U.S.-X income tax treaty.

Example 8. Treatment of person specifically listed as resident in applicable treaty. (i) *Facts.* The facts are the same as in *Example 7* except that A (the Common Fund) is organized in Country Z and the Residence Article of the U.S.-Z income tax treaty provides that ''the term 'resident of a Contracting State' includes, in the case of Country Z, Common Funds.* * *''

(ii) *Analysis.* A is treated, for purposes of the U.S.-Z income tax treaty as deriving the dividend income as a resident of Country Z under paragraph (d)(1) of this section because the item of income is paid directly to A, A is a Common Fund under the laws of Country Z, and Common Funds are specifically identified as residents of Country Z in the U.S.-Z treaty. There is no need to determine whether A meets the definition of fiscally transparent under paragraph (d)(3)(ii) of this section.

Example 9. Treatment of investment company when entity receives distribution deductions, and all distributions sourced by residence of entity. (i) *Facts.* Entity A is a business organization formed under the laws of Country X, which has an income tax treaty in effect with the United States. A is treated as a partnership for U.S. income tax purposes. Under the laws of Country X, A is an investment company taxable at the entity level and a resident of Country X. It is also entitled to a distribution deduction for amounts distributed to its interest holders on a current basis. A distributes all its net income on a current basis to its interest holders and, thus, in fact, has no income tax liability to Country X. A receives U.S. source dividend income. Under Country X law, all amounts distributed to interest holders of this type of business entity are treated as dividends from sources within Country X and Country X imposes a withholding tax on all payments by A to foreign persons. Under Country X laws, the interest holders in A do not have to separately take into account their respective shares of A's income on a current basis if such income is not, in fact, distributed.

(ii) *Analysis.* A is not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the U.S. source dividends because the interest holders in A do not have to take into account their respective share of the U.S. source dividends on a current basis whether or not distributed. A is also not fiscally transparent under paragraph (d)(3)(ii) of this section because there is a change in source of the income received by A when A distributes the income to its interest holders and, thus, the character and source of the income in the hands of A's interest holder are not determined as if such income were realized directly from the source from which realized by A. Accordingly, A is treated as deriving the U.S. source dividends for purposes of the U.S.-Country X treaty.

Example 10. Item by item determination of fiscal transparency. (i) *Facts.* Entity A is a business organization formed under the laws of Country X, which has an income tax treaty in effect with the United States. A is treated as a partnership for U.S. income tax purposes. Under the laws of Country X, A is an investment company taxable at the entity level and a resident of Country X. It is also entitled to a distribution deduction for amounts distributed to its interest holders on a current basis. A receives both U.S. source dividend income and interest income from U.S. sources that is neither portfolio interest nor effectively connected with the conduct of a trade or business in the United States. Country X law sources all distributions attributable to dividend income based on the residence of the investment company. In contrast, Country X law sources all distributions attributable to interest income based on the residence of the payor of the interest. No withholding applies with respect to distributions attributable to U.S. source interest and the character of the distributions attributable to the interest income remains the same in the hands of A's interest holders as if such items were realized directly from the source from which realized by A. However, under Country X law the interest holders in A do not have to take into account their respective share of the interest income received by A on a current basis whether or not distributed.

(ii) *Analysis.* An item by item analysis is required under paragraph (d) of this section. The analysis is the same as *Example 9* with respect to the dividend income. A is also not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the interest income because, although the character of the

distributions attributable to the interest income in the hands of A's interest holders is determined as if realized directly from the source from which realized by A, under Country X law the interest holders in A do not have to take into account their respective share of the interest income received by A on a current basis whether or not distributed. Accordingly, A derives the U.S. source interest income for purpose of the U.S.-X treaty.

Example 11. Treatment of charitable organizations. (i) *Facts.* Entity A is a corporation organized under the laws of Country X that has an income tax treaty in effect with the United States. Entity A is established and operated exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes. Entity A receives U.S. source dividend income from U.S. sources. A provision of Country X law generally exempts Entity A's income from Country X tax due to the fact that Entity A is established and operated exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes. But for such provision, Entity A's income would be subject to tax by Country X.

(ii) *Analysis.* Entity A is not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the U.S. source dividend income because, under Country X law, the dividend income is treated as an item of income of A and no other persons are required to take into account their respective share of the item of income on a current basis, whether or not distributed. Accordingly, Entity A is treated as deriving the U.S. source dividend income.

Example 12. Treatment of pension trusts. (i) *Facts.* Entity A is a trust established and operated in Country X exclusively to provide pension or other similar benefits to employees pursuant to a plan. Entity A receives U.S. source dividend income. A provision of Country X law generally exempts Entity A's income from Country X tax due to the fact that Entity A is established and operated exclusively to provide pension or other similar benefits to employees pursuant to a plan. Under the laws of Country X, the beneficiaries of the trust are not required to take into account their respective share of A's income on a current basis, whether or not distributed and the character and source of the income in the hands of A's interest holders are not determined as if realized directly from the source from which realized by A.

(ii) *Analysis.* A is not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the U.S. source dividend income because under the laws of Country X, the beneficiaries of A are not required to take into account their respective share of A's income on a current basis, whether or not distributed. A is also not fiscally transparent under paragraph (d)(3)(ii) of this section with respect to the U.S. source dividend income because under the laws of Country X, the character and source of the income in the hands of A's interest holders are not determined as if realized directly from the source from which realized by A. Accordingly, A derives the U.S. source dividend income for purposes of the U.S.-X income tax treaty.

(6) *Effective date.* This paragraph (d) applies to items of income paid on or after June 30, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: June 28, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 00–16761 Filed 6–30–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC–73

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Production Measurement Document Incorporated by Reference

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is adding a production measurement document incorporated by reference to the regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS). The document will continue to ensure that lessees are able to use the best available and most accurate technologies while operating in the OCS. The document is from the American Petroleum Institute's Manual of Petroleum Measurement Standards.

DATES: This rule is effective August 2, 2000. The incorporation by reference of publications listed in the regulation is approved by the Director of the Federal Register as of August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Sharon Buffington, Engineering and Research Branch, at (703) 787–1147.

SUPPLEMENTARY INFORMATION: MMS uses standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry as a means of establishing requirements for activities in the OCS. This practice, known as incorporation by reference, allows MMS to incorporate the requirements of technical documents into the regulations without increasing the volume of the Code of Federal Regulations (CFR). MMS currently incorporates by reference approximately 85 documents into the offshore operating regulations.

The regulations found at 1 CFR part 51 govern how MMS and other Federal agencies incorporate various documents by reference. Agencies can only incorporate by reference through publication in the **Federal Register**. Agencies must also gain approval from the Director of the Federal Register for each publication incorporated by reference.

Incorporation by reference of a document or publication is limited to the edition of the document or publication cited in the regulations. This means that newer editions, amendments, or revisions to documents already incorporated by reference in regulations are not part of MMS's regulations.

This rule adds the following API document to those currently incorporated by reference into MMS regulations:

- API Manual of Petroleum Measurement Standards (MPMS), Chapter 10, Section 9, Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration, First Edition, November 1993.

MMS has reviewed this document and has determined that it must be incorporated into regulations to ensure that industry is able to use the best available and most accurate technologies. Our review shows that the option to use this standard will not impose additional costs on the offshore oil and gas industry. In fact, industry will still have the option to use the other procedures in current documents incorporated, as approved. Therefore, MMS is including this document via a final rule. MMS has determined under the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) that publishing this rule as a notice of proposed rulemaking would be contrary to the public interest. The regulations found at 30 CFR 250.198(a)(2) allow updating documents without opportunity to comment when MMS determines that the revisions to a document result in safety improvements or represent new industry standard technology and do not impose undue costs on the affected parties.

A summary of MMS's review of the document is provided below:

API MPMS Chapter 10, Section 9, Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration, First Edition, November, 1993.

This document lists the method for directly determining water in crude oils by volume and weight. It represents an industry standard that would be newly used in the OCS. The MMS will retain the documents from MPMS, Chapter 10, Sediment and Water, that describe the other methods of determining water in crude oils.

Procedural Matters

This is a very simple rule. The rule's purpose is to add a document to those that are currently incorporated by reference in the regulations. If MMS did not give the option to use the other techniques incorporated into the regulations, MMS could not add this document via a final rule. The document will not cause any economic effect on any entity (small or large). It simply gives industry standards for using an alternate method to determine sediment and water.

Federalism (Executive Order 13132)

According to Executive Order 13132, the rule does not have

Federalism implications because it does not affect the relationship between the Federal and State governments.

The rule simply provides the option and guidance to use new technology. It does not prevent any lessee, operator, or drilling contractor from performing operations on the OCS, provided they follow the regulations. This rule will not impose costs on States or localities.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule does not have new requirements. This rule will not create an inconsistency or otherwise interfere with an action taken or planned by another agency.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The standards only apply to those lessees who choose to use the new technology. Either way, the costs will be the same.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. There are no new costs. The standards contain guidance if lessees use the new measurement technology. They do have the option to use current technology. Therefore, the costs will be the same.

(4) This rule does not raise novel legal or policy issues. The requirements are based on the legal authority of the OCS Lands Act and other laws.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The document was added to give lessees the option to use new technology. If they choose to do so, the cost will be the same. It does not contain new requirements, and it will not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Takings Implication Assessment

According to Executive Order 12630, the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The standards are optional. Thus, a Takings Implication Assessment need not be prepared according to Executive Order 12630, Government Action and Interference with Constitutionally Protected Property Rights.

Regulatory Flexibility (RF) Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The optional standards will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Under the Standard Industrial Classification code, 1381, Drilling Oil and Gas Wells, MMS estimates that there is a total of 1,380 firms that drill oil and gas wells onshore and offshore. Of these, approximately 130 companies are offshore lessees/operators, based on current estimates. According to SBA estimates, 39 companies qualify as large firms, leaving 91 companies qualified as small firms with fewer than 500 employees. This rule imposes no new operational requirements, reporting burdens, or other measures that would increase costs to lessees/operators, large or small. Therefore, this rule has no significant economic impact on small entities.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small businesses. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under (5 U.S.C. 804(2)) the SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The main purpose of this rule is to add industry standards to give lessees the option to use new measurement technology and the guidance if they choose to do so. The rule does not have new requirements.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The cost to comply with the rule is the same as current requirements.

(c) Does not have a significant adverse effect on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises. The rule does not contain new requirements.

Paperwork Reduction Act (PRA) of 1995

The Department of the Interior has determined that this regulation does not contain information collection requirements pursuant to PRA (44 U.S.C. 3501 *et seq.*). We will not be submitting an information collection request to OMB.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 7, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, MMS amends 30 CFR Part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. In § 250.198, in the table in paragraph (e), add the following in alpha-numerical order:

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of documents	Incorporated by reference at
* * * * * * *	
API MPMS, Chapter 10, Section 9, Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration, First Edition, November 1993, API Stock No. 852–30210.	§ 250.1202(a)(3), (l)(4)
* * * * * * *	

[FR Doc. 00–15659 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Bonus Payments in Medically Underserved Areas

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: This interim final rule implements a bonus payment, in addition to the amount normally paid under the allowable charge methodology, to providers in medically underserved areas. For purposes of this rule, medically underserved areas are the same as those determined by the Secretary of Health and Human Services for the Medicare program. Such bonus payments shall be equal to the bonus payments authorized by Medicare, except as necessary to recognize any unique or distinct characteristics or requirements of the CHAMPUS program, and as described in instructions issued by the Director, OCHAMPUS. Due to the urgency for such bonus payments in medically underserved areas to alleviate problems of access to healthcare coverage caused by lower payments, the interim final rule making process has been utilized. This rule promotes a reimbursement enhancement to a limited number of providers designed to increase CHAMPUS beneficiary access to care, which also supports the use of the interim final rule.

DATES: This rule is effective August 2, 2000. Written comments will be accepted until September 1, 2000.

ADDRESSES: Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3742.

SUPPLEMENTARY INFORMATION: 32 CFR Part 199, ''Civilian Health and Medical Program of the Uniformed Services (CHAMPUS),'' was published in the **Federal Register** on July 1, 1986. This interim final rule implements a bonus payment, in addition to the amount normally paid under the allowable charge methodology, to providers in medically underserved areas. For purposes of this rule, medically underserved areas are the same as those determined by the Secretary of Health and Human Services for the Medicare program. Such bonus payments shall be equal to the bonus payments authorized by Medicare, except as necessary to recognize any unique or distinct characteristics or requirements of the CHAMPUS program, and as described in instructions issued by the Director, OCHAMPUS. If the Department of Health and Human Services acts to amend or remove the provision for bonus payments under Medicare, CHAMPUS likewise may follow Medicare in amending or removing provision for such payments. To expedite access to healthcare coverage that has been impacted by lower payments in such medically underserved areas, the interim final rule process is being utilized. Additionally, it provides a reimbursement enhancement that favors providers in underserved areas, thus alleviating healthcare access problems experienced by beneficiaries residing in such areas. Finally, because Medicare previously established a bonus payment reimbursement mechanism in these areas, our emulation of this well established mechanism complies with existing statutory mandates that CHAMPUS follow Medicare reimbursement policy wherever practicable. This rule will not unilaterally increase payments to all providers, but just those residing in these underserved areas. Due to the urgency for additional payments to ensure beneficiary access to care in these areas, it would be impracticable and contrary to the public's interest not to use the interim final rule process. To do otherwise would prevent OCHAMPUS from fulfilling its duty to beneficiaries in these underserved areas.

Regulatory Procedure

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public

comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This Interim Final Rule is not a significant regulatory action under Executive Order 12866, nor would it have a significant impact on a substantial number of small entities. The changes set forth in the interim final rule are minor revisions to the existing regulation.

The interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. The Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be impracticable, unnecessary, and contrary to the public interest. This determination is based on several factors. Most importantly, this change directly implements a payment process already used by Medicare. All public comments are invited.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. Chapter 55.

2. Section 199.14 is amended by redesignating paragraphs (h)(2) and (h)(3) as (h)(3) and (h)(4) and adding a new paragraph (h)(2) to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(h) * * *

(2) *Bonus payments in medically underserved areas.* A bonus payment, in addition to the amount normally paid under the allowable charge methodology, may be made to providers in medically underserved areas. For purposes of this paragraph, medically underserved areas are the same as those determined by the Secretary of Health and Human Services for the Medicare program. Such bonus payments shall be equal to the bonus payments authorized by Medicare, except as necessary to recognize any unique or distinct characteristics or requirements of the CHAMPUS program, and as described in instructions issued by the Director, OCHAMPUS.

If the Department of Health and Human Services acts to amend or remove the provision for bonus payments under Medicare, CHAMPUS likewise may follow Medicare in amending or removing provision for such payments.

* * * * *

Dated: June 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–16264 Filed 6–30–00; 8:45 am]

BILLING CODE 5001–10–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–00–062]

RIN 2115–AE46

Special Local Regulations; Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary Special Local Regulations are being adopted for the Harbour Town Fireworks Display, Calibogue Sound, Hilton Head, SC. The event will be held from 9 p.m. to 9:30 p.m. local time on July 4, 2000 in Calibogue Sound, Hilton Head, SC. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 8:30 p.m. to 9:30 p.m. local time on July 4, 2000 and from 8:30 p.m. to 9:30 p.m. on July 5, 2000 in case of event postponement due to the onset of inclement weather.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD 07–00–062 and are available for inspection or copying at Commander, Coast Guard Group, 196 Tradd St., Charleston, SC 29401, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Simone Brisco, U.S. Coast Guard Group, Charleston, SC, at (843) 724–7628.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM because information concerning the exact date and times of the event were only recently received. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because information concerning the exact date and times of the event were only recently received.

Background and Purpose

These regulations are required to provide for the safety of life on navigable waters because of the inherent danger of fireworks during the Harbour Town Display, Calibogue Sound, Hilton Head, SC.

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, 1979). 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 as this regulation will only be in effect for one hour in a limited area.

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 business, 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 Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Calibogue Sound from 8:30 p.m. to 9:30 p.m. on July 4, 2000 (or July 5, 2000 if the event is postponed). This special local regulation will not have a significant economic impact on a substantial number of small entities

because this rule will be in effect for only 1 hour, and vessel traffic can pass safely around the regulated area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. 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 contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 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 unfunded mandate 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 Executive Order 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 Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 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 safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—MARINE EVENTS

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

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

2. Temporary § 100.35T–07–062 is added to read as follows:

§ 100.35T–07–062 Temporary Special Local Regulation, Calibogue Sound, Harbour Town, Hilton Head, SC.

(a) *Definitions.*

(1) *Regulated Area.* A regulated area is established on the waters of Calibogue Sound, Harbour Town, Hilton Head, SC, within a 1000 foot radius of a fireworks launch area on a barge in approximate position 32 08.2′ N, 080 49.2′ W. All coordinates referenced use Datum: NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Group Charleston, SC.

(b) *Special Local Regulations.* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft are required to remain in a spectator area to be established by the event sponsor The Club Group, LTD.

(c) *Dates.* These regulations are effective from 8:30 p.m. to 9:30 p.m. local time on July 4, 2000. If event is postponed, they are effective from 8:30 p.m. to 9:30 p.m. local time on July 5, 2000.

Dated: June 20, 2000.

G.W. Sutton,

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

[FR Doc. 00–16882 Filed 6–29–00; 1:19 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Southeast Alaska 00–005]

RIN 2115–AA97

Safety Zone; Gastineau Channel, Juneau, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone along the navigable waters of Gastineau Channel, Juneau, Alaska to encompass the vessel conducting fireworks display activities. The safety zone is needed to protect maritime vessels and to minimize traffic for the safety and protection of both the vessel conducting fireworks display activities and other vessels in the immediate proximity.

This safety zone will encompass the waters within a 300 yard radius of the vessel situated at approximately 58°17′41″ N, 134°24′22″ W. Entry into, transit through or anchoring within this Safety Zone is prohibited unless authorized by the Captain of the Port Southeast Alaska or the Coast Guard vessel on-scene via VHF–FM channel 16.

DATES: This temporary final rule becomes effective at 10 p.m. July 3, 2000 and terminates at 2 a.m. July 4, 2000.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at U.S. Coast Guard, Marine Safety Office, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (907) 463–2450.

FOR FUTHER INFORMATION CONTACT: Lieutenant Cecil McNutt Jr., Chief, Port

Operations, U.S. Coast Guard Marine Safety Office Juneau; (907) 463–2470.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with requirements of 5 U.S.C. 553(B), the Coast Guard finds a good cause exists for not publishing a NPRM. In keeping with requirements of 5 U.S.C. 553 (d)(3), the Coast Guard also finds that cause exists for making this regulation effective less than 30 days after publication in the **Federal Register** due to receipt of application for this marine event was not received until June 6, 2000. Publication of a NPRM and delay of effective date would be contrary to the public interest because immediate action is necessary to protect the safety of the maritime vessel traffic.

Background and Purpose

Each year, on or about the 3rd of July, a tug vessel with a barge conducts fireworks display activities within an established 100 yd safety zone (33 CFR 165.1706) located on the navigable waters of Gastineau Channel, mid-channel off the shoreline of the city of Juneau, AK. This year will differ slightly from the established safety zone, in that a blast or fallout radius of 300 yards is required for the city authorized 12-inch fireworks display shells and 600 lbs of Division 1.3G (UN 0335) Fireworks.

This will occur at 12 a.m. ADT, and will last approximately 1 hour. This safety zone is necessary to protect the maritime public from the fallout hazards created by the vessel conducting firework display activities.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under sections 6(a)(3) of that Order. It has been exempted from review by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under Section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with Sec. 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 US.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern 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.

List of Subjects in 33 CFR Part 165

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

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

PART 165—[AMENDED]

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

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

2. A new temporary § 165.T17–005 is added to read as follows:

§ 165.T17–005 Gastineau Channel, Juneau, Alaska—Safety Zone.

(a) *Location.* The following area is a temporary safety zone: the waters in Juneau Harbor within a 300 yard radius of the vessel engaged in firework display activities, situated at approximately 58°17′41″ N, 134°24′22″ W.

(b) *Effective Dates.* This regulation becomes effective at 10 p.m. July 3, 2000 and terminates at 2 a.m. July 4, 2000.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone is prohibited except as authorized by the Captain of the Port-Southeast Alaska, or the Coast Guard vessel on scene via VHF–FM Channel 16.

Dated: June 21, 2000.

B.J. Peter,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Southeast Alaska.

[FR Doc. 00–16878 Filed 6–29–00; 1:19 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–122]

RIN 2115–AA97

Safety Zone: Fireworks Display, Provincetown Harbor, Provincetown, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone within a five hundred (500) yard radius of the fireworks barge in Provincetown Harbor, Provincetown, MA on July 4, 2000, with a rain date of July 5, 2000. The safety zone is needed to safeguard the public from possible hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

EFFECTIVE DATE: This rule is effective from 8 p.m. until 10 p.m. July 4, 2000 and 8 p.m. until 10 p.m. July 5, 2000, in case of event postponement due to the onset of inclement weather.

FOR FURTHER INFORMATION CONTACT: CWO John W. Winter at Marine Safety Office Providence, (401) 435–2335.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective less then 30 days after **Federal Register** publication. Due to the date that conclusive information for this event was received, there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway to protect the maritime public from the hazards associated with this fireworks display, which is intended for public entertainment.

Background and Purpose

This regulation establishes a safety zone in all waters within a five hundred (500) yard radius of the fireworks launching barge in Provincetown Harbor, Provincetown, MA on July 4, 2000, with a rain date of July 5, 2000. This safety zone is needed to protect the maritime community from possible hazards associated with a fireworks display. No vessel may enter the safety zone without permission of the Captain of the Port (COTP), Providence RI.

Regulatory Evaluation

This temporary final 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves a very small area of Provincetown Harbor. The effect of this regulation will not be significant due to the lateness of the hour, all vessel traffic may safely transit around this safety zone, and the extensive maritime advisories that will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed 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 Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would 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 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this action 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 temporary rule would not impose an unfunded mandate.

Taking of Private Property

This temporary rule would 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 temporary 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 temporary 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

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T01–122 to read as follows:

§ 165.T01–122 Safety Zone: Fireworks Display, Provincetown Harbor, Provincetown, MA.

(a) *Location.* All waters within a five hundred (500) yard radius of the fireworks launching barge located in Provincetown harbor, Provincetown, MA.

(b) *Effective Period.* This section is effective from 8 p.m. until 10 p.m. on July 4, 2000, rain date 8 p.m. until 10 p.m. on July 5, 2000, unless extended or terminated sooner by the Captain of the Port Providence.

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

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

Dated: June 20, 2000.

J.D. Stieb,

Commander, U.S. Coast Guard, Acting Captain of the Port, Marine Safety Office Providence.

[FR Doc. 00–16880 Filed 6–29–00; 1:19 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–152]

RIN 2115–AA97

Security Zone: Presidential Visit, Hudson River, New York

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone between Piers 83 and 90 on the Hudson River, Manhattan, New York. This action is necessary to protect the Port of New York/New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during the President's visit to New York City. This action is intended to restrict vessel traffic in a portion of the Hudson River.

DATES: This rule is effective from 6 p.m. (e.s.t.) to 11 p.m. (e.s.t.) on July 5, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–152) and are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 204, Staten Island, New York, 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(8), the Coast Guard finds that good cause exists for not publishing an NPRM. Good cause exists for not publishing an NPRM due to the date that specific information on the President's visit to New York City was made available to the Coast Guard, there was insufficient time to draft and publish an NPRM. This event will have minimal impact on the waterway, vessels may still transit through the western 600 yards of the 950-yard wide Hudson River during the President's visit to the Intrepid Sea Air and Space Museum, and the zone is only in effect for 5 hours. Additionally, the New York City Passenger Ship Terminal does not have any vessels scheduled to be berthed at Piers 88 or 90 during the event and do not expect to receive any at this late date. Circle Line Sightseeing Cruises anticipates only having to move 2 vessels at Pier 83 between 6 p.m. (e.s.t.) and 6:30 p.m. (e.s.t.) which they will be authorized to do. Any delay encountered in this regulation's effective date would be unnecessary and contrary to security interests as immediate action is needed to protect the Port of New York/New Jersey and the President.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This is due to the following reasons: this event will have minimal impact on the waterway, vessels may still transit through the western 600 yards of the 950-yard wide Hudson River during the President's visit to the Intrepid Sea Air and Space Museum, and the zone is only in effect for 5 hours. Additionally, the New York City Passenger Ship Terminal does not have any vessels scheduled to be berthed at Piers 88 or 90 during the event and do not expect to receive any at this late date. Circle Line Sightseeing Cruises anticipates only having to move 2 vessels at Pier 83 between 6 p.m. (e.s.t.) and 6:30 p.m. (e.s.t.) which they will be authorized to do.

Background and Purpose

This zone is needed to ensure the security of the Port of New York/New Jersey while the President is visiting the Intrepid Sea Air and Space Museum in Manhattan. This security zone will safeguard the Port of New York/New Jersey during his visit to the Intrepid Museum against terrorism, sabotage or other subversive acts and incidents of a similar nature. This security zone provides for an exclusion area during the President's visit at the museum. This zone includes all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46′10″ N 074°00′13″ W (NAD 1983), south to approximate position 40°45′54″ N 074°00′25″ W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall, then north to the point of beginning. The security zone is based on security needs for the Port of New York/New Jersey and the President. All vessels are prohibited from transiting the area for approximately five hours during the President's visit at the Intrepid Museum. The New York City Passenger Ship Terminal does not have any vessels scheduled to be berthed at Piers 88 or 90 during the event and do not expect to receive any at this late date. Circle Line Sightseeing Cruises anticipates only having to move 2 vessels at Pier 83 between 6 p.m. (e.s.t.) and 6:30 p.m. (e.s.t.) which they will be authorized to do. This security zone has been narrowly tailored to impose the least impact on maritime interests yet provide the level of security deemed necessary. Entry into or movement within this security zone is prohibited unless authorized by the Coast Guard Captain of the Port, New York.

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, 1979).

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 finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through the western 600 yards of the 950-yard wide Hudson River while the security zone is in effect. Additionally, the New York City Passenger Ship Terminal does not have any vessels scheduled to be berthed at Piers 88 or 90 during the event and do not expect to receive any at this late date. Circle Line Sightseeing Cruises anticipates only having to move 2 vessels at Pier 83 between 6 p.m. (e.s.t.) and 6:30 p.m. (e.s.t.) which they will be authorized to do, and extensive advance notifications that will be made.

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 Coast Guard certifies under section 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Hudson River during the time this zone is activated.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can transit through the western 600 yards of the 950-yard wide Hudson River while the security zone is in effect, this rule will be in effect for only five hours, and extensive advance notifications which will be made. Additionally, the New York City Passenger Ship Terminal does not have any vessels scheduled to be berthed at Piers 88 or 90 during the event and do not expect to receive any at this late date. Circle Line Sightseeing Cruises anticipates only having to move 2 vessels at Pier 83 between 6 p.m. (e.s.t.) and 6:30 p.m. (e.s.t.) which they will be authorized to do.

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 affects on them and participate in the rulemaking process. The New York City Passenger Ship Terminal and Circle Line Sightseeing Cruises were both contacted about the affects this zone may have on their business. The Passenger Ship Terminal does not have any vessels scheduled to be berthed during the event. Circle Line anticipates only having to move 2 vessels between 6 p.m. (e.s.t.) and 6:30 p.m. (e.s.t.) during the event which they will be authorized to do.

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 Executive Order 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 unfunded mandate 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 Executive Order 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 Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 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

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule fits paragraph 34(g) as it establishes a security zone. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T01–152 to read as follows:

§ 165.T01–152 Security Zone: Presidential Visit, Hudson River, New York.

(a) *Location.* The following area is a security zone: all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46′10″ N 074°00′13″ W (NAD 1983), south to approximate position 40°45′54″ N 074°00″25″ W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall, then north to the point of beginning.

(b) *Effective period.* This section is effective from 6 p.m. (e.s.t.) until 11 p.m. (e.s.t.) on July 5, 2000.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.33 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise

commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: June 27, 2000.

R.E. Bennis,

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

[FR Doc. 00–16881 Filed 6–29–00; 1:19 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[COTP Southeast Alaska 00–008]

RIN 2115–AA97

Safety Zone; Tongass Narrows, Ketchikan, AK

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone along the navigable waters of Tongass Narrows, Ketchikan, Alaska. The safety zone is required to protect maritime vessels and minimize traffic for the safety and protection of both the vessel conducting fireworks display activities and other vessels in the immediate proximity. This safety zone will encompass the waters within a 300 yd radius of the vessel situated at approximately 55°20′32″ N, 131°39′40″ W. Entry into, transit through or anchoring within this Safety Zone is prohibited unless authorized by the Captain of the Port, Southeast Alaska, or the Coast Guard vessel on scene via VHF.

DATES: This temporary final rule becomes effective 10 p.m. July 4, 2000 and terminates at 1 a.m. July 5, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Cecil McNutt, Marine Safety Office Juneau, Alaska, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska 99801, (907) 463–2470.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at U.S. Coast Guard, Marine Safety Office, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (907) 463–2450.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with requirements of 5 U.S.C. 553(B), the Coast Guard finds a good cause exists for not publishing a NPRM. In keeping with requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that cause exists for making this regulation effective less than 30 days after publication in the **Federal Register** due to receipt of application for this marine event was not received until June 12, 2000. Publication of a NPRM and delay of effective date would be contrary to the public interest because immediate action is necessary to protect the safety of the maritime vessel traffic.

Background and Purpose

On or about the 4th of July, a tug and barge conducts fireworks display activities within an established 100 yd safety zone (33 CFR 165.1708) located on the navigable waters of Tongass Narrows, off the northern tip of Pennock Island. This year the tug and barge will be positioned approximately 55°20′32″ N, 131°39′40″ W and a blast or fallout radius has been increased to 300 yd for the fireworks display.

This will occur at 10 p.m. July 4, 2000 and ending approximately 1 a.m. July 5, 2000. This safety zone is required to protect the maritime public from the hazards created by the vessel conducting fireworks activities.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with Sec. 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the office listed in **ADDRESSES** in this preamble.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this temporary rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership (58 FR 58093; October 28, 1993), govern 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.

List of Subjects in 33 CFR Part 165

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

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

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.2.

2. A new temporary section § 165.T17–008 is added to read as follows:

§ 165.T17–008 Tongass Narrows, Ketchikan, Alaska—Safety Zone.

(a) *Location.* The following area is a temporary Safety Zone: the waters in Ketchikan Harbor within a 300 yd radius of the vessel engaged in fireworks display activities, situated at approximately 55°20′32″ N, 131°39′40″ W.

(b) *Effective dates.* This regulation becomes effective at 10 p.m. July 4, 2000 and terminates 1 a.m. July 5, 2000.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone is prohibited except as authorized by the Captain of the Port, Southeast Alaska or the Coast Guard vessel on scene via VHF–FM Channel 16.

Dated: June 21, 2000.

B.J. Peter,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Southeast Alaska.

[FR Doc. 00–16883 Filed 6–29–00; 1:19 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–00–157]

RIN 2115–AA97

Safety Zone: Manchester Fourth of July Fireworks, Manchester, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Manchester Fourth of July Fireworks, Manchester, MA. The safety zone will be in effect from 8 p.m. until 11 p.m. on Monday, July 3, 2000. The safety zone will temporarily close all waters of Massachusetts Bay within a four hundred (400) yard radius of the fireworks barge located at position 42°34.05′N, 070°45.52′W. The safety zone prohibits entry into or movement within this portion of Massachusetts Bay and is needed to protect the maritime public from the hazards posed by a fireworks display.

DATES: This rule is effective from 8 p.m. until 11 p.m. on Monday, July 3, 2000.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Brian J. Downey, Marine Safety Office Boston, Waterways Management Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until June 2, 2000, making it impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

This regulation establishes a safety zone on the waters of Massachusetts Bay in a four hundred (400) yard radius around the fireworks barge located at position 42°34.05′N, 070°45.52′W. The safety zone is in effect from 8 p.m. until 11 p.m. on Monday, July 3, 2000. This safety zone prohibits entry into or movement within this portion of Massachusetts Bay and is needed to protect the maritime public from the dangers posed by a fireworks display.

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, 1979).

The Coast Guard expects 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.

Due to the limited duration of the safety zone, the fact that the safety zone will not restrict the entire Bay, allowing marines to freely navigate around the safety zone, and the advance maritime advisories that will be made, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard 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 Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Massachusetts Bay from 8 p.m. until 11 p.m. on July 3, 2000. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone is only 3 hours in duration; mariners may freely navigate around the safety zone, and the Coast Guard will issue marine radio advisories before the effective period.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Federalism

The Coast Guard analyzed this rule under E.O. 13132 and has 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 would not impose an unfunded mandate.

Taking of Private Property

This rule would 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

The Coast Guard 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

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), 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 in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary § 165.T01–157 to read as follows:

§ 165.T01–157 Safety Zone: Manchester Fourth of July Fireworks, Massachusetts Bay, Massachusetts

(a) *Location.* The following area is a safety zone: All waters of Massachusetts Bay within a four hundred (400) yard radius of the fireworks barge located at position 42°34.05′N, 070°45.52′W.

(b) *Effective Date.* This section is effective from 8 p.m. until 11 p.m. on Monday, July 3, 2000.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: June 19, 2000.

J.R. Whitehead,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 00–16880 Filed 6–29–00; 1:19 pm]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 775

National Environmental Policy Implementing Procedures

AGENCY: Postal Service (USPS).

ACTION: Final rule.

SUMMARY: This rule corrects an oversight in wording in the Postal Service's National Environmental Policy Act (NEPA) regulations concerning procedures and categorical exclusions.

EFFECTIVE DATE: This regulation is effective June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Susan L. Koetting, Attorney, U.S. Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260–1135, phone (202) 268–4818.

SUPPLEMENTARY INFORMATION: On August 27, 1998, the Postal Service published in the **Federal Register**, final regulations on procedures and categorical exclusions regarding NEPA (63 FR 45719). After the publication of the regulations, it was discovered that an error had been made in language in section 775.9(a)(1). Specifically, it was not intended that a written determination not to prepare an environmental assessment be required for all actions. When these regulations were proposed on August 11, 1997 (62 FR 42958), the Postal Service expanded the list of postal activities that were subject to NEPA review and also expanded the list of categorical exclusions. Previous and current internal guidance for facilities programs and projects requires a checklist for all facility actions, while previous and current internal guidance for operational activities only requires a checklist for certain actions that exceed certain higher level financial approval requirements. When these regulations were finalized, internal facilities policy was inadvertently carried over to all activities. This was not intended and is inconsistent with internal guidance and the purpose for establishing categorical exclusions. Postal policy, as discussed in the August 1997 notice, requires a checklist to screen for potential environmental concerns, but it was not intended to do one for all activities, even if categorically excluded.

In a further development, it was recently discovered that a sentence in the regulations was inadvertently dropped during the codification process. In § 775.9(b)(1), the original second sentence in the 1997 version of the published regulations in Title 39, Code of Federal Regulations was dropped out of the version of the regulations published in 1999. The old second sentence was to have become the third sentence in § 775.9(b)(1).

In light of the foregoing, the Postal Service adopts the following minor revisions to its NEPA regulations.

List of Subjects in 39 CFR Part 775

Environmental impact statements.

Accordingly, the Postal Service amends 39 part 775 as follows:

PART 775—NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

1. The authority citation for 39 CFR part 775 continues to read as follows:

Authority: 39 U.S.C. 401; 42 U.S.C. 4321 *et seq.*; 40 CFR 1500.4.

2. Amend § 775.9 by revising the introductory text of paragraph (a)(1) and adding a sentence after the second sentence in paragraph (b)(1) to read as follows:

§ 775.9 Environmental evaluation process.

(a) All actions—(1) Assessment of actions. An environmental checklist may be used to support a record of environmental consideration as the determination that the proposed action does not require an environmental assessment. An environmental assessment must be prepared for each proposed action except that an assessment need not be made if a determination is made that:

* * * * *

(b) Additional requirements for facility actions. (1) * * * An environmental assessment report, however, is not required until the contending project sites have been determined. * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–16674 Filed 6–30–00; 8:45 am]

BILLING CODE 7710–12–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1412, MM Docket No. 99–291; RM–9665]

Digital Television Broadcast Service; Reno, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sarkes Tarzian, Inc., licensee of Station KTVN(TV), Reno, Nevada, substitutes DTV Channel 13 for DTV Channel 32 at Reno, Nevada. *See* 64FR 52486, September 29, 1999. DTV Channel 13 can be allotted to Reno at coordinates (39–18–45 N. and 119–53–00 W.) with a power of 12, HAAT of 906 meters and with a DTV service population of 481 thousand. With this action, this proceeding is terminated.

DATES: Effective August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–291, adopted June 26, 2000, and released June 29, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Nevada, is amended by removing DTV Channel 32 and adding DTV Channel 13 at Reno.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–16777 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1413, MM Docket No. 99–252; RM–9648]

Digital Television Broadcast Service; Las Vegas, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Journal Broadcast Corporation, licensee of Station KTNV, Las Vegas, Nevada, substitutes DTV Channel 12 for DTV Channel 17 at Las Vegas, Nevada. *See* 64 FR 38621, July 19, 1999. DTV Channel 12 can be allotted to Las Vegas at coordinates (35–56–43 N. and 115–02–32 W) with a power of 26.4, HAAT of 610 meters and with a DTV service population of 738 thousand.

With this action, this proceeding is terminated.

DATES: Effective August 14, 2000.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–252, adopted June 26, 2000, and released June 29, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Nevada, is amended by removing DTV Channel 17 and adding DTV Channel 12 at Las Vegas.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–16776 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1261; MM Docket No. 99–287; RM–9712]

Radio Broadcasting Services; Sulphur Bluff, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 259A to Sulphur Bluff, Texas, in

response to a petition filed by Sulphur Bluff Radio Broadcasting . *See* 64 FR 52487, September 29, 1999. The coordinates for Channel 259A at Sulphur Bluff are 33–23–03 NL and 95–22–59 WL. There is a site restriction 2.7 kilometers (1.7 miles) northeast of the community. With this action, this proceeding is terminated. A filing window for Channel 259A at Sulphur Bluff will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–287, adopted May 31, 2000, and released June 9, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Sulphur Bluff, Channel 259A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16681 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1245; MM Docket No. 99–84; RM–9501, RM–9594]

Radio Broadcasting Services; Stratford and Lincoln, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Peter George, allots Channel 254A to Stratford, NH, as the community's first local aural service. *See* 64 FR 14429, May 21, 1999. Channel 254A can be allotted to Stratford in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.6 kilometers (5.3 miles) north, at coordinates 44–43–54 NL; 71–34–10 WL, to avoid a short-spacing to vacant and unapplied-for Channel 256A at Whitefield, NH. Canadian concurrence in the allotment has been obtained since Stratford is located within 320 kilometers (200 miles) of the U.S.-Canadian border. The petition and counterproposal filed by Barry P. Lunderville to allot Channel 254A to Lincoln, NH, is dismissed for failure to comply with the subscription and verification requirements of Section 1.52 of the Commission's Rules. A filing window for Channel 254A at Stratford will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–84, adopted May 31, 2000, and released July 9, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Hampshire, is amended by adding Stratford, Channel 254A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16682 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1259; MM Docket No. 98–128; RM–9308 and RM–9385]

Radio Broadcasting Services; Crystal Falls and Republic, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 235A at Crystal Falls, Michigan, in response to a petition filed by Results Broadcasting of Iron Mountain, Inc. *See* 63 FR 40253, July 28, 1998. The coordinates for Channel 235A at Crystal Falls are 46–09–05 and 88–22–01. There is a site restriction 7.4 kilometers (4.6 miles) north of the community. In response to a counterproposal filed by Crystal Radio Company, we shall also allot Channel 244A at Republic, Michigan, at coordinates 46–26–09 and 88–07–12. There is a site restriction 11.5 kilometers (7.2 miles) west of the community. Canadian concurrence has been received for the allotment of Channel 244A at Republic. Although Canadian concurrence has been requested for the allotment of Channel 235A at Crystal Falls, notification has not yet been received. Therefore, operation with the facilities specified for Crystal Falls herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the USA–Canada FM Broadcast Agreement or if specifically objected to by Canada. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 24, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–128, adopted May 31, 2000, and released June 9, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 235A at Crystal Falls and by adding Republic, Channel 244A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16680 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–2000–7581]

Organization and Delegation of Powers and Duties; Delegation to the Administrators of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: Section 101(f) of the Motor Carrier Safety Improvement Act of 1999 provides that the authority under title 49, United States Code, to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture is vested in the Secretary and may be delegated. Accordingly, by this action, the Secretary delegates to the Administrator of the National Highway Traffic Safety Administration the authority to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture when the standards are based upon and similar to a Federal Motor Vehicle Safety Standard (FMVSS) promulgated under chapter 301 of title 49, U.S.C. The Administrator may promulgate a standard simultaneously with the FMVSS on which it is based. The authority to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture is delegated to the Administrator of the Federal Motor Carrier Safety Administration when the standards are not based upon and similar to an FMVSS promulgated under chapter 301 of title 49, U.S.C.

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. John Womack, Office of the Chief Counsel, HCC–01, (202) 366–9511, National Highway Traffic Safety Administration, or Ms. Judith A. Rutledge, Office of the Chief Counsel, (MC-CC), (202) 366–2519, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government's Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

Effective October 9, 1999, the Secretary of Transportation rescinded the authority of the Federal Highway Administrator to perform motor carrier safety functions and operations and redelegated it to the Director of a newly established Office of Motor Carrier Safety in the Department of Transportation. (64 FR 56270, October 19, 1999; 64 FR 58356, October 29, 1999.) This action was consistent with section 338 of the Fiscal Year 2000 Department of Transportation and Related Agencies Appropriations Act (Pub. L. 106–69), as amended by Pub. L. 106–73, which prohibits the Federal Highway Administration from spending funds made available or limited in that Act to carry out such functions. On December 9, 1999, the Motor Carrier Safety Improvement Act of 1999 (MCSI Act) (Public Law No. 106–159, 113 Stat. 1748) was enacted for the purpose of establishing the Federal Motor Carrier Safety Administration effective January 1, 2000. As we noted in a prior delegation to the FMCSA, 49 U.S.C. 113(f), as enacted by section 101(a) of the MCSI Act, states that the Federal Motor Carrier Safety Administrator shall carry out a number of duties and powers related to motor carrier and motor carrier safety and gives the Secretary discretion to delegate the authority to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture. As a result, Part 1 of title 49, CFR, was amended to reflect this new provision by substituting the words ''Administrator of the Federal Motor Carrier Safety Administration'' for the words ''Director of the Office of Motor Carrier Safety.'' (65 FR 220, January 4, 2000.) It was also amended to reflect the Federal Motor Carrier Safety Administration as an organization within the Department of Transportation and to describe its general responsibilities. *Id.* In addition, section 1.73 of this Part was amended in accordance with section 101(f) of the MCSI Act to reflect the Secretary's reservation to himself of the authority to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture. *Id.* These amendments were effective January 1, 2000.

This rule amends 49 CFR Part 1 to reflect the Secretary's decision to now delegate to the National Highway Traffic Safety Administrator the authority to promulgate safety standards for commercial motor vehicles and equipment already in use when the standards are based upon and similar to an FMVSS promulgated under chapter 301 of title 49, U.S.C. In issuing standards under this delegation, the Administrator will coordinate with the Federal Motor Carrier Safety Administrator. This rule also amends Part 1 to delegate to the Federal Motor Carrier Safety Administrator the authority to promulgate safety standards for commercial motor vehicles and equipment already in use when the standards are not based upon and similar to an FMVSS promulgated under chapter 301 of title 49, U.S.C. Nothing in this rule changes the existing authority of the Federal Motor Carrier Safety Administration to promulgate standards relating to motor carrier

operations and maintenance of commercial motor vehicles, to inspect vehicles and equipment for compliance with applicable safety standards and maintenance requirements, and to take enforcement action as necessary.

The Administrators of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration have the authority to redelegate the functions described in this document if not inconsistent with statute, departmental regulations, policies, and orders governing delegation of functions.

As the rule relates to Departmental organization, procedure, and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). This action makes no substantive changes to the motor carrier safety regulations. Therefore, prior notice and opportunity to comment are unnecessary, and good cause exists under 5 U.S.C. 553(d)(3) to dispense with the 30-day delay in the effective date requirement so that the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration may immediately operate pursuant to the changes noted below.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

Issued this 22nd day of June, 2000 at Washington, DC.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation amends 49 CFR Part 1 as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

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

Authority: 49 U.S.C. 2104(a); Pub. L. 101–552; 28 U.S.C. 2672, 31 U.S.C. 3711 (a)(2), 46 U.S.C. 2104(a).

2. In § 1.50 add paragraph (n) to read as follows:

§ 1.50 Delegation to the National Highway Traffic Safety Administrator.

* * * * *

(n) Carry out, in coordination with the Federal Motor Carrier Safety Administrator, the authority vested in the Secretary by subchapter III of chapter 311 and section 31502 of title 49, U.S.C., to promulgate safety standards for commercial motor vehicles and equipment subsequent to initial manufacture when the standards are based upon and similar to a Federal Motor Vehicle Safety Standard promulgated, either simultaneously or previously, under chapter 301 of title 49, U.S.C.

§ 1.73 [Amended]

3. Amend § 1.73 as follows:

a. Amend paragraph (g) by removing the word ''for'' the first time it is used and adding the word ''that'' in its place, and by adding before the period ''is limited to standards that are not based upon and similar to a Federal Motor Vehicle Safety Standard promulgated under chapter 301 of title 49, U.S.C.''

b. Amend paragraph (l) by removing the word ''for'' the first time it is used and adding the word ''that'' in its place, and by adding before the period ''is limited to standards that are not based upon and similar to a Federal Motor Vehicle Safety Standard promulgated under chapter 301 of title 49, U.S.C.''

[FR Doc. 00–16623 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000503121–0189–02; I.D. 030600A]

RIN 0648–AN07

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure for adjusting management measures (framework procedure) of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS issues this final rule to: Increase the annual total allowable catch (TAC) and increase the commercial trip limit off the southeast coast of Florida for Atlantic group king mackerel; and increase the TAC, modify the commercial trip limits applicable off Florida, and increase the recreational bag limit for Atlantic group Spanish mackerel. The intended effects of this rule are to maintain healthy stocks of king and Spanish mackerel while still allowing catches by important commercial and recreational fisheries.

DATES: This final rule is effective August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter; telephone: 727–570–5305; fax: 727–570–5583; e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils and was approved and implemented by NMFS through regulations at 50 CFR part 622. In accordance with the framework procedure, the South Atlantic Fishery Management Council (Council) recommended, and NMFS published, a proposed rule (65 FR 31132, May 16, 2000) to: Increase the annual TAC and increase the commercial trip limit off the southeast coast of Florida for Atlantic group king mackerel; and increase the TAC, modify the commercial trip limits applicable off Florida, and increase the recreational bag limit for Atlantic group Spanish mackerel. The proposed rule described the need and rationale for these measures, which are not repeated here.

Comments and Responses

One public comment on the proposed rule was received from the Council.

Comment: The Council reiterated its support for a TAC of 7.04 million lb (3.19 million kg) for Atlantic group Spanish mackerel; noted that the regulations would relieve restrictions, consistent with conserving the resource, and would benefit fishers who had experienced necessary restrictions in the past; and urged timely implementation of the regulations.

Response: NMFS agrees that the Council's proposed actions are appropriate, has approved them, and is implementing them by this final rule.

Change from the Proposed Rule

The proposed rule inadvertently did not include the revision of the adjusted quota for Atlantic group Spanish mackerel that results automatically from the increase in TAC. This final rule incorporates the appropriate revision in § 622.44(b)(2).

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when

this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Comments should be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 27, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.39, paragraph (c)(1)(iii) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(iii) Atlantic migratory group Spanish mackerel—15.

* * * * *

3. In § 622.42, paragraphs (c)(1)(ii) and (c)(2)(ii) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of king mackerel is 3.71 million lb (1.68 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

* * * * *

(2) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 3.87 million lb (1.76 million kg).

* * * * *

4. In § 622.44, paragraph (a)(1)(iii), paragraphs (b)(1)(ii)(A) and (B), and the first sentence of paragraph (b)(2) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(1) * * *

(iii) In the area between 28°47.8′ N. lat. and 25°20.47′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 75 fish from April 1 through October 31.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) From April 1 through November 30, in amounts exceeding 3,500 lb (1,588 kg).

(B) From December 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(*1*) Mondays through Fridays—unlimited.

(*2*) Saturdays and Sundays—not exceeding 1,500 lb (680 kg).

* * * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.62 million lb (1.64 million kg). * * *

* * * * *

[FR Doc. 00–16774 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000229053–0190–02; I.D. 120699A]

RIN 0648–AK96

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 17

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 17 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). Amendment 17 and this final rule extend the current commercial reef fish vessel permit moratorium, which is effective through December 31, 2000, for 5 years through December 31, 2005. The purpose of the moratorium is to provide a stable environment in the fishery necessary for evaluation and development of a more comprehensive controlled access system for the entire commercial reef fish fishery.

DATES: This rule is effective August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727–570–5305; fax: 727–570–5583; e-mail: Michael.Barnette@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery is managed under the FMP as prepared by the Gulf of Mexico Fishery Management Council (Council) and approved and implemented by NMFS, under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), by regulations at 50 CFR part 622.

On December 17, 1999, NMFS announced the availability of Amendment 17 and requested comments on the amendment (64 FR 70678). NMFS approved Amendment 17 on March 16, 2000, and published a proposed rule to implement the 5-year extension of the current commercial reef fish vessel permit moratorium, which would otherwise expire on January 1, 2001, in Amendment 17 and requested comments on it (65 FR 14518, March 17, 2000). The background and rationale for the measure in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

Comments and Responses

One comment from the Department of the Interior (DOI) was received on Amendment 17. The DOI requested an extension of the comment period due to the inability to respond with comments in the allotted time. However, the 60-day comment period for the amendment is set by section 304 of the Magnuson-Stevens Act and cannot be extended.

No comments were received on the proposed rule.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendment 17 is necessary for the conservation and management of the reef fish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Comments should be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 27, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraph (m) introductory text is revised to read as follows:

§ 622.4 Permits and fees.

* * * * *

(m) *Moratorium on commercial vessel permits for Gulf reef fish.* The provisions of this paragraph (m) are applicable through December 31, 2005.

* * * * *

[FR Doc. 00–16771 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0137–02; I.D. No. 112399C]

RIN 0648–AM48

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2000 Specifications; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction.

SUMMARY: This document contains corrections to the **DATES** section of the 2000 specifications that was published on May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fisheries Policy Analyst, (978) 281–9221.

SUPPLEMENTARY INFORMATION:

Background

In the final rule implementing the 2000 annual specifications for summer flounder, scup, and black sea bass, the regulations were inadvertently made effective for the same time frame as the quotas (i.e., for the calendar year). The regulations were meant to remain effective until revised. This correction clarifies that the regulations are final, not temporary, regulations.

Correction

In FR Doc. 00–12993, published in the **Federal Register** issue of May 24, 2000, on page 33486, in column 2, correct the **DATES** caption to read as follows:

DATES: Effective 0001 hours, May 24, 2000, except that the quotas identified in the preamble are effective 0001 hours, May 24, 2000, through 2400 hours, December 31, 2000.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 27, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–16772 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 128
Monday, July 3, 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 927

[Docket No. FV00–927–1 PR]

Winter Pears Grown in Oregon and Washington; Establishment of Quality Requirements for the Beurre D'Anjou Variety of Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on establishing quality requirements for the Beurre D'Anjou (Anjou) variety of pears under the winter pear marketing order. The marketing order regulates the handling of winter pears grown in Oregon and Washington and is administered locally by the Winter Pear Control Committee (Committee). This rule would require that Anjou variety pears shipped to North America during the period of August 15 through November 1 of each year be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. Establishing quality requirements for Anjou pears would enhance the ripening process. This is expected to result in higher quality Anjou pears reaching the market and to benefit producers, handlers, and consumers. A minimum quantity exemption from the quality and inspection requirements also is proposed.

DATES: Comments must be received by July 18, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 89 and Order No. 927, both as amended (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on establishing quality requirements under the order for Anjou variety pears. This rule would require that Anjou pears shipped to North America (Continental United States, Canada, or Mexico) during the period of August 15 through November 1 of each year, be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. Application of the quality and inspection requirements to shipments to these three markets is proposed because shipments to other important markets outside of North America are transported in cold storage containers and arrive after November 1. This rule would also establish a minimum quantity exemption under which Anjou pear shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the proposed inspection and quality requirements.

Section 927.51 of the order provides authority for the issuance, modification, suspension, or termination of regulations for grade, size, and quality for any variety of winter pears grown in any district during a specified period and for different requirements applicable to shipments for different export markets.

Section 927.60 provides that when such regulations are in effect, no person shall handle such pears unless they are inspected and certified by the Federal-State Inspection service as meeting such requirements. Section 927.60 further provides authority for the establishment of minimum quantity exemptions from such requirements.

Section 927.52 provides that any vote on size, grade, and quality regulations be conducted based upon an affirmative vote of not less than 80 percent of the applicable total number of votes for that variety. This section provides that for the Anjou variety of pears, each member shall have one vote as an individual and, in addition, shall have an equal share of the vote of the district represented by the member. Each district is given an additional vote for each 25,000 boxes of the average quantity of Anjou pears produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods. Using this formula, there are 453 applicable total votes for Anjou pears.

At its meeting on March 30, and further discussed at subsequent meetings on May 4 and June 2, 2000, the Committee recommended the establishment of quality and inspection requirements for the Anjou variety of pears for shipments to North America from August 15 through November 1 of each year. The Committee recommended, with 83 percent (373 votes) of the applicable total number of votes voting in favor, that it be required that such pears have their core/pulp temperature lowered to 35 degrees Fahrenheit or less and have an average pressure test of 14 pounds or less. The Committee, for over 20 years, has recommended that handlers of Anjou pears voluntary comply with these two quality requirements because they are necessary for Anjou pears to ripen properly. In addition, the Committee has regularly provided handlers with research studies collected over the years supporting the importance of proper chilling for Anjou pears and the fruit being harvested and shipped at appropriate hardness.

While the voluntary program worked well for many years, an increasing number of handlers in recent years have not consistently complied with these voluntary recommendations. At these three meetings, all Committee members supported the need for Anjou pears meeting these minimum quality requirements prior to shipment to North American markets (Continental United States, Canada, or Mexico). The three members who voted against the establishment of quality regulations supported continuation of the voluntary program.

Anjou pears are unique to most other pear varieties because they are harvested in a mature, but unripe condition. For Anjou pears to ripen properly, these pears should be stored in cold storage facilities until their core/pulp temperature is reduced to 35 degrees Fahrenheit or less. Once the core/pulp temperature is reduced to 35 degrees Fahrenheit or less, these pears will ripen properly when purchased by a consumer. To further assist the ripening process and result in a higher quality pear, Anjou pears should also have an average pressure of 14 pounds or less prior to shipment. Anjou pears that have been properly chilled will naturally ripen, and soften, over time. The storage and handling practices of a few handlers have allowed Anjou pears to be marketed at much higher pressure levels, sometimes well over 20 pounds, as well as without adequate chilling. In such cases, the consumer finds it is virtually impossible to ripen these pears after purchasing them. This has caused consumer dissatisfaction, hurt repeat purchases, depressed the market for later market pears and resulted in decreased producer returns.

The Committee does not anticipate the establishment of these quality requirements would prevent any producer from ultimately being able to have his fruit marketed. The requirements would simply ensure the proper handling practices that are necessary to prevent poor quality fruit from being shipped early in the marketing year. The Committee further anticipates that these requirements would be relatively easy for each handler to meet. Winter pears are marketed throughout the year. Therefore, all handlers either have cold storage facilities or have access to such facilities.

In the same motion recommending quality requirements, the Committee also recommended the establishment of a minimum quantity exemption under which shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the inspection and quality requirements. This minimum quantity exemption would eliminate any adverse impacts on handlers making small shipments or on sales at roadside stands and farmer markets.

The Committee recommended that this rule be effective by August 15 because shipments of Anjou pears are expected to begin shortly thereafter. This rule would apply only through November 1 of each year. Anjou pears harvested in August and stored in cold storage facilities through November 1 would naturally drop to the proposed minimum temperature because the pears are stored at that temperature, or lower. It is also unusual for pressure to be a problem in pears shipped after this date because pears soften naturally. Therefore, after November 1, enforcement of this regulation would no longer be necessary. Similarly the Committee recommended exemption of shipments to areas other than North America since Anjou pears shipped to overseas ports are refrigerated during transit and most shipments are sold and arrive at foreign ports after November 1. Consistent with the experience of many years with the voluntary program, the Committee's intent is to keep regulations at the minimum level necessary to ensure that a quality product is shipped to the consumer and to maintain reasonable returns to producers.

The Committee estimates the total 2000–2001 winter pear shipments at approximately 15,300,000 standard boxes. Of that amount, Anjou pear shipments are estimated at approximately 11,800,000 standard boxes. Last year, the total winter pear crop was about 13,800,000 standard boxes. Of that amount, Anjou pear shipments were approximately 10,100,000 standard boxes. In recent years approximately 7–8 percent of the total Anjou pear crop has been shipped from August 15 through November 1 into the domestic market.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 90 handlers of winter pears who are subject to regulation under the marketing order and approximately 1,800 winter pear producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

The Committee estimates, based upon handler shipment totals and an average price of $14 per standard box, that about 87 percent of winter pear handlers could be considered small businesses under SBA's definition, excluding receipts from other sources. In addition, based on acreage, production, and

producer prices reported by the National Agricultural Statistic Service, and the total number of winter pear producers, the average annual producer receipts are approximately $43,200, excluding receipts from other sources. In view of the foregoing, it can be concluded that the majority of handlers and producers of winter pears may be classified as small entities.

This rule would require that Anjou pears shipped to North America (Continental United States, Mexico, or Canada) during the period of August 15 through November 1 of each year, be certified by the Federal-State Inspection Service as having their core/pulp temperature lowered to 35 degrees Fahrenheit or less and having an average pressure test of 14 pounds or less. Shipments to other markets outside of North America are transported in cold storage containers and the fruit arrives after November 1. This rule would also establish a minimum quantity exemption under which Anjou pear shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the inspection and quality requirements.

At its meeting on March 30, and further discussed at subsequent meetings on May 4 and June 2, 2000, the Committee recommended the establishment of quality and inspection requirements for the Anjou variety of pears for shipments to North America from August 15 through November 1 of each year. The Committee recommended, with 83 percent (373 votes) in favor, that it be required that such pears have their core/pulp temperature lowered to 35 degrees Fahrenheit or less and have an average pressure test of 14 pounds or less. The Committee, for over 20 years, has recommended that handlers of Anjou pears voluntarily comply with these two quality factors necessary to enhance the ripening process. In addition, the Committee has regularly provided handlers with a compilation of research data that has been collected over the years supporting the importance of proper chilling for Anjou pears and the fruit being harvested and shipped at appropriate hardness.

While the voluntary program has worked well for many years, an increasing number of handlers in recent years have not consistently complied with these voluntary recommendations. At these three meetings, all Committee members supported the need for Anjou pears to meet these quality requirements prior to shipment. The three members who voted against the establishment of quality regulations supported continuation of the voluntary program.

Anjou pears are unique to most other pear varieties because they are harvested in a mature, but unripe condition. For Anjou pears to ripen properly, these pears should be stored in cold storage facilities until their core/pulp temperature is reduced to 35 degrees Fahrenheit or less. Once the core/pulp temperature is reduced to 35 degrees Fahrenheit or less, these pears will ripen properly when purchased by a consumer. To further assist the ripening process and result in a higher quality pear, Anjou pears should have an average pressure test of 14 pounds or less prior to shipment. Anjou pears that have been properly chilled will naturally ripen, and soften, over time. The storage and handling practices of a few handlers have allowed Anjou pears to be marketed at much higher pressure levels, sometimes well over 20 pounds, as well as without adequate chilling. In such cases, the consumer finds that it is virtually impossible to ripen these pears after purchasing them. This has caused consumer dissatisfaction, hurt repeat purchases, depressed the market for later market pears and resulted in decreased producer returns.

The Committee does not anticipate the establishment of these quality requirements would prevent any producer from ultimately being able to have his fruit marketed. The requirements would simply ensure that handlers follow the handling practices necessary to prevent poor quality fruit from being shipped early in the marketing year. The Committee further anticipates that these requirements would be relatively easy for each handler to meet. Winter pears are marketed throughout the year. Therefore, all handlers either have cold storage facilities or have access to such facilities.

In the same motion recommending quality requirements, the Committee also recommended the establishment of a minimum quantity exemption under which shipments of 8,800 pounds or less on any one conveyance may be shipped without regard to the inspection and quality requirements. This minimum quantity exemption would eliminate any adverse impacts on handlers making small shipments or on sales at roadside stands and farmer markets.

The Committee recommended that this rule be effective by August 15 because shipments of Anjou pears are expected to begin shortly thereafter. This rule would apply only through November 1 of each year. Anjou pears harvested in August and stored in cold storage facilities through November 1 would naturally drop to the minimum temperature because they are stored at that temperature, or lower. It is also unusual for pressure to be a problem in pears shipped after this date because pears soften naturally. Therefore, after November 1, enforcement of this regulation would no longer be necessary. Similarly the Committee recommended exemption of shipments to areas other than North America since Anjou pears shipped to overseas ports are refrigerated during transit and most shipments are sold and arrive at foreign ports after November 1. Consistent with the experience of many years with the voluntary program, the Committee's intent is to keep regulations at the minimum level necessary to ensure a quality product is shipped to the consumer and to maintain reasonable returns to producers.

This rule would impose some additional costs on handlers. Some of the additional costs may be passed on to producers. In recent years, approximately 9–10 percent of the total Anjou pear crop has been shipped from August 15 through November 1 into North American markets. The Committee currently estimates the Anjou pear crop to be approximately 11,800,000 standard boxes. An average inspection rate for pears within the production area would approximate $0.05 per standard box. Therefore, it is estimated that the establishment of quality and inspection requirements would result in mandatory inspection costs of approximately $56,050 (9.5 percent × 11,800,000 standard boxes × inspection rate of $0.05 per standard box). The actual increase in costs to the industry because of mandatory inspection requirements would be significantly less, however, because approximately 65–75 percent of the Anjou pear crop is currently being inspected on a voluntary basis. These costs are expected to be significantly offset by the benefits of the proposed rule. The benefits for this proposed rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

The Committee discussed alternatives to the quality requirements, including a longer time period of mandatory inspection as well as continuing with the voluntary program. The Committee believes that the requirements proposed are the minimum level necessary to ensure a quality product. The Committee believes that voluntary compliance is no longer effective. The Committee believes that this action would benefit producers, handlers, and consumers.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large winter pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meetings were widely publicized throughout the winter pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 30, May 4, and June 2, 2000, meetings were public meetings and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twelve members, of whom six are handlers and six are producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place by August 15, 2000, because shipments of Anjou pears are expected to begin shortly thereafter. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is proposed to be amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 927.316 is added to read as follows:

§ 927.316 Handling regulation.

During the period August 15 through November 1, no person shall handle any Beurre D'Anjou variety of pears for shipments to North America (Continental United States, Mexico, or Canada), unless such pears meet the following requirements:

(a) Beurre D'Anjou variety of pears shall have a certification by the Federal-State Inspection Service, issued prior to shipment, showing that (1) the core/pulp temperature of such pears has been lowered to 35 degrees Fahrenheit or less and

(2) Any such pears have an average pressure test of 14 pounds. The handler shall submit, or cause to be submitted, a copy of the certificate issued on the shipment to the Control Committee.

(b) Each handler may ship on any one conveyance 8,800 pounds or less of Beurre D'Anjou variety of pears without regard to the quality and inspection requirements in paragraph (a) of this section.

Dated: June 27, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 55

RIN 3150–AG40

Operator License Eligibility and Use of Simulation Facilities in Operator Licensing

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by allowing applicants for operator and senior operator licenses to fulfill a portion of the experience prerequisites for license eligibility by manipulating a plant-referenced simulator as an alternative to use of the actual plant. The proposed rule would allow applicants for operator and senior operator licenses to fulfill a portion of the experience prerequisites by manipulating a plant-referenced simulator as an alternative to use of the actual plant. In addition, the proposed rule would remove current requirements for certification of simulation facilities and routine submittal of simulator performance test reports to the NRC for review. Also, the proposed rule would revise the definitions of ''Performance testing,'' ''Plant-referenced simulator,'' and ''Simulator facility.''

DATES: Submit comments by September 18, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, Mail Stop O–16C1. Deliver written comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (*http://www.nrc.gov*). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: cag@nrc.gov). Copies of any comments received and certain documents related to this rulemaking may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may be viewed and downloaded electronically via the rulemaking website.

Documents created or received at the NRC after April 1, 2000, are also available electronically at the NRC's Public Electronic Reading room on the internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agency Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 202–634–3273 or toll-free at 1–800–397–4209, or by e-mail at *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Glenn Tracey, Operator Licensing, Human Performance and Plant Support Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–1031; or by Internet electronic mail to gmt@nrc.gov.

SUPPLEMENTARY INFORMATION:

Introduction

Section 107 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2137), requires the NRC to prescribe uniform conditions for licensing individuals as operators of production and utilization facilities to determine the qualifications

of these individuals, and to issue licenses to these individuals. The regulations implementing these requirements are set out in Part 55 of Title 10, Chapter 1, of the Code of Federal Regulations. To assist licensees and others, the Commission has issued regulatory guides and generic letters that provide guidance on acceptable methods of meeting these regulatory requirements.

The Commission has become increasingly aware of the need to update its operator licensing regulations and related regulatory guides. These revisions are needed to clarify the extent to which applicants for operator and senior operator licenses may fulfill a portion of the experience prerequisites for license eligibility with the performance of five significant control manipulations on a plant-referenced simulator as an alternative to use of the actual plant, and to remove current requirements for certification of simulation facilities and routine submittal of simulator performance test reports to the NRC for review. The proposed rule changes would improve the operator licensing process. If adopted, these revisions would achieve the following objectives: (1) Allow applicants for operator and senior operator licenses to fulfill a portion of the experience prerequisites by performing five significant control manipulations on a plant-referenced simulator and/or the actual plant facility for which a license is sought; (2) maintain training integrity through a requirement that ensures adequate simulator replication of the plant and demonstrated fidelity for those simulators used to provide control manipulation experience; (3) remove current requirements for certification of simulation facilities; (4) eliminate routine submittal of simulator performance test reports to the NRC for review; and (5) maintain safety through NRC reviews to ensure simulator suitability for providing effective training in performance assessment of operator license applicants.

Background

On March 25, 1987 (52 FR 9453), the Commission published a final rule in the **Federal Register** that amended 10 CFR Part 55 and became effective May 26, 1987. The amendment requires that an applicant successfully manipulate the controls of the facility for which a license is sought. Five significant control manipulations must be performed which affect reactivity or power level. The final rule also included requirements for the use of simulators in the qualification and requalification of nuclear power plant operators, and required certification of simulation facilities.

Discussion of Proposed Rule Changes

Subpart A—Revision of § 55.4, Definitions

Three definitions would be revised. The definition of ''Performance testing,'' which is testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance, would be revised in a manner that would not impose additional requirements on licensees, to comport with the definition for such testing in the most recent edition of the industry standard for use of nuclear plant simulators in operator training and examination (ANSI/ANS–3.5–1998). The definition of a ''Plant-referenced simulator,'' which is a simulator modeling the systems of the reference plant, would be revised to reference within the definition existing simulator requirements in Part 55, and the proposed revision allowing completion of certain on-the-job training prerequisites for license applicant eligibility on the simulator. The definition of ''Simulation facility,'' which describes the components that alone, or in combination, can be used for partial conduct of operating tests, would be revised to include part-task and limited-scope simulator devices because these devices are now referenced in the most recent edition of ANSI/ANS–3.5, and a request could be received for Commission approval of their use.

Conforming Changes to § 55.8 Information Collection Requirements: OMB Approval

As a result of the previously described proposed changes to § 55.45(b) that eliminate the simulator certification requirement, a conforming change to § 55.8(c)(3) would delete Form 474, ''Simulation Facility Certification,'' OMB approval No. 3150–0138, as currently referred to § 55.45(b)(1)(iii) and § 55.45(b)(3)(iii).

Section 55.8(c)(4) would be deleted because its requirements have been incorporated into this 10 CFR part.

Subpart D—Revision of § 55.31 To Allow Performance of Control Manipulations on the Plant-Referenced Simulator

Section 55.31(a)(5), currently requires that five significant control manipulations that affect reactivity or power level be performed on the actual plant would be revised to allow those manipulations to be performed either on a plant-referenced simulator or on the actual plant, at the facility licensee's discretion. Eligibility for an operator license encompasses education, training, and experience factors. Reactivity manipulations are an operating experience requirement addressed by on-the-job training (OJT). Use of a plant-referenced simulator of appropriate fidelity for these manipulations is appropriate based upon improvements in simulator technology and 13 years of successful experience in using plant-specific simulation facilities since the 1987 final rule. Modern plant-referenced simulation facilities in operation today are providing accurate and validated operator training and examination scenarios that convey realism in reactivity manipulations, other normal and abnormal procedure operations, complex plant operations, and emergency operating procedure evolutions, including simultaneous task management and faulted conditions. The proposed rule change would allow part of the plant operating experience requirement for license eligibility to be fully satisfied in a timely manner within the facility's accredited training program without impacting operation of the actual plant.

The requirement of § 55.31(a)(4) to complete the facility licensee's program of education, experience, and OJT as a prerequisite of license eligibility would not be affected by the proposed rule change. Performance of control manipulations that affect reactivity or power level constitutes only a small part of an applicant's preparedness to perform licensed duties and would continue to be implemented as a subset of OJT. If adopted, the proposed rule would alternatively allow use of the actual plant and/or the plant-referenced simulator for control manipulations, thus broadening the range of options available to facility licensees for selecting the most advantageous training method.

Although facility licensees' simulation facilities are, for the most part, state-of-the-art, the NRC has identified two areas of concern with respect to considering a plant-referenced simulator suitable for fulfilling the experience requirements of a license applicant. First, recognizing that the simulator may differ to a degree from the reference unit and to provide experience essentially replicating that obtained from control manipulations on the plant, reasonable measures should be taken to ensure that the simulated reactor core, at least for the directly associated models such as those for nuclear and thermal-hydraulic

characteristics, represents the actual reactor core that will exist in the plant at the time the applicant is tested for a license. Second, the performance of the nuclear and thermal-hydraulic characteristics models must be tested to ensure that the simulator is capable of being used to satisfy predetermined objectives without significant performance discrepancies or deviation from the approved scenario sequence. To address these concerns and thereby maintain plant safety, the proposed rule would add a requirement under § 55.45(b) for licensees using a plant-referenced simulator to satisfy reactivity manipulation experience requirements to ensure that: Simulator models relating to nuclear and thermal-hydraulic characteristics replicate the core load that exists in the nuclear power unit for which a license is being sought at the time of the applicant's operating test; and simulator fidelity has been demonstrated so that significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviations from the approved training scenario sequence. This provision in the proposed rule thus links § 55.45(b) with the proposed § 55.31(a)(5).

Subpart E—Revision of § 55.45 To Remove Current Requirements for Simulator Certification and Routine Submittal of Performance Test Reports

The proposed rule would delete requirements that have become outdated and burdensome to the facility licensees and are of limited value to the NRC in the following areas of § 55.45(b): (1) Certification of simulation facilities; (2) submittal of test schedule information; and (3) submittal of quadrennial test reports.

The March 25, 1987, final rule provided a phased implementation schedule for the requirement that facility licensees who propose to use a simulation facility consisting solely of a plant-referenced simulator certify, by means of NRC Form 474, ''Simulation Facility Certification,'' the availability of a simulation facility meeting Commission regulations. The certification requirement also contained associated requirements for submittal of test documentation and test schedules on a quadrennial basis. Licensees have certified plant-referenced simulators at all power reactor facilities, and the NRC staff's experience has shown the quadrennial reports to be of minimal value in assessing simulator suitability for testing of operators.

The proposed rule would, by means of an alternative regulatory approach that would not change substantive existing requirements, eliminate the need for certification and quadrennial reports. Absent certification, assurance of simulator suitability would be provided through NRC reviews and validation of operating test scenarios, with review of performance test results, and uncorrected modeling or hardware discrepancies, if needed. If the simulator is found by this review to be unsuitable, the simulator may not be used to conduct an operating test, requalification training, or for performing control manipulations to establish license applicant eligibility. The current requirement for more recent simulator test and performance data to remain onsite would not be changed.

Facility licensees proposing to use a simulator facility meeting the definition in § 55.4 for a plant-referenced simulator are not required to submit an application for Commission approval of that simulator.

For cases in which licensees propose to use a simulation facility not meeting the definition of a plant-referenced simulator, the Commission would require additional information to determine the acceptability of the simulator, and thus would require an application for Commission approval.

Since 1987, the last time the Commission amended its regulations regarding the use of simulators, facility licensees have trained licensed operators and applicants for operator and senior operator licenses on plant-referenced simulators that were certified in accordance with the 1985 edition of ANSI/ANS–3.5. This standard specifies full-scope, stand-alone testing of system models and simulator training capabilities as part of initial simulator acceptance testing. Licensees continue to test their plant-referenced simulators in the manner of initial development and to submit test schedules and reports on a quadrennial basis to comply with the 1987 final rule that requires periodic scheduling and reporting of test results to the NRC. The industry's approach to computer software development and simulator testing has changed considerably since 1987, and a new approach has been codified though the issuance of the 1998 version of ANSI/ANS–3.5, Nuclear Power Plant Simulators for Use in Operator Training and Examination. The standard has moved away from continued full-scope, stand-alone testing of system models and simulator training capabilities toward a scenario-based testing and quality control philosophy that is associated with the facility's planned simulator usage.

The proposed rule would eliminate the need for certification of simulation facilities to the NRC and the associated testing and reporting requirements that have been become outdated by the 1998 revision of the national consensus standard ANSI/ANS–3.5.

The proposed rule would eliminate duplicate testing for those licensees that choose to adopt the revised national standard. The proposed rule changes would neither require facility licensees to adopt a newly revised version of the national consensus standard, nor would it require facility licensees to modify existing simulator support programs or practices. The proposed rule changes would not impose additional burden or increase the risks to the health and safety of any segment of the nuclear industry or the public.

The proposed rule would allow facility licensees to voluntarily adjust their performance test programs consistent with end-user needs as defined by their accredited systems-approach-to-training (SAT) programs or to voluntarily conform existing simulation facility programs to new revisions of ANSI/ANS–3.5. Facility licensees' plant-referenced simulators are continually in the update and maintenance mode of their life-cycle as new computer technology and new plant information is incorporated into the simulation facility. Earlier revisions of the national consensus standard were not intended for today's highly technical, very complex, and sophisticated computer simulation programs that routinely encompass verification, validation, and documentation of a simulator's performance. Identification and resolution of discrepancies are a function of the licensees discrepancy reporting and resolution practices. The proposed rule and associated proposed Regulatory Guide 1.149, ''Nuclear Power Simulation Facilities for Use in License Examinations,'' which would endorse ANSI/ANS–3.5–1998 without exception, would reduce apparent inconsistencies between the operational needs of facility licensee programs and simulator testing requirements, thereby relieving unnecessary regulatory burden and freeing resources for more effective developmental and validation testing associated with either simulator modification programs or the operator licensing training and examination processes.

Subpart F—Licenses

Conforming Changes to § 55.59, Requalification

As a result of the proposed changes to § 55.45(b) that would eliminate the simulator certification requirement, a

conforming change to § 55.59(c)(4)(iv) is proposed that would delete the terms ''certified or approved'' when referring to a simulation facility in this section.

Section-by-Section Analysis

Subpart D—Revisions To Allow Performance of Control Manipulations on the Plant-Referenced Simulator

The proposed rule would add a statement that ''The Commission may accept evidence of satisfactory performance of control manipulations as part of a Commission-approved training program by a trainee on a plant-referenced simulator acceptable to the Commission under Section 55.45(b) of this part in lieu of use of the actual plant. Control manipulations performed on the simulator may be chosen from a representative sampling of the control manipulations and plant evolutions described in Section 55.59(c)(3)(A–F), (R), (T), (W), and (X) of this part, as applicable to the design of the plant for which the license application is submitted.''

By providing an option for licensee to use plant-referenced simulators for control manipulations, the proposed rule obviates the need for current provisions in Section 55.31(a)(5) addressing the use of simulators for performance of control manipulations for facilities that have not yet completed pre-operational testing and initial startup test programs and provisions addressing plants in extended shutdowns. Thus those provisions are removed.

Subpart E—Remove Current Requirements for Simulator Certification and Routine Submittal of Performance Test Reports

10 CFR 55.45(b) provides regulations associated with the implementation and use of simulation facilities in operator licensing. Section 55.45(b)(1) addresses ''Administration'' of the operating test on a simulation facility. Section 55.45(b)(2) addresses ''Schedule for facility licensees'' with respect to submitting a plan by which its simulation facility will be developed and by which an application will be submitted for its use. Section 55.45(b)(3) addresses ''Schedule for facility applicants'' with respect to submitting a plan which identifies whether its simulation facility will conform with paragraph (b)(1)(i) or (b)(1)(ii) of this section at the time of application. Section 55.45(b)(4) addresses ''Application for and approval of simulation facilities'' with respect to using a simulation facility that is other than solely a plant-referenced simulator as defined in § 55.4. Section 55.45(b)(5) addresses ''Certification of simulation facilities'' with respect to those facility licensees which propose, in accordance with paragraph (b)(1)(ii) of this section, to use a simulation facility consisting solely of a plant-referenced simulator. Facility licensees have communicated to the NRC and the NRC agrees that some or portions of the rule provisions discussed and identified in this paragraph are unnecessarily burdensome.

Section 55.45(b)(1)(ii) requires that, ''A simulation facility consisting solely of a plant-reference simulator which has been certified to the Commission'' be used in administering the operating test. The proposed rule would eliminate the requirement for certification of the simulation facility and more appropriately refer to the definition of a simulation facility as described in § 55.4.

Section 55.45(b)(2) discusses, ''Schedule for facility licenses.'' The proposed rule would eliminate this outdated item in its entirety.

Section 55.45(b)(2)(i) requires that, ''Within one year after the effective date of this part, each facility licensee which proposes to use a simulation facility pursuant to paragraph (b)(1)(i) of this section, except test and research reactors, shall submit a plan by which its simulation facility will be developed and by which an application will be submitted for its use'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(2)(ii) requires that, ''Those facility licensees which propose to conform with paragraph (b)(1)(i) of this section, not later than 42 months after the effective date of this rule, shall submit an application for use of this simulation facility to the Commission, in accordance with paragraph (b)(4)(i) of this section'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(2)(iii) requires that, ''Those facility licensees which propose to conform with paragraph (b)(1)(ii) of this section, not later than 46 months after the effective date of this rule, shall submit a certification for use of this simulation facility to the Commission on Form NRC–474, ''Simulation Facility Certification,'' available from Records and Reports Management Branch, Division of Information Support Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555, in accordance with paragraph (b)(5)(i) of this section.'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(2)(iv) requires that, ''The simulation facility portion of the operating test will not be administered on other than a certified or an approved simulation facility after May 26, 1991.'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(3) discusses, ''Schedule for facility applicants.'' The proposed rule would eliminate this outdated item in its entirety.

Section 55.45(b)(3)(i) requires that, ''For facility licensee applications after the effective date of this rule, except test and research reactors, the applicant shall submit a plan which identifies whether its simulation facility will conform with paragraph (b)(1)(i) or (b)(1)(ii) of this section at the time of application.'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(3)(ii) requires that, ''Those applicants which propose to conform with paragraph (b)(1)(i) of this section, not later than 180 days before the date when the applicant proposes that the Commission conduct operating tests, shall submit an application for use of its simulation facility to the NRC, in accordance with paragraph (b)(4)(i) of this section.'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(3)(iii) requires that, ''Those applicants which propose to conform with paragraph (b)(1)(ii) of this section, not later than 60 days before the date when the applicant proposes that NRC conduct operating tests, shall submit a certification for use of its simulation facility to the Commission on Form NRC–474, in accordance with paragraph (b)(5)(i) of this section.'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(4) requires that, ''Application for and approval of simulation facilities. Those facility licensees which propose, in accordance with paragraph (b)(1)(i) of this section, to use a simulation facility that is other than solely a plant-referenced simulator as defined in § 55.4 shall—.'' The proposed rule would eliminate in its entirety this requirement and replace it with language to address ''Commission-approved simulation facilities'' whereby the Commission would approve a simulation facility if it finds that the simulation facility and its proposed use are suitable for the conduct of operating test for the facility licensee's reference plant, in accordance with paragraph (a) of this section.

Section 55.45(b)(4)(i) requires that, ''In accordance with the plan submitted pursuant to paragraph (b)(2)(i) or (b)(3)(i) of this section, as applicable,

submit an application for approval of the simulation facility to the Commission, in accordance with the schedule in paragraph (b)(2)(ii) or (b)(3)(ii) of this section, as appropriate. This application must include:'' The proposed rule would eliminate the phrases ''In accordance with the plan submitted pursuant to paragraph (b)(2)(i) or (b)(3)(i) of this section, as applicable'' and '' * * * in accordance with the schedule in paragraph (b)(2)(ii) or (b)(3)(ii) of this section, as appropriate.'' and replace its language to address those facility licensees that propose, in accordance with paragraph (b)(1)(i) of this section, to use a simulation facility that is other than solely a plant-referenced simulator as defined in § 55.4 and to also submit an application for approval of the simulation facility to the Commission that include certain items as described in § 55.45(b)(2)(i)(A), (B), and (C).

Section 55.45(b)(4)(i)(A) requires that, ''A statement that the simulation facility meets the plan submitted to the Commission pursuant to paragraph (b)(2)(i) or (b)(3)(i) of this section, as applicable;'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(4)(ii) requires that, ''The Commission will approve a simulation facility if it finds that the simulation facility and its proposed use are suitable for the conduct of operating tests for the facility licensee's reference plant, in accordance with paragraph (a) of this section.'' The proposed rule would eliminate in its entirety this requirement and replace it with language applicable to those facility licensees which use a plant-referenced simulator to establish prerequisites for operator license eligibility in accordance with § 55.31(a)(5) and to provide in addition to existing performance testing required for significant control manipulations which affect reactivity; that simulator models relating to nuclear and thermal-hydraulic characteristics replicate the core load that exist in the nuclear power unit for which a license is being sought at the time of the applicants's operating test and that simulator fidelity has been demonstrated so that significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence.

Section 55.45(b)(4)(iii) requires that facility licensees, ''Submit, every four years on the anniversary of the application, a report to the Commission which identifies any uncorrected performance test failures, and submit a schedule for correction of these performance test failures, if any.'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(4)(iv) requires that facility licensees, ''Retain the results of the performance test conducted until four years after the submittal of the application under paragraph (b)(4)(i), each report pursuant to paragraph (b)(4)(iii), or any reapplication under paragraph (b)(4)(iv) of this section, as appropriate.'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(4)(v) requires that, ''If the Commission determines, based upon the results of performance testing, that an approved simulation facility does not meet the requirements of this part, the simulation facility may not be used to conduct operating tests.'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(4)(vi) requires that, ''If the Commission determines, pursuant to paragraph (b)(4)(v) of this section, that an approved simulation facility does not meet the requirements of this part, the facility licensee may again submit an application for approval. This application must include a description of corrective actions taken, including results of completed performance testing as required for approval.'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(4)(vii) requires that, ''Any application or report submitted pursuant to paragraphs (b)(4)(i), (b)(4)(iii) and (b)(4)(vi) of this section must include a description of the performance testing completed for the simulation facility, and must include a description of performance tests, if different, to be conducted on the simulation facility during the subsequent four-year period, and a schedule for the conduct of approximately 25 percent of the performance tests per year for the subsequent four years.'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(5), ''Certification of simulation facilities'' requires that, ''Those facility licensees which propose, in accordance with paragraph (b)(1)(ii) of this section, to use a simulation facility that is other than solely a plant-referenced simulator as defined in § 55.4 shall—.'' The proposed rule would eliminate in its entirety this requirement and replace it with language to address ''Acceptability of simulation facilities'' such that facility licensees which maintain a simulation facility for the conduct of operating test shall conform to the revised proposed rule and to provide assurance that approved or certified simulation facilities remain acceptable over a period time to meet the requirements paragraph (a) of this section.

Section 55.45(b)(5)(i) requires that facility licensees, ''Submit a certification to the Commission that the simulation facility meets the Commission's regulations. The facility licensee shall provide this certification on Form NRC 474 in accordance with the schedule in paragraph (b)(2)(iii) or (b)(3)(iii) of this section, as applicable.'' The proposed rule would eliminate in its entirety this requirement.

Section 55.45(b)(5)(ii) requires that facility licensees, ''Submit, every four years on the anniversary of the certification, a report to the Commission which identifies any uncorrected performance test failures, and submit a schedule for correction of such performance test failures, if any.'' The proposed rule would partially eliminate this requirement. The facility licensee would have to make available for NRC review, prior to or concurrent with preparations for each operator licensing operating test or requalification program inspection results of any uncorrected performance test failures that will exist at the time of the operating test or requalification program inspection.

Section 55.45(b)(5)(iii) requires that facility licensees, ''Retain the results of the performance test conducted until four years after the submittal of certification under paragraph (b)(5)(i), each report pursuant to paragraph (b)(5)(ii), or recertification under paragraph (b)(5)(v) of this section, as applicable.'' The proposed rule would revise the rule to require facility licensees to provide recurring assurance of fidelity by performance testing throughout the life of the simulation facility consistent with paragraphs 55.45(b)(2)(ii) and 55.45(b)(3)(i)(B) and only retain the results of performance test conducted for four years or until superseded by updated test results. The proposed rule would require the inclusion of provisions for maintaining examination and test integrity consistent with § 55.49.

Section 55.45(b)(5)(iv) requires that, ''If the Commission determines, based upon the results of performance testing, that a certified simulation facility does not meet the requirements of this part, the simulation facility may not be used to conduct operating tests.'' The proposed rule revises the language such that if the Commission determines, based upon the results of pre-examination scenario validation, a review of performance testing results, or

uncorrected modeling or hardware discrepancies, that a simulation facility consisting solely of a plant-referenced simulator does not meet the requirements of this part as defined in § 55.4 or the criteria in § 55.45(b)(2)(ii), then the plant-referenced simulator may not be used to conduct operating tests, requalification, or control manipulations as described in §§ 55.31(a), 55.45(b)(1), and 55.59(c)(3) of this part. Facility licensees proposing to use simulation facilities meeting the definition in § 55.4 of a plant-referenced facility would not be required to submit an application for Commission approval.

Section 55.45(b)(5)(v) requires that, ''If the Commission determines, pursuant to paragraph (b)(5)(iv) of this section, that a certified simulation facility does not meet the requirements of this part, the facility licensee may submit a recertification to the Commission on Form NRC—474. This recertification must include a description of corrective actions taken, including results of completed performance testing as required for recertification.'' The proposed rule eliminates this provision.

Section 55.45(b)(5)(vi) requires that, ''Any certification report, or recertification submitted pursuant to paragraph (b)(5)(i), (b)(5)(ii) or (b)(5)(v) of this section must include a description of performance testing completed for the simulation facility, and must include a description of the performance tests, if different, to be conducted on the simulation facility during the subsequent four-year period, and a schedule for the conduct of approximately 25 percent of the performance tests per year for the subsequent four years.'' The proposed rule would eliminate in its entirety this requirement.

The proposed rule requirements associated with the implementation and use of simulation facilities would significantly reduce unnecessary burden for facility licensees and the NRC. The proposed rule would allow facility licensees greater flexibility to adjust their performance test programs consistent with user needs as defined by their accredited training programs, and encourage implementation of improved revisions of the national standard which, as endorsed by the NRC, would improve focus on the training and examination environment in which the plant-referenced simulator is used. In addition, the proposed rule would allow facility licensees to reduce cost.

Since § 55.45(b) was last revised on March 25, 1987 (52 FR 9453), facility licensees have continually improved and implemented sophisticated simulator modeling and replaced outdated computer hardware to ensure that operator and senior operator applicants as well as licensed operators are trained and qualified on a plant-referenced simulator.

Subpart A—Revisions of § 55.4 Definitions

Section 55.4 defines performance testing as ''Performance testing means testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance.'' The proposed rule would redefine performance testing as ''Performance testing means validation, scenario-based, or operability testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance.''

Section 55.4 defines plant-referenced simulator as ''Plant-referenced simulator means a simulator modeling the systems of the reference plant with which the operator interfaces in the control room, including operating consoles, and which permits use of the reference plant's procedures. A plant-referenced simulator demonstrates expected plant response to operator input, and to normal, transient, and accident conditions to which the simulator has been designed to respond.'' The proposed rule would enhance the definition of plant-referenced simulator as ''Plant-referenced simulator means a simulator modeling the systems of the reference plant with which the operator interfaces in the control room, including operating consoles, and which permits use of the reference plant's procedures. A plant-referenced simulator demonstrates expected plant response to operator input, and to normal, transient, and accident conditions to which the simulator has been designed to respond. A plant-referenced simulator is designed, implemented, and maintained such that it: (1) Is sufficient in scope and fidelity to allow conduct of the evolutions listed in paragraphs 55.45(a)(1) through (13), and 55.59(c)(3)(i)(A) through (AA), as applicable to the design of the reference unit; (2) allows for the completion of on-the-job training experience prerequisites for license operator eligibility consistent with paragraph 55.45(b)(2)(ii).''

Section 55.4 defines simulation facility as ''Simulation facility means one or more of the following components, alone or in combination, used for the partial conduct of operating tests for operators, senior operators, and candidates: (1) The plant, (2) a plant-referenced simulator, (3) another simulation device.'' The proposed rule would update the definition of simulation facility to ''Simulation facility means one or more of the following components, alone or in combination, used for the partial conduct of operating tests for operators, senior operators, and license applicants: (1) The plant, (2) a plant-referenced simulator, (3) a Commission-approved simulator in accordance with § 55.45(b)(2), (4) another simulation device, including part-task and limited scope simulation devices.''

Subpart A—General Provisions, § 55.8 Information Collection Requirements: OMB Approval

Section 55.8(c)(3) identifies the information collection requirement and the control number under which the requirement is approved for NRC Form 474, ''Simulation Facility Certification,'' OMB approval No. 3150–0138. If adopted, the proposed rule would eliminate the need for the certification form.

Section 55.8(c)(4) would be deleted because its requirements have been incorporated into this 10 CFR part.

Subpart F—Licenses, § 55.59, Requalification

Section 55.59(c)(4)(iv) requires that, ''* * * After the provisions of § 55.45(b) have been implemented at a facility, the certified or approved simulation facility must be used to comply with this paragraph.'' The proposed rule would eliminate the words ''certified or approved'' as a result of eliminating the certification requirement as described in the proposed rule § 55.45(b).

Issues for Public Comment

Comments concerning the content, level of detail specified, and the implementation of the proposed amendments are encouraged. Suggestions of alternatives other than those described in this notice and estimates of cost for implementation are encouraged. Because the intent of the proposed rule changes to § 55.31(a)(5) and § 55.45(b)(1) is to reduce unnecessary regulatory burden by providing acceptable methods to comply with the Commission's regulations, the NRC is particularly interested in receiving from the public comments on the following issues related to this proposed rule:

1. Are there rulemaking alternatives to this proposed rule that were not considered in the regulatory analysis for this proposed rule?

2. Are the revised definitions as used in § 55.4 clearly defined?

3. Would the revised requirements permitting control manipulations to be performed on a plant-referenced simulator as prescribed in § 55.31(a)(5) reduce unnecessary regulatory burden associated with establishing license eligibility for operators and senior operators and yet continue to maintain safety by ensuring that experience gained on the simulator essentially replicates that obtained from control manipulations on the plant?

4. Would the revised requirements in § 55.45 to eliminate the need for certification of simulation facilities and duplicate testing and reporting requirements accomplish their intended purpose of eliminating unnecessary regulatory burden?

5. Would the proposed NRC reviews of simulators ensure requisite simulator suitability to support effective training and operator performance assessment and thereby maintain plant safety?

Related Regulatory Activity

NRC Endorsement of ANSI/ANS 3.5–1998

The NRC staff has reviewed ANSI/ANS 3.5–1998 with respect to the revision of Regulatory Guide 1.149, ''Nuclear Power Plant Simulation Facilities for Use in License Examinations.'' The 1998 revision of the standard was developed with full NRC participation and insight. Accordingly, the staff believes that those testing and fidelity concerns that have required exceptions and clarifications in the regulatory positions of the previous revisions of Regulatory Guide 1.149, are adequately addressed in this latest revision of the standard. The staff further believes that industry's concerns have been addressed in this latest revision of the standard. As noted in the introductory paragraph to the standard, ''the consensus committee was balanced to ensure that competent, concerned, and varied interests have had an opportunity to participate.'' The staff is considering endorsing ANSI/ANS 3.5–1998 without the exceptions or clarifications that have characterized NRC's endorsement of previous revisions.

The staff published in the **Federal Register** for public comment a notice of availability of Draft Guide DG–1080 (proposed Revision 3 of Regulatory Guide 1.149) on August 23, 1999 (64 FR 162). The public comment period closed on November 12, 1999. NRC Form 474 and the associated OMB clearance will also be modified to reflect NRC's endorsement of the 1998 revision of the standard upon final issuance of Regulatory Guide 1.149 and final Commission action on changes described in this proposed rule.

Facility licensees would not be required to automatically adopt the new standard. The 1993 revision is still recognized by ANS, and the 1985 revision is considered to be a ''historical'' standard. Simultaneous endorsement of more than one version of the standard is consistent with both the NRC policy of evaluating the latest version of national consensus standards in terms of their suitability for endorsement by regulations or regulatory guides and the established regulatory position regarding simulators, allowing industry to establish recommended and required capabilities and acceptability criteria.

Referenced Documents

Copies of SECY–99–0225, DG–1080 (Proposed Revision 3 to Regulatory Guide 1.149), NRC Form 474, NUREG–1262, NUREG–1258, and NUREG–1021 are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Plain Language

The Presidential memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed the government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editoral changes have been made in this proposed amendment to improve readability of the existing language of the provisions being revised. These types of changes are not discussed further in this document. The NRC requests comment on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Because the rule will reduce existing information collection requirements, the public burden for this information collection is expected to be decreased by 120 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for further reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0138), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by August 2, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

National Technology Transfer and Advancement Act Statement

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise

impractical. Regulatory Guide 1.149 describes an acceptable method by which facility licensees might implement specific parts of this proposed rule and references the 1985, 1993, and 1998, revisions of voluntary standard American National Standards Institute/American Nuclear Society (ANSI/ANS) 3.5, ''Nuclear Power Plant Simulators for Use in Operator Training and Examination.''

Comments are being solicited, particularly with respect to effects of application of ANSI/ANS 3.5–1998 on existing simulator support and operator training programs and perceived compatibility with the proposed regulations. Comments are also being solicited with respect to applicability of earlier versions of ANSI/ANS 3.5 or applicability of standards and guidance other than ANSI/ANS 3.5 for use in training and examination of operators at nuclear power plants.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from the Branch Chief, Operator Licensing, Human Performance and Plant Support Branch, Office Nuclear Reactor Regulation, U.S. Regulatory Commission, at 301–415–3173 or by e-mail at jfc@nrc.gov. The Commission requests public comment on the regulatory analysis. Comments on the analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule; therefore, a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 55.

PART 55—OPERATOR'S LICENSES

1. The authority citation for Part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

2. In § 55.4, the terms ''Performance testing,'' ''Plant-referenced simulator,'' and ''Simulation facility,'' are revised to read as follows:

§ 55.4 Definitions.

* * * * *

Performance testing means validation, scenario-based, or operability testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance.

* * * * *

Plant-referenced simulator means a simulator modeling the systems of the reference plant with which the operator interfaces in the control room, including operating consoles, and which permits use of the reference plant's procedures. A plant-referenced simulator demonstrates expected plant response to operator input, and to normal, transient, and accident conditions to which the simulator has been designed to respond. A plant-referenced simulator is designed and implemented such that it:

(1) Is sufficient in scope and fidelity to allow conduct of the evolutions listed in §§ 55.45(a)(1) through (13), and 55.59(c)(3)(i)(A) through (AA), as applicable to the design of the reference unit, and

(2) Allows for the completion of on-the-job training experience prerequisites for licensed operator applicant eligibility consistent with § 55.45(b)(3)(i).

* * * * *

Simulation facility means one or more of the following components, alone or in combination, used for the partial conduct of operating tests for operators, senior operators, and license applicants, or to establish on-the-job training experience prerequisites for operator license eligibility:

(1) The plant;

(2) A plant-referenced simulator;

(3) A Commission-approved simulator in accordance with § 55.45(b)(2); and

(4) Another simulation device, including part-task and limited scope simulation devices.

* * * * *

3. In § 55.8, paragraphs (c)(3) and (c)(4) are removed and paragraph (b) is revised to read as follows:

§ 55.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 55.11, 55.23, 55.25, 55.27, 55.31, 55.35, 55.40, 55.41, 55.43, 55.45, 55.47, 55.53, 55.57, and 55.59.

* * * * *

4. In § 55.31, paragraph (a)(5) is revised to read as follows:

§ 55.31 How to apply.

(a) * * *

(5) Provide evidence that the applicant, as a trainee, has successfully manipulated the controls of the facility for which a license is sought. At a minimum, five significant control manipulations must be performed that affect reactivity or power level. Evidence of satisfactory performance of control manipulations may be demonstrated on a plant-referenced simulator that meets the requirements of § 55.45(b)(3). Control manipulations performed on the simulator may be chosen from a representative sampling of the control manipulations and plant evolutions described in § 55.59(c)(3)(A–F), (R), (T), (W), and (X) of this part, as applicable to the design of the plant for which the license application is submitted. For licensed operators applying for a senior operator license, certification that the operator has successfully operated the controls of the facility as a licensed operator shall be accepted; and

* * * * *

5. In § 55.45, paragraph (b) is revised to read as follows:

§ 55.45 Operating tests.

* * * * *

(b) *Implementation*— (1) *Administration.* The operating test will be administered in a plant walkthrough and in either—

(i) A simulation facility which the Commission has approved for use after application has been made by the facility licensee; or

(ii) A plant-referenced simulator as defined in § 55.4.

(2) *Commission-approved simulation facilities.* (i) Facility licensees who propose to use a simulation facility in the administration of the operating test in accordance with paragraph (b)(1)(i) of this section, shall submit an application for approval of the simulation facility to the Commission. This application must include:

(A) A description of the components of the simulation facility that are intended to be used for each part of the operating test, unless previously approved;

(B) A description of the performance tests as part of the application, and the results of these tests; and

(C) A description of the procedures for maintaining examination and test integrity consistent with the requirements of § 55.49.

(ii) The Commission will approve a simulation facility if it finds that the simulation facility and its proposed use are suitable for the conduct of operating tests for the facility licensee's reference plant under paragraph (a) of this section.

(3) *Plant-referenced simulators.* (i) Facility licensees which propose to use a plant-referenced simulator to meet the experience requirements in § 55.31(a)(5) must ensure that:

(A) The plant-referenced simulator uses models relating to nuclear and thermal-hydraulic characteristics that replicate the core load that exists in the nuclear power unit for which a license is being sought at the time of the applicant's operating test; and

(B) Simulator fidelity has been demonstrated so that significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence.

(ii) If the Commission determines that a simulation facility consisting solely of a plant-referenced simulator does not meet either the definition of a plant-referenced simulator as defined in § 55.4, or the criteria in § 55.45(b)(4)(A) and (D), the Commission will not accept the plant-referenced simulator for conducting operating tests as described in § 55.45(b)(1) of this part, requalification training as described in § 55.59(c)(3) of this part, or performing control manipulations that affect reactivity to establish eligibility for an operator's license as described in § 55.31(a)(5).

(4) *Continued assurance of simulator fidelity.* Facility licensees that maintain a simulation facility shall:

(A) Conduct performance testing throughout the life of the simulation facility in a manner sufficient to assure that the criteria of paragraphs 55.45(b)(4)(C) and 55.45(b)(3)(i)(B) as applicable, are met. The results of performance tests must be retained for four years after the completion of each performance test or until superseded by updated test results;

(B) Correct scenario validation, performance test, modeling , and hardware discrepancies;

(C) Make available for NRC review, before or concurrent with preparations for each operator licensing operating test or requalification program inspection, results of any uncorrected performance test failures that may exist at the time of the operating test or requalification program inspection; and

(D) Maintain the provisions for examination and test integrity consistent with § 55.49.

* * * * *

6. In § 55.59, paragraph (c)(4)(iv) is revised to read as follows:

§ 55.59 Requalification.

* * * * *

(c) * * *

(4) * * *

(iv) Simulation of emergency or abnormal conditions that may be accomplished by using the control panel of the facility involved or by using a simulator. Where the control panel of the facility is used for simulation, the actions taken or to be taken for the emergency or abnormal condition must be discussed; actual manipulation of the plant controls is not required. If a simulator is used in meeting the requirements of paragraph (c)(4)(iii) of this section, it must accurately reproduce the operating characteristics of the facility involved and the arrangement of the instrumentation and controls of the simulator must closely parallel that of the facility involved. After the provisions of § 55.45(b) have been implemented at a facility, the simulation facility must be used to comply with this paragraph.

* * * * *

Dated at Rockville, Maryland, this 27th day of June, 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–16751 Filed 6–30–00; 8:45 am]

BILLING CODE 7590–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 00N–1351]

Food Labeling; Use of the Term ''Fresh'' for Foods Processed With Alternative Nonthermal Technologies; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss the use of the term ''fresh'' in the labeling of foods processed with alternative nonthermal technologies. The purpose of the meeting is to determine whether the use of the term ''fresh'' is truthful and not misleading on foods processed with these alternative technologies and to determine what type of criteria FDA should use when considering the use of the term with future technologies.

DATES: The public meeting will be held on July 21, 2000, from 8:30 a.m. to 4 p.m. Please preregister by July 14, 2000. Late registrations will be accepted contingent on space availability. Comments must be submitted no later than August 21, 2000.

ADDRESSES: The meeting will be held at the Holiday Inn City Centre, 300 East Ohio St., Chicago, IL, 312–787–6100.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. You may also send comments to the Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov or on the FDA website at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm.

FOR FURTHER INFORMATION CONTACT:

For registration: Kimberly Phillips or Darlene M. Bailey, Office of Public Affairs (HFR–CE645), Food and Drug Administration, 300 South Riverside Plaza, suite 550 South, Chicago, IL 60606, 312–353–7126 or FAX 312–886–3280.

For general information: Geraldine A. June, Center for Food Safety and Nutrition, Food and Drug Administration (HFS–822), 200 C St. SW., Washington, DC 20204, 202–205–4168 or FAX 202–205–5295.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1993 (58 FR 2302 at 2401), FDA published a final rule that established labeling regulations that govern the use of the terms ''fresh,'' ''freshly_____'' (e.g., ''freshly baked'') and ''fresh frozen'' as they appear on the labeling of foods, including the use of these terms in brand names and as sensory modifiers. As discussed in the final rule, we issued this regulation because of the continued misuse of the term ''fresh'' and related terms in the marketplace.

We concluded at that time that it was necessary to establish a definition for ''fresh'' to preclude the type of misuse that we encountered most often, i.e., use of the term to imply that a food is unprocessed, when in fact it has been processed. Thus, provisions in § 101.95 (21 CFR 101.95) govern the use of the term ''fresh'' when used on the labels or in labeling of foods to suggest or imply that the food is unprocessed. Generally, the appearance of the term ''fresh'' on a label or in labeling means that the food in its raw state or finished form has not been frozen or subjected to any form of thermal processing or any other form of preservation. However, we provided that the following treatments do not preclude the food from bearing the term ''fresh'': (1) The addition of approved waxes or coatings, (2) the post-harvest use of approved pesticides, (3) the application of a mild chlorine wash or mild acid wash on produce, or (4) the treatment of raw foods with ionizing radiation not to exceed the maximum dose of 1 kiloGray.

The regulation also notes that use of the term ''fresh'' is not precluded when it does not imply that the food is unprocessed, e.g., ''fresh'' may be used to describe pasteurized whole milk because consumers understand that almost all milk is pasteurized and, therefore, there is no misleading implication.

Recently, manufacturers have developed new alternative food processing technologies to control pathogens in foods while minimizing the thermal component of the process. Such processes include, but are not limited to, high pressure processing, pulsed electric field, pulsed light, submerged arc, and filtration.

FDA contracted with the Institute of Food Technologists (IFT) to review and evaluate the scientific information available on these new alternative technologies and to assist us in evaluating each technology's effectiveness in reducing and inactivating pathogens of public health concern. Where information on these technologies was too limited for a thorough evaluation and conclusion, IFT identified research needs. The final report of this work, entitled ''Kinetics of Microbial Inactivation for Alternative Food Processing Technologies'' (Ref. 1), is available on FDA's website at www.cfsan.fda.gov.

Manufacturers using these processes contend that their products maintain the same ''fresh'' characteristics as unprocessed products. Thus, these manufacturers have asked FDA if they may label these products with the term ''fresh.'' We are interested in obtaining the views of interested parties on the use of the term ''fresh'' for foods processed with these technologies. Thus, we have decided to hold a public meeting to engage interested parties in discussion on this issue. We will use information gathered at this meeting, as well as other information available to FDA, in considering whether to initiate rulemaking to amend § 101.95.

In this notice, we are announcing a public meeting to discuss the use of the term ''fresh'' in the labeling of foods processed with the alternative technologies. We are soliciting public comment on whether the use of the term ''fresh'' is truthful and not misleading on foods processed with these alternative technologies and on what type of criteria FDA should use when considering the use of the term with future technologies. Specifically, we invite comment on the following questions:

1. Do consumers associate the term ''fresh'' with organoleptic characteristics, nutritional characteristics, or some other characteristics?

2. Do consumers want a way to identify foods that taste and look fresh but have been processed to control pathogens?

3. What does industry think the term ''fresh'' means?

4. Is the term ''fresh'' when applied to foods processed with the new technologies misleading to consumers?

5. Do the new technologies preserve the foods?

6. Are the new technologies truly nonthermal?

7. Are there quantifiable parameters, e.g., level of nutrients, vitamins etc., that could be measured to determine if a food is ''fresh?''

8. Is there a term other than ''fresh'' that can be used for foods processed with the new technologies?

9. Would consumers understand a new term?

10. What is the economic impact of allowing use of the term ''fresh'' for foods processed with the new technologies?

11. Would allowing the term ''fresh'' on foods processed with new technologies place small firms not able to use these technologies at an economic disadvantage?

At the public meeting, we will be addressing whether the use of alternative processing technologies should preclude the use of the term ''fresh.'' Therefore, the public meeting will be restricted to the discussion of whether these processes fit the criteria for the use of the term ''fresh'' and not whether other aspects of the provisions in § 101.95 should be reopened.

II. Registration and Requests to Make Oral Presentations

If you would like to attend the meeting, you must preregister in writing with the contact person for registration (address above) by July 14, 2000, by providing your name, title, business affiliation, address, telephone and fax number. Preregistered persons should check in before the meeting between 8 a.m. and 8:30 a.m. Persons who have not preregistered may register before the meeting between 8 a.m. and 8:30 a.m., dependent on space availability. To expedite processing, this registration information also may be sent to the contact person by FAX to 312–886–3280. If you need special accommodations due to disability (e.g., sign language interpreter), please inform the contact person when you register.

If, in addition to attending, you wish to make an oral presentation during the meeting, you must so inform the contact person and submit: (1) A brief written statement of the general nature of the views you wish to present and (2) the names and addresses of the persons who will give the presentation. Depending on the number of people who register to make presentations, we will limit the time allotted for each presentation. We anticipate that, if time permits, those attending the meeting will have the opportunity to ask questions during the meeting.

III. Comments

Interested persons may, on or before August 21, 2000, submit written comments to the Dockets Management Branch (address above). You may also

send comments to the Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov or to the FDA website at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm. Please address your comments to the docket number given at the beginning of this notice. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m. Monday through Friday.

IV. Transcripts

You may request a transcript of the meeting from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. You may also examine the transcript of the meeting after August 11, 2000, at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA website at http://www.fda.gov.

V. Reference

We have placed the following reference on display in the Dockets Management Branch. You may see it at that office between 9 a.m. and 4 p.m., Monday through Friday.

1. Institute of Food Technologists, ''Kinetics of Microbial Inactivation for Alternative Food Processing Technologies,'' A report of the Institute of Food Technologists for the Food and Drug Administration of the United States Department of Health and Human Services, June 2, 2000.

REGISTRATION FORM

Public Meeting on Use of the Term ''Fresh'' on Foods Processed with Alternative Nonthermal Technologies

Instructions: To register, complete this form and mail it to the address of the contact person(s) for registration or fax it to 312–886–3280 by July 14, 2000.

Name, _____
Title, _____
Company, _____
Address, _____
Telephone, _____
Fax, _____
E-mail, _____
Please indicate the type of organization that you represent:
Industry ____
Government ____
Consumer Organization ____
Media ____
Law Firm ____
Educational Organization ____
Other (specify) ____

Do you wish to make an oral presentation?
Yes____
No ____
If yes, you must also submit the following:
1. A brief statement of the general nature of the views you wish to present,
2. The names and addresses of all persons who will participate in the presentation, and depending on the number of people who register to make presentations, we will limit the time allotted for each presentation.

Dated: June 27, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–16716 Filed 6–28–00; 1:38 pm]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6728–2]

Announcement of Stakeholders Meeting on Arsenic in Drinking Water Proposed Rule

AGENCY: . Environmental Protection Agency.

ACTION: Notice of stakeholders meeting.

SUMMARY: The Environmental Protection Agency (EPA) will be holding a one-day Stakeholders meeting on August 9, 2000 in Reno, Nevada. The purpose of this meeting is to present information and to answer questions on the proposed rule. EPA is encouraging people to attend from State and Tribal drinking water programs, the regulated community (water systems), public health organizations, academia, environmental and public interest groups, engineering firms, and other interested stakeholders.

DATES: The stakeholder meeting on arsenic in drinking water will be held on Wednesday, August 9, 2000 from 8 a.m. to 12 pm and 1 p.m. to 5 p.m. PDT.

ADDRESSES: The meeting will be held at the Reno Hilton [(800) 648–5080], which is located at 2500 E. Second Street, Reno, NV 89595.

To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791 between 9 am and 5:30 p.m. EST. Those registered for the meeting by Friday, July 28, 2000 will receive an agenda, logistics sheet, and a copy of the **Federal Register** notice prior to the meeting. There will be a limited number of conference lines available. These lines will be allocated on a first-reserved, first served basis. Members of the public who cannot attend the meeting in person should register with the Safe Drinking Water Hotline by July 28 to receive copies of the overheads in advance. Please provide your name, organization, title, mailing address, telephone number, facsimile number, e-mail address and telephone number for EPA to connect the caller via conference call [if applicable] for the ''Arsenic Meeting.''

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to the proposed arsenic rule, contact the Safe Drinking Water Hotline at 1–800–426–4791, or visit the EPA Office of Ground Water and Drinking Water arsenic webpage at *http://www.epa.gov/OGWDW/ars/arsenic.html*, which contains electronic copies of two fact sheets, the proposed rule, and the discussion papers and executive meeting summaries from previous stakeholders meetings. Registrants must make their own room reservations for the Reno Hilton by July 7, 2000 by calling (800) 648–5080 and mention ''EPA Arsenic in Drinking Water Meeting'' to guarantee the room rate of $55 plus tax.

SUPPLEMENTARY INFORMATION:

A. Background

Arsenic (As) is a naturally occurring element found in the human body and is present in food, water, and air. Arsenic in drinking water occurs in ground water and surface water and is associated with certain natural geologic conditions, as well as with contamination from human activities. Arsenic ingestion is linked to skin cancer and arsenic inhalation to lung cancer. In addition, arsenic ingestion seems to be associated with vascular effects, gastrointestinal irritation, and cancers of the kidney, bladder, liver, lung, and other organs. Water primarily contains inorganic arsenic species (As^{V+} and As^{III+}).

On August 6, 1996, Congress amended the SDWA, adding section 1412(b)(12)(A) which requires, in part, that EPA propose a NPDWR for arsenic by January 1, 2000 and issue a final regulation by January 1, 2001. The current maximum contaminant level (MCL) of 50 μg/L remains in effect until the effective date of the revised rule.

The National Primary Drinking Water regulation for arsenic proposes a Maximum Contaminant Level Goal (MCLG) of zero, an MCL of 5 μg/L, and lists best available technologies and small system compliance technologies. In addition, the proposed rule,

published June 22, 2000 (65 FR 38888) requests comments on MCLs of 3 μg/L, 10 μg/L, and 20 μg/L. EPA is proposing to withdraw two analytical methods, keeping the rest of the approved test methods for arsenic intact. The regulation will be effective for community water systems (CWSs) serving over 10,000 people three years after the final rule is issued, and effective five years after promulgation for CWSs serving under 10,000 people. In addition, EPA is proposing that non-transient, non-community water systems (NTNCWS) monitor and report arsenic that exceeds the new MCL, but not requiring compliance for NTNCWS with the MCL.

Furthermore, the proposal clarifies compliance for State-determined monitoring after exceedances for inorganic, volatile organic, and synthetic organic contaminants. Finally, EPA is proposing that States will specify the time period and sampling frequency for new public water systems and systems using a new source of water to demonstrate compliance for inorganic, volatile organic, and synthetic organic MCLs.

In conducting research and developing the proposed rule for arsenic in drinking water, EPA has consulted with the National Academy of Sciences, other Federal agencies, and other interested public and private parties.

The stakeholders meeting will cover a broad range of issues including: (1) Regulatory process, including risk management decisions; (2) arsenic risk assessment (exposure, health assessment, national occurrence); (3) key technical assessments (treatment technologies, treatment residuals, cost, analytical methods); (4) small system concerns; and (5) future stakeholder involvement.

EPA has announced this public meeting to discuss the proposed rule prior to the close of the public comment period. The meeting is not the forum for giving the Agency public comment on the rule. The public comment period ends on September 20, 2000, and you may send written comments to the W–99–16 Arsenic Comments Clerk, Water Docket (MC–4101), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Comments may be hand delivered to the Water Docket, located at U.S. EPA EB–57, 401 M St. SW, Washington, DC between 9 am. and 3:30 pm., Monday through Friday. Comments may be submitted electronically to *ow-docket@epamail.epa.gov.* Please submit an original and three copies of your comments and enclosures (including references) to the Water Docket at the address given above. For further information about submitting comments, please contact the Safe Drinking Water Hotline at 1-800–426–4791.

Dated: June 26, 2000.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water, Environmental Protection Agency.

[FR Doc. 00–16754 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 87

[WT Docket No. 00–77; RM Nos. 9376, 9462; FCC 00–160]

Advanced Digital Communications in the 117.975–137 MHz Band and Implementation of Flight Information Services in the 136–137 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission seeks comment on proposals regarding the use of the 136–137 MHz frequency band by the Aviation Services and certain modifications to parts 2 and 87 of the Commission's rules in response to two Petitions for Rulemaking filed by the Federal Aviation Administration and the Small Aircraft Manufacturers Association. In response to the Petitions and comments received, the Commission has released a Notice of Proposed Rulemaking (NPRM) in which the Commission proposes to: modify the footnote allocation of the Commission's rules to permit the FAA to use twenty channels in the 136–136.475 MHz band on a shared basis with non-Federal Government users for Air Traffic Control purposes, including Flight Information Services; revise certain technical rules in part 87 for the 117.975–137 MHz band to accommodate digital communications systems; and modify those rules pertaining to special purpose enroute services in the Gulf of Mexico.

DATES: Comments are due August 2, 2000. Reply comments are due August 2, 2000.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW., TW–325, Washington, DC 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, and Roberto Mussenden, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, SW., Room 3–A424, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden (rmussend@fcc.gov) or Ghassan Khalek (gkhalek@fcc.gov) at the Public Safety and Private Wireless Division, Policy and Rules Branch, (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WT Docket No. 00–77, FCC No. 00–160, released on May 15, 2000, as amended by *Errata* released on June 5, 2000. The full text of the NPRM is available for inspection and copying during normal business hours in the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 4–C207, Washington, DC 20554. The complete text of this NPRM may also be purchased from the Commission's duplicating contractor, International Transcription Services, 1231 20th Street, NW., Washington, DC 20036, 202–857–3800. Alternative formats (computer diskette, large print, audiocassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov.

Currently, the 136–137 MHz band is allocated to the non-Federal Government aeronautical mobile (R) service on a primary basis. This one megahertz of spectrum is used by the civil aviation community, in particular ARINC, for AOC communications, and pursuant to footnote US244, by the FAA for general aviation ATC purposes. SAMA, in its Petition, requests the FCC to set aside four channels in the 136–137 MHz band for FIS to support general aviation. The FAA, in its Revised Petition, supports this request but also seeks a reallocation of approximately half of the band (136–136.475 MHz) to accommodate a new, digital communications system. While generally supporting both requests, it appears that the aviation community challenges the amount of spectrum needed and the manner in which it is allocated. The aviation community counsels caution when evaluating the petitions and stresses the need to balance future Federal Government services against the existing and planned improvements in non-Federal Government data communications services. All parties also request that 47

CFR part 87 be amended to permit digital communications for general aviation.

The Commission proposes to amend 47 CFR 2.106, footnote US244 to extend the FAA's access from fifteen to twenty channels within the 136–136.475 MHz band on a shared basis with non-Federal Government users. Specifically, the Commission proposes to add channels 136.100 MHz, 136.200 MHz, 136.275 MHz, 136.375 MHz, and 136.475 MHz to the list of FAA's shared channels. As requested by SAMA and supported by the FAA and industry, the Commission further proposes to accommodate FIS in the 136–137 MHz band. SAMA contends that locating the FIS within in the 136–137 MHz band is most appropriate. It notes that frequencies in the 136–137 MHz band are not currently being used because very few general aviation aircraft have voice radios that can tune to this band. NATA, NBAA, and ARINC/ATA all support authorization of FIS within the 136–137 MHz band. According to SAMA, most general aviation aircraft have 720-channel transceivers that tune up to 136 MHz; only the newest radios are 760-channel transceivers that also tune to the forty channels in the 136–137 MHz band. SAMA maintains that aircraft desiring to receive FIS broadcasts could purchase an FIS receiver that tunes to these frequencies only. Finally, SAMA avers that avionics manufacturers have already introduced low-cost radio receivers for FIS broadcasts for the general aviation market in anticipation of the FAA's initiation of this service. Consequently, the Commission proposes to add the FIS designation to footnote US244; however, it tentatively concludes that specifying four channels for FIS in US244 is unnecessary and could curtail flexibility.

To foster improved spectrum efficiencies, the Commission also proposes to amend various service and technical rules pertaining to the aviation services, 47 CFR part 87. The specific rule provisions proposed for amendment are: (1) 47 CFR 87.131 (Power and emissions); (2) 47 CFR 87.133 (Frequency stability); (3) 47 CFR 87.137 (Types of mission); (4) 47 CFR 87.139 (Emission limitations); (5) 47 CFR 87.173 (Frequencies) [General List]; (6) 47 CFR 87.187 (Frequencies) [Aircraft Stations]; and (7) 47 CFR 87.263 (Frequencies) [Aeronautical Enroute and Aeronautical Fixed Stations]. The Commission believes that these changes would serve to promote the transition from analog voice communications to digital voice and data transmissions.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (''RFA''), the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this NPRM provided. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). *See* 5 U.S.C. 603(a).

I. Need for and Objectives of the Proposed Rules

Increased spectrum congestion within the 117.975–136 MHz band, due to increasing air traffic control communications requirements, which cause frequency assignments in this band to grow about four percent annually, compels the transition to digital communications technology. Further pressuring our aviation communications spectrum capacity is the explosive growth in data communications within the civil aviation communications spectrum band. This, combined with the FAA's role in administering the civil aviation communications spectrum, along with the public safety issues inherent with aviation communications, provides justification for our proposals in this NPRM. The objective is to develop aviation communications spectrum policies for the civil aviation community while providing the FAA with the latitude it needs to meet its statutory requirements. Our proposals are aimed at being as least intrusive on the private sector as feasible, while achieving our public interest objectives.

II. Legal Basis

The proposed action is authorized by sections 4(i), 303(r), and 332(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r) and 332(a)(2).

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions, or entities. 5 U.S.C. 601(6). The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the [SBA], and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register.**''

The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in § 22.99 of the Commission's rules. 47 CFR 22.99. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as ''small businesses'' or ''small entities'' under the SBA definition.

IV. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Current licensees are subject to minimal reporting, recordkeeping, and compliance requirements, *e.g.,* retaining a copy of their license, filing for renewal of their license after a period of years. Equipment manufacturers are required to certify that their products comply with the performance standards established by the Commission. No new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the actions proposed in this rulemaking proceeding.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or

simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The first two and the fourth alternatives are not relevant at this stage of the proceeding, whereby the Commission would permit additional use of existing Aviation Radio Service frequencies and the establishment of a new service. The third alternative is reflected in the NPRM in that the Commission has not specified the design standards for any potential radio apparatus but has limited its proposal to technical, performance standards for the use of the frequencies at issue. We seek comment on the impact on small entities of the proposals in the NPRM.

Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules: None.

VI. Paperwork Reduction Analysis

This NPRM contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this NPRM as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. These comments should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW., Washington, D.C. 20554, or via the Internet to <jboley@fcc.gov>. Furthermore, a copy of any such comments should be submitted to Virginia Huth, OMB Desk Officer, 725 17th Street, NW., Room 10236 NEOB, Washington, DC 20503, or via the Internet to <vhuth@omb.eop.gov>.

List of Subjects in 47 CFR Parts 2 and 87

Communications equipment, Radio, Air Transportation.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–16679 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[GEN Docket No. 90–314; ET Docket No. 92–100; PP Docket No. 93–253; DA 00–1421]

Narrowband Personal Communications Services; Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making; extension of comment period.

SUMMARY: In this document, the Commission grants in part a motion for extension of time to file comments and reply comments in the narrowband PCS proceeding. The motion was filed by the Personal Communications Industry Association (PCIA). A brief extension of time is warranted in order to give PCIA and its members adequate time to develop a consensus position and thus facilitate the compilation of a more complete record on the issues raised. The new deadlines for filing comments and reply comments will be July 19, 2000, and August 3, 2000, respectively.

DATES: Comments are due on or before July 19, 2000, and reply comments are due on or before August 3, 2000.

ADDRESSES: Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. *See* the ''Supplementary Information'' section for additional information about paper and electronic filing.

FOR FURTHER INFORMATION CONTACT: Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in GEN Docket No. 90–314, ET Docket No. 92–100, and PP Docket No. 93–253, DA 00–1421, adopted and released on June 26, 2000. The complete text of the Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW, Room CY–A257, Washington, DC 20554, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. The Order is also available via the Internet at

http://www.fcc.gov/Bureaus/Wireless/Orders/2000/index.html.

1. On May 18, 2000, the Commission released a *Second Report and Order and Second Further Notice of Proposed Rule Making,* GEN Docket No. 90–314, ET Docket No. 92–100, PP Docket No. 93–253, FCC 00–159, 65 FR 35875 (June 6, 2000). Comments on the *Second Further Notice of Proposed Rule Making* were due on or before July 5, 2000, and reply comments were due on or before July 20, 2000.

2. On June 19, 2000, the Personal Communications Industry Association (PCIA) filed a ''Motion of the Personal Communications Industry Association for Extension of Time,'' requesting that the Commission extend these deadlines for filing comments and reply comments by thirty days. Thus, PCIA requested that the deadlines be extended to August 4, 2000, and August 21, 2000, respectively. According to PCIA, additional time is needed to permit PCIA and its members to explore fully channelization options and other issues raised in the *Second Further Notice of Proposed Rule Making* and to develop a consensus position. PCIA urges that a brief delay of the rulemaking process would be more than compensated for by the advantage of a more complete record and the development of a consensus position on behalf of a significant portion of the messaging industry.

3. The Commission does not routinely grant extensions of time. Upon review, however, the Division agrees that a brief extension of time is warranted in order to give PCIA and its members adequate time to develop a consensus position and thus facilitate the compilation of a more complete record in this proceeding. However, the Division is not persuaded that a thirty-day extension is necessary and is concerned that such an extension could delay the Commission's consideration of the issues raised in the *Second Further Notice of Proposed Rule Making.* The current deadlines for filing comments and reply comments in this proceeding will therefore be extended by two weeks.

4. Accordingly, it is ordered that the Motion of the Personal Communications Industry Association for Extension of Time filed on June 19, 2000, is granted in part. Interested parties may file comments on or before July 19, 2000,

and reply comments on or before August 3, 2000.

5. Filing procedures. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments in accordance with the schedule listed in the ''Dates'' section. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

6. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (Form-ET) at

http://www.fcc.gov/efile/email.html.

7. Parties who choose to file by paper must file an original and four copies of each filing. If interested parties want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. One copy should also be sent to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036. In addition, a courtesy copy should be delivered to Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

8. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to Alice Elder, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including GEN Docket No. 90–314, ET Docket No. 92–100, PP Docket No. 93–253), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036.

9. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, 445 12th Street, SW, Washington, DC 20554.

10. This action is taken pursuant to the authority provided in 47 CFR 1.46 and under delegated authority pursuant to 47 CFR 0.131, 0.331.

Federal Communications Commission.

Margaret Wiener,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 00–16814 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1411, MM Docket No. 00–116, RM–9877]

Digital Television Broadcast Service; Kansas City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KMBC Hearst-Argyle Television, Inc. licensee of station KMBC(TV), NTSC Channel 9, Kansas City, Missouri, requesting the substitution of DTV Channel 7 for DTV Channel 14. DTV Channel 7 can be allotted to Kansas City, Missouri, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (39–05–01 N. and 94–30–57 W.). As requested, we propose to allot DTV Channel 7 to Kansas City with a power of 115 and a height above average terrain (HAAT) of 357 meters.

DATES: Comments must be filed on or before August 21, 2000, and reply comments on or before September 5, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Brooks, Pierce, McLendon, Humphrey & Leonard, Post Office Box 1800, Raleigh, North Carolina 27602 (Counsel for KMBC Hearst-Argyle Television, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–116, adopted June 23, 2000, and released June 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–16686 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1409, MM Docket No. 00–114, RM–9744]

Digital Television Broadcast Service; Great Fall, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by KFBB Corporation, L.L.C., licensee of station KFBB–TV, NTSC Channel 5, Great Falls, Montana, requesting the substitution of DTV Channel 8 for its assigned DTV Channel 39. DTV Channel 8 can be substituted and allotted to Great Falls, Montana, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (47–32–08 N. and 111–17–02 W). However, since the community of Great Falls is located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government must be obtained for this allotment. DTV Channel 8 can be allotted to Great Falls with a power of 160 (kW) and a height above average terrain (HAAT) of 180 meters.

DATES: Comments must be filed on or before August 21, 2000, and reply comments on or before September 5, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Kenneth C. Howard, Jr., Baker & Hostetler, 1050 Connecticut Avenue, NW, Suite 1100, Washington, DC 20036–5304 (Counsel for KFBB Corporation, L.L.C.)

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–114, adopted June 23, 2000, and released June 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–16685 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA–1410, MM Docket No. 00–115, RM–9884]

Digital Television Broadcast Service; Redding, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by California Broadcasting, Inc., licensee of Station KRCR–TV, NTSC Channel 7, Redding, California, requesting the substitution of DTV Channel 34 for its assigned DTV Channel 14. DTV Channel can be allotted to Redding, California, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (40–36–10 N and 122–39–00 W). As requested, we propose to allot DTV Channel 34 to Redding with a power of 1106 and a height above average terrain (HAAT) of 1106 meters.

DATES: Comments must be filed on or before August 21, 2000, and reply comments on or before September 5, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur B. Goodkind, Koteen & Naftalin, L.L.P., 1150 Connecticut Avenue, Washington, DC 20036–4104 (Counsel for California Broadcasting, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–115, adopted June 23, 2000, and released June 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–16684 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–1301, MM Docket No. 00–109, RM–9899]

Radio Broadcasting Services; Ravenwood, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on by Clyde John Holdsworth Ronald G. Filbeck d/b/a R.C. Broadcasting Company requesting the allotment of Channel 291A at Ravenwood, Missouri, as the community's first FM broadcast service. The coordinates for Channel 291A at

Ravenwood are 40–21–09 and 94–40–16.

DATES: Comments must be filed on or before August 4, 2000, and reply comments on or before August 21, 2000.

ADDDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Clyde John Holdsworth and Ronald G. Filbeck d/b/a R.C. Broadcasting Co., 9118 N.W. 198th Street, Trimble, Missouri 64492.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–109, adopted May 31, 2000 and released June 13, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16687 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–1260; MM Docket No. 00–107; RM–9891]

Radio Broadcasting Services; Florence and Comobabi, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Desert West Air Ranchers Corporation, licensee of FM Station KCDX, Channel 276C1, Florence, Arizona, requesting the substitution on Channel 276C for Channel 276C1 and modification of its authorization accordingly. Additionally, to accommodate the request, petitioner seeks the deletion of vacant reserved Channel *275A at Comobabi, Arizona, or its replacement with Channel *289A. Coordinates used for Channel 276C at Florence, Arizona, are 32–48–45 NL and 110–57–30 WL; coordinates used for Channel *289A at Comobabi, Arizona are 32–03–29 NL and 111–47–58 WL. As Florence and Comobabi are each located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the requested use of Channel 276C at Florence and Channel *289A at Comobabi, as specially negotiated restricted allotments is required.

DATES: Comments must be filed on or before July 31, 2000, and reply comments on or before August 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, Esq., Shook, Hardy & Bacon, 600 14th Street, NW., Suite 800, Washington, DC 20005–2004.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–107, adopted May 31, 2000, and released June 9, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–16683 Filed 6–30–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 2000–D017]

Defense Federal Acquisition Regulation Supplement; Polyacrylonitrile Carbon Fiber

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to phase out restrictions on the acquisition of polyacrylonitrile (PAN) carbon fiber from foreign sources. The restrictions will be phased out over a five-year period to minimize short-term risks to DoD and current domestic suppliers.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 1, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 2000–D017 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 2000–D017 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes revisions to DFARS 225.7103–1 and 225.7103–3 to phase out restrictions on the acquisition

of PAN carbon fiber from foreign sources. DoD conducted a review of the administratively imposed restrictions, evaluating DoD applications for PAN carbon fiber, key domestic and foreign suppliers, supply and demand market information, potential impacts on DoD and key suppliers, and potential national security issues. As a result, DoD is proposing to phase out the restrictions over the five-year period ending May 31, 2005. The phased elimination will minimize short-term risks to both DoD and current domestic suppliers and will allow for a gradual introduction of competition that will encourage innovation and emphasize affordability. This action is consistent with DoD's interest in promoting vigorous competition in defense markets while ensuring that industrial capabilities essential to national defense are preserved.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to 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.*, because there are no known domestic small business manufacturers of PAN carbon fiber. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D017.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Part 225 as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7103–1 is revised to read as follows:

§ 225.7103–1 Policy.

DoD has imposed restrictions on the acquisition of PAN carbon fiber from foreign sources. DoD is phasing out the restrictions over the five-year period ending May 31, 2005. Contractors with contracts that contain the clause at 252.225–7022 must use U.S. or Canadian manufacturers or producers for all PAN carbon fiber requirements.

3. Section 225.7103–3 is revised to read as follows:

§ 225.7103–3 Contract clause.

Use the clause at 252.225–7022, Restriction on Acquisition of Polyacrylonitrile (PAN) Carbon Fiber, in solicitations and contracts for major systems as follows:

(a) In solicitations and contracts issued on or before May 31, 2003, if—

(1) The system is not yet in production (milestone III as defined in DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs (MDAPS) and Major Automated Information System (MAIS) Acquisition Programs); or

(2) The clause was used in prior program contracts.

(b) In solicitations and contracts issued during the period beginning June 1, 2003, and ending May 31, 2005, if the system is not yet in engineering and manufacturing development (milestone II as defined in DoD 5000.2–R).

[FR Doc. 00–16639 Filed 6–30–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 242 and 252

[DFARS Case 2000–D003]

Defense Federal Acquisition Regulation Supplement; Material Management and Accounting Systems

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise the criteria for determining when review of a contractor's material management and accounting system (MMAS) is needed. The rule also replaces the current requirement for an MMAS ''demonstration'' with a requirement for the contractor to provide adequate evidence that it has conducted internal audits to ensure compliance with its MMAS policies, procedures, and operating instructions.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 1, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Mr. Rick Layser, OUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to dfars@acq.osd.mil

Please cite DFARS Case 2000–D003 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 2000–D003 in the subject line.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, (703) 602–0293.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule makes the following changes to the DFARS:

1. Revises the prescription for use of the clause at 252.242–7004, Material Management and Accounting System.

a. The DFARS presently requires inclusion of the clause in fixed-price contracts with progress payments or other Government financing, regardless of whether the financing provisions are based on cost. The proposed rule requires inclusion of the clause in only those fixed-price contracts that contain progress payments based on cost or other financing provisions based on cost.

b. The DFARS presently exempts small businesses, educational institutions, and nonprofit organizations from the major MMAS requirements of disclosure, demonstration, and maintenance, but still requires inclusion of the clause in contracts with these entities. The proposed rule eliminates the requirement for inclusion of the clause in contracts with small businesses, educational institutions, and nonprofit organizations.

2. Revises the clause at 252.242–7004 to replace the requirement for an MMAS ''demonstration'' with a requirement for the contractor to have policies, procedures, and operating instructions that adequately describe its MMAS, and to provide adequate evidence that it has conducted internal audits to ensure compliance with its MMAS policies, procedures, and operating instructions.

The requirement for a demonstration has caused significant confusion, because the DFARS does not define the term or describe what constitutes an adequate demonstration. The proposed rule revises the MMAS requirements to be consistent with the documentation and testing requirements of other system reviews such as accounting and purchasing. The Government does not require demonstrations of these systems, but instead performs risk-based reviews that focus on contractor practices and the implementation of those practices, including testing the system when and where necessary. This revision does not eliminate the requirement for contractor compliance with the ten MMAS standards or alter the level of audit access to which the Government is entitled.

3. Makes the dollar threshold for conducting an MMAS review consistent with the threshold for conducting a Contractor Insurance/Pension Review at DFARS Subpart 242.73. The DFARS presently requires an MMAS review every 3 years for contractors that receive total annual DoD awards in excess of $70 million, unless the administrative contracting officer (ACO) specifies otherwise. The proposed rule eliminates the requirement for an MMAS review every 3 years; raises the minimum dollar threshold for MMAS review from $30 million to $40 million; requires the ACO to make a case-by-case determination of the need for an MMAS review; and revises the basis for the dollar threshold, replacing ''prior year DoD contract and subcontract awards'' with the definition of ''qualifying sales'' from DFARS Subpart 242.73.

4. Clarifies the responsibilities of the ACO and the MMAS team members.

This rule was not subject to Office of Management and Budget review under executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to 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.,* because the DFARS already exempts small business concerns from the major MMAS requirements. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D003.

C. Paperwork Reduction Act

The proposed rule will eliminate the requirement for contractors to demonstrate their material management and accounting systems, and will reduce the number of contractors that must disclose their systems to the Government. Therefore, this rule will reduce the paperwork burden hours approved under Office of Management and Budget Control Number 0704–0250.

List of Subjects in 48 CFR Parts 242 and 252

Government procurement.

Michele P. Peterson,

Executive Editor,

Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 242 and 252 as follows:

1. The authority citation for 48 CFR Parts 242 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Subpart 242.72 is revised to read as follows;

Subpart 242.72—Contractor Material Management and Accounting System

Sec.

242.7200 Scope of subpart.
242.7201 Definitions.
242.7202 Policy.
242.7203 Review procedures.
242.7204 Contract clause.

242.7200 Scope of subpart.

(a) This subpart provides policies, procedures, and standards for use in the evaluation of a contractor's material management and accounting system (MMAS).

(b) The policies, procedures, and standards in this subpart—

(1) Apply only when the contractor has contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and are either—

(i) Cost-reimbursement contracts; or

(ii) Fixed-price contracts with progress payments based on cost or other financing provisions based on cost; and

(2) Do not apply to small businesses, educational institutions, or nonprofit organizations.

242.7201 Definitions.

Material management and accounting system and *valid time-phased requirements* are defined in the clause at 252.242–7004, Material Management and Accounting System.

242.7202 Policy.

DoD policy is for its contractors to have an MMAS that conforms to the standards in paragraph (e) of the clause at 252.242–7004, so that the system—

(a) Reasonably forecasts material requirements;

(b) Ensures the costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(c) Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

242.7203 Review procedures.

(a) *Criteria for conducting reviews.* Conduct an MMAS review when—

(1) A contractor has $40 million of qualifying sales to the Government during the contractor's preceding fiscal year; and

(2) The administrative contracting officer (ACO), with advice from the auditor, determines an MMAS review is needed based on a risk assessment of the contractor's past experience and current vulnerability.

(b) *Qualifying sales.* Qualifying sales are sales for which cost or pricing data were required under 10 U.S.C. 2306a, as implemented in FAR 15.403, or that are contracts priced on other than a firm-fixed-price or fixed-price with economic price adjustment basis. Sales include prime contracts, subcontracts, and modifications to such contracts and subcontracts.

(c) *System evaluation.* Cognizant contract administration and audit activities must jointly establish and manage programs for evaluating the MMAS systems of contractors and must annually establish a schedule of contractors to be reviewed. In addition, they must—

(1) Conduct reviews as a team effort.

(i) The ACO—

(A) Appoints a team leader; and

(B) Ensures that the team includes appropriate functional specialists (*e.g.,* industrial specialist, engineer, property administrator, auditor).

(ii) The team leader—

(A) Advises the ACO and the contractor of findings during the review and at the exit conference.

(B) Makes every effort to resolve differences regarding questions of fact during the review.

(iii) The contractor auditor—

(A) Participates as a member of the MMAS team or serves as the team leader (see paragraph (c)(1)(i) of this section); and

(B) Issues an audit report for incorporation into the MMAS report based on an analysis of the contractor's books, accounting records, and other related data.

(2) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(3) Prepare the MMAS report.

(d) *Disposition of evaluation team findings.* The team leader must document the evaluation team findings and recommendations in the MMAS report to the ACO. If there are any significant MMAS deficiencies, the report must provide an estimate of the adverse impact on the Government resulting from those deficiencies.

(1) *Initial notification to the contractor.* The ACO must provide a copy of the report to the contractor immediately upon receipt from the team leader.

(i) The ACO must notify the contractor in a timely manner if there are no deficiencies.

(ii) If there are any deficiencies, the ACO must request the contractor to provide a written response within 30 days (or such other date as may be mutually agreed to by the ACO and the contractor) from the date of initial notification.

(iii) If the contractor agrees with the report, the contractor has 60 days (or such other date as may be mutually agreed to by the ACO and the contractor) to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(iv) If the contractor disagrees with the report, the contractor must provide rationale in the written response.

(2) *Evaluation of the contractor's response.* The ACO, in consultation with the auditor, evaluates the contractor's response and determines whether—

(i) The MMAS contains any deficiencies and, if so, any corrective action is needed;

(ii) The deficiencies are significant enough to result in the reduction of progress payments or disallowance of costs on vouchers; and

(iii) Proposed corrective actions (if the contractor submitted them) are adequate to correct the deficiencies.

(3) *Notification of ACO determination.*

(i) The ACO must notify the contractor in writing (copy to auditor and functional specialists) of—

(A) Any deficiencies and the necessary corrective action;

(B) Acceptability of the contractor's corrective action plan (if one was submitted) or the need for a corrective action plan; and

(C) Any decision to reduce progress payments or disallow costs on vouchers.

(ii) The Government does not approve or disapprove the contractor's MMAS. ACO notifications should avoid any such implications.

(iii) From the time the ACO determines that there are any significant MMAS deficiencies until the time the deficiencies are corrected, all field pricing reports for that contractor must contain a recommendation relating to proposed adjustments necessary to protect the Government's interests.

(iv) The ACO should consider the effect of any significant MMAS deficiencies in reviews of the contractor's estimating system (see 215.407–5).

(4) *Reductions or disallowances.*

(i) When the ACO determines the MMAS deficiencies have a material impact on Government contract costs, the ACO must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503–6) and/or disallow costs on vouchers (in accordance with FAR 42.803). The reductions or disallowances must remain in effect until the ACO determines that—

(A) The deficiencies are corrected; or

(B) The amount of the impact is immaterial.

(ii) The maximum payment adjustment is the adverse material impact to the Government as specified in the MMAS report. The ACO should use the maximum adjustment when the contractor did not submit a corrective action plan with its response, or when the plan is unacceptable. In other cases, the ACO should consider the quality of the contractor's corrective action plan in determining the appropriate percentage.

(iii) As the contractor implements its accepted corrective action plan, the ACO should reinstate a portion of withheld amounts commensurate with the contractor's progress in making corrections. However, the ACO must not fully reinstate withheld amounts until the contractor corrects the deficiencies, or until the impact of the deficiencies become immaterial.

(5) *Monitoring contractor's corrective action.* The ACO and the auditor must monitor the contractor's progress in correcting deficiencies. When the ACO determines the deficiencies have been corrected, the ACO must notify the contractor in writing. If the contractor fails to make adequate progress, the ACO must take further action. The ACO may—

(i) Elevate the issue to higher level management;

(ii) Further reduce progress payments and/or disallow costs on vouchers;

(iii) Notify the contractor of the inadequacy of the contractor's cost estimating system and/or cost accounting system; and

(iv) Issue cautions to contracting activities regarding the award of future contracts.

242.7204 Contract clause.

Use the clause at 252.242–7004, Material Management and Accounting System, in all solicitations and contracts exceeding the simplified acquisition threshold that are not for the acquisition of commercial items and—

(a) Are not awarded to small businesses, educational institutions, or nonprofit organizations; and

(b) Are either—

(1) Cost-reimbursement contracts; or

(2) Fixed-price contracts with progress payments based on cost or other financing provisions based on cost.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.242–7004 is revised to read as follows:

252.242–7004 Material Management and Accounting System.

As prescribed in 242.7204, use the following clause.

Material Management and Accounting System (XXX 2000)

(a) *Definitions.* As used in this clause—

(1) ''Material management and accounting system (MMAS)'' means the Contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

(2) ''Valid time-phased requirements'' means material that is—

(i) Needed to fulfill the production plan, including reasonable quantities for scrap, shrinkage, yield, *etc.;* and

(ii) Charged/billed to contracts or other cost objectives in a manner consistent with the need to fulfill the production plan.

(3) ''Contractor'' means a business unit as defined in section 31.001 of the Federal Acquisition Regulation (FAR).

(b) *General.* The Contractor shall—

(1) Maintain an MMAS that—

(i) Reasonably forecasts material requirements;

(ii) Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and

(iii) Maintains a consistent, equitable, and unbiased logic for costing of material transactions; and

(2) Assess its MMAS and take reasonable action to comply with the MMAS standards in paragraph (e) of this clause.

(c) *Disclosure and maintenance requirements.* The Contractor shall—

(1) Have policies, procedures, and operating instructions that adequately describe its MMAS;

(2) Provide to the Administrative Contracting Officer (ACO) adequate evidence that it has conducted internal audits to ensure compliance with established MMAS policies, procedures, and operating instructions; and

(3) Disclose significant changes in its MMAS to the ACO within 30 days of implementation.

(d) *Deficiencies.*

(1) If the Contractor receives a report from the ACO that identifies any deficiencies in its MMAS, the Contractor shall respond as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall—

(A) Within 30 days, state its agreement in writing; and

(B) Within 60 days, correct the deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the Contractor disagrees with the report findings and recommendations, the Contractor shall, within 30 days, state its rationale for each area of disagreement.

(2) The ACO will evaluate the Contractor's response and will notify the Contractor in writing of the—

(i) Determination concerning any remaining deficiencies;

(ii) Adequacy of any proposed or completed corrective action plan; and

(iii) Need for any new or revised corrective action plan.

(3) When the ACO determines the MMAS deficiencies have a material impact on Government contract costs, the ACO must reduce progress payments by an appropriate percentage based on affected costs (in accordance with FAR 32.503–6) and/or disallow costs on vouchers (in accordance with FAR 42.803) until the ACO determines that—

(i) The deficiencies are corrected; or

(ii) The amount of the impact is immaterial.

(e) *MMAS standards.* The MMAS shall have adequate internal controls to ensure system and data integrity, and shall—

(1) Have an adequate system description including policies, procedures, and operating instructions that comply with the FAR and Defense FAR Supplement;

(2) Ensure that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements as impacted by minimum/economic order quantity restrictions.

(i) A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.

(ii) If systems have accuracy levels below these, the Contractor shall provide adequate evidence that—

(A) There is no material harm to the Government due to lower accuracy levels; and

(B) The cost to meet the accuracy goals is excessive in relation to the impact on the Government;

(3) Provide a mechanism to identify, report, and resolve system control weaknesses and manual override. Systems should identify operational exceptions such as excess/residual inventory as soon as known;

(4) Provide audit trails and maintain records (manual and those in machine readable form) necessary to evaluate system logic and to verify through transaction testing that the system is operating as desired;

(5) Establish and maintain adequate levels of record accuracy, and include reconciliation of recorded inventory quantities to physical inventory by part number on a periodic basis. A 95 percent accuracy level is desirable. If systems have an accuracy level below 95 percent, the Contractor shall provide adequate evidence that—

(i) Three is no material harm to the Government due to lower accuracy levels; and

(ii) The cost to meet the accuracy goal is excessive in relation to the impact on the Government;

(6) Provide detailed descriptions of circumstances that will result in manual or system generated transfers of parts;

(7) Maintain a consistent, equitable, and unbiased logic for costing of material transactions as follows:

(i) The Contractor shall maintain and disclose written policies describing the transfer methodology and the loan/pay-back technique.

(ii) The costing methodology may be standard or actual cost, or any of the inventory costing methods in 48 CFR 9904.411–50(b). The Contractor shall maintain consistency across all contract and customer types, and from accounting period to accounting period for initial charging and transfer charging.

(iii) The system should transfer parts and associated costs within the same billing period. In the few instances where this may not be appropriate, the Contractor may accomplish the material transaction using a loan/pay-back technique. The ''loan/pay-back technique'' means that the physical part is moved temporarily from the contract, but the cost of the part remains on the contract. The procedures for the loan/pay-back technique must be approved by the ACO. When the technique is used, the Contractor shall have controls to ensure—

(A) Parts are paid back expeditiously;

(B) Procedures and controls are in place to correct any overbilling that might occur;

(C) Monthly, at a minimum, identification of the borrowing contract and the date the part was borrowed; and

(D) The cost of the replacement part is charged to the borrowing contract;

(8) Where allocations from common inventory accounts are used, have controls (in addition to those in paragraphs (e)(2) and (7) of this clause) to ensure that—

(i) Reallocations and any credit due are processed no less frequently than the routine billing cycle;

(ii) Inventories retained for requirements that are not under contract are not allocated to contracts; and

(iii) Algorithms are maintained based on valid and current data;

(9) Notwithstanding FAR 45.505–3(f)(1)(ii), have adequate controls to ensure that physically commingled inventories that may include material for which costs are charged or allocated to fixed-price, cost-reimbursement, and commercial contracts do not compromise requirements of any of the standards in paragraphs (e)(1) through (8) of this clause. Government-furnished material shall not be—

(i) Physically commingled with other material; or

(ii) Used on commercial work; and

(10) Be subjected to periodic internal audits to ensure compliance with established policies and procedures.

(End of clause)

[FR Doc. 00–16640 Filed 6–30–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000616183–0183–01; I.D. 053000E]

RIN 0648–AN35

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Special Management Zones

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: In accordance with the framework procedure of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), NMFS proposes to establish 12 new special management zones (SMZs) at the sites of artificial reefs (ARs) in the exclusive economic zone (EEZ) off Georgia; to revise the boundaries of the 7 existing SMZs that are in the EEZ off Georgia; to restrict fishing in the new and revised SMZs to rod and reel and spearfishing gear, including powerheads; and within these SMZs, to limit the harvest and possession of South Atlantic snapper-grouper taken by powerheads to the applicable bag limits. NMFS also proposes establishing a 30-day deadline for resolving deficiencies related to an application and a 60-day deadline for correcting deficiencies regarding automatic renewals of permits. The intended effects are to promote orderly use of the fishery resources on and around the ARs and SMZs, to reduce

potential user-group conflicts, and to maintain the socioeconomic benefits of the ARs and SMZs to the maximum extent practicable.

DATES: Written comments must be received no later than 4:30 p.m. eastern standard time, on August 2, 2000.

ADDRESSES: Comments on the proposed rule may be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Roy Crabtree, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of the framework regulatory amendment, which includes an environmental assessment, a regulatory impact review, a social impact assessment/fishery impact statement, and a Monitoring Team Report should be sent to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 803–571–4366; Fax: 803–769–4520.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Eldridge, Phone: 727–570–5305, Fax: 727–570–5583, E-mail *Peter.Eldridge@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fisheries for snapper-grouper species in the EEZ off the southern Atlantic states are regulated under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

New and Revised SMZs

In accordance with the FMP framework procedures, the Council recommended that the Regional Administrator, Southeast Region, NMFS (RA), establish 12 new SMZs and modify the boundaries of the 7 existing SMZs in the EEZ off Georgia. The Council's recommendation is based on a request from the Georgia Department of Natural Resources (GADNR). Fishing in the new and revised SMZs would be restricted to specified gear.

The new SMZs in the EEZ off Georgia would be, and the existing SMZs whose boundaries would be modified are, at the sites of ARs constructed by the GADNR. The ARs were constructed for the purpose of enhancing fishing opportunities for offshore sport fishermen. The ARs in the EEZ off Georgia are on an expansive shelf area that has large areas devoid of any live/hard bottom. Prior to establishment of the ARs, these areas did not support any significant fisheries.

Thus, these ARs create fishing opportunities in the areas where they are placed that would not exist otherwise and may increase the biological production of fish in the long term. They are expensive to construct. The enhanced fishing benefits created by ARs can be dissipated rapidly by use of highly efficient commercial fishing gear with the capacity to harvest large amounts of fish in a short period of time, thereby reducing catch-per-unit-effort for other users. The use of such gear can disrupt, and potentially eliminate, the intended, long-term fishing benefits and can jeopardize the incentive for development of ARs. In addition, use of commercial fishing gear such as bottom longlines, gillnets, or trawls, is not suitable for use on ARs because such gear tends to foul on the AR structure and with other gear. Restrictions on the use of such gear are necessary to preserve the intended benefits of ARs.

The Council proposes to modify the boundaries of 7 existing SMZs in the EEZ off Georgia to conform to the boundaries specified in GADNR's permits from the Corps of Engineers (COE) for placement of these ARs. Since NOAA nautical charts identify SMZs using the COE permit coordinates, compliance and enforcement of the SMZs would be facilitated by these minor modifications. Each of the revised SMZs would be enlarged by a small amount, but, in no case would the enlargement exceed 1.5 square nautical miles. The enlarged SMZs were requested by GADNR and approved by the COE to disperse fishing pressure further and to create habitat with adequate forage zones. As with the current sites, the expanded boundaries would encompass only flat, sand-shell expanses where little or no fishing occurs.

Authorized Fishing Gear

Fishing in the SMZs in the EEZ off Georgia would be restricted to rod and reel, including manual, electric, and hydraulic reels, and spearfishing gear, including powerheads. Further, within these SMZs, the harvest and possession of South Atlantic snapper-grouper taken by powerheads would be limited to the applicable bag limits. Thus, the maximum amount of snapper-grouper that a person aboard a commercial vessel could take by powerhead from an SMZ would be the recreational bag limit. Currently, in the existing SMZs in the EEZ off Georgia, there is no limitation on the use of powerheads to harvest snapper-grouper commercially. The use of powerheads, a highly efficient gear, can quickly overharvest already limited snapper-grouper species, particularly amberjack. Limitations on commercial gear, including powerheads, would better maintain the availability of artificial reef resources and more equitably distribute them among greater numbers of users over a longer period of time.

Monitoring Team Report

In accordance with the FMP, the monitoring team appointed by the Council evaluated GADNR's request in consideration of the following criteria: (1) Fairness and equity; (2) promotion of conservation; (3) prevention of excessive shares; (4) consistency with the objectives of the FMP, the Magnuson-Stevens Act, and other applicable law; (5) suitability of the natural bottom in and surrounding the areas and impacts on historical uses; and (6) cumulative impacts. A copy of the monitoring team's report is available (see **ADDRESSES**).

After consideration of all relevant information, including the Monitoring Team Report, other supporting data, and comments received during public hearings, committee meetings, and Council meetings, the Council voted to recommend to the RA that GADNR's request be approved. Accordingly, the proposed new and revised SMZs and the management measures applicable to them are published for public comment.

Additional Changes to Part 622 Proposed by NMFS

In § 622.4, NMFS proposes revising paragraph (h) relating to renewals of permits, licenses, or endorsements. Paragraph (h) provides applicants the opportunity to correct deficiencies that would otherwise preclude renewals. However, there is no deadline specified for resolving the deficiencies. Therefore, a pending renewal could be left unresolved for extended periods. This could circumvent the intent of renewing a permit, license, or endorsement in a timely manner. NMFS proposes establishing a 30-day deadline for resolving deficiencies related to an application and a 60-day deadline for correcting deficiencies regarding automatic renewals (that may involve more time-consuming issues related to reporting requirements). NMFS also

proposes to reorganize paragraph (h) for clarity.

NMFS also corrects the telephone number in §§ 622.17(b)(1) introductory text and 622.41(a)(4) introductory text to reflect a change in area code.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This proposed rule makes minor revisions to an existing collection-of-information requirement subject to review and approval by OMB under Control Number 0648–0205. Public reporting burden for submitting permit applications is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

This proposed action will establish 12 new SMZs at the sites of ARs in the EEZ off Georgia, revise the boundaries of the 7 existing SMZs that are in the EEZ off Georgia, and restrict fishing in the new and revised SMZs to rod and reel and spearfishing gear, including powerheads. The 17 AR sites cover a total area of about 80 square nautical miles. These sites were originally established as recreational fishing areas, and the purpose of the proposed rule is to maintain these areas mainly as recreational fishing areas by specifying the allowable fishing methods that can be used by fishermen when fishing within the boundaries of the artificial reef sites. The allowable gears are hand-held hook and line and spearfishing gears, including powerheads. The catch by the users of powerheads will be restricted to the recreational bag limit for all species having a bag limit. By implication, certain commercial gears, including longlines, bandit rigs and the use of powerheads to take commercial quantities of fish are prohibited.

According to information supplied by GADNR to NMFS, there is almost no commercial fishing activity on these artificial reefs at the present time. Therefore, the actual effect of the proposed rule would be to maintain the status quo in terms of the current users of these sites (recreational fishermen for the most part). In terms of the use of commercial fishing gear that would be prohibited, the information supplied by GADNR indicates that there is no commercial fishing activity by fishermen using bandit rigs or longlines at these sites. GADNR's information further indicates that one or two commercial fishermen fish on one or two of the artificial reef sites using powerheads. These fishermen use the areas during the period May to October and target greater amberjack. A total of 349 documented vessels and an unknown number of small fishing craft commercially fish in Georgia waters and most of these commercial fishing activities represent individual small business entities. Since only one or two of over 349 small entities are expected to be impacted by the proposed rule, a substantial number of small entities are not expected to be impacted. There are no large business entities engaged in commercial fishing in Georgia, so there cannot be any disproportional impacts between large entities and the one or two small entities expected to be impacted. Based on the available information, NMFS has concluded that the small amount of current commercial fishing activity reported by GADNR does not constitute a case where this proposed rule, if implemented, would have a significant negative impact on a substantial number of small entities.

As a result, a regulatory flexibility analysis was not prepared.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this rule. Comments should be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 27, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraph (h) is revised to read as follows:

§ 622.4 Permits and fees.

* * * * *

(h) *Renewal.* Although a permit, license, or endorsement required by this section is issued on an annual basis, an application for its renewal is required only every 2 years. In the interim years, renewal is automatic (without application) for a vessel owner or dealer who has met the specific requirements for the requested permit, license, or endorsement, who has submitted all reports required under the Magnuson Act, and who is not subject to a sanction or denial under paragraph (j) of this section. An owner or dealer whose permit, license, or endorsement is expiring will be mailed a notification by the RA approximately 2 months prior to its expiration. That notification will advise the status of the renewal. That is, the notification will advise that the renewal will be issued without further action by the owner or dealer (automatic renewal), that the permit, license, or endorsement is ineligible for automatic renewal, or that a new application is required.

(1) *If eligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is eligible for automatic renewal, the RA will mail the automatically renewed permit, license, or endorsement approximately 1 month prior to expiration of the old permit, license, or endorsement.

(2) *If ineligible for automatic renewal.* If the RA's notification indicates that the owner's or dealer's permit, license, or endorsement is ineligible for automatic renewal, the notification will specify the reasons and will provide an opportunity for correction of any deficiencies. If the owner or dealer does not correct such deficiencies within 60 days after the date of the RA's notification, the renewal will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(3) *If new application is required.* If the RA's notification indicates that a new application is required, the notification will include a preprinted renewal application. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RA's letter of notification, the application will be considered abandoned. A permit, license, or endorsement that is not renewed within the applicable deadline will not be reissued.

(4) *If notification is not received.* A vessel owner or dealer who does not receive a notification from the RA regarding status of renewal of a permit, license, or endorsement by 45 days prior to expiration of the current permit must contact the RA.

* * * * *

3. In § 622.35, paragraphs (e)(1)(xii) through (e)(1)(xviii) are revised and paragraphs (e)(1)(xl) through (e)(1)(li) and (e)(2)(v) are added to read as follows:

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

* * * * *

(e) * * *

(1) * * *

(xii) *Artificial Reef—A* is bounded on the north by 30°57.4' N. lat.; on the south by 30°55.4' N. lat.; on the east by 81°13.9' W. long.; and on the west by 81°16.3' W. long.

(xiii) *Artificial Reef—C* is bounded on the north by 30°52.0' N. lat.; on the south by 30°50.0' N. lat.; on the east by 81°08.5' W. long.; and on the west by 81°10.9' W. long.

(xiv) *Artificial Reef—G* is bounded on the north by 30°00.0' N. lat.; on the south by 30°58.0' N. lat.; on the east by 80°56.8' W. long.; and on the west by 80°59.2' W. long.

(xv) *Artificial Reef—F* is bounded on the north by 31°06.8' N. lat.; on the south by 31°04.8' N. lat.; on the east by 81°10.5' W. long.; and on the west by 81°13.4' W. long.

(xvi) *Artificial Reef—J* is bounded on the north by 31°36.7' N. lat.; on the south by 31°34.7' N. lat.; on the east by 80°47.3' W. long.; and on the west by 80°50.1' W. long.

(xvii) *Artificial Reef—L* is bounded on the north by 31°46.0' N. lat.; on the south by 31°44.0' N. lat.; on the east by 80°34.7' W. long.; and on the west by 80°37.1' W. long.

(xviii) *Artificial Reef—KC* is bounded on the north by 31°51.2' N. lat.; on the south by 31°49.2' N. lat.; on the east by 80°45.3' W. long.; and on the west by 80°47.7' W. long.

* * * * *

(xl) *Artificial Reef—ALT* is bounded on the north by 31°18.6' N. lat.; on the south by 31°16.6' N. lat.; on the east by 81°07.0' W. long.; and on the west by 81°09.4' W. long.

(xli) *Artificial Reef—CAT* is bounded on the north by 31°40.2' N. lat.; on the south by 31°38.2' N. lat.; on the east by 80°56.2' W. long.; and on the west by 80°58.6' W. long.

(xlii) *Artificial Reef—CCA* is bounded on the north by 31°43.7' N. lat.; on the south by 31°41.7' N. lat.; on the east by 80°40.0' W. long.; and on the west by 80°42.3' W. long.

(xliii) *Artificial Reef—DRH* is bounded on the north by 31°18.0' N. lat.; on the south by 31°16.0' N. lat.; on the east by 80°56.6' W. long.; and on the west by 80°59.0' W. long.

(xliv) *Artificial Reef—DUA* is bounded on the north by 31°47.8' N. lat.; on the south by 31°45.8' N. lat.; on the east by 80°52.1' W. long.; and on the west by 80°54.5' W. long.

(xlv) *Artificial Reef—DW* is bounded on the north by 31°22.8' N. lat.; on the south by 31°20.3' N. lat.; on the east by 79°49.8' W. long.; and on the west by 79°51.1' W. long.

(xlvi) *Artificial Reef—KBY* is bounded on the north by 30°48.6' N. lat.; on the south by 30°46.6' N. lat.; on the east by 81°15.0' W. long.; and on the west by 81°17.4' W. long.

(xlvii) *Artificial Reef—KTK* is bounded on the north by 31°31.3' N. lat.; on the south by 31°29.3' N. lat.; on the east by 80°59.1' W. long.; and on the west by 81°01.5' W. long.

(xlviii) *Artificial Reef—MRY* is bounded on the north by 30°47.5' N. lat.; on the south by 30°45.5' N. lat.; on the east by 81°05.5' W. long.; and on the west by 81°07.8' W. long.

(xlix) *Artificial Reef—SAV* is bounded on the north by 31°55.4' N. lat.; on the south by 31°53.4' N. lat.; on the east by 80°45.2' W. long.; and on the west by 80°47.6' W. long.

(l) *Artificial Reef—SFC* is bounded on the north by 31°00.8' N. lat.; on the south by 30°59.8' N. lat.; on the east by 81°02.2' W. long.; and on the west by 81°03.4' W. long.

(li) *Artificial Reef—WW* is bounded on the north by 31°43.5' N. lat.; on the south by 31°42.2' N. lat.; on the east by 79°57.7' W. long.; and on the west by 79°59.3' W. long.

* * * * *

(2) * * *

(v) In the SMZs specified in paragraphs (e)(1)(xii) through (e)(1)(xviii) and (e)(1)(xl) through (e)(1)(li) of this section, the possession of South Atlantic snapper-grouper taken with a powerhead is limited to the bag limits specified in § 622.39(d)(1).

* * * * *

4. In § 622.39, paragraph (a)(4) is added to read as follows:

§ 622.39 Bag and possession limits.

(a) * * *

(4) Paragraph (a)(1) of this section notwithstanding, a person aboard a vessel for which a commercial permit for South Atlantic snapper-grouper has been issued must comply with the bag limits specified in paragraph (d)(1) of this section for South Atlantic snapper-grouper taken with a powerhead, regardless of where taken, when such snapper-grouper are possessed in an SMZ specified in § 622.35(e)(1)(xii) through (e)(1)(xviii) or (e)(1)(xl) through (e)(1)(li).

* * * * *

§§ 622.17 and 622.41 [Amended]

5. In addition to the amendments set forth above, in 50 CFR part 622, remove the telephone number, ''813–570–5344'', and add in its place ''727–570–5344'' in the following places:

(a) Section 622.17(b)(1) introductory text; and

(b) Section 622.41(a)(4) introductory text.

[FR Doc. 00–16773 Filed 6–30–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000627195–0195–01; I.D. 060500C]

RIN: 0648–AN94

Fisheries of the Exclusive Economic Zone Off Alaska; Seasonal Adjustment of Closure Areas to Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to implement a seasonal closure of a portion of the Central Regulatory Area of the Gulf of Alaska (GOA) to vessels using trawl gear. Regulatory authority also is proposed

for inseason action to open directed fishing for pollock within 10 nautical miles (nm) of the Steller sea lion haulouts located at Gull Point and Cape Barnabas for research purposes. These actions are necessary to support NMFS-sponsored research on the effect of fishing on localized pollock distribution and abundance. The proposed regulatory amendment is intended to meet the objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and further the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Comments on the proposed rule must be received by July 18, 2000.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK 99801. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the listed address, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, (907) 481–1780, fax (907) 481–1781, or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

This proposed regulatory action would impose a ban on all trawl fishing in the Chiniak Gully region on the east side of Kodiak Island and authorize a temporary reopening of the 10–nm zones around Gull Point and Cape Barnabas to directed fishing for pollock. These fishing restrictions would be in effect annually during the period of August 1st to no later than September 20 in the years 2000–2003. These restrictions are necessary to support NMFS research designed to identify and quantify the effects of commercial fishing on the availability of pollock to foraging Steller sea lions within a finite area. This research is intended to help assess the effectiveness and efficiency of alternative management methods for ensuring that pollock fisheries off Alaska neither jeopardize the continued existence of the western population of endangered Steller sea lions nor adversely modify its critical habitat. Currently the information available to evaluate alternative methods for protecting Steller sea lions and their habitat is very limited, which could result in the use of less effective and less efficient management measures. NMFS is proposing a controlled experiment off Kodiak Island in order to improve the information that can be used to assess further management actions to protect Steller sea lions and their habitat.

The proposed research is designed to provide information bearing on the following issues: (1) Whether measurable changes exist in the distribution and abundance of pollock during the 4-year duration of the study, (2) whether commercial pollock fisheries cause short-term (days to weeks) changes in the pollock school dynamics, and (3) whether pollock fisheries cause reductions in the availability of sea lion forage (i.e., pollock) in localized regions off the east side of Kodiak Island.

NMFS plans to conduct an echo integration trawl (EIT) survey before, during, and after the 'πC' season commercial pollock fishery off the east side of Kodiak Island in the years 2000 to 2003. An EIT survey involves systematic survey vessel track lines over which acoustic and research trawl data are collected and used to generate estimates of abundances and distribution patterns of targeted species. The 'C' season currently opens on August 20 (§ 679.22(d)(3)).

The experimental design proposes a feasibility study in the first year and three full implementation experiments in 2001 to 2003. A feasibility study is necessary because NMFS has not conducted EIT surveys in the GOA during summer months and uncertainty exists whether survey conditions will be suitable for identifying abundance and distribution patterns of pollock. Questions also exist about conducting an EIT survey in a small geographic area during the same time period that commercial fisheries are operating.

The research proposal identifies two treatment (fishing areas) areas at Barnabas Gully and Marmot Canyon where directed fishing for pollock typically occurs. A control site (no fishing) also is proposed in the Chiniak Gully area where trawl fishing will be prohibited in Federal waters. The prohibition on trawling in the control site is necessary to provide a basis for comparing pollock school dynamics in a fished and unfished condition (addressing issue 2 above). These study locations are proposed because they encompass historical fishing areas for pollock that are separated by topographical features with generally discrete concentrations of fish. The concentration of fishing effort in the GOA enables the designation of comparable treatment and control sites, which are essential to the study design.

In 2001 to 2003, the EIT research surveys would be conducted in the same areas as the feasibility survey in 2000, with additional sampling after the fishing season has ended. The consistency in area and season (August to September) will enable researchers to obtain a time series of data and evaluate the effects of interannual variation. The proposed research could provide researchers with better information on pollock movements and impacts of commercial pollock harvest on foraging behavior of Steller sea lions.

A regulatory amendment is required to prohibit trawl fishing in the control site and to allow fishing for pollock in the treatment sites, including within the 10–nm zones surrounding the Cape Barnabas and Gull Island Steller sea lion haulout sites that currently are closed to directed fishing for pollock. To accomplish this objective, the proposed regulatory amendment would implement two measures. First, it would prohibit trawl fishing in the Chiniak Gully area off the east side of Kodiak Island from August 1st to a date no later than September 20th for four years (2000 to 2003). The Chiniak Gully control site is defined by straight lines intersecting the following coordinates in the order given: 152.37° W. long., 57.81° N. lat.; 151.85° W. long., 57.81° N. lat.; 150.64° W. long., 57.22° N. lat.; 151.27° W. long., 56.98° N. lat.; 152.16° W. long., 57.62° N. lat.; and 152.37° W. long., 57.81° N. lat.

The second management measure would authorize inseason action to open directed fishing for pollock within 10 nm of the Steller sea lion haulouts located at Gull Point and Cape Barnabas during the same period of time the Chiniak Gully control site is closed if specified conditions are met. Fishing within 10 nm of these two haulout sites would be authorized as part of the treatment area of Barnabas Gully, unless NMFS' EIT survey conducted as part of its proposed research design prior to the August 20 opening of the pollock C season indicates that the abundance and size distribution of pollock in the Barnabas Gully area are insufficient to support a commercial fishery. If the annual EIT survey fails to locate commercial concentrations of pollock in

Barnabas Gully, the treatment area for a year would be moved from Barnabas Gully to Marmot Canyon and the pollock fishing closures within 10 nm surrounding Cape Barnabas and Gull Point would remain effective. These considerations are intended to focus the research area where large concentrations of pollock are present to minimize the potential for localized depletion.

Pursuant to section 7 of the Endangered Species Act (ESA), NMFS completed a biological opinion (B.O.) on December 3, 1998, which was revised December 16, 1998, that evaluated the effects of the Atka mackerel fisheries of the Bering Sea and Aleutian Islands management area (BSAI) and the pollock fisheries of the BSAI and the GOA on candidate and listed species, including the Steller sea lion, and designated critical habitat. The B.O. concluded that the Atka mackerel fisheries were not likely to jeopardize candidate or listed species or adversely modify any designated critical habitat. However, the B.O. concluded that the pollock fisheries were likely to jeopardize the endangered western population of Steller sea lions and adversely modify its critical habitat. On October 15, 1999, NMFS issued revised final reasonable and prudent alternatives (RFRPAs) to avoid the likelihood that the pollock fisheries jeopardize the endangered western population of Steller sea lions and adversely modify its critical habitat. The RFRPAs were implemented by emergency interim rule at the commencement of the 2000 pollock fisheries (65 FR 3892, January 25, 2000). This emergency interim rule was extended through December 31, 2000 (65 FR 36795, June 12, 2000), to continue to implement RFRPAs to protect Steller sea lions and their designated critical habitat. Among other things, the RFRPAs allow the proposed research and directed fishing for pollock to be authorized until permanent rulemaking is implemented.

The RFRPAs establish pollock ''no trawl zones'' in waters of the GOA around Steller sea lion rookeries and major haulouts out to 10 nm. Three exceptions to these closures were described, including one for the Steller sea lion haulouts at Cape Barnabas and Gull Point, where these sites may be opened for the purpose of conducting research to determine the effects of the pollock fisheries on prey resources in this area.

Species listed under the ESA are present in the action area and some may be negatively affected by the proposed research. Therefore, NMFS has initiated formal consultation under section 7 of the ESA on the proposed action to authorize directed fishing for pollock within 10 nm of the Gull Point and Cape Barnabas haulout areas during the August 20 opening of the pollock ''C'' season in the GOA. Consultation will need to be concluded prior to agency determination on whether or not to approve the proposed action.

Classification

At this time, NMFS has not determined that the proposed seasonal adjustments of fishery closures this rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Nothing in this proposed action would result in any changes in reporting or recordkeeping requirements. The analysis for this proposed action did not reveal any existing Federal rules that duplicate, overlap, or conflict with this action.

NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, may have on small entities. Most of the vessels that the proposed rule would apply to are between 80 and 100 feet in length and are small entities under the $3 million gross earnings criterion. This action would apply to all of the approximately 200 groundfish trawl vessels that participate in the Gulf of Alaska groundfish trawl fisheries during the months of August and September. However, only about 10 percent (20 vessels) have fished in the areas subject to the controlled experiment during those months. Most of the vessels that otherwise would trawl for groundfish in the proposed Chiniak Gully area are home ported in and operate out of Kodiak, adjacent to the proposed closure area. Although vessels would be able to harvest elsewhere, they would be expected to incur some additional costs as a result of traveling greater distances to alternative fishing areas. However, these costs are expected to be low and would be short-lived while the benefits of the improved information the controlled experiment is designed to provide could be substantial. NMFS anticipates that the information the experiment would produce would help decrease the risk of not implementing effective measures to protect Steller sea lions, and decrease the cost of providing a given level of protection for the sea lions.

NMFS considered maintaining the status quo, which could have resulted in less severe economic impacts on some small entities. However, this alternative would not allow NMFS to conduct the controlled experiment and obtain information that could be used to assess further management actions to protect Steller sea lions and their habitat. NMFS also considered an alternative that would exempt small entities from the proposed time/area closure. However, such an exemption would undermine the intent of the action to allow a controlled experiment to assess the effects of trawl fishing on the availability of prey for Steller sea lions. The preferred alternative, which this proposed rule would implement, was designed to cause the least economic impact to small entities while still obtaining the necessary information to protect Steller sea lions. Without the information obtained through this proposed action, other management actions that would cause greater economic impacts, such as permanent closure of all critical habitat to protect Steller sea lions, may have to be implemented.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 27, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.22, paragraph (b)(5) is added to read as follows:

§ 679.22 Closures.

* * * * *

(b) * * *

(5) *Chiniak Gully Research Area (effective through December 31, 2003)*—

(i) *Description of Chiniak Gully*. The Chiniak Gully Research Area is defined as that part of statistical Area 630 bounded by straight lines connecting the coordinates in the order listed:

57.81° N. lat., 152.37° W. long.;

57.81° N. lat., 151.85° W. long.;

57.22° N. lat., 150.64° W. long.;

56.98° N. lat., 151.27° W. long.;

57.62° N. lat., 152.16° W. long.; and hence counterclockwise along the shoreline of Kodiak Island to

57.81° N. lat., 152.37° W. long.

(ii) *Closure*. (A) The Chiniak Gully Research Area is closed to vessels using trawl gear from August 1 to a date no later than September 20, except that trawl gear may be tested in the manner described at § 679.24(d)(2) in the Kodiak Test Area defined at § 679.24(d)(4)(i) and illustrated in Figure 7 to this part.

(B) Prior to September 20, the Regional Administrator may publish notification in the **Federal Register** rescinding the trawl closure in the Chiniak Gully Research Area described in paragraph (b)(5)(i) of this part and reinstating closures to directed fishing for pollock within 10 nm of the Steller sea lion haulout sites located at Gull Point and Cape Barnabas if such closures were rescinded under paragraph (b)(5)(iii) of this section.

(iii) *Exemption to Steller sea lion critical habitat closures*. (A) *General*. During the C season in Statistical Area 630 of the GOA, defined at § 679.23(d)(3)(iii) of this part, the Regional Administrator may rescind the prohibition on directed fishing for pollock within 10 nm of the Steller sea lion haulout sites at Cape Barnabas and Gull Point on Kodiak Island, which are defined at § 679.22(b)(3)(ii)and Table 13 of this part.

(B) *Criteria for exemption*. NMFS will conduct an annual echo integration trawl survey of pollock abundance and distribution off the east side of Kodiak Island prior to the start of the pollock C season defined at § 679.23(d)(3)(iii). If survey results indicate that the abundance and size distribution of pollock in the area between the Steller sea lion haulouts at Cape Barnabas and Gull Point, defined at § 679.22(b)(3)(ii) and Table 13 of this part, are sufficient to support a commercial fishery, then NMFS will authorize directed fishing for pollock within 10 nm of these two haulout sites during that C season.

(C) *Notification*. If the Regional Administrator rescinds the closures to directed fishing for pollock around the Cape Barnabas and Gull Point haulout sites under this paragraph (b)(5)(iii), NMFS will publish notification in the **Federal Register** announcing this action prior to the start of the pollock C season.

* * * * *

[FR Doc. 00–16770 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 65, No. 128

Monday, July 3, 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

Forest Service

Implemetation of the Wildfire Suppression Aircraft Transfer Act of 1996

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Wildfire Suppression Aircraft Transfer Act of 1996 authorizes the Department of Defense to sell excess aircraft and aircraft parts to eligible persons or entities seeking a contract with the Forest Service for the delivery of fire retardant by air for wildfire suppression. The Secretary of Agriculture must certify in writing to the Secretary of Defense, prior to a sale, those persons or entities that are capable of meeting the terms and conditions of a contract to deliver fire retardant by air. This notice identifies the certification criteria against which persons or entities, who want to contract with the Forest Service, will be evaluated when seeking to purchase excess U.S. Department of Defense aircraft or excess aircraft parts.

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Dudley, Aviation Management Specialist, Forest Service, Fire and Aviation Staff, Mail Stop 1107, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090 or call (202) 205–0995 or email mdudley@fs.fed.us.

SUPPLEMENTARY INFORMATION:

Background

The Wildfire Suppression Aircraft Transfer Act of 1996 (10 U.S.C. 2576) provides that from October 1, 1996, through September 30, 2000, the Secretary of Defense may sell certain aircraft and aircraft parts to persons or entities that contract with the Federal government for the delivery of fire retardant by air to suppress wildfire. The Defense Logistics Agency of the Department of Defense published regulations implementing the Wildfire Suppression Aircraft Transfer Act of 1996 in the **Federal Register** on June 1, 1999 (64 FR 29227).

The Secretary of Agriculture must certify in writing to the Secretary of Defense, prior to a sale, those persons or entities that are capable of meeting the terms and conditions of a contract to deliver fire retardant by air. This notice identifies the certification criteria that persons or entities, who want to contract with the Forest Service, will have to meet to be eligible to bid on U.S. Department of Defense excess aircraft and aircraft parts for delivery of fire retardent by air for wildfire suppression. Determination of eligibility will be conducted under existing procedures described in Federal Acquisition Regulation Part 9. Sale of aircraft and parts will be conducted under existing procedures described in 32 CFR Part 171 and Department of Defense Manual 4160.21–M, Chapter 4, paragraph B2.

Aircraft Sale Certification and Restrictions

The Wildfire Suppression Act of 1996 (10 U.S.C. 2576), hereby referred to as the Act, authorizes the U.S. Department of Defense to sell excess aircraft and aircraft parts to eligible persons or entities seeking a contract with the Forest Service of the U.S. Department of Agriculture for airtanker service for suppression of wildfires. The Act requires that, prior to the sale, the Secretary of Agriculture must certify to the Secretary of Defense that potential purchasers are capable of meeting the terms and conditions of an aerial fire retardant delivery contract with the Forest Service. These criteria supplement the rule adopted by the Defense Logistics Agency of the U.S. Department of Defense at 32 CFR, Part 171, on June 1, 1999 (64 FR 29227).

Certification Criteria for Potential Purchasers of Excess Aircraft.

(1) The potential purchaser can demonstrate proof of adequate financial capacity to purchase, modify, operate, and maintain proposed aircraft at competitive rates in the airtanker marketplace.

(2) The potential purchaser can provide a business plan indicating current and proposed ability to drop retardant from airtankers in an acceptable manner.

(3) The potential purchaser can demonstrate adequate organization and facilities for operation and maintenance of proposed aircraft.

(4) The potential purchaser has the ability to comply with all applicable Federal Aviation Regulations (FAR). The potential purchaser can be certified and can operate under 14 CFR, Part 137.

(5) The potential purchaser can provide a proposed plan for obtaining required approvals, including type and airworthiness certificates, for aircraft modification and/or tank and gating system. (FAA and Interagency Airtanker Board)

(6) The potential purchaser can demonstrate experience in operating and maintaining aircraft proposed for sale.

(7) Aircraft parts will be sold only to those persons or entities eligible to bid on aircraft under the Wildfire Suppression Act of 1996 and implementation regulations adopted by the Defense Logistics Agency of the U.S. Department of Defense at 32 CFR, Part 171. Firms may only purchase parts appropriate for the aircraft they are operating.

Restrictions

Section 171.3 of Title 32 of the Code of Regulations published by the Department of Defense on June 1, 1999, restricts the use of the aircraft and aircraft parts sold under the Wildfire Suppression Aircraft Transfer Act of 1996 to wildfire suppression purposes only; the aircraft and aircraft parts must not be flown or removed from the United States unless dispatched by the National Interagency Fire Center in support of an international agreement to assist in wildfire suppression or when jointly approved in advance, in writing, by the Secretary of Agriculture and the Secretary of Defense.

Dated: June 27, 2000.

Clyde Thompson,

Deputy Chief, Business Operations.

[FR Doc. 00–16734 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[00–C]

Designation for the East Indiana (IN) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces designation of East Indiana Grain Inspection, Inc. (East Indiana) to provide official services under the United States Grain Standards Act, as amended (Act), for a 1-year term, September 1, 2000, though August 31, 2001.

EFFECTIVE DATE: September 1, 2000.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 1, 1999, **Federal Register** (64 FR 67246), GIPSA asked persons interested in providing official services in the geographic area assigned to East Indiana to submit an application for designation. Applications were due by December 30, 1999. Since East Indiana was the sole applicant for designation to provide official services in the entire area currently assigned to them, GIPSA did not ask for comments on the applicant.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l)(A) of the Act and, according to section 7(f)(l)(B), determined that East Indiana is able to provide official services in the geographic area, specified in the December 1, 1999, **Federal Register**, for which they applied. We are granting the 1-year designation to allow East Indiana time to complete the requirements for compliance with the national quality database. Interested persons may obtain official services by calling East Indiana at 765–289–1206.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: June 14, 2000.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 00–16542 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[99–05–s]

Designation for the Kansas (KS), Minot (ND), and Tri-State (OH) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act): Kansas Grain Inspection Service, Inc. (Kansas); Minot Grain Inspection, Inc. (Minot); and Tri-State Grain Inspection Service, Inc. (Tri-State).

EFFECTIVE DATES: September 1, 2000, for Kansas; and October 1, 2000, for Minot and Tri-State.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 1, 1999, **Federal Register** (64 FR 67246), GIPSA asked persons interested in providing official services in the geographic areas assigned to Kansas, Minot, and Tri-State to submit an application for designation. Applications were due by December 30, 1999. Kansas, Minot, and Tri-State, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them. Since these they were the only applicants, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in section 7(f)(l)(A) of the Act and, according to section 7(f)(1)(B), determined that Kansas, Minot, and Tri-State are able to provide official services in the geographic areas, specified in the December 1, 1999, **Federal Register**, for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Designation term	Telephone
Kansas	09/01/2000–06/30/2003	785–233–7063
Minot	10/01/2000–06/30/2003	701–838–1734
Tri-State	10/01/2000–06/30/2003	513–251–6571

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: June 14, 2000.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 00–16541 Filed 6–30–00; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Cement Clinker From Mexico; Final Results of Full Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: gray portland cement and cement clinker from Mexico.

SUMMARY: On February 28, 2000, the Department of Commerce (''the Department'') published a notice of preliminary results of the full sunset review of the antidumping duty order on gray portland cement and cement clinker from Mexico (65 FR 10468) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping.

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Carole Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3217, respectively.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) (''Sunset Regulations''), and in 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

Background

On February 28, 2000, the Department published in the **Federal Register** a notice of preliminary results of the full sunset review of the antidumping duty order on gray portland cement and cement clinker from Mexico pursuant to the Act. In our preliminary results, we determined that revocation of the order would be likely to lead to continuation or recurrence of dumping. In addition, we preliminarily determined that the following margins are likely to prevail for respective manufactures/exporters if the order were revoked: CEMEX, S.A. (''CEMEX'') '' 95.44 percent; Apasco, S.A. de C.V. (''Apasco'') '' 53.26 percent; Cementos Hidalgo, S.C.L. '' 3.69 percent; and all others '' 59.91 percent.

Subsequent to the issuance of our preliminary results, on March 15, 2000, the Department issued the final results of the administrative review covering the period from August 1, 1997, through July 31, 1998 (65 FR 13943). Information included in the latest final results of the administrative review is reflected in our final determination.

On April 10, 2000, we received case briefs from both domestic and respondent interested parties within the deadline specified in 19 CFR 351.309(c)(1)(i). We also received rebuttal comments from both parties on April 18, 2000, within the deadline specified in 19 CFR 351.309(d). [1]

Scope of Review

The products covered by this order include gray portland cement and clinker (''portland cement'') from Mexico. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (''HTS'') item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as other hydraulic cements. In its only scope ruling, the Department determined that masonry cement is not within the scope of the order. The HTS subheadings are provided for convenience and customs purposes only. Our written description of the scope of the proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on portland cement from Mexico would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/Exporter	Margin (percent)
CEMEX/GCCC/Hidalgo	91.94
Apasco	53.26
All others	59.91

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16792 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] On April 13, 2000, the domestic interested parties requested an extension of the deadline for filing rebuttal comments to the case briefs. The Department extended the deadline until April 18, 2000, for all participants eligible to file rebuttal comments.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–803]

Gray Portland Cement and Cement Clinker From Venezuela; Final Results of Sunset Review of Suspended Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Gray Portland Cement and Cement Clinker From Venezuela.

SUMMARY: On February 28, 2000, the Department of Commerce (''the Department'') published a notice of preliminary results of the full sunset review of the suspended antidumping duty investigation on gray portland cement and cement clinker from Venezuela (65 FR 10467) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). We provided interested parties an opportunity to comment on our preliminary results. We received comments only from domestic interested parties. As a result of this review, the Department finds that termination of this agreement would be likely to lead to continuation or recurrence of dumping at the rates indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Carole Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–3217, respectively.

EFFECTIVE DATE: July 3, 2000.

Statute and Regulations

Unless otherwise indicated, all citations to the Act of 1930 are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On February 28, 2000, the Department published in the **Federal Register** a notice of preliminary results of the suspended antidumping duty investigation on gray portland cement and cement clinker from Venezuela pursuant to section 751(c) of the Act. In our preliminary results, we determined that termination of the suspended antidumping duty investigation would be likely to lead to continuation or recurrence of dumping. In addition, we preliminarily determined that the following weighted-average dumping margins are likely to prevail if the order were revoked: 50.02 percent for Venezolana de Cementos, S.A.C.A. (''Vencemos''); 49.20 percent for Cementos Caribe, C.A. (''Caribe''); and 49.26 percent for all others.

Only domestic interested parties submitted a case brief within the deadline specified in 19 CFR 351.309(c)(1)(i). (See domestic interested parties' April 10, 2000, case brief.)

Scope of Review

The products covered by this order include gray portland cement and cement clinker (''portland cement'') from Venezuela. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Oil well cement is also included within the scope of the investigation. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (''HTS'') item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as other hydraulic cements. The HTS subheadings are provided for convenience and customs purposes only. Our written description of the scope of the proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Jeffrey A. May, Director, Office of Policy, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 27, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that termination of the suspended antidumping duty investigation on portland cement from Venezuela would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Vencemos	50.02
Caribe	49.20
All others	49.26

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 27, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16793 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–842]

Final Affirmative Countervailing Duty Determination: Structural Steel Beams From the Republic of Korea

AGENCY: Import Administration, International Trade Administration Department of Commerce.

ACTION: Notice of final affirmative countervailing duty investigation.

SUMMARY: On December 14, 1999, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the countervailing duty investigation of structural steel beams from the Republic of Korea for the period January 1, 1998, through December 31, 1998.

Based on our analysis of the comments received, we have made changes to the net subsidy rates. Therefore the net subsidy rates in the *Final Determination* differ from those of the *Preliminary Determination.* The final net subsidy rates for the reviewed companies are listed below in the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds or Tipten Troidl, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2786.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR part 351 (1999).

Background

On December 14, 1999, the Department published the results of its

Preliminary Determination in the investigation of structural steel beams from the Republic of Korea. *See Preliminary Negative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Structural Steel Beams From the Republic of Korea*, 64 FR 69731 (December 14, 1999) (*Preliminary Determination*). We invited interest parties to comment on the *Preliminary Determination*. On June 14, 2000, case briefs were submitted by respondents and petitioners. Also, on June 14, 2000, petitioners withdrew their January 13, 2000, request for a hearing. No other interested party requested a hearing. On June 19, 2000, rebuttal briefs were submitted by petitioners and respondents.

This investigation covers three manufactures/exporters: Kangwon Industries Ltd. (Kangwon), Inchon Iron and Steel Co., Ltd. (Inchon), and Dongkuk Steel Mill Co., Ltd. (DSM). This investigation also covers four trading companies: Hyosung Corporation (Hyosung), Sampyo Corporation (Sampyo), Hyundai Corporation (Hyundai), and Dongkuk Industries Co. (DKI). This investigation covers the period January 1, 1998, through December 31, 1998, and thirty-four programs.

Scope of the Investigation

For purposes of this investigation, the products covered are doubly-symmetric shapes, whether hot-or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products (Structural Steel Beams) include, but are not limited to, wide-flange beams (W shapes), bearing piles (HP shapes), standard beams (S or I shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation: Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our *Final Determination*. We followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit of the Department of Commerce (Room B–099).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this countervailing duty investigation are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated June 26, 2000, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded is in the Decision Memorandum and is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at www.ita.doc.gov/import_admin/records/frn, under the heading ''Republic of Korea.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the record and comments received, we have made certain changes to the net subsidy rate. As a result of the changes, the net subsidy rates of Kangwon and DSM are above *de minimis*. All changes made since the *Preliminary Determination* are discussed in the relevant sections of the Decision Memorandum.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual subsidy rate for Kangwon, Inchon, and DSM, manufacturers of subject merchandise. We determine that the total estimated net subsidy rates are as follows:

Company	Net subsidy rate
Inchon	0.15 percent *ad valorem*
Kangwon	3.88 percent *ad valorem*
DSM	1.34 percent *ad valorem*
All Others Rate	3.87 percent *ad valorem*

With respect to Inchon, its estimated net countervailable subsidy rate is *de minimis*. Therefore, we determine that no countervailable subsidies are being provided to Inchon for its production or exportation of structural steel beams. In accordance with section 705(c)(5)(A)(i) of the Act, we calculated an all-others rate, which is an amount equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates. On this basis, we determined the all-others rate listed in the table above. Because Inchon has a *de minimis* rate, it will be excluded from any suspension of liquidation.

In accordance with section 705(c)(1)(C) of the Act, we will instruct the U.S. Customs Service to suspend liquidation under section 703(d) of the Act for all entries of subject merchandise from Korea, except for Inchon, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and will require a cash deposit of estimated countervailing duties for such entries of the merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary

information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated. If however, the ITC determines that such injury does exist, we will issue a countervailing duty order.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the act.

Dated: June 26, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues Discussed in Decision Memorandum

Methodology and Background Information

I. Subsidies Valuation Information
- A. Allocation Period
- B. Treatment of Subsidies Received by Trading Companies
- C. Benchmark Interest Rates and Discount Rates
- D. Creditworthiness

Analysis of Programs

I. Programs Conferring Subsidies
- A. The Government of Korea's (GOK) Direction of Credit Policies
  - 1. The GOK's Credit Policies Through 1991
  - 2. The GOK's Credit Policies from 1992 Through 1998
- B. Debt Restructuring for Kangwon
- C. Reserve for Export Loss Under Article 16 of the Tax Exemption and Reduction Control Act (TERCL)
- D. Reserve for Overseas Market Development Under Article 17 of the TERCL
- E. Investment Tax Credits Under Article 25 of the TERCL
- F. Asset Revaluation Under Article 56(2) of the TERCL
- G. Electricity Discounts Under the Requested Load Adjustment Program
- H. Scrap Reserve Fund
- I. Export Industry Facility Loans (EIFLs)
- J. Special Cases of Tax for Balanced Development in Selected Areas Under Article 43 of the TERCL

II. Programs Determined To Be Not Countervailable
- A. Tariff Reductions on Imported Machinery Equipment

III. Programs Determined To Be Not Used
- A. Private Capital Inducement Act
- B. Tax Credit in Equipment to Develop Technology and Manpower Under Article 10 of the TERCL
- C. Tax Credits for Vocational Training Under Article 18 of the TERCL
- D. Exemptions of Corporate Tax on Dividend Income from Overseas Resources Development Resources Act Under Article 24 of the TERCL
- E. Tax Credits for Investments in Specific Facilities Under Article 26 of the TERCL
- F. Tax Credits for Temporary Investments Under Article 27 of the TERCL
- G. Social Indirect Capital Investment Reserve Funds Under Article 28 of the TERCL
- H. Energy-Savings Facilities Investment Reserve Funds Under Article 29 of the TERCL
- I. Tax Credits for Specific Investments Under Article 71 of the TERCL
- J. Mining Investment Reserve Funds Under Article 95 of the TERCL
- K. Grants Under the Technology Development Promotion Act
- L. Highly Advanced National Project Fund Industry Technology Development Fund
- M. Short-Term Export Financing
- N. Korean Export-Import Bank Loans
- O. Tax Incentives for Highly Advanced Technology Businesses
- P. Special Depreciation of Assets Based on Foreign Exchange Earnings
- Q. Steel Campaign for the 21st Century
- R. Excessive Duty Drawback
- S. Reserve for Investment
- T. Export Insurance Rates By The Korean Export Insurance Corporation
- U. Special Cases of Tax for Balanced Development among Areas (TERCL Articles 41, 42, 44, and 45)
- V. Reserve for Investment
- W. Overseas Resource Development Loan

IV. Analysis of Comments
- Comment 1: Kangwon's Creditworthiness from 1991 through 1998
- Comment 2: Countervailability of Kangwon's Debt for Equity Swap
- Comment 3: Department Selection of Benchmarks
- Comment 4: Calculation Errors in Preliminary Determination
- Comment 5: The Suspension of Kangwon's Interest Payments Following the Company's Debt Restructuring and Its Affect on Kangwon's Benefit Calculations
- Comment 6: The Department's Finding Regarding Direction of Credit to the Steel Industry Is Not Supported By Substantial Evidence Or Otherwise in Accordance With Law
- Comment 7: Whether the Department Must Find a ''Casual Nexus'' to Determine Direction of Credit to the Steel Industry Countervailable
- Comment 8: Countervailability of the Tariff Reductions on Imported Machinery Equipment Program

[FR Doc. 00–16794 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Noitce of Initiation of Five-Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping and countervailing duty orders or suspended investigation listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notices of Institution of Five-Year Reviews covering these same orders.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho, or James Maeder, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1698, or 482–3330, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (see Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigation:

DOC Case No.	ITC Case No.	Country	Product
A–357–809	731–TA–707	Argentina	Seamless Pipe.
A–351–826	731–TA–708	Brazil	Seamless Pipe.
A–428–820	731–TA–709	Germany	Seamless Pipe.
A–475–814	731–TA–710	Italy	Seamless Pipe.

DOC Case No.	ITC Case No.	Country	Product
A–357–810	731–TA–711	Argentina	Oil Country Tubular Goods.
A–475–816	731–TA–713	Italy	Oil Country Tubular Goods.
A–588–835	731–TA–714	Japan	Oil Country Tubular Goods.
A–580–825	731–TA–715	Korea	Oil Country Tubular Goods.
A–201–817	731–TA–716	Mexico	Oil Country Tubular Goods.
A–570–838	731–TA–722	China (the PRC)	Honey (Suspended investigation).
C–475–815	701–TA–362	Italy	Seamless Pipe.
C–475–817	701–TA–364	Italy	Oil Country Tubular Goods.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) Dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The reviews will be conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) (''Sunset Regulations'') and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin'').

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Sunset Regulations and Sunset Policy Bulletin, the Department's schedule of sunset reviews, case history information (*e.g.,* previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: ''http://www.ita.doc.gov/import_admin/records/sunset/''.

All submissions in the sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (2000). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (2000)) wishing to participate in the sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the Sunset Regulations at 19 CFR 351.218(d)(1)(ii). In accordance with the Sunset Regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review.

If we receive a notice of intent to participate from a domestic interested party, the Sunset Regulations provide that all parties wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the Sunset Regulations at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Sunset Regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 (2000) for definitions of terms and for other general information concerning antidumping duty order proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: June 16, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16670 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000522149–0149–01]

RIN 0648–ZA87

Dean John A. Knauss Marine Policy Fellowship, National Sea Grant College Program

AGENCY: Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice announces that applications may be submitted for a Fellowship program which was initiated by the National Sea Grant Office (NSGO), NOAA, in fulfilling its broad educational responsibilities, to provide educational experience in the policies and processes of the Legislative and Executive Branches of the Federal

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (Sunset Regulations, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (2000), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

Government to graduate students in marine and aquatic-related fields. The Fellowship program accepts applications once a year during the month of September. All applicants must submit an application to the local Sea Grant program in their state. Applicants from states not served by a Sea Grant program should obtain further information by contacting the Knauss Fellows Program Manager at the NSGO.

DATES: Deadlines vary from program to program, but are generally due early to mid-September. Contact your state's Sea Grant program for specific deadlines (see list below).

ADDRESSES: Applications should be addressed to your local Sea Grant program. Contact the appropriate state's Sea Grant program from the list below to obtain the mailing address or the address may be obtained on the web site *http://www.nsgo.seagrant.org/SGDirectors.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Nikola Garber, Knauss Fellows Program Manager, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910, Tel. (301) 713–2431 ext. 124; e-mail: *nikola.garber@noaa.gov*. Also call your nearest Sea Grant program or visit the web site *http://www.nsgo.seagrant.org/Knauss.html*.

Sea Grant Programs

Alabama, Mississippi-Alabama Sea Grant Consortium, (228) 875–9341
Alaska, University of Alaska (907) 474–7086
California, University of California, San Diego, (858) 534–4440
California, University of Southern California, (213) 812–1335
Connecticut, University of Connecticut, (860) 405–9128
Delaware, University of Delaware, (302) 831–2841
Florida, University of Florida, (352) 392–5870
Georgia, University of Georgia, (706) 542–5954
Hawaii, University of Hawaii, (808) 956–7031
Illinois, Purdue University, (765) 494–3593
Indiana, Purdue University, (765) 494–3593
Louisiana, Louisiana Sea Grant, (225) 388–6710
Maine, University of Maine, (207) 581–1435
Maryland, University of Maryland, (301) 405–6371
Massachusetts, Massachusetts Institute of Technology, (617) 253–7131
Massachusetts, Woods Hole Oceanographic Institution, (508) 289–2557
Michigan, University of Michigan, (734) 763–1437
Minnesota, University of Minnesota, (218) 726–8710
Mississippi, Mississippi-Alabama Sea Grant Consortium, (228) 875–9341
New Hampshire, University of New Hampshire, (603) 862–0122
New Jersey, New Jersey Marine Science Consortium, (732) 872–1300 Ext. 21
New York, New York Sea Grant Institute, SUNY, (631) 632–6905
North Carolina, North Carolina State University, (919) 515–2454
Ohio, Ohio State University, (614) 292–8949
Oregon, Oregon State University, (541) 737–2714
Puerto Rico, University of Puerto Rico, (787) 832–3585
Rhode Island, University of Rhode Island, (401) 874–6800
South Carolina, South Carolina Sea Grant Consortium, (843) 727–2078
Texas, Texas A&M University, (979) 845–3854
Virginia, Virginia Graduate Marine Science Consortium, (804) 924–5965
Washington, University of Washington, (206) 543–6600
Wisconsin, University of Wisconsin-Madison, (608) 262–0905

SUPPLEMENTARY INFORMATION:

Dean John A. Knauss Marine Policy Fellowship, National Sea Grant College Program

Purpose of the Fellowship Program

In 1979, the National Sea Grant Office (NSGO), NOAA, in fulfilling its broad educational responsibilities, initiated a program to provide a unique educational experience in the policies and processes of the Legislative and Executive Branches of the Federal Government to graduate students who have an interest in ocean, coastal and Great Lakes resources and in the national policy decisions affecting these resources. The U.S. Congress recognized the value of this program and in 1987, Public Law 100–220 stipulated the Sea Grant Federal Fellows Program was to be a formal part of the National Sea Grant College Program Act. The recipients are designated Dean John A. Knauss Marine Policy Fellows pursuant to 33 U.S.C. 1127(b).

Announcement

Fellows program announcements are sent annually to all participating Sea Grant institutions and campuses by the local sea Grant program upon receipt of notice from the NSGO.

Eligibility

Any student who, on September 26, 2000, is in a graduate or professional program in a marine or aquatic-related field at a United States accredited institution of higher education may apply to the NSGO through their local Sea Grant program. Applicants from states not served by a Sea Grant program should obtain further information by contacting the Knauss Fellows Program Manager at the NSGO. NOAA makes financial assistance funds available to the Sea Grant programs nationwide to implement the fellowship program. The National Sea Grant program is listed in the *Catalog of Federal Domestic Assistance* under number 11.417: Sea Grant Support.

How To Apply

Interested students should discuss this fellowship with their local Sea Grant Program Director. Applications must be submitted with signature to the local Sea Grant program by the deadline set in the announcement (usually early to mid-September). Each Sea Grant program may select and forward to the NSGO no more than five (5) applicants selected according to criteria used by the NSGO in the national competition.

Selected applications are to be received in the NSGO from the sponsoring Sea Grant program, no later than 5 p.m. EST on September 26, 2000. The competitive selection process and subsequent notification to the Sea Grant programs will be completed by October 25, 2000.

Stipend and Expenses

The local Sea Grant program receives and administers the overall award of $38,000 per student on behalf of each Fellow selected from their program. Of this award, the local Sea Grant program provides $32,000 to each Fellow for stipend and living expenses (per diem). The additional $6,000 will be used to cover mandatory health insurance for the Fellow and moving expenses. In addition, any remaining funds shall be used during the Fellowship year, first to satisfy academic degree-related travel, and second for Fellowship-related travel. Indirect costs are not allowable for either the Fellowships or for any costs associated with the Fellowships [15 CFR 917.11(e), Guidelines for Sea Grant Fellowships]. During the fellowship, the host may provide supplemental funds for work-related travel by the fellow.

Application

An application will include:

(1) Personal and academic curriculum vitae (not to exceed two pages using 12 pt. font).

(2) A personal education and career goal statement which emphasizes the applicant's abilities and the applicant's expectations from the experience in the way of career development (1000 words or less). Placement preference in the Legislature or Executive Branches of the Government may be stated; this preference will be honored to the extent possible.

(3) Two letters of recommendation, including one from the student's major professor.

(4) A letter of endorsement from the sponsoring Sea Grant Program Director.

(5) Copy of all undergraduate and graduate student transcripts.

It is our intent that all applicants be evaluated only on their ability. Therefore, letters of endorsements from members of Congress, friends, relatives or others; as well as thesis papers, publications, or other additional supporting documents will not be accepted.

Selection Criteria

The selection criteria will include:

(1) Quality of the applicant's personal education and career goal statement.

(2) Endorsement of the applicant's Sea Grant program director, and support of the applicant's major professor and second letter of recommendation.

(3) Strength of academic performance and diversity of educational background including extracurricular activities, awards and honors (from the curriculum vitae and transcripts).

(4) Experience in marine or aquatic-related fields, oral and written communication skills, and interpersonal abilities. Relative weights of the evaluation criteria are equal.

Selection

Applicants will be individually reviewed and ranked, according to the criteria outlined above, by a panel appointed by the Director of the NSGO with input from the Sea Grant Association and the National Sea Grant Review Panel. The panel will include representation from the Sea Grant Association and the current, and possibly past, class of Fellows. Once the entire class is selected, based on the criteria listed, the Knauss Program Manager will group the top-ranked applicants in each category, legislative and executive, based upon the applicant's stated preference and/or judgement of the panel based upon material submitted. Academic discipline and geographic representation may be considered by the National Sea Grant Office to provide overall balance. The number of fellows assigned to the Congress will be limited to 10.

Federal Policies and Procedures

Fellows receive funds directly from their sponsoring Sea Grant Program and are considered to be subrecipients of Federal assistance subject to all Federal laws and Federal and Commerce Department policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Pre-Award Activities

If applicants incur any cost prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance they may have been received, there is no obligation on the part of Department of Commerce to cover pre-award costs.

No Obligation for Future Funding

If an application is selected for funding, Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of Department of Commerce.

Delinquent Federal Debts

No award of Federal funds shall be made to a Fellows applicant who has an outstanding delinquent Federal debt or fine until either:

i. The delinquent account is paid in full,

ii. A negotiated repayment schedule is established and at least one payment is received, or

iii. Other arrangements satisfactory to Department of Commerce are made.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Application Certifications

All primary applicant must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

i. Nonprocurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, ''NONPROCUREMENT Debarment and Suspension'' and the related section of the certification form prescribed above applies;

ii. Drug-Free Workplace: Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, ''Government wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

iii. Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000,and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

iv. Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower tier Covered Transaction and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities,'' Form CD–512 is intended for the use of recipients and should not be transmitted to Department of Commerce. SF–LLL submitted by any tier recipient or subrecipients should be submitted to Department of Commerce in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Minority Serving Institutions Statement

Pursuant to Executive Orders 12876, 12900, and 13021, DOC/NOAA is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the Nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: *http://www.ed.gov/offices/OCR/99minin.html.*

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This document contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB under control number 0648–0362. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person 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 currently valid OMB Control Number.

Dated: June 26, 2000.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 00–16713 Filed 6–30–00; 8:45 am]

BILLING CODE 3510–KA–M

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 20 July 2000, at 9 a.m. at the Department of Interior's main auditorium, 18th & C Streets, NW., Washington, DC, 20240. The principal item for review will be the World War II Memorial.

Following this meeting, the Commission will reconvene at the Commission of Fine Arts, National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728, to discuss the remaining items on the agenda, including the design of the Woodrow Wilson Bridge.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, June 23, 2000.

Charles H. Atherton,

Secretary.

[FR Doc. 00–16752 Filed 6–30–00; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0133]

Proposed Collection; Comment Request Entitled Defense Production Act Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0133).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Defense Production Act Amendments. This OMB clearance expires on October 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 1, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title III of the Defense Production Act (DPA) of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA.

FAR 34.1 and 52.234–1 require contractors, upon the direction of the contracting officer, to test Title III industrial resources for qualification, and provide the test results to the Defense Production Act Office. The FAR coverage also expresses Government policy to pay for such testing and provides definitions, procedures, and a contract clause to implement the policy. This information is used by the Defense Production Act Office, Title III Program, to determine whether the Title III industrial resource has been provided an impartial opportunity to qualify.

B. Annual Reporting Burden

Respondents: 6.
Responses Per Respondent: 3.
Total Annual Responses: 18.
Hours Per Response: 100.

Total Burden Hours: 1,800.FP

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0133, in all correspondence.

Dated: June 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–16688 Filed 6–30–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0034]

Proposed Collection; Comment Request Entitled Examination of Records by Comptroller General and Contract Audit

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0034).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Examination of Records by Comptroller General/Audit-Negotiation now retitled Examination of Records by Comptroller General and Contract Audit. The clearance currently expires on October 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 1, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Federal Acquisition Policy Division, GSA, (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Audit and Records-Negotiation clause, 52.215–2; Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items clause, 52.212–5(d); and Audit and Records-Sealed Bidding clause, 52.214–26, implement the requirements of 10 U.S.C. 2313, 41 U.S.C. 254, and 10 U.S.C. 2306. The statutory requirements are that the Comptroller General and/or agency shall have access to, and the right to, examine certain books, documents and records of the contractor for a period of 3 years after final payment. The record retention periods required of the contractor in the clauses are for compliance with the aforementioned statutory requirements. The information must be retained so that audits necessary for contract surveillance, verification of contract pricing, and reimbursement of contractor costs can be performed.

B. Annual Reporting Burden

Respondents: 19,142.
Responses Per Respondent: 20.
Total Responses: 382,840.
Hours Per Response: .167.
Total Burden Hours: 63,934.

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0034, Examination of Records by Comptroller General and Contract Audit in all correspondence.

Dated: June 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–16689 Filed 6–30–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115]

Proposed Collection; Comment Request Entitled Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0115).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Notification of Ownership Changes. This OMB clearance expires on October 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 1, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Federal Acquisition Policy Division, GSA, (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–40, Notification of Ownership Changes.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 125.
Total Burden Hours: 125.

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0115, Notification of Ownership Changes, in all correspondence.

Dated: June 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–16690 Filed 6–30–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0075]

Submission for OMB Review; Comment Request Entitled Government Property

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding extension of an existing OMB clearance (9000–0075).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Government Property. A request for public comments was published at 65 FR 26818, on May 9, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before August 2, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

''Property,'' as used in Part 45, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property. Government property includes both Government-furnished property and contractor-acquired property.

Contractors are required to establish and maintain a property system that will control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract including property located with subcontractors.

The contractor's property control records shall constitute the Government's official property records and shall be used to:

(a) Provide financial accounts for Government-owned property in the contractor's possession or control;

(b) Identify all Government property (to include a complete, current, auditable record of all transactions);

(c) Locate any item of Government property within a reasonable period of time.

This clearance covers the following requirements:

(a) FAR 45.307–2(b) requires a contractor to notify the contracting officer if it intends to acquire or fabricate special test equipment.

(b) FAR 45.502–1 requires a contractor to furnish written receipts for Government property.

(c) FAR 45.502–2 requires a contractor to submit a discrepancy report upon receipt of Government property when overages, shortages, or damages are discovered.

(d) FAR 45.504 requires a contractor to investigate and report all instances of loss, damage, or destruction of Government property.

(e) FAR 45.505–1 requires that basic information be placed on the contractor's property control records.

(f) FAR 45.505–3 requires a contractor to maintain records for Government material.

(g) FAR 45.505–4 requires a contractor to maintain records of special tooling and special test equipment.

(h) FAR 45.505–5 requires a contractor to maintain records of plant equipment.

(i) FAR 45.505–7 requires a contractor to maintain records of real property.

(j) FAR 45.505–8 requires a contractor to maintain scrap and salvage records.

(k) FAR 45.505–9 requires a contractor to maintain records of related data and information.

(l) FAR 45.505–10 requires a contractor to maintain records for completed products.

(m) FAR 45.505–11 requires a contractor to maintain records of transportation and installation costs of plant equipment.

(n) FAR 45.505–12 requires a contractor to maintain records of misdirected shipments.

(o) FAR 45.505–13 requires a contractor to maintain records of property returned for rework.

(p) FAR 45.505–14 requires a contractor to submit an annual report of Government property accountable to each agency contract.

(q) FAR 45.508–2 requires a contractor to report the results of physical inventories.

(r) FAR 45.509–1(a)(3) requires a contractor to record work accomplished in maintaining Government property.

(s) FAR 45.509–1(c) requires a contractor to report the need for major repair, replacement and other rehabilitation work.

(t) FAR 45.509–2(b)(2) requires a contractor to maintain utilization records.

(u) FAR 45.606–1 requires a contractor to submit inventory schedules.

(v) FAR 45.606–3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

(w) FAR 52.245–2(a)(3) requires a contractor to notify the contracting

officer when Government-furnished property is received and is not suitable for use.

(x) FAR 52.245–2(a)(4) requires a contractor to notify the contracting officer when government-furnished property is not timely delivered and the contracting officer will make a determination of the delay, if any, caused the contractor.

(y) FAR 52.245–2(b) requires a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(z) FAR 52.245–4 requires a contractor to submit a timely written request for an equitable adjustment when Government-furnished property is not furnished in a timely manner.

(aa) FAR 52.245–5(a)(4) requires a contractor to notify the contracting officer when Government-furnished property is received that is not suitable for use.

(bb) FAR 52.245–5(a)(5) requires a contractor to notify the contracting officer when Government-furnished property is not received in a timely manner.

(cc) FAR 52.245–5(b)(2) requests a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(dd) FAR 52.245–7(f) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ee) FAR 52.245–7(l)(2) requires a contractor to alert the contracting officer within 30 days of receiving facilities that are not suitable for use.

(ff) FAR 52.245–9(f) requires a contractor to submit a facilities use statement to the contracting officer within 90 days after the close of each rental period.

(gg) FAR 52.245–10(h)(2) requires a contractor to notify the contracting officer if facilities are received that are not suitable for the intended use.

(hh) FAR 52.245–11(e) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ii) FAR 52.245–11(j)(2) requires a contractor to notify the contracting officer within 30 days of receiving facilities not suitable for intended use.

(jj) FAR 52.245–17 requires a contractor to maintain special tooling records.

(kk) FAR 52.245–18(b) requires a contractor to notify the contracting officer 30 days in advance of the contractor's intention to acquire or fabricate special test equipment (STE).

(ll) FAR 52.245–18(d) & (e) requires a contractor to furnish the names of subcontractors who acquire or fabricate special test equipment (STE) or components and comply with paragraph (d) of this clause, and contractors must comply with the (b) paragraph of this clause if an engineering change requires acquisition or modification of STE. In so complying, the contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(mm) FAR 52.245–19 requires a contractor to notify the contracting officer if there is any change in the condition of property furnished ''as is'' from the time of inspection until time of receipt.

This information is used to facilitate the management of Government property in the possession of the contractor.

B. Annual Reporting Burden

Respondents: 27,884.

Responses Per Respondent: 488.6.

Total Responses: 13,624,122.

Average Burden Hours Per Response: .4826.

Total Burden Hours: 6,575,309.

The total burden hours have changed under this OMB clearance 9000–0075 to reflect the incorporation of hours currently associated with OMB clearance 9000–0151 (FAR Case 1995–013) which expires on June 30, 2000, and will not be renewed. The OMB collection burden associated with Government property nonetheless remains unchanged.

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0075, Government Property, in all correspondence.

Dated: June 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–16691 Filed 6–30–00; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 1, 2000.

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, Regulatory Information Management, 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. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 27, 2000.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Management.

Type of Review: Extension.

Title: Master Plan for Customer Surveys and Focus Groups.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit; Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 100,000—Burden Hours: 50,600.

Abstract: Customer satisfaction surveys and focus group discussions will be conducted by the Principal Offices of the Department of Education to measure customer satisfaction and establish and improve customer service standards as required by Executive Order 12862.

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 4050, 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. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address Kathy_Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–16723 Filed 6–30–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education; Intent To Repay the Commonwealth of Massachusetts Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 459 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234h, the Secretary of Education (Secretary) intends to repay to the Commonwealth of Massachusetts Department of Education (Massachusetts), under a grantback arrangement, an amount equal to 75 percent of the principal amount of funds recovered by the U.S. Department of Education (Department) as a result of the final audit determination in this matter (ACN: 01–33145G). The Department's recovery of funds followed the settlement reached between the parties under which Massachusetts refunded $2,111,810 to the Department in full resolution of the Department's final audit determination for State fiscal year (FY) 1992. This notice describes Massachusetts' plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. This notice invites comments on the proposed grantback.

DATES: All comments must be received on or before August 2, 2000.

ADDRESSES: All written comments should be addressed to Ron Castaldi, Chief, Division of Vocational-Technical Education, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW, Mary E. Switzer Building, Room 4317, MS 7323, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Ron Castaldi. Telephone: (202) 205–9444. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION

A. Background

Under the settlement agreement between the Department and the Commonwealth of Massachusetts, the Department recovered $2,111,810 from Massachusetts in full resolution of all claims arising from an audit of Massachusetts covering FY 1992 (ACN: 01–33145G).

The Department's original claim of $4,604,211 was contained in a program determination letter (PDL) issued by the Assistant Secretary for Vocational and Adult Education on March 31, 1995. This claim arose from findings related to Massachusetts' administration of its vocational education program under the provisions of the Carl D. Perkins Vocational and Applied Technology Education Act. 20 U.S.C. 2301 *et seq.* (1988) (Perkins II).

In the March 31, 1995 PDL, the Assistant Secretary determined that Massachusetts violated the Federal requirements governing maintenance of fiscal effort. Specifically, the Assistant Secretary concluded that Massachusetts failed to expend non-Federal funds at an appropriate level to maintain fiscal effort on either an aggregate or per pupil basis, thus violating section 502(a) of Perkins II (20 U.S.C. 2463(a)).

The settlement negotiations resulting from Massachusetts' appeal of the Assistant Secretary's March 31, 1995 PDL culminated in a settlement agreement for a total repayment of a principal amount of $2,111,810. The settlement agreement was executed on August 15, 1997. The Department received full payment for this determination in September 1997.

B. Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to any applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the State or local educational agency affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that—

(1) The practices or procedures of the recipient that resulted in the violation of law have been corrected, and that the recipient is in all other respects in compliance with the requirements of that program;

(2) The recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

(3) The use of the funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, Massachusetts has applied for a grantback of $1,583,858, or 75 percent of the $2,111,810 repaid to the Department under the settlement agreement, and has submitted a plan for use of the proposed grantback funds, consistent with the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), which is the successor statute to Perkins II and is currently in effect. Massachusetts plans to establish new career and technical education programs in high-wage, high-demand emerging career fields where there is a critical shortage of skilled workers, and to assist existing career and technical programs seeking national program certification.

Specifically, Massachusetts plans to utilize the requested grantback funds, totaling $1,583,858, to offer a competitive Request for Proposal for Perkins-eligible secondary schools with career and technical programs. Funds will be used either to begin a career and technical education program in a new and emerging field, or to update an existing program using the National Program Standards as a framework. The award of grants will be weighed in favor of schools with a higher concentration

of special populations. Massachusetts expects to award 20–25 grants ranging from $50,000 to $100,000 each. Grant recipients will be required to match on a dollar for dollar basis the total grant request from State, local, business and industry, or other non-Perkins Federal funding source. The Request for Proposal will include a stipulation that schools include enrollment figures for new proposed programs or grant-impacted programs, and also include the number of students who are members of special populations. Grant funds awarded under this Request for Proposal cannot be used to supplant activities that are currently being funded.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by Massachusetts and other relevant documentation. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met.

This determination is based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action at a later date. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Massachusetts Department of Education under a grantback arrangement. The grantback award would be in the amount of $1,583,858, which is 75 percent—the maximum percentage authorized by the statute—of the principal recovered by the Department as a result of the final audit determination and the settlement in this matter.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

Massachusetts agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) Massachusetts will expend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that was submitted and any amendments to the plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 2000, for ACN: 01–33145G, in accordance with section 459(c) of GEPA and Massachusetts' plan.

(3) Massachusetts will, no later than January 1, 2002, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been expended in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF, you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.048, Basic State Grants for Vocational Education)

Dated: June 28, 2000.

Patricia W. McNeil,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 00–16750 Filed 6–30–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM98–10–000, RM98–12–000 and RP00–335–000]

Regulation of Short-Term Natural Gas Transportation Services; Regulation of Interstate Natural Gas Transportation Services; and Black Marlin Pipeline Company; Notice of Compliance Filing

June 27, 2000.

Take notice that on June 15, 2000, Black Marlin Pipeline Company tendered for filing its *pro forma* tariff sheets, in compliance with Order Nos. 637 and 637–A.

On February 9 and May 19, 2000, the Commission issued Order Nos. 637 and 637–A, respectively, which prescribed new regulations, implemented new policies and revised certain existing regulations respecting natural gas transportation in interstate commerce. The Commission directed pipelines to file *pro forma* tariff sheets to comply with the new regulatory requirements regarding scheduling procedures, capacity segmentation, imbalance management services and penalty credits, or in the alternative, to explain why no changes to existing tariff provisions are necessary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before July 17, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http:www.ferc.fed.us/online/rims.htm. (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16697 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR00–6–000]

Chevron Pipeline Company; Notice of Request for Protective Order and for Limited Waiver of 18 CFR 348.2(e)

June 27, 2000.

Take notice that on June 13, 2000, pursuant to 18 CFR part 348, Chevron Pipeline Company (Chevron) filed an application for authority to charge market-based rates on its two pipeline systems originating in El Paso, Texas. Pursuant to 18 CFR 388.112, Chevron requests confidential treatment of certain information contained in its application. Chevron states that the only information for which it is requesting confidential treatment is shipper information that Chevron is required by law not to disclose pursuant to Section 15(13) of the Interstate Commerce Act (ICA). Chevron maintains that it is not requesting confidential treatment of any of its own business information at this time. In addition, Chevron requests the expedited issuance of a protective order and limited waiver of 18 CFR 348.2(e)—until the Commission issues the requested protective order—to govern the provision of the application containing the confidential information to other parties.

According to Chevron, the proposed protective order encompasses both the provision of the confidential version of the application prior to any entity becoming a participant in this proceeding and the later provision of both Section 15(13) and other confidential information among participants, should that become necessary in this proceeding. Chevron contends that the proposed protective order limits access to Section 15(13) information to an entity's outside counsel and consultants.

Any person desiring to comment or protest this request for a protective order and limited waiver should file the comment or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All such comments or protests must be filed by July 7, 2000. Comments or protests will be considered by the Commission in determining the appropriate action to be taken, but will not make the person filing a party to the proceeding. Copies of this filing, including the request for a protective order are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–16702 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2496]

Eugene Water and Electric Board, Leaburg Walterville Project, Oregon; Notice

June 27, 2000.

The following Commission staff are assigned to help facilitate resolution of environmental issues and related issues for any filings that may be submitted to the Commission for the Leaburg Walterville Project.

Office of General Council

Ellen Korthaus-Vos (202) 501–6794
Merrill Hathaway (202) 208–0825

Office of Energy Projects

Jim Hastreiter (503) 944–6760

The staff listed above are separated from the advisory staff in these proceedings and will not participate as advisory staff in these proceedings.

David P. Boergers,

Secretary.

[FR Doc. 00–16695 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2921–000]

JPower Inc.; Notice of Filing

June 27, 2000.

Take notice that on June 13, 2000, JPower, Inc., tendered for filing notice of change in status. JPower requests that the name JPower and JPower's market based rate schedule under ER95–1421–000 be transferred to Great Lakes Energy Trading, LLC effective immediately.

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 and protests should be filed on or before July 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–16701 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–298–002]

Kern River Gas Transmission Company; Notice of Proposed Pro Forma Changes in FERC Gas Tariff

June 27, 2000.

Take notice that on June 19, 2000, Kern River Gas Transmission Company (Kern River) has withdrawn certain dated tariff sheets initially filed in this proceeding and has replaced them with the following corresponding pro forma tariff sheets for inclusion in its FERC Gas Tariff, Second Revised Volume No. 1.

Pro Forma Sheet No. 15
Pro Forma Sheet No. 71
Pro Forma Sheet No. 171
Pro Forma Sheet No. 186
Pro Forma Sheet No. 423–426
Pro Forma Sheet No. 501
Pro Forma Sheet No. 601
Pro Forma Sheet No. 701
Pro Forma Sheet No. 901

Kern River states that the purpose of this filing is to withdraw the dated and numbered tariff sheets filed in this docket on May 24, 2000, and to replace them with corresponding pro forma sheets.

Kern River states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulation. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspect in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16699 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–304–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

June 27, 2000.

Take notice that on June 21, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GTN) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A: Substitute Twenty-fourth Revised Sheet No. 5. PG&E GTN requests that the above-referenced tariff sheet become effective July 1, 2000.

PG&E GTN asserts that the purpose of this filing is to correct an error in its fuel surcharge filing filed June 1, 2000 in this Docket. PG&E GTN states that the correction of the error will reduce PG&E GTN's proposed fuel surcharge to be in effect for the period July 1, 2000 through December 31, 2000 from 0.0015% per Dth per pipeline-mile to 0.0006% per Dth per pipeline-mile. Also included are revised workpapers showing the derivation of the corrected fuel surcharge.

PG&E GTN further states that a copy of this filing has been served on PG&E GTN's jurisdictional customers, interested state regulatory agencies, and all parties on the Commission's official service list for this proceeding.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16700 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands

June 27, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and isavailable for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No.:* 2183–023.

c. *Date Filed:* June 8, 2000.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Markham Ferry Hydroelectric Project.

f. *Location:* The Markham Ferry hydroelectric project is located on the Grand (Nesho) River in Mayes County, Oklahoma. The project does not occupy any federal or tribal lands.

g. *Applicant Contact:* Ms. Mary E. Von Drehle, Assistant General Council, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301. Phone (918) 256–5545.

h. *FERC Contact:* Steve Hocking at (202) 219–2656. E-mail address: *steve.hocking@ferc.fed.us.* Note, the Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

i. *Deadline for filing comments and recommendations, motions to intervene, and protests:* August 2, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of the Application:* Grand River Dam Authority (GRDA) has filed a supplement which substantially changes a pending application before the Commission. On January 14, 1999, GRDA filed an application to grant a permit to Mike Sisemore (applicant) to dredge about 102,00 cubic yards (cy) of material and create a canal from Lake Hudson to his private property. Commission staff public noticed the application on February 12, 1999. On June 10, 1999, GRDA filed a supplement reducing the amount of proposed dredging to about 25,000 cy. Finally, on June 8, 2000, GRDA filed a supplement to permit the applicant to install two boat docks with a total of 36 slips within the area to be dredged. The site where the applicant would dredge 25,000 cy and install two boat docks with 36 slips is located in Lake Hudson, in the southwest 1/4 of Section 16, Township 21 North, Range 20 East, Mays County, Oklahoma. This is on the north side of state highway 20 just west of the bridge over Lake Hudson going to Salina, Oklahoma.

k. *Locations of the application:* The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance. In addition, a copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letter the title ''COMMENTS,'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number (P–2183–023) of the particular application to which the filing refers. Any of the above-named documents must be filed

by providing the original and the number of copies provided by the Commission's regulatoins to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–16694 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2203–007; Holt Project]

Alabama Power Company; Notice of Telephone Conference

June 27, 2000.

On Thursday, July 13, 2000, the Federal Energy Regulatory Commission (Commission) staff will conduct a telephone conference with representatives of the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Alabama Department of Conservation and Natural Resources, the National Marine Fisheries Service, the Alabama Department of Environmental Management, and Alabama Power Company to discuss the Application for Non-Capacity Amendment of Project License for the Holt Project, FERC Docket No. 2203–007. The Commission staff will initiate the telephone conference. The telephone conference will begin at 2 p.m. Eastern Daylight Time (1 p.m. Central Daylight Time).

The telephone conference will be conducted according to the procedures used at Commission meetings. Meeting minutes will be taken, which will be distributed to interested parties and placed in the Commission's public files for the proceeding.

For further information, please contact Steve Kartalia at the Commission, 9202) 219–2942.

David P. Boergers,

Secretary.

[FR Doc. 00–16696 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–264–000]

Northern Natural Gas Company; Notice of Rescheduling of Technical Conference

June 27, 2000.

In the Commission's order issued on May 31, 2000,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference has been rescheduled for Thursday, July 20, 2000, at 9:30 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–16698 Filed 6–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: June 26, 2000, 65 FR 39384.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 28, 2000, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Nos. and Company has been added to Item CAE–1 and on the Agenda scheduled for the June 28, 2000 meeting.

Item No.	Docket No. and company
CAE–1	ER00–2068–000, ER00–1379–000, ER00–1386–000 and ER00–1387–000, Ameren Services Company.

[1] 91 FERC ¶ 61,216 (2000).

David P. Boergers,

Secretary.

[FR Doc. 00–16877 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6728–6]

Agency Information Collection: Continuing Collection; Comment Request Combined Sewer Overflow Control Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA plans to submit the following renewal Information Collection Request (ICR) to the Office of Management and Budget (OMB): Combined Sewer Overflow Control Policy (OMB Control Number 2040–0170; EPA Number 1680.03; expiring on September 30, 2000). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 1, 2000.

ADDRESSES: Environmental Protection Agency, Office of Wastewater Management, (Mail Code 4203, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Interested persons may obtain a copy of the proposed renewal ICR without charge by calling or writing to Timothy J. Dwyer at the Office of Wastewater Management, MC 4203, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20450; telephone (202) 260–6064.

FOR FURTHER INFORMATION CONTACT: Timothy Dwyer, EPA Office of Wastewater Management (Mail Code 4203), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 260–6064. Fax: (202) 260–1460. E-mail: dwyer.tim@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are municipalities with combined sewer systems, which are covered by EPA's Combined Sewer Overflow (CSO) Control Policy.

Title: Combined Sewer Overflow Control Policy (OMB Control No. 2040–0170; EPA ICR No. 1680.02) expiring on 09/30/00.

Abstract: EPA is proposing to continue its ICR for the Combined Sewer Overflow (CSO) Control Policy. The ICR was initially approved in April 1994. The first renewal was approved in September 1997. This renewal ICR includes the burden associated with documenting implementation of the nine minimum controls identified in the CSO control policy, public notification of CSO events and their impacts, developing and submitting long-term CSO control plans (LTCPs), and post-construction compliance monitoring.

Combined sewer systems (CSSs) serve approximately 900 municipalities, primarily in the Northeast and Great Lakes regions. This number is smaller than that in the former ICR largely because the Agency has better data on the number of municipalities with combined sewer systems nationwide. CSOs occur when these systems overflow and discharge to receiving waters prior to treatment in a publicly owned treatment works (POTW).

The CSO Control Policy, published on April 19, 1994 (59 FR 18688), is a national framework for controlling CSOs through the National Pollutant Discharge Elimination System (NPDES) permitting program. The Policy represents a comprehensive national strategy to ensure that municipalities with CSSs, NPDES permitting authorities, water quality standards authorities, and the public engage in a comprehensive and coordinated planning effort to achieve cost-effective CSO controls that ultimately meet appropriate health and environmental objectives, including compliance with water quality standards.

Among the provisions in the CSO Policy are the nine minimum controls, which are technology-based actions or measures designed to reduce the magnitude, frequency, and duration of CSOs and their effects on receiving water quality. The CSO Control Policy provided for implementation of the nine minimum controls by January 1, 1997.

One of these controls is public notification of CSO occurrences and impacts. Public notification is of particular concern at beach and recreation areas directly or indirectly affected by CSOs, where public exposure is likely to be significant. That burden continues to be included in this renewal.

The CSO Control Policy also contains a provision for the development of long-term control plans. The policy recommends that permit writers require permittees to develop a long-term plan within two years of the issuance of a NPDES permit or other enforceable mechanism containing such a requirement. The core of the plan is the development and evaluation of long-term control alternatives. One of the elements of the long-term plan is the development of a post-construction compliance monitoring program to be implemented when selected controls are completed. OMB's approval of the initial ICR for the CSO Control Policy recommended that the renewal ICRs include EPA's best estimate of the burden associated with a reasonable and targeted compliance monitoring program. That burden also continues to be included in this renewal.

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

The EPA would like to solicit comments on its renewal ICR for the CSO Control Policy. Specifically we would like comments to help us to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Burden Statement: The estimated burden reflected in this ICR is 1,754,877 hours and a cost of $61,964,707.

Of this total, the portion for municipalities with combined sewer systems is 1,699,696 hours at a cost of $60,016,265, including start-up costs of $182,125 for the third party notification under the nine minimum controls in the CSO Policy. The estimated burden on each of 585 municipalities for DMR reporting and record keeping is 417 hours and $14,724. The estimated burden on each of 490 municipalities for nine minimum control reporting and LTCP development and submission is 3,011 hours and $106,313 and for third-party notification, 27 hours and $940.

The estimated burden for Federal and State governments is 4,894 hours and $172,807 and 55,181 hours and $1,948,441, respectively. This includes the burden associated with reviewing the DMRs, the nine minimum control documentations, and the LTCP plans submitted by the respondents, and reissuing NPDES permits or issuing other enforceable mechanisms to municipalities with CSSs to implement the CSO Control Policy. The annual average burden for Federal and State review of DMRs, nine minimum control documentations, and LTCP plans is 1,325 hours and $46,774 and 15,807 hours and $532,722, respectively. The annual average burden associated with reissuing NPDES permits or issuing other enforceable mechanisms to CSO municipalities is 307 hours and $10,828 for the Federal government and 3,307 hours and $116,758 for State governments.

The estimated burden on the States to report summary information to EPA for oversight of the EPA's CSO Control Policy and for GPRA purposes is 1,200 hours and $42,351.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Interested parties may obtain a copy of the draft supporting statement, including the burden analysis, from Timothy Dwyer, EPA Office of Wastewater Management, at (202) 260–6064.

Dated: June 23, 2000.

A.W. Lindsey,

Acting Director, Office of Wastewater Management.

[FR Doc. 00–16764 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6728–7]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Tolerance Petitions for Pesticides on Food/Feed and New Inert Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Tolerance Petitions for Pesticides on Food/Feed and New Inert Ingredients, [EPA ICR No. 0597.07, OMB No. 2070–0024]. The ICR, which is abstracted below, expires on June 30, 2000. The ICR describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew approval of the ICR for a three year period. On June 9, 1999 (64 FR 30988), EPA solicited comment on this ICR pursuant to 5 CFR 1320.8(d). EPA received comments, which have been addressed in this ICR prior to submission to OMB.

DATES: Additional comments may be submitted on or before August 2, 2000.

FOR FURTHER INFORMATION: For a copy of the ICR contact Sandy Farmer by phone at 202–260–2740, by e-mail at *farmer.sandy@epa.gov,* or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0597.07 and OMB Control No. 2070–0024.

ADDRESSES: Send comments, referencing the proper ICR numbers, to the following addresses: Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, N.W.,Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Title: Tolerance Petitions for Pesticides on Food/Feed and New Inert Ingredients [EPA ICR No. 0597.07, OMB No. 2070–0024]. This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

Abstract: The use of pesticides to increase crop production may result in pesticide residues in or on the crop. To protect the public health from unsafe pesticide residues, the Environmental Protection Agency (EPA) sets limits on the nature and level of residues permitted. Food or feed commodities found to contain pesticide residues in excess of established tolerances are considered adulterated, and are subject to seizure. This ICR covers all requests for tolerances, or exemptions from the requirement of a tolerance, for both active and inert ingredients in pesticides. The type of data that are required to be submitted is dependent on the type of tolerance that is sought.

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

Burden Statement: Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. The annual respondent burden for this collection of information is estimated to average 1,726 hours per petitioner. No forms are associated with this collection, however, petitioners must submit information related to: (1) The name, chemical identity, and composition of the pesticide chemical; (2) chemical use; (3) safety reports; (4) residue test results; (5) residue removal; (6) proposed MRLs for the pesticidal chemical; (7) reasonable grounds in support of the petition; (8) an analysis of factors relevant to the provisions of FQPA, specifically, aggregate exposure, children's exposure, special sensitivities, cumulative effects and endocrine disruptor effects; 9) an informative summary of the petition or application, including a summary of the supporting data, information, accompanying rationales, and a statement providing permission to publish such summary; and a cover letter and fee. The following is a summary of the estimates taken from the ICR:

Respondents/Affected Entities: Any person seeking a tolerance action.

Estimated Number of Annual Respondents: 150.

Frequency of Response: On occasion.

Estimated total annual responses for each respondent: 1.

Estimated Total Annual Burden: 258,900 hours.

Estimated Total Annual Non-labor Costs: $0.

Changes in Burden Estimates: The total burden associated with this ICR has increased from 216,300 hours in the previous ICR to 258,900 for this ICR. This increase in burden represents a change in the underlying statutory requirements under which the Agency may take a tolerance action. The ICR provides a more detailed description of these changes and the activities currently related to this ICR. As such, the Agency considers this to be a program change.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: June 21, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–16755 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6729–1]

Adequacy Status of Motor Vehicle Budgets in Submitted State Implementation Plans for Transportation Conformity Purposes; District of Columbia, Maryland, Virginia; Revised Phase II Plans for the Metropolitan Washington D.C. Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy status.

SUMMARY: EPA is announcing that the motor vehicle emissions budgets for the out-years 2015 and 2020 (budgets) established in revised Phase II Plans for the Metropolitan Washington DC Ozone Nonattainment Area are adequate for transportation conformity purposes. The revised Phase II Plans which establish these out-year budgets were submitted by the District of Columbia on March 22, 2000, and by the State of Maryland and Commonwealth of Virginia on March 31, 2000 as State Implementation Plans (SIPs) revisions. These SIP revisions consist of revisions to the attainment plan for the Metropolitan Washington D.C. Ozone Nonattainment Area and have been made to establish revised out-year budgets for 2015 and 2020. EPA has found these out-year budgets adequate for transportation conformity purposes.

DATES: The finding that these out-year budgets of the revised attainment plan are adequate was made in letters dated June 22, 2000 from EPA Region III to the District of Columbia, the State of Maryland and the Commonwealth of

Virginia. This adequacy finding is effective on July 18, 2000.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth, P.E., U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA. 19103 at (215) 814–2183 or by e-mail at: wentworth.paul@epa.gov .

SUPPLEMENTARY INFORMATION: Throughout this document ''we, us,'' or ''our'' refer to EPA. The word ''budgets'' refers to the motor vehicle emission budgets for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for the out-years 2015 and 2020. The word ''SIP'' in this document refers to the revised Phase II SIPs submitted on March 22, 2000, March 31, 2000 and March 31, 2000 by the District, Maryland and Virginia , respectively. The revised Phase II SIPs consist of the revised attainment plan for the one-hour National Ambient Air Quality Standard (NAAQS) for ozone for the Metropolitan Washington DC Nonattainment Area.

On March 2, 1999, the D.C. Circuit Court ruled that budgets contained in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. By transmittal letters dated as shown below, the District, Maryland, and Virginia each formally submitted revisions to the attainment plan for the purpose of establishing out-year budgets for 2015 and 2020 for the Metropolitan Washington DC Ozone Nonattainment Area. The revised Phase II SIPs submittal dates are:

The District of Columbia—March 22, 2000;
Maryland—March 31, 2000;
Virginia—March 31, 2000.

On April 24, 2000, we posted the availability of these revised Phase II SIPs and their budgets on our conformity website for the purpose of soliciting public comment on the adequacy of the budgets. The comment period closed on May 24, 2000.

On June 22, 2000, EPA Region III sent letters to the District of Columbia, the State of Maryland and the Commonwealth of Virginia which constituted final Agency actions on the adequacy of the budgets contained in the revised Phase II SIPs. Those actions were EPA's finding that the mobile budgets contained in the revised attainment plan are adequate for transportation conformity purposes. As a result of our finding, the budgets contained in the submitted revised attainment plans for the Metropolitan Washington D.C. Nonattainment Area may be used for future conformity determinations. This is an announcement of an adequacy finding that we already made on June 22, 2000. The effective date of this finding is July 18, 2000. This finding will also be announced on EPA's website: http://www.epa.gov/oms/traq (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of Submissions for Conformity''). The website will contain a detailed analysis of our adequacy finding and our responses to public comments.

Transportation conformity is required by section 176 of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The criteria by which we determine whether a SIP's budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

Please note that an adequacy finding of the mobile budgets of a submitted SIP is separate from EPA's completeness determination on that SIP, and separate from EPA's final action as to whether or not the SIP is approvable. Even if we find budgets adequate, the SIP could later be disapproved. We describe our process for determining the adequacy of submitted SIP budgets in guidance memorandum dated May 14, 1999 and titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.'' We followed this guidance in making this adequacy finding for the budgets contained in the revised Phase II SIPs submitted on March 22, 2000, March 31, 2000 and March 31, 2000 by the District, Maryland, and Virginia, respectively. You may obtain a copy of this guidance from EPA's conformity web site: http://www.epa.gov/oms/traq (once there, click on the ''Conformity'' button) or by calling the contact name listed in ''For Further Information Contact'' section of this notice.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 23, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–16736 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IL202–1; FRL–6728–4]

Adequacy Status of East St. Louis, Illinois Submitted Ozone Attainment Demonstration for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the motor vehicle emissions budgets in the Illinois portion of the St. Louis ozone attainment demonstration are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the St. Louis area can use the motor vehicle emissions budgets for volatile organic compounds and oxides of nitrogen from the submitted ozone attainment demonstration for future conformity determinations.

DATES: These budgets are effective July 18, 2000.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments will be available at EPA's conformity website: http://www.epa.gov/oms/traq, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Patricia Morris, Environmental Scientist, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, morris.patricia@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

Throughout this document, whenever ''we'', ''us'' or ''our'' is used, we mean EPA. Today's notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Illinois Environmental Protection Agency on June 12, 2000, stating that the motor vehicle emissions budgets for volatile organic compounds and oxides of nitrogen in the Illinois portion of the St. Louis submitted ozone attainment demonstration for 2003 are adequate. This finding will also be announced on EPA's conformity website: *http://www.epa.gov/oms/traq,* (once there, click on the ''Conformity'' button, then

look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 16, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–16757 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6728–3]

Community Based In-Home Asthma Environmental Education and Management

AGENCY: Environmental Protection Agency.

ACTION: Request for grant proposals.

SUMMARY: Request for Proposals for Community Based In-Home Asthma Environmental Education and Management. This is an announcement of the availability of FY 2000 grant funds for the Environmental Protection Agency's (EPA) Indoor Environments Division/Office of Radiation and Indoor Air. Section 103(a)(1) of the Clean Air Act authorizes the Administrator to conduct and promote the coordination and acceleration of research, investigations, experiments, demonstrations, surveys and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution by ((b)(3)) making grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in 103(a)(1). The intended use of these funds is to support pilot studies of asthma education, including asthma management and indoor asthma trigger identification/mitigation, in existing Community-Based In-Home Environmental Management or Education programs. EPA is awarding these grants to support the recipients to conduct pilot studies of in-home asthma education and assess the effectiveness of their in-home approaches to educating children with asthma, their parents and/or primary care givers, and other people with asthma, including how to identify the indoor triggers to which the asthmatic(s) in the household may be sensitive, and how to mitigate them. EPA plans to award two grants to each of two organizations for $100,000.00 each, however the final number of awards and award amounts may vary depending on proposal quality and resource availability.

DATES: Letter of Intent due by July 7, 2000. Pre-application Assistance Conference Call dates are:

1. July 11, 2000, 12 noon until 2pm Eastern Daylight Time
2. July 14, 2000, 12 noon until 2pm Eastern Daylight Time

Application Deadline: Postmarked no later than August 7, 2000.

ADDRESSES: Send Letter of Intent and Applications to the attention of Sheila Brown, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6609J), Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Sheila Brown (202) 564–9370

SUPPLEMENTARY INFORMATION: The focus for funding is to: (a) Reduce the impact of in-home environmental asthma triggers on children and adults with asthma; (b) strengthen the capacity of individual households to control in-home environmental asthma triggers; and (c) assess the effectiveness and sustainability of strategies for in-home environmental asthma trigger management and education within communities. Completed applications, including work plans and detailed budgets, are due to the Indoor Environments Division no later than August 7, 2000. If you intend to apply, you must send a letter of intent postmarked no later than July 7, 2000 to Attention: Sheila Brown,1200 Pennsylvania Avenue, N.W. (6609J), Washington, D.C. 20460, or an e-mail to <*brown.sheila@epa.gov*> no later than 3 pm (EDT) on July 7, 2000, indicating the name of your organization, the name and phone number of a contact person in the organization, whether you expect to participate in one of the pre-award technical assistance conference calls (see page 5), and if so, on which day. Should demand exceed capacity, we will schedule an additional call and inform you by telephone of the date and time.

Eligibility Criteria

To be eligible for funding, an applicant must:

(1) Demonstrate the ability to implement an in-home education program which includes: In-home identification and assessment of potential indoor environmental asthma triggers; direct one-on-one education in the home on asthma, asthma management, and mitigation of indoor environmental triggers to which household members with asthma may be sensitive;

(2) Meet the standards for eligibility as identified in Section 103 (3)(b) of the Clean Air Act (page 1, paragraph 1);

(3) Request no more than $100,000.00 to accomplish pilot project objectives;

(4) Properly complete and submit standard form SF–424 and a work plan no greater than seven pages in length (in no smaller than 12 point type) by the established due date;

(5) Commit to complete the proposed pilot project activities within 18–24 months of grant award.

Ranking Criteria

Applications will be ranked on the basis of the criteria listed below. Ranking for each criterion is based on a scale of 1 (does not meet the requirement) to 10 (exceeds the requirement).

(1) Applicant organization currently is established and operates within a base community, performing community level work. (1–10 points).

(2) Applicant organization currently is, or is affiliated with, an established in-home environmental management and/or education program. (1–10 points)

(3) Education materials and assessment tools developed or selected for use in conducting in-home education and assessment pilot project activities address established indoor environmental triggers of asthma including: environmental (secondhand) tobacco smoke, house dust mites, cockroaches, molds, and animal dander. Materials are compatible with the

guidance contained in EPA's asthma brochure, ''Clear Your Home Of Asthma Triggers: Your Children Will Breathe Easier'' (http://www.epa.gov/iaq/pubs/asthma.html) and the findings and recommendations contained in the January, 2000 National Academy of Sciences report on asthma, ''Clearing the Air: Asthma and Indoor Air Exposures'' (*http://books.nap.edu/catalog/9610.html*). (1–10 points)

(4) Mitigation methods for environmental (secondhand) tobacco smoke, house dust mites, cockroaches, molds, and animal dander included among the pilot project activities are compatible with the guidance in EPA's asthma brochure, ''Clear Your Home Of Asthma Triggers: Your Children Will Breathe Easier'' (http://www.epa.gov/iaq/pubs/asthma.html) and the findings and recommendations contained in the January, 2000 National Academy of Sciences report on asthma, ''Clearing the Air: Asthma and Indoor Air Exposures'' (*http://books.nap.edu/catalog/9610.html*). (1–10 points)

(5) Education materials and assessment tools selected for the pilot project reflect current standards for conducting public health education and outreach activities, particularly with respect to motivating behavioral changes in low-literacy, low-income, and disproportionately impacted populations. (1–10 points)

(6) Applicant adequately describes mechanisms for obtaining feedback about program effectiveness from households after the in-home education assessment visit(s). (1–10 points)

(7) Applicant agrees to provide quarterly performance reports to EPA which shall include, at a minimum, information about: the number of homes visited, the number of children and adults with asthma educated, the number of homes in which indoor environmental triggers have been identified, and the number of households in which mitigation actions have been taken. (1–10 points)

(8) The project demonstrates the effectiveness of education strategies that are appropriate to varied populations and geographic locations in the United States, and contributes to an improved understanding of how to conduct in-home asthma education programs. (1–10 points)

Application Process

Applicants must complete standard form 424 (*http://www.whitehouse.gov/omb/grants/sf424.pdf*) and submit a work plan no greater than five pages in length (12 point type). The work plan must include: (1) A summary of specific objectives, expected outcomes, and deliverables; and (2) a discussion of the budget and how the budget relates to the objectives, outcomes, and deliverables in the work plan. Resumes and supplementary biographical information, if any, should not exceed an additional two pages. The project work plan submitted with the completed application SF–424 should conform to the following outline:

(1) Title.

(2) Description of the applicant organization, experience in community work (especially with children and adults with asthma), existing in-home education efforts, existing indoor air quality/asthma activities, and the organization's infrastructure as it relates to its ability to do in-home assessments and/or education programs.

(3) Description of staffing and funding resources needed to implement proposed work plans, including number of staff and qualifications.

(4) Description of experience implementing evaluation and tracking procedures and managing grants (*e.g.,* submitting reports, budgets, etc.).

(5) Project Period—beginning and ending dates.

(6) Project purpose.

(7) Description of basic structure of the in-home asthma education and assessment pilot project proposed, curricula and assessment tools to be used, and resource lists including references. Describe why the curricula and protocols were selected or created; what other materials you may have considered (including reasons for not selecting them); and, if possible, a discussion of how the asthma education approaches you wish to demonstrate compare or contrast to other known approaches.

(8) Description of target audiences, community, and any special asthma-related demographics of areas targeted for this work.

(9) Description of mechanisms for question resolution and follow-up with asthmatics and their families and/or primary care givers following in-home visit(s). Reasons for selecting or creating these mechanisms and, if possible, a discussion of how the selected mechanisms compare to other available mechanisms.

(10) Description of any types of follow-up materials or training that may be given to the households such as community resource lists, household repair and maintenance training, lessons on how to obtain services in the community, etc.

(11) Definition of success for the project and how success will be measured. Describe mechanisms for tracking program outputs (*e.g.,* how many households were educated, how many homes were assessed, in how many homes actions were taken), summarizing and characterizing program outcomes (*i.e.,* the effectiveness of the education and mitigation methods, the level of increased awareness).

(12) Identification of other localities, regions, or states that might benefit from the lessons you expect to learn as a result of your pilot project.

(13) Schedule—indicate tasks, quarterly report submission and final report submission dates.

(14) Budget. Indicate funds used for salaries, materials, equipment, contracted activities, travel, overhead, and other pertinent information.

If you would like to apply for assistance under the Community Based In-Home Asthma Environmental Education and Management program, application materials are available at the web addresses listed below or by calling the Indoor Environments Division at (202) 564–9370. The application kit contains the following information:

—Application for Federal Assistance—http://www.epa.gov/region4/grantpgs/grants.htm)
—Instructions for completing the application
—Assurances/certifications

An original application and one copy must be received at the following address no later than close of business on Monday, August 7, 2000:

Mailing Address: Attn: Sheila Brown, Environmental Protection Agency, Indoor Environments Division, In-Home Program (6609J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460

Courier Address: Attn: Sheila Brown, Environmental Protection Agency, Indoor Environments Division, In-Home Program (6609J), 501 3rd Street, NW., Washington, DC 20001

Questions regarding the administrative aspects and programmatic aspects, including work plan, should be referred to Sheila Brown (202) 564–9370. Two pre-application assistance conference calls have been scheduled to help prospective applicants:

1. Tuesday, July 11, 2000 from 12 noon until 2pm Eastern Daylight Time. Call in number (202) 260–1015, then dial access code 9490#
2. Thursday, July 14, 2000 from 12 noon until 2pm Eastern Daylight Time. Call in number (202) 260–7280, then dial access code 0792#

Twenty lines have been reserved for each call. To ensure access, please

follow the instructions for submitting the letter of intent described on page 1 of this announcement.

In addition, prospective applicants should obtain a copy of the Code of Federal Regulations (CFR) Title 40, Part 30 (and for State and local agencies, also see Part 31). This portion of the CFR includes regulations applicable to your assistance agreement. Copies of the CFR are available at your local U.S. Government Bookstore, the U.S. Government Printing Office or on the internet at *http://www.epa.gov/ogd/grants.htm.* Once at this site, select ''Administrative Regulations and Policies/Subchapter B-Grants and Other Federal Assistance'' and select Part 30 or Part 31.

Selected projects will be announced on or around October 15, 2000. If you have any questions regarding this grant notice, please contact Sheila Brown (202) 564–9370.

Authority: 42 U.S.C. 7401–7626; Pub. L. 159, 69 Stat. 322.

Dated: June 26, 2000.

Robert Perciasepe,

Assistant Administrator of Air and Radiation.

[FR Doc. 00–16763 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6728–5]

Notice of Proposed Prospective Purchaser Agreements Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9601–9675, notice is hereby given that two identical proposed prospective purchaser agreements (''Purchaser Agreements'') associated with the Sharon Steel Farrell Works Superfund Site (''Site'') in Farrell, Pennsylvania, have been executed by the Environmental Protection Agency and the Department of Justice. The prospective purchasers, Shenango Valley Manufacturing Company (''SVMC'') and Farrell Slag, Inc. (''Farrell Slag'') competed at a bankruptcy auction sale by the United States Bankruptcy Court for the Western District of Pennsylvania to purchase approximately 200 acres of the Sharon Steel Farrell Works Superfund Site (''Site''). Sharon Steel Corporation presently owns the Site and is liquidating its assets pursuant to Chapter 11 of the Bankruptcy Code. Farrell Slag bid successfully for the property. SVMC was the second highest bidder. Pursuant to the bankruptcy sale, if Farrell Slag is unable to complete the purchase of the property, it will be conveyed to the next highest bidder, SVMC. Since it is acceptable to EPA for either Farrell Slag or SVMC to acquire the property, EPA is proposing Purchaser Agreements for each. However, only the ultimate purchaser of the property will be bound by its respective Purchaser Agreement.

The Purchaser Agreements are now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreements are inappropriate, improper, or inadequate. The Purchaser Agreements will resolve certain potential EPA claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The property subject to the Purchaser Agreements is the portion of the Site south of Ohio Street and west of the Shenango River. The property contains slag Sharon Steel generated during operation of an integrated steel making plant at the Site. EPA will conduct or oversee long term remedial actions at the Site and has initiated the Remedial Investigation/Feasibility Study to identify the hazards posed by contamination at and arising from the Site. Under the terms of each Purchaser Agreement, the purchaser will pay the United States $40,000 for a limited covenant not to sue, cooperate with EPA in the continued implementation of remedial actions at the Site and otherwise comply with the requirements of the Purchaser Agreement.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Purchaser Agreements. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before August 2, 2000.

ADDRESSES: *Availability:* The proposed Purchaser Agreements and additional background information relating to the proposed Purchaser Agreements are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Purchaser Agreements may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''Sharon Steel Farrell Works Superfund Site Prospective Purchaser Agreements'' and ''EPA Docket No. CERCLA–PPA–2000–01 and CERCLA–PPA–2000–02,'' and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Ami Y. Antoine (3RC43), Sr. Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2497.

Dated: June 16, 2000.

Bradley M. Campbell,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 00–16762 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 17, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Alan E. Knudson and the Knudson Family Limited Partnership, Ltd., Draper, Utah; to retain voting shares of Silver State Bancorp, Henderson, Nevada, and thereby indirectly retain voting shares of Silver State Bank, Henderson, Nevada.

Board of Governors of the Federal Reserve System, June 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16733 Filed 6–30–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 27, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Avant Financial LLC, Syracuse, New York, to become a bank holding company by acquiring 67.5 percent of the voting shares of Reliance Bank, White Plains, New York.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Cardinal Financial Corporation, Fairfax, Virginia; to merge with Heritage Bancorp, Inc., McLean, Virginia, and thereby indirectly acquire The Heritage Bank, McLean, Virginia.

Board of Governors of the Federal Reserve System, June 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16732 Filed 6–30–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 17, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. Boston Private Financial Holdings, Inc., Boston, Massachusetts; to acquire Sand Hill Advisors, Inc., Menlo Park, California, and thereby engage in investment advisory services, pursuant to § 225.28(b)(6) if Regulation Y.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Southern Financial Bancorp, Inc., Warrenton, Virginia; to acquire First Savings Bank of Virginia, Springfield, Virginia, and thereby engage in operating a savings and loan association, pursuant to § 225.28(b)(4)(ii) of Regulation Y, and immediately merging this institution into Southern Financial Bank, Warrenton, Virginia, a wholly owned subsidiary of Southern Financial Bancorp, Inc. Comments on this application must be received not later than July 27, 2000.

Board of Governors of the Federal Reserve System, June 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16731 Filed 6–30–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Evaluation of the BodyWise Eating Disorder Initiative—NEW—The Office on Women's Health plans to conduct an evaluation of the initial demonstration phase of the BodyWise Eating Disorder initiative to look for changes in school practices and awareness regarding eating disorder issues. The study design features a pre-test/post-test model with questionnaires to be completed by a sample of middle school staff. Burden Information for Pre-test—Number of Respondents: 426; Burden Per Response: 20 minutes; Burden for Pre-test: 142 hours—Burden Information for Post-test—Number of Respondents: 396; Burden Per Response: 20 minutes; Burden for Post-test: 132 hours—Total Burden: 274 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and

Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received on or before August 2, 2000.

Dated: June 15, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–16669 Filed 6–30–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of National AIDS Policy; Notice of Meeting of the Presidential Advisory Council and HIV/AIDS and Its Subcommittees

June 27, 2000.

Pursuant to P.L. 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS scheduled for September 21–22, 2000 at the Madison Hotel, Washington, DC. The meeting of the Presidential Advisory Council on HIV/AIDS will take place of Thursday, September 21, and Friday, September 22 (8:30 a.m. to 6 p.m. on Thursday and Friday) at the Madison Hotel, 1177 15th Street, NW, Washington, D.C. 20005. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council of HIV/AIDS may include presentations from either of the Council's subcommittees, Services or Prevention.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 736 Jackson Place, NW, Washington, DC 20503, Phone (202) 456–2437, Fax (202) 456–2438, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Vanessa Vaughn at (301) 986–4870 no later than August 25, 2000.

Daniel C. Montoya,

Executive Director, Presidential Advisory Council of HIV and AIDS.

[FR Doc. 00–16779 Filed 6–30–00; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Human Subject Protection and Financial Conflict of Interest: Conference

AGENCIES: OASPE, OPHS, NIH, FDA, and CDC, HHS.

ACTION: Notice of conference; request for comments.

SUMMARY: A Conference on Human Subject Protection and Financial Conflict of Interest will be held at Natcher Auditorium, NIH Campus on August 15–16, 2000. The issue of financial conflict of interest is one of the 5 main issues identified by the Secretary of Health and Human Services in her announcement of steps being taken to strengthen human subject protection during clinical trials. In that announcement, the Secretary stated that there would be a public process to review this issue. She said that HHS would undertake an extensive public consultation to identify new or improved means to manage financial conflicts of interest that could threaten the safety of research subjects or the objectivity of the research itself. Emphasis will be placed on the informed consent process and how it might be clarified and enhanced in dealing with issues related to financial conflict of interest.

The Conference will review the current regulatory requirements and guidance, serve as a forum for presentations of current approaches being taken for dealing with real and potential financial conflict of interest at the institution, IRB, and clinical investigator levels. This conference will help the government refine its current guidance and may lead to other changes. NIH has developed a set of issues to consider related to its regulations which is now available as background for the conference. Further guidance will be issued based on the responses to questions posed in this Notice and the conference deliberations.

To facilitate review of current policies, regulations, and guidance documents, these documents are cited as references at the end of this Notice. The references cited are also available electronically at the OASPE Website (http://aspe.hhs.gov/sp/coi/index.htm).

To maximize the efficiency of this process, six questions (see below) have been developed. Please address these in writing by August 1, 2000. This will help in organizing the plenary and concurrent work group sessions. There will be a public session where brief comments on these topics can be addressed during the conference.

DATES: *Conference on Human Subject Protection and Financial Conflict of Interest:* The Conference will be held on Tuesday August 15, 2000 from 8:30 AM to 5:30 PM and Wednesday August 16, 2000 from 8:30 AM to 1:00 PM. Although the entire conference is open to the public and there will be no registration fee, it is requested that all those who wish to participate in the conference register by August 1, 2000. This will allow us to prepare an adequate number of conference background materials and to make appropriate assignments for the breakout sessions.

Request for Comments: Written responses to the six questions are requested by all parties, whether or not they will be attending the conference, by August 1, 2000 as described below.

Opportunity for Public Comment during the Conference on August 15, 2000, 2:15–3:30 PM. There will be an opportunity to make brief presentations during this session set aside for public comments. The comments should be responses to any or all of the six questions listed below. Anyone wishing to make comments should file a written Notice of Participation as described below by August 1, 2000. You will be contacted after all the requests are reviewed and given information about the time of your presentation and other details.

ADDRESSES: The Conference will be held at Natcher Auditorium, Building 45, NIH Campus, 9000 Rockville Pike, Bethesda, MD 20892.

Registration Information: To register for the conference please contact Mr. Mark Brown, CMP, MasiMax Resources, Inc., phone 240–632–5618, FAX 240–632–0519, e-mail: *Mbrown@masimax.com.* Please register by August 1, 2000.

Comments and Notices of Participation in Public Session: Written or electronic responses to the six questions as well as submissions of written or electronic Notices of Participation to speak during the Public Session of the Conference should both be addressed to: Stuart L. Nightingale, M.D., Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW, Washington, DC 20101, Fax: 202–205–8835 email: *COI@aspe.dhhs.gov*

Notices of Participation to present during the Public Session should include name, affiliation, (whether person is from an IRB, an institution,

industry, is a clinical investigator, etc.), main points of presentation, how much time requested (no more than 5 minutes), and telephone number and other contact information.

FOR FURTHER INFORMATION CONTACT: Stuart L. Nightingale, FAX 202–205–8835, e-mail: *coi@OSASPE.dhhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

In recent years, clinical research has generally become ever more complex—which, in turn, has engendered a new degree of complexity in accompanying ethical and conflict of interest considerations. Financial conflict of interest in clinical trials has been of concern for a number of years, both from the perspective of research objectivity and human subject protection. Both the PHS and FDA have requirements/regulations and guidance in place relating to financial conflict of interest. Recently, financial arrangements between commercial interests and institutions have become more common and some institutions have arrangements with the same commercial organizations as investigators. This has been highlighted in the area of gene transfer research. Additionally, although IRBs are required to deal with conflict of interest issues, these have been understood to be directed more toward members' own conflict of interest rather than those of investigators or institutions. There is little guidance to IRB's and a recent HHS Inspector General's Report found that only 25 percent of IRBs review these issues and consider them for inclusion in the informed consent document.

B. The Secretary's Initiatives To Strengthen Human Subject Protection

Notwithstanding the many successes over the years in protecting human research subjects from undue and undisclosed risks, we recognize that the protection system itself needs to be enhanced. In this regard, we agree with the finding of the HHS Inspector General that Institutional Review Boards (IRBs)—the central element of the system—often have difficulty fulfilling even their fundamental responsibilities because many of them are overworked and few have been accorded adequate resources by their parent institutions. These findings have been reinforced over the last two years by a series of inspections by the HHS Office for Protection from Research Risks (OPRR). Several inspections resulted in complete or partial cessation of human subjects research until the institutions involved took appropriate actions.

In response to these developments, Secretary Shalala recently announced five initiatives designed to enhance protection for human research subjects.

First, HHS will take steps to require that clinical investigators and IRB members and staff undergo continuing education in issues relating to human subjects.

Second, HHS will issue guidance making clear that research institutions and clinical trial sponsors are expected to take stringent continuing review actions, such as audits of research records, to promote compliance with current informed consent requirements.

Third, HHS will expand its requirements for study monitoring—thereby improving the oversight of even small-scale clinical trials. Large-scale phase III clinical trials, already have the requirement to have data and safety monitoring.

Fourth, HHS will undertake an extensive public consultation to identify new or improved means to manage financial conflict of interest that could threaten the safety of research subjects or the objectivity of the research itself. The insights gained from this process will be expressed in new guidance for the research community regarding what information about the financial interests of investigators and research institutions should be disclosed to research subjects and others. The objective of this guidance will be to make current conflict of interest regulations more effective.

Fifth, HHS will seek new legislation to enable FDA to level civil money penalties for violation of informed consent and other important regulatory requirements so that they can be applied to clinical investigators and institutions. This new authority would fill a significant gap in the current spectrum of sanctions against those who fail to obey Federal regulations for protection of human research subjects.

C. HHS/PHS Grant Award Requirements for Dealing With Financial Conflict of Interest

In 1995 the Public Health Service promulgated regulations establishing standards and procedures to be followed by institutions that apply for research funding to ensure that the design, conduct and reporting of research under PHS grants, contracts or cooperative agreements would not be biased by any conflicting financial interest of those investigators responsible for the research. These regulations require that investigators disclose to an institutional official a listing of significant financial interests (and those of his/her spouse and dependent children) that would reasonably appear to be affected by the research. The institutional official must review the disclosures and determine whether any of the reported financial interests could directly and significantly affect the design, conduct or reporting of the research and, if so, the institution must, prior to any expenditure of funds, report the existence of any conflicting interests to the PHS awarding component and assure that the conflict of interest has been managed, reduced or eliminated in accordance with the regulations.

D. FDA Regulations Requiring Financial Disclosure by Clinical Investigators

On February 2, 1998, FDA published a final rule requiring that financial interests and arrangements of clinical investigators that could affect the reliability of data submitted to FDA be identified and disclosed to FDA by the applicant. Clinical research data provide the basis for FDA's assessment of whether a product is approvable under statutory requirements. It is essential that these data be reliable and that steps be taken to minimize possible effects on the data resulting from potential bias on the part of any investigator. This regulation, which became effective on February 2, 1999, applies to any applicant who submits a marketing application or reclassification petition for a human drug, biological product, or medical device and who submits any clinical study of a drug or device in humans that the applicant or FDA relies on to establish that the product is effective, or any study in which a single investigator makes a significant contribution to the demonstration of safety. The regulation requires applicants to certify to the absence of certain financial interests of clinical investigators or to disclose those financial interests. If the applicant does not include certification and/or disclosure, or does not certify that it was not possible to obtain the information, the agency may refuse to file the application. On December 31, 1998, FDA published an amended final rule that reduced the need to gather certain financial information for studies completed before February 2, 1999.

E. Purpose of This Conference

As discussed above, the issue of financial conflict of interest in research is one of the 5 main areas identified by the Secretary of Health and Human Services in her announcement of steps being taken to strengthen human subject protection during clinical trials. In that

announcement, the Secretary stated that HHS will hold public discussions this summer to find new ways to manage conflicts of interest so that research subjects are appropriately informed, and to further ensure that research results are analyzed and presented objectively. In addition, these public discussions also will focus on clarifying and enhancing the informed consent process.

This Conference Will:

Implement one of the Secretary's five initiatives to strengthen human subject protection in clinical research.

Remind participants of current PHS/FDA regulations, guidelines and guidance through documents and presentations.

Present examples of how the issue of financial conflict of interest is dealt with at the level of: Institutions, IRBs, and Clinical Investigators (including Sponsor/Investigators), and Industry/Sponsors.

Receive public comments on questions posed in the **Federal Register** announcing the conference.

Provide information for the Department of Health and Human Services to develop more useful and detailed guidance to implement current regulatory requirements.

Who Should Attend?

Institutional Officials, IRB staff and members, Clinical Investigators, Industry/Sponsors, National Organizations/Health Professionals, Patient and Advocate groups, Patients and Research Participants.

General information about the conference, the conference Program is available on the ASPE Website (*http://aspe.hhs.gov/sp/coi*) and at the Website of MasiMax Resources, Inc. (www.masimax.com/coi/index.html).

F. Questions for Comment

Members of the Public who wish to respond to the following questions, should send their comments by August 1, 2000 or comment at the Conference during the public session (To comment at the conference during the session for Public Comment, a Notice of Participation should be submitted).

1. For each group listed below, what types of financial interests are associated with human subjects research funded or regulated by HHS agencies?

Clinical investigators (including sponsor/investigators)
IRB members and staff
Awardee institutions

2. Is there empirical evidence that informing research participants about financial relationships or financial conflict of interest of the investigator, the institution, or the IRB:

Can cause or prevent real or perceived harm (physical or psychological) to human research subjects?

Can compromise the objectivity of the associated research?

Can adversely or positively affect participation in the trial?

Can enhance the informed consent process by more fully informing potential participants?

Can be understood by and is meaningful to the potential research participant?

3. If information about financial interests is disclosed to potential participants in clinical trials, what information should be disclosed and at what level of detail?

Should potential participants be told of all of the financial interests of investigators, IRB members, or institutions, or only those financial interests which constitute a financial conflict of interest or might constitute a financial conflict of interest? Should potential participants be told what protections are in place and are working to ensure that financial conflicts are managed, reduced, or eliminated to promote objectivity and enhance human subject protection in the trial? Are the financial limits set forth in current PHS regulations covering awardee institutions still appropriate for clinical researchers? What are appropriate levels of reportable financial relationships for IRB members and institutions?

4. If information about financial interests is disclosed to potential participants, when and how should information about financial conflict of interest be provided to them?

If information about financial interests/conflict of interest involving institutions, IRBs, and investigators should be provided, what is the optimal point in the process for disclosure?

Should information be provided by the institution, the research investigator, the IRB, or a third party?

Should disclosure information and institutional policy be provided in the informed consent document or in an entirely separate document?

5. What are appropriate roles for the institution, the IRB, the clinical investigator (including sponsor/investigators), and perhaps other entities in dealing with financial interests or financial conflict of interest?

What are the responsibilities and obligations of each entity?

How should each entity relate to the other entities?

Should disclosed information on which determinations are made (including deliberations) be shared with the other entities? If so, what information should be shared and how and when should the disclosures be conducted?

What confidentiality protections are/should be in place to safeguard the privacy and confidentiality of the investigator, IRB member, and institution?

6. Other than those at the Federal level, what protections exist to ensure that the financial conflicts are managed, reduced, or eliminated to promote objectivity in the trial and to enhance human subjects protection?

References

HHS NEWS, U.S. Department of Health and Human Services, May 23, 2000: ''Secretary Shalala Bolsters Protections for Human Research Subjects''

HHS FACT SHEET, U.S. Department of Health and Human Services, May 23, 2000 ''Protecting Research Subjects''

Code of Federal Regulations, Title 45, Part 46, Subpart A. Federal Policy for the Protection of Human Subjects (Basic DHHS Policy for Protection of Human Research Subjects).

Code of Federal Regulations, Title 42, Part 50, Subpart A. Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science

Code of Federal Regulations, Title 42, Part 50, Subpart F. Responsibility of Applicants for Promoting Objectivity in Research for Which PHS Funding Is Sought

Frequently Asked Questions Concerning the Department of Health and Human Services' Objectivity in Research Regulations and the National Science Foundation Investigator Financial Disclosure Policy, **Federal Register:** July 3, 1996 Volume 61, Number 129, p. 34839.

Required Education in the Protection of Human Research Participants. NIH Guidance, June 5, 2000

Financial Conflict of Interest and Research Objectivity: Issues for Investigators and Institutional Review Boards. NIH Guidance, June 5, 2000.

FDA Information Sheets, Guidance for Institutional Review Boards and Clinical Investigators, 1998 Update, Revised February 1999. Also available at www.fda.gov

Code of Federal Regulations, Title 21, Part 50. Protection of Human Subjects (FDA)

Code of Federal Regulations, Title 21, Part 54. Financial Disclosure by Clinical Investigators (FDA)

Code of Federal Regulations, Title 21, Part 56. Institutional Review Boards (FDA)
Code of Federal Regulations, Title 45, Part 76. HHS Debarment Regulations

Dated: June 27, 2000.

William F. Raub,

Deputy Assistant Secretary for Science Policy, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

[FR Doc. 00–16760 Filed 6–30–00; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00095]

Cooperative Agreement for Birth Defects Surveillance, Research, and Prevention Activities; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for the University of South Alabama Birth Defects Surveillance, Research, and Prevention Activities.

B. Eligible Applicants

Single Source: Assistance will be provided only to the University of South Alabama. No other applications are solicited.

This authority is granted under the Consolidated Appropriations Act 2000 (Public Law 106–113), which states: ''* * * under section 1509 of the Public Health Service Act * * * $1,000,000 shall be for the University of South Alabama birth defects monitoring and prevention activities.''

C. Availability of Funds

Approximately $800,000 is available in FY 2000 to fund this award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of only 1 year. Funding estimates may change.

D. Where To Obtain Additional Information

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: William A. Paradies, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number (770) 488–2721, Email address: WParadies@cdc.gov.

For program technical assistance, contact: Larry D. Edmonds, State Services, Birth Defects and Pediatric Genetics Branch, Division of Birth Defects, Child Development, Disability and Health, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop F–45, Atlanta, GA 30341–3724, Telephone number (770) 488–7171, E-mail address: LEdmonds@cdc.gov.

Dated: June 27, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–16719 Filed 6–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00105]

TB Epidemiologic and Operational Research; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of Fiscal Year 2000 funds for a new cooperative agreement to enhance the capabilities of recipients of state and local tuberculosis (TB) elimination and laboratory agreements to conduct TB epidemiologic and operational research. This program addresses the ''Healthy People 2010'' focus areas of Immunization and Infectious Diseases. For the conference copy of ''Healthy People 2010'', visit the internet site http://www.health.gov/healthypeople

The purpose of this cooperative agreement is to build capacity at state and local health departments to conduct and implement protocol-driven epidemiologic and operational research. Such actions are consistent with recommendations issued by the Advisory Council for the Elimination of Tuberculosis (ACET) calling for decisive actions to: Better understand the changing epidemiology of TB to rebuild the public health infrastructure; identify challenges and opportunities for TB control in an era of changes in health care organizations and delivery; recognize the interdependence of global TB and TB in the United States; and develop and evaluate new tools for TB diagnosis, treatment and prevention. This new cooperative agreement will be awarded to successful applicants from state and local health agencies to support health department-based investigators with access to patients with tuberculosis, latent tuberculosis infection, or recent exposure to persons with active tuberculosis (''contacts'') in the implementation of protocols for epidemiologic and operational research. Recipients of this award will be expected to conduct site-specific epidemiologic and operational research activities in TB which rely upon the implementation of common, agreed-upon study protocols. Award recipients will be expected to successfully compete for one or more of the specific TB research projects listed below. Eligible applicants may request support for activities under one or more of the following three separate focus areas. See Attachments 1–3 in the application kit for details under each focus area:

1. *Development of Contact Investigation Self-Evaluation Tools:* (See Attachment 1): Assist local TB control programs in building local-level capacity for evaluation of contact investigation processes by providing them with a package of self-evaluation tools. These tools will enable programs to systematically assess contact investigation processes and target programmatic revisions accordingly. The package will include economic evaluation tools to show how program changes will impact resource use and outcomes, thus enabling programs to plan strategically. The package of tools will be pilot tested to ensure usefulness and feasibility. These funds will give state and local health departments the ability to develop practical evaluation tools, based on the CDC's Recommended Framework for Evaluation, that can be used by local TB programs to use local data to evaluate contact investigation processes. They will also provide for the development of educational support materials to enable local level program staff to understand evaluation principles and conduct self-evaluations.

2. *Improving Contact Investigations in Foreign-Born Populations:* (See Attachment 2) Improve contact identification for foreign-born (FB) TB cases. Improve completeness and timeliness of screening for identified contacts to FB TB cases. Improve the interpretation of screening results for contacts to FB TB cases in [a] the context of screening results for US-born contacts to the same cases and [b] using serum immunologic profile (IFN-gamma

and TNF-alpha) and results of skin test screening with non-tuberculous mycobacterial antigens to aid interpretation of screening results for FB contacts. Improve completion of treatment for latent TB infection for FB contacts to pulmonary TB cases. These funds will be used to provide information for public health officials and policy makers to better understand methods for conducting contact investigations in FB populations and will provide improved completeness and timeliness of screening, interpretation of screening results, and treatment for latent TB infection for FB contacts to pulmonary TB cases.

3. *The Unmeasured Impact of the TB Epidemic on TB Programs in Health Departments:* (See Attachment 3) Describe the burden of investigating, providing diagnostic and treatment services, and conducting contact investigations for persons reported as suspect TB cases who are not subsequently verified as a TB case using the public health surveillance case definition or who are verified as a TB case but do not meet the criteria to be included in the area's annual morbidity reported to the national TB surveillance system. These funds will be used to allow state or local public health departments to provide information for public health officials and policy makers to better understand the burden of TB suspects and TB patients who are not included in annual morbidity TB counts. In addition, they will be used to provide a template for approaches to measuring this burden that may be useful in other jurisdictions in the future.

Additional background information and details for each of the three focus areas are provided in Attachments 1–3 in the application kit.

B. Eligible Applicants

Applications for this cooperative agreement award are limited to the official public health agencies of States and territories, or their bona-fide agents that are current recipients of the Tuberculosis Cooperative Awards announced in PA 00001, AND which reported 200 or more TB cases in 1999. These sites are the states of Alabama, Arizona, California, Florida, Georgia, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Washington; the cities of Chicago, Houston, Los Angeles, New York, San Diego and San Francisco; and Puerto Rico.

The only additional requirement of eligibility applies to the research activity listed in Attachment 2 for ''Improving Contact Investigations in Foreign-Born Populations'' which includes a requirement that of the reported 200 or more TB cases in 1999, at least 100 must be among foreign-born persons. Therefore, eligible applicants for this cooperative agreement would be the states of Arizona, California, Florida, Georgia, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Pennsylvania, Texas, Virginia, and Washington and the cities of Chicago, New York, Houston, Los Angeles, San Diego, and San Francisco.

C. Availability of Funds

Approximately $1,015,000 is available in FY 2000 to fund approximately 13 awards. See Attachments 1—3 for the specific amount of funds available in each focus area.

It is anticipated that awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance

Applicants may request Federal personnel, equipment, or supplies as direct assistance in lieu of a portion of financial assistance.

Use of Funds

Categorical funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant state or local health department funds or for inpatient care or construction of facilities. Funds may not be used to purchase drugs for treatment. In addition, recipients must maintain clear audit records to insure that the funding awarded under this cooperative agreement is used toward the activities under this announcement and remains separate from any funding the recipient may be awarded under other mechanisms.

Funding Preferences

Funding preferences for awards under this announcement will be given to those applicants who have demonstrated the greatest continued achievement of the following National TB Program Objectives:

1. At least 90 percent of patients with newly diagnosed TB, for whom therapy for one year or less is indicated*, will complete therapy within 12 months (*please refer to the definitions in ''Reported Tuberculosis in the United States, 1997'' for more information). To obtain a copy of this report, you may order through the CDC Website http://www.cdc.gov/nchstp/tb/ and go to online ordering; or you may contact the Communication and Education Branch, Sherry Hussain, 404–639–8135.

2. At least 85 percent of infected contacts who are started on treatment for latent TB infection will complete therapy.

3. Completeness of RVCT reporting on HIV status for at least 75 percent of all newly reported TB cases age 25–44.

In addition, funding preference will be given to those applicants in areas with a high number of TB cases in foreign-born persons and other high-risk populations (*e.g.*, HIV-infected persons), and to applicants with a high number of culture-positive TB cases reported in urban and rural areas.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under 1. Recipient Activities, and CDC will be responsible for conducting activities listed under 2. CDC Activities. See Attachments 1–3 for specific Program Requirements for each focus area.

E. Application Content

Submit separate and complete narrative and budget sections for each specific epidemiologic and operations research focus area addressed. For the budget section, submit a separate Form 424A (included in the Application Package) and detailed line-item justification for each focus area project.

Applications for each of the focus areas addressed must be developed in accordance with PHS Form 5161–1 (OMB Number 0937–0189). Pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and each copy of the application must be submitted unstapled and unbound. Materials which should be part of the basic plan should not be in the appendices.

Please label each application request clearly. See Attachments 1–3 for specific application content instructions for each focus area.

F. Submission and Deadline

Submit the original and two copies of the application including the PHS Form 5161–1 (OMB Number 0937–0189) on or before July 28, 2000 to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the stated criteria by an independent review group appointed by CDC. Evaluation Criteria instructions specific to each focus area may be found in Attachments 1–3.

H. Other Requirements

Technical Reporting Requirements: Provide CDC with an original plus two copies of:

1. Annual progress report, no more than 90 days after the end of the budget period;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the ''Where to Obtain Additional Information'' section of this announcement.

The following additional requirements are applicable to this announcement. For a complete description of each, See Attachment IV in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317E of the Public Health Service Act, 42 U.S.C. section 42 U.S.C. 247b–6, as amended. The Catalog of Federal Domestic Assistance number is 93.947.

J. Where To Obtain Additional Information

This and other CDC Announcements can be found on the CDC homepage on the Internet address http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements''.

To obtain additional information, contact: Carrie Clark, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–2783, Telephone (770) 488–2783, E-mail address: zri4@cdc.gov

Programmatic technical assistance may be obtained from: Juanita Elder, Division of Tuberculosis Elimination, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–10, Atlanta, GA 30333, Telephone (404) 639–8120, Email Address: jlc7@cdc.gov.

Dated: June 27, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–16718 Filed 6–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 2000 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Trends in STD Prevalence, Tuberculosis, and HIV Risk Behaviors Among Men Who Have Sex With Men, PA# 99000–H

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 2000 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Trends in STD Prevalence, Tuberculosis, and HIV Risk Behaviors among Men who have Sex with Men, PA# 99000–H.

Times and Dates: 8:30 a.m.–9 a.m., August 4, 2000 (Open), 9 a.m.–4:30 p.m., August 4, 2000 (Closed).

Place: Centers for Disease Control and Prevention, Corporate Square, Building 11, Conference Room 2214, Atlanta, Georgia 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 99000–H.

Contact Person for more Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eow1@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: June 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–16720 Filed 6–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Community-Based Strategies To Increase HIV Testing of Persons at High Risk in Communities of Color, PA# 00100

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis

Panel: Community-Based Strategies to Increase HIV Testing of Persons at High Risk in Communities of Color, PA# 00100.

Times and Dates: 9 a.m.–12 p.m., August 22, 2000 (Open), 12 p.m.–4:30 p.m., August 22, 2000 (Closed), 8:30 a.m.–4:30 p.m., August 23, 2000 (Closed), 8:30 a.m.–4:30 p.m., August 24, 2000 (Closed), 8:30 a.m.–4:30 p.m., August 25, 2000 (Closed).

Place: Crowne Plaza Airport Hotel, 1325 Virginia Avenue, Atlanta, GA 30344. Telephone 404/768–6660.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 00100.

Contact Person For More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eow1@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 the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–16721 Filed 6–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Optimizing Strategies to Provide Sexually Transmitted Disease (STD) Partner Services, PA# 00080.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Optimizing Strategies to Provide Sexually Transmitted Disease (STD) Partner Services, PA# 00080.

Times and Dates: 8:30 a.m–9 a.m., August 29, 2000 (Open), 9 a.m.–4:30 p.m., August 29, 2000 (Closed), 8:30 a.m.–4:30 p.m., August 30, 2000 (Closed).

Place: Centers for Disease Control and Prevention, 12 Corporate Square Boulevard, Building 12, Conference Rooms 1203 and 1307, Atlanta, GA 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 00080.

Contact Person for more Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eow1@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: June 23, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–16722 Filed 6–30–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 65 FR 30125–26, dated May 10, 2000) is amended to retitle the Office of Data Processing and Services (ODPS), National Center for Health Statistics (NCHS), to the Office of Information Technology and Services, and revise the functional statement.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete the title and functional statement for the Office of Data Processing and Services (CS3) and insert the following:

Office of Information Technology and Services (CS3). (1) Participates in the development of policy, long-range plans and programs of the Center; (2) Directs, plans and coordinates the Information Services and Information Technology Infrastructure of the Center; (3) Provides IRM policy coordination for the Center and IRM procurement approval authority for software, hardware and systems contract support; (4) Provides liaison with other public and private health agencies, foundations and statistical agencies on Information Technology and electronic data dissemination activities; and (5) Serves as the focal point for advanced Information Technology infrastructure research activities for NCHS-wide systems and in that capacity represents NCHS in developing technology partnerships with other agencies both public and private.

Dated: June 18, 2000.

Jeffrey P. Koplan,

Director.

[FR Doc. 00–16791 Filed 6–30–00; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–1366]

Nippon Shokubai; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nippon Shokubai has filed a petition proposing that the food additive regulations be amended to provide for the safe use of methylmethacrylate-trimethylolpropane trimethacrylate copolymer as an antiblocking agent in linear low-density polyethylene intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 0B4713) has been filed by Nippon Shokubai, c/o Keller & Heckman, 1001 G St., NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 177.1520 *Olefins polymers* (21 CFR 177.1520) to provide for the safe use of

methylmethacrylate-trimethylolpropane trimethacrylate copolymer as an antiblocking agent in linear low-density polyethylene intended for use in contact with food. The agency has also determined under 21 CFR 25.32(i) that the petitioned action would be of the type that would not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement would be required.

Dated: May 16, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–16725 Filed 6–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Children's Hospitals Graduate Medical Education (CHGME) Program Conference

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction.

In notice document 00–15901 appearing on page 39151 in the issue of Friday, June 23, 2000, make the following correction:

On page 39151, in the first column, in the first paragraph, fourteen lines down, the second to last sentence should read as follows:

''To do so, dial: 800–545–4387, then enter the access code ID # M31053, or 700–991–1738 (for Federal Government employees), then enter the access code ID # 28353.''

Dated: June 29, 2000.

Jane M. Harrison,

Director of Policy Review and Coordination.

[FR Doc. 00–16865 Filed 6–30–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Invasive Species Council; Listening Sessions for Input to the Development of the National Invasive Species Management Plan

AGENCY: National Invasive Species Council, Interior.

ACTION: Notice of regional public listening sessions.

SUMMARY: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463). Pursuant to Executive Order 13112, the National Invasive Species Council (NISC) on behalf of the Invasive Species Advisory Committee (ISAC) is holding regional public listening sessions in five locations for the first round of public input to the National Invasive Species Management Plan (Management Plan) under development by the NISC. A compilation of working group recommendations will be available at the meeting and through the Council's website (invasivespecies.gov) on or about July 7, 2000. These recommendations will be used to develop the framework and strategies of a draft plan.

DATES: See **SUPPLEMENTARY INFORMATION** section for ISAC/Council listening sessions dates and locations.

ADDRESSES: Comments and statements should be sent to Kelsey Passe, Program Analyst, National Invasive Species Council, 1951 Constitution Ave., NW, Room 320, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kelsey Passe or Alexis Gutierrez at (202) 208–6336; FAX (202) 208–1526; email: kelsey_passe@ios.doi.gov or alexis_gutierrez@ios.doi.gov; Phone: (202) 208–6336; Fax: (202) 208–1526. Council website (available on or about 7/10/2000): http://www.invasivespecies.gov.

SUPPLEMENTARY INFORMATION: In 1997, more than 500 scientists and land and resource managers from across the U.S. wrote the Administration to express their concerns about invasive species and the federal government's lack of coordinated actions to address biological invaders. In response to the letter and to the growing concern associated with invasive species, the Administration issued Executive Order 13112 on February 3, 1999.

EO 13112 establishes a National Invasive Species Council (NISC) which is to provide national leadership regarding invasive species. The Council is to ensure that Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective.

The NISC includes the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency. The Council is Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce.

The NISC is required to produce a Management Plan in August, 2000. The Management Plan will encourage planning and action at the local, tribal, State, regional, and ecosystem-based levels; develop recommendations for international cooperation; provide guidance on incorporating prevention and control of invasive species into the National Environmental Policy Act; facilitate development of a communication network to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health; and initiate the development of an information-sharing system that facilitates the exchange of information concerning invasive species.

The NISC, in order to address the requirements of EO 13112, established the Invasive Species Advisory Committee which consists of qualified representatives from outside of the Federal government. Their role is to provide stakeholder input to help the NISC achieve the goals and objectives of the Executive Order.

Management Plan—Scope and Objectives

Working groups, including federal and non-federal members, were convened this spring to provide the ISAC and the Council advice on what elements were most important to include in the first edition of the National Invasive Species Management Plan. The six working groups include the following:

1. Communication, Outreach, and Education
2. International Activities and Cooperation
3. Policy and Regulation
4. Research, Information Sharing, Documentation and Monitoring
5. Risk Analysis and Prevention
6. Management (Control and Restoration)

Working groups were organized with federal and non-federal co-leaders. The groups have and continue to utilize electronic communications (email, listservers, and web-based postings) to accelerate development of Management Plan input. The vision or scoping statements developed by each working group reflect a more specific refinement of the draft guiding principles adopted by the ISAC. Priority issues have been identified and the groups have developed draft responses or actions to be taken for consideration by the ISAC. As part of the management planning process, model projects will be identified which improve coordination and effectiveness and stimulate local action.

The working groups provided Council staff with summary information regarding the priority recommendations the Management Plan should include when the draft plan is ready for public comment and publication in the **Federal Register** in August, 2000. After issuance of the plan in the fall, the working groups will help implement the plan and begin developing input for its biennial revision.

A compilation of the working group recommendations will be available on the Council website, invasivespecies.gov on or about July 7, 2000. Initial comments from Federal agencies, State agencies, and the public (via the listening sessions and website responses) will be incorporated into a draft plan for discussion by the ISAC at their meeting in Seattle, WA, on August 2 and 3. A second draft will be completed by the end of August, for a 60 or 90 day comment period in the **Federal Register**.

Focus Questions

1. What are the most effective methods for gathering and disseminating information on invasive species and information on federal and non-federal activities regarding invasive species?
2. What is the best way to improve, expand, and implement an invasive species risk analysis or screening process?
3. What is the most effective way to communicate with interested parties before and during critical decision making activities?
4. What is the best way to encourage and involve key groups or individuals in implementing actions to address invasive species problems?
5. Is there an immediate project or action involving multiple regions, states, or interest groups that would address a significant invasive species issue? In your opinion, what should be the federal government's role in implementing this project or action?

ISAC Council Listening Sessions

(1) July 12, Oakland, California. 9 am–12 noon. Elihu Harris State Building, 1st Floor Auditorium, 1515 Clay Street.

(2) July 14, Chicago, Illinois. 9 am–3 pm. EPA Regional Office, 12th Floor Conference Center, Lake Michigan Room, 77 West Jackson Boulevard.

(3) July 14, Denver, Colorado. 9 am–2 pm. Executive Tower Hotel, Symphony Ballroom, 1405 Curtis Street.

(4) July 17, Albany, New York. 1 pm–5 pm. Marriott, Grand Ballroom Area, 189 Wolf Road.

(5) July 20, West Palm Beach, Florida. 1 pm–5 pm. South Florida Water Management District Headquarters Building, B–1, 3301 Gun Club Road.

Anyone wishing to make an oral presentation at a public listening session may do so without prior arrangement. Presenters will be recognized on a first-come, first-served basis, and comments will be limited based on the time available and the number of presenters. The presentation should identify the name and affiliation of the individual. Written presentation material may be provided to the staff for supplement to the court reporter's record. Written statements will be accepted at the meeting, or may be mailed or faxed to the NISC office. Those wishing to provide initial comments, but who are unable to attend one of the listening sessions, may send written comments to Kelsey Passe (see address below) by COB July 21, 2000.

Persons with disabilities who require accommodations to attend or participate in these meetings should contact Kelsey Passe, at 202–208–6336 or kelsey_passe@ios.doi.gov, by COB July 6, 2000.

Dated: June 28, 2000.

A. Gordon Brown,

Acting Co-Executive Director, National Invasive Species Council.

[FR Doc. 00–16735 Filed 6–28–00; 3:16 pm]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–060–1230–00–PA]

Cocoraque Butte Area Use Travel Restriction

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: This order restricts all motorized vehicle use year round on public lands in the Cocoraque Butte area in the Tucson Field Office, Arizona. The existing Off Highway Vehicle (OHV) use designation limiting motorized travel to existing roads and trails established in the Phoenix Resource Management Plan remains unchanged. This order is issued under the authority of 43 CFR 8364.1.

The affected public land includes approximately 480 acres generally located south of the Cocoraque Ranch Road, in

Gila and Salt River Meridian, Arizona T.14 S.,R. 10 E., sec. 8, Pima County, Arizona

EFFECTIVE DATES: The restrictions shall be effective immediately until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION:

Current OHV use designations limit motorized vehicle travel to existing routes in the Cocoraque Butte area, which contains significant cultural values that are fragile and easily damaged or destroyed through intentional or unintentional actions. Public use in the affected area in increasing and expected to grow as public awareness of the area increases. Adverse impacts from damage to fragile and irreplaceable resources have occurred and are likely to continue unless management action is taken. The use restrictions excluding motor vehicle use within the affected area will reduce the potential adverse impacts on fragile resource values.

The Cocoraque Butte area described herein will be subject to the following use restriction: Unless otherwise authorized, no person shall use, drive or operate any motor vehicle in the restricted area. Persons who are exempt from the restriction include: (1) Any Federal, State, or local officers engaged in fire, emergency or law enforcement activities; (2) BLM employees engaged in official duties; (3) Persons authorized by BLM to operate motorized vehicles within the restricted area. Non motorized access or use is not affected by this restriction.

The area affected by this order will be posted with appropriate regulatory signs. Additional information is available in the Tucson Field Office at the address shown below.

PENALTIES: Violations of this restriction order are punishable by fines not to exceed $100,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Jesse Juen, Field Manager, Tucson Field Office, 12661 East Broadway Boulevard, Tucson, Arizona 85748; (520) 722–4289.

Jesse J. Juen,

Field Manager.

[FR Doc. 00–16461 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–14000–00–1610–00]

Interim Travel Limitations to Motorized and Mechanized Vehicles in the Roan Plateau Area; Colorado

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that motorized and mechanized travel, except snowmobiles operating on snow,

are limited to designated routes yearround. The affected public land is generally known as the Roan Plateau or the Roan Cliffs. The affected public land is located northwest of Rifle, Colorado in Garfield County. The travel order specifically encompasses, approximately 53, 916 acres public lands in T. 5 S., R. 93 W., Sections 6, 7, 8, 17, 18, 19, 20, 29, 30, 31, 32; T. 5 S., R 94 W., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36; T. 5 S., R 95 W., Sections 1, 2, 4, 11, 12, 13, 14, 23, 24, 25, 26, 35, 36; T. 6 S., R 94 W., Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 17, 18, 19; T. 6 S, R. 95 W. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17,19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33; T. 6 S. R. 96 W., Sections 25, 26, 35, 36; T. 7 S., R. 95 W., Section 6; T. 7 S., R. 96 W., Section 1; 6th Principal Meridian; Garfield County.

This action is in accordance with the Glenwood Springs Resource Management Plan (RMP), Record of Decision (BLM, 1984). This order, issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2(a), is established because there are currently no travel designations for the area. The interim travel designations are needed as a temporary measure to halt and mitigate the proliferation of roads and trails, caused by cross-country travel, which results in unacceptable damage to vegetation, soils, wildlife habitat, and other natural resources as well as creating user conflicts. Any cross-country use of motorized or mechanized transport off designated routes is prohibited. This travel order does not apply to foot or horseback travel.

EFFECTIVE DATES: The travel limitations become effective immediately upon publication of this notice in the **Federal Register** and will remain in effect until the Glenwood Springs Field Office RMP is amended. The RMP amendment process is scheduled to begin in October of the year 2000. The planning process may result in a decision by the authorized officer to maintain, rescind or modify these interim travel designations.

SUPPLEMENTARY INFORMATION: In November, 1997 Public Law 105–85 directed the transfer of jurisdiction of the area formally known as the Naval Oil Shale Reserve (NOSR) from the Department of Energy (DOE) to the BLM. The transfer directed that the lands be managed in accordance with laws applicable to public lands. BLM has been providing custodial surface management on the NOSR for many years under a Memorandum of Understanding with DOE. In fact, the 1984 Glenwood Springs Field Office (GSFO), Resource Management Plan (RMP), includes the NOSR lands and provides management direction for some activities. However, some major land use allocation decisions, like travel management were not included in the 1984 RMP.

Visitors will notice little change in the routes open for travel since the existing network of travel routes have been essentially designated as open. The area and routes affected by this order will be posted with appropriate regulatory signs and information in such a manner and location as is reasonable to bring prohibitions to the attention of visitors. Information, including an updated map of the designated routes (Roan Plateau Visitor Guide and Map), is available from the Glenwood Springs Field Office at the addresses shown below.

Persons who are exempt from the restrictions include: (1) Any Federal, State, or local officers engaged in fire, emergency and law enforcement activities; (2) BLM employees engaged in official duties; (3) Persons authorized to travel off designated routes via travel authorizations from the Glenwood Springs Field Office.

Penalties: Any person who fails to comply with the provisions of this order may be subject to penalties outlined in 43 CFR 8360.0–7.

ADDRESSES: Field Office Manager, Glenwood Springs Field Office, Bureau of Land Management, 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, CO 81602

FOR FURTHER INFORMATION CONTACT: Brian Hopkins, (970) 947–2840.

Steve Bennett,

Acting Glenwood Springs Field Office Manager.

[FR Doc. 00–16780 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Minor Boundary Revision

SUMMARY: This notice announces a minor boundary revision to add approximately 0.181 of an acre of land at the Dayton Aviation Heritage National Historical Park, Dayton, Ohio. The National Park Service has determined this boundary revision is necessary to facilitate preservation of the historically important Wright Brothers Print Shop Building, adjacent Aviation Trail Building, and maintain an overall cost-savings for the renovation projects proposed at the Dayton Aviation Heritage National Historical Park. This boundary revision will contribute to the proper care and management of the Dayton Aviation Heritage National Historical Park, and protect the immediate environment of the park unit for the benefit and enjoyment of present and future generations.

Public Notice. This minor boundary revision was published for public comments in the Dayton Daily News on August 16, 23, and 30. The forty-five day public comment period ended October 14, 1999. No public comments were received in response to this publication.

FOR FURTHER INFORMATION CONTACT: Superintendent, Dayton Aviation Heritage National Historic Park, P.O. Box 9280, Dayton, Ohio 45409 (UPS or Federal Express address—c/o Wright Cycle Company, 22 South Williams Street, Dayton, Ohio 45407), or by telephone (937) 225–7705.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 4601–9(c) authorizes the Secretary of the Interior to make this boundary revision. Notice is hereby provided that the boundary of Dayton Aviation Heritage National Historical Park is revised, effective as of the date of this notice, to include approximately 0.18 of an acre of land of privately owned land, and 0.01 of an acre of land of publicly owned land within the Dayton Aviation Heritage National Historical Park located in Montgomery County, Ohio. The legal description of these tracts of lands are as follows:

TRACT 101–08—containing an area of 0.18 of an acre, more or less, situated in the City of Dayton, County of Montgomery, State of Ohio, and being part of Lot Number 6316 of the Revised and Consecutive Lot Numbers of the City of Dayton and being more particularly described as follows:

Beginning at a cut cross set at the Southwest Corner of said Lot Number 6315 also being the intersection of the east right-of-way line of South Williams Street (60.0 feet wide) and the north right-of-way line of Sanford Court (16.5 feet wide); Thence, North 72° 37′ 54″ East, along the south boundary of said Lot 6315 Tract 2, a distance of 97.46 feet to the point of beginning, also being the southeast corner; Thence North 16° 52′ 59″ West, along the eastern boundary of Lot 6315 Tract 2, a distance of 90.48 feet; Thence North 16° 52′ 59″ West, along the eastern boundary of Lot 6315 Tract 2A. a distance of 72.53 feet; Thence North 72° 37′ 54″ East, along West Third Street, a distance of 48.15 feet; Thence South 17° 33′ 36″ East, a distance of 163.00 feet; Thence South

72° 37′ 54″ West, a distance of 50.07 feet, and the point of beginning; and

TRACT 101–09—containing an area of 0.001 of an acre, more or less, situated in the City of Dayton, County of Montgomery, State of Ohio, and being part of Sanford Court of the City of Dayton and being more particularly described as follows:

Beginning at a cut cross set at the Southwest Corner of said Lot Number 6315 also being the intersection of the east right-of-way line of South Williams Street (60.0 feet wide) and the north right-of-way line of Sanford Court (16.5 feet wide); Thence, North 72° 37′ 54″ East along the Northern right-of-way line of said Lot Number 6315, a distance of 97.46 feet to the point of beginning; Thence, North 72° 37′ 54″ East, a distance of 50.07 feet to an iron pin set; Thence, South 17° 33′ 36″ East, a distance of 8.25 feet to the centerline of Sanford Court; Thence, South 72° 37′ 54″ West, a distance of 50.07 feet to a point in the centerline of Sanford Court; Thence, North 16° 52′ 59″ West, a distance of 8.25 feet to an iron pin set, and the place of beginning.

The National Park Service has prepared a map bearing drawing number 362/80,009, dated July 19, 1999, which depicts the specific real property for inclusion within the historic park. Copies of this map are available at the following three locations: The Department of the Interior, National Park Service, Land Resources Division, 1849 ''C'' Street, NW, Room 2444, Washington, D.C. 20240; The National Park Service, Midwest Region Office, 1709 Jackson Street, Omaha, NE 68102; and Superintendent, Dayton Aviation Heritage National Historic Park, at the address given above.

Dated: November 24, 1999.

William W. Schenk,

Regional Director, Midwest Region.

[FR Doc. 00–16704 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park Service Concession Contract Franchise Fees

AGENCY: National Park Service, Interior.

ACTION: Notice Regarding Franchise Fee Determination

SUMMARY: On February 6, 1998, the National Park Service (NPS) published in the **Federal Register** a notice regarding the continuation of guidelines for determining franchise fees for NPS concession contracts. On November 13, 1998, Title IV of Public Law 105–391 amended NPS statutory authorities regarding concession contracts, including provisions concerning franchise fees. This notice provides the public with information as to NPS concession contract franchise fee determinations under the terms of Title IV of Public Law 105–391.

EFFECTIVE DATE: On or before August 2, 2000.

FOR FURTHER INFORMATION CONTACT: Cindy Orlando, Concession Program Manager, National Park Service, 1849 C Street, NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: the February 6, 1998, **Federal Register** notice concerning NPS franchise fee determinations re-adopted those portions of the NPS concession contracting guidelines (NPS–48) that concern determinations of concession contract franchise fees, including determinations of franchise fees for new (or reviewed) concession contracts and possible adjustments to the franchise fees of existing concession contracts during their term. On April 17, 2000, NPS published in the **Federal Register** final new regulations for the NPS concession contracting program (36 CFR Part 51).

Title IV of Public Law 105–391 repealed the statutory authorities under which the franchise fee guidelines were developed. In addition, Section 407 of Public Law 105–391 established new statutory authorities and policies regarding NPS concession contract franchise fees. Title IV of Public Law 105–391 also included other provisions that have implications for concession contract franchise fees, including, without limitation, the establishment of leasehold surrender interest in certain capital improvements constructed pursuant to a concession contract.

Section 407(a) of Public Law 105–391 reads as follows:

> SEC. 407(a). A concession contract shall provide for payment to the government of a franchise fee or such other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value shall be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

In light of the enactment of Title IV of Public Law 105–391, NPS hereby withdraws Chapter 24, Section D (''Franchise Fee'') of NPS–48 as outdated. The terms and conditions of current concession contracts and permits remain in effect except as may otherwise be provided by Section 415(a) of Public Law 105–391.

Until such time as NPS may adopt more specific new franchise fee determination guidelines reflecting the terms and conditions of Title IV of Public Law 105–391, NPS will establish minimum franchise fees for new (or renewed) concession contracts on a case by case basis in accordance with the terms of Section 407(a) of Public Law 105–391 and will include the proposed minimum franchise fee in concession contract prospectuses issued pursuant to 36 CFR part 51. The establishment of minimum franchise fees will consider the probable value to the concessioner of the privileges to be granted by the new contract. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United states shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

Dated: June 27, 2000.

Maureen Finnerty,

Associate Director, Park Operations and Education.

[FR Doc. 00–16783 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement and Comprehensive Management Plan; Merced Wild and Scenic River; Yosemite National Park; Madera and Mariposa Counties, California; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council of Environmental Quality regulations (40 CFR 1500), the National Park Service, Department of the Interior has prepared a Final Environmental Impact Statement identifying and evaluating five alternatives for a Merced Wild and Scenic River Comprehensive Management Plan (Merced River Plan) for segments of the river within lands managed by the National Park Service at Yosemite National Park, California. Potential impacts, and appropriate mitigation measures, are assessed for each alternative. Responses to public comment are provided in the document.

When approved, the plan will guide management actions during the next 15–20 years which are necessary to protect and enhance the ''Outstandingly Remarkable Values'' (ORVs) for which the river was designated, pursuant to the Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271).

Proposal: The proposed Merced River Plan (Alternative 2—Preferred) would provide management direction for the Merced Wild and Scenic River by establishing seven management elements: ORVs, boundaries, classifications, Section 7 determination, River Protection Overlay (RPO), management zoning, and research and monitoring. The Wild and Scenic Rivers Act requires the first four elements; the final three elements were developed in the Merced River Plan to respond to the Act's requirement to protect and enhance ORVs. This plan modifies the ORVs, boundaries and classifications from the present situation to respond to public comment, to more accurately respond to the Wild and Scenic Rivers Act, and to reflect updated information. The proposed alternative presents the management elements to guide future decision-making and management actions with the intent that natural processes will prevail.

Alternatives: In addition to the proposal, four other alternatives are identified and analyzed. Alternative 1 (''no action'') is a continuation of the existing situation, based on the ORVs, boundaries, and classifications as published in the 1996 Draft Yosemite Valley Housing Plan/Supplemental EIS. If approved, Alternative 1 will not implement the three management elements—establishment of a RPO, management zoning, and a research and monitoring program—that are not required by the Act. Nor would it present the specific Section 7 determination process outlined in the proposed action.

Alternative 3 differs from the proposed alternative (Alternative 2) with regard to the boundaries, classifications, and management zones. The effect of the differences would promote more resource protection, using a narrower corridor in east Yosemite Valley and in Wawona, within the river corridor than under Alternative 2.

Alternative 4 varies from Alternatives 2 and 3 by presenting yet another combination of boundaries, classifications and management zoning. Of the alternatives presented, Alternative 4 would present the most resource protection within the developed areas along the Merced River.

Alternative 5 presents the same boundaries and classifications as Alternative 4, but with zoning that would allow for more use and facilities in developed areas than that presented under any of the other action alternatives. In addition, there would be no river protection overlay under Alternative 5, reducing the ability to protect the areas immediately adjacent to the Merced.

Planning Background: The draft and final Merced River Plan/EIS were prepared pursuant to the Wild and Scenic Rivers Act and National Environmental Policy Act. A Scoping Notice was published in the **Federal Register** on June 11, 1999; and the Notice of Intent was published on August 23, 1999. An intensive scoping phase was undertaken during June and July 1999, which included a series of six public meetings. The invitation letter requesting input into the development of the draft Merced River Plan/EIS was sent to the park's general mailing list. In addition, the scoping effort was publicized via regional and local media and on the park's Webpage. As a result of this outreach, over 330 responses were received and used in the development of issues upon which preparation of the draft Merced River Plan/EIS was based. A summary of the scoping process is available on the park's Webpage (address noted below). On January 7, 2000, a Notice of Availability for the Draft Merced Wild and Scenic River Comprehensive Management Plan/EIS appeared in the **Federal Register**. A press briefing was held earlier the same week to raise public awareness of the plan. Over 9000 plans were mailed to each person or organization listed on the park's mailing list. A 70-day public comment period began on January 14, 2000 and ended on March 24, 2000. Fourteen public hearings were held throughout the state of California in January and February. Local press was notified days in advance of each meeting to help raise awareness of the meetings. Yosemite National Park management and planning officials attended all sessions to present the draft Merced River Plan/EIS, to receive oral and written comments, and to answer questions. More than 2300 comments were received by mail, fax, electronic mail, recorded testimony, and other means.

Distribution of MRP/Final EIS: A post-card was mailed to all individuals and organizations on the park's general mailing list to determine whether a printed copy or a CD-ROM version (or both) of the Merced River Plan/FEIS should be mailed to the respective address. Another option presented on the postcard was to receive nothing by mail, considering that the complete final plan will be available on the park's website (http://www.nps.gov/yose/planning). Still another option was to receive a ''user's guide'' after a Record of Decision is signed. In view of these options, the Merced River Plan/FEIS will be mailed, in format requested, until quantities are exhausted. Copies will also be available at park headquarters in Yosemite Valley, the Warehouse Building in El Portal, and at local and regional libraries (*i.e.*, San Francisco and Los Angeles).

Decision Process: Depending upon the response from other agencies, organizations and the general public, at this time it is anticipated that the notice of an approved Record of Decision would be published in the **Federal Register** not sooner than July 31, 2000 (nor would it be signed until at least 30 days have elapsed after publication by the EPA of the filing notice for the Final MRP/EIS). The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Yosemite National Park.

Dated: June 23, 2000.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 00–16703 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 24, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by July 18, 2000.

Carol D. Shull,

Keeper of the National Register.

Arizona

Yavapai County
Toltec Lodge,
228 High St.,
Prescott, 00000812

Arkansas

Pulaski County

Capitol View Neighborhood Historic District,
Roughly bounded by Riverview Dr., Schiller St., W. 7th St. and Woodrow St.
Little Rock, 00000813

Colorado

Larimer County
Mountainside Lodge,
2515 Tunnel Rd.,
Estes Park, 00000814

Connecticut

Litchfield County
Bridgewater Center Historic District,
Roughly along Main St., Warner Rd., Clapboard Rd. and Hat Shop Hill,
Bridgewater, 00000816
New Haven County
Pine Orchard Union Chapel,
25 Chapel Dr.,
Branford, 00000815
New London County
Perkins—Bill House,
1040 Long Cove Rd.,
Gales Ferry, 00000817

Minnesota

Goodhue County
Florence Town Hall,
33923 MN 61 Blvd.,
Florence Township, 00000818

Missouri

Cape Girardeau County
Cape Girardeau Commercial Historic District,
(Cape Girardeau, Missouri MPS)
100 Blk. of N. Main St. and 100 Blk. of Broadway,
Cape Girardeau, 00000820
Haarig Commercial Historic District,
(Cape Girardeau, Missouri MPS)
Along sections of the 600 Blk. of Good Hope St. and 300 Blk. of S. Sprigg St.,
Cape Girardeau, 00000819

Nevada

Lander County
Lander County High School,
130 Sixth St.,
Austin, 00000821

New York

Oneida County
Memorial Church of the Holy Cross,
841 Bleecker St.,
Utica, 00000823
Ulster County
Ashokan—Turnwood Covered Bridge,
477 Beaverkill Rd.,
Oliverbridge, 00000822

North Carolina

Chatham County
North Third Avenue Historic District,
Roughly bounded by N. Second Ave., E. Fourth St., N. Third Ave., and E. Third St.,
Siler City, 00000824
Rowan County
Salisbury Historic District (Boundary Increase),
Portions of E. Council, E. Innes, Lee and E. Liberty Sts. bet. Main and Depot Sts.,
Salisbury, 00000826
Transylvania County
Hanckel—Barclay House (Boundary Increase),
8 mi. W of Jct. NC 1114 and US 276,
Brevard, 00000825

South Dakota

Minnehaha County
Gloria House, The,
1216 S. Center Ave.,
Sioux Falls, 00000828
Split Rock Creek Park Historic District,
Roughly 1 mi. N of Garretson in Split Rock Park,
Garretson, 00000827

Vermont

Addison County
Union Church, Jct. of River Rd. and East St.,
New Haven, 00000829
Orleans County
House at 68 Highland Avenue,
68 Highland Ave.,
Newport, 00000831
Windsor County
Smith, Samuel Gilbert, Farmstead,
(Agricultural Resources of Vermont MPS)
375 Orchard St.,
Brattleboro, 00000830

A request for a *move* has been made for the following resource

Arkansas

Pulaski County
Compton-Wood House 800 High St.
Little Rock, 80000781

A request for *removal* has been made for the following resources:

Arkansas

Benton County
Sunset Hotel
(Benton County MRA)
US 71
Bella Vista, 92000986
Franklin County
Cabins, The
W of Ozark on AR 219
Ozark vicinity, 77000253
Jackson County
Hickory Grove Church and School
N of Jacksonport
Jacksonport vicinity, 78000595
Pulaski County
Pulaski County Road 67D Bridge
(Historic Bridges of Arkansas MPS)
Co. Rd. 67D over Bridge Cr.
Jacksonville, 95000651

[FR Doc. 00–16782 Filed 6–30–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–722 (Review)]

Honey From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the suspended investigation on honey from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether termination of the suspended investigation on honey from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is August 22, 2000. Comments on the adequacy of responses may be filed with the Commission by September 18, 2000. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–059, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background.—On August 16, 1995, the Department of Commerce suspended an antidumping duty investigation on imports of honey from China (60 F.R. 42521). The Commission is conducting a review to determine whether termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original preliminary determination, the Commission found one Domestic Like Product consisting of natural honey, artificial honey containing more than 50 percent natural honey by weight, and preparations of natural honey containing more than 50 percent natural honey by weight.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original preliminary determination, the Commission found one Domestic Industry consisting of producers of natural honey, artificial honey containing more than 50 percent natural honey by weight, and preparations of natural honey containing more than 50 percent natural honey by weight. For the purpose of the preliminary investigation, the Commission included independent packers in the definition of the domestic industry and declined to exclude any firms under the related parties provision. One Commissioner defined the Domestic Industry differently.

(5) The Order Date is the date that the investigation was suspended. In this review, the Order Date is August 16, 1995.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 22, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is September 18, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification

(or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response To This Notice of Institution

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the termination of the suspended investigation on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1994.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 23, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–16671 Filed 6–30–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–364 (Review) and 731–TA–711 and 713–716 (Review)]

Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on oil country tubular goods from Argentina, Italy, Japan, Korea, and Mexico.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on oil country tubular goods from Argentina, Italy, Japan, Korea, and Mexico would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is August 22, 2000. Comments on the adequacy of responses may be filed with the Commission by September 18, 2000. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On August 10, 1995, the Department of Commerce issued a countervailing duty order on imports of oil country tubular goods from Italy (60 FR 40822). On August 11, 1995, the Department of Commerce issued antidumping duty orders on imports of oil country tubular goods from Argentina, Italy, Japan, Korea, and Mexico (60 FR 41055). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Argentina, Italy, Japan, Korea, and Mexico.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission found two *Domestic Like Products* consisting of (1) OCTG excluding drill pipe (*i.e.*, casing and tubing) and (2) drill pipe.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission found two *Domestic Industries* consisting of (1) producers of OCTG excluding drill pipe (*i.e.,* casing and tubing) and (2) producers of drill pipe. The Commission found that processors should be included in both the domestic casing and tubing industry and in the domestic drill pipe industry, but those firms that only perform basic threading and coupling operations should not be included.

(5) The *Order Dates* are the dates that the countervailing duty and antidumping duty orders under review became effective. In the review concerning the countervailing duty order on OCTG from Italy, the *Order Date* is August 10, 1995. In the reviews concerning the antidumping duty orders on OCTG from Argentina, Italy, Japan, Korea, and Mexico, the *Order Date* is August 11, 1995.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) under an Administrative Protective Order (APO) and APO Service List.—Pursuant to

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–058, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. appendix 3.

Written Submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 22, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 18, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to Provide Requested Information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined by the Commission in its original determinations, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the *Subject Merchandise* in the *Subject Countries* that currently export or have exported *Subject Merchandise* to the United States or other countries since 1994.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Countries,* provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties)

of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Countries* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Countries;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Countries.*

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Countries,* provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Countries* accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Countries* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Countries* since the *Order Dates,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Countries,* and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 23, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–16672 Filed 6–30–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–362 (Review) and 731–TA–707–710 (Review)]

Seamless Pipe From Argentina, Brazil, Germany, and Italy

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on seamless pipe from Argentina, Brazil, Germany, and Italy.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751 © of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on seamless pipe from Argentina, Brazil, Germany, and Italy would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is August 22, 2000. Comments on the adequacy of responses may be filed with the Commission by September 18, 2000. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On August 3, 1995, the Department of Commerce issued antidumping duty orders on imports of seamless pipe from Argentina, Brazil, Germany, and Italy (60 FR 39704). On August 8, 1995, the Department of Commerce issued a countervailing duty order on imports of seamless pipe from Italy (60 FR 40569). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Argentina, Brazil, Germany, and Italy.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the

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[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–057, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product, which consists of certain seamless carbon and alloy standard, line and pressure pipe and tube not more than 4.5 inches in outside diameter, and including all redraw and semifinished hollows.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of seamless carbon and alloy steel standard, line and pressure pipes and tubes not more than 4.5 inches in outside diameter, as well as all redraw hollows. The Commission included all domestic production in the domestic industry, whether toll-produced, captively consumed or sold in the merchant market.

(5) The Order Dates are the dates that the countervailing duty and antidumping duty orders under review became effective. In the reviews concerning the antidumping duty orders on seamless pipe from Argentina, Brazil, Germany, and Italy, the Order Date is August 3, 1995. In the review concerning the countervailing duty order on seamless pipe from Italy, the Order Date is August 8, 1995.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is August 22, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is September 18, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16'' and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61© of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of

the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1994.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: June 23, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–16673 Filed 6–30–00; 8:45 am]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 15, 2000, Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application to the Drug

Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Penylacetone (8501)	II

The firm plans to import the phenylacetone to manufacture methamphetamine and to import racemic methamphetamine for resolution into the d- and 1-stereoisomers.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than August 2, 2000.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.349b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 21, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–16675 Filed 6–30–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 3, 2000, and May 10, 2000, ISP Freetown Fine Chemicals, Inc., 2328 South Main Street, Assonet, Massachusetts 02702, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II

The firm plans to bulk manufacture amphetamine for a customer and to bulk manufacture the phenylacetone for the manufacture of the amphetamine.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than September 1, 2000.

Dated: June 21, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–16676 Filed 6–30–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2077–00]

Opportunity to File Untimely Motions to Reconsider Decisions Denying EB–2 Immigrant Visa Petitions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice informs concerned parties (prospective employers who have filed certain EB–2 immigrant visa petitions) of the opportunity to file untimely motions to reconsider Service decisions denying EB–2 immigrant visa petitions. The Service is publishing this notice in accordance with an order issued May 4, 2000, by the United States District Court for the Northern District of California (Chesney, J.), in the case entitled *Chintakuntla* v. *INS*, No. C99–5211 MMC (N.D.Cal.). This notice is necessary to ensure that all persons who are able to file motions to reconsider in accordance with the Court's order have notice of their right to do so.

DATES: This notice is effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Janice Podolny, Associate General Counsel, Chief of the Examinations Division, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone number (202) 514–2895.

SUPPLEMENTARY INFORMATION:

Why Is the Service Publishing This Notice?

On March 20, 2000, the Service published a policy memorandum (the March 20, 2000, Service Memorandum) clarifying the requirements that govern the adjudication of immigrant visa petitions filed under section 204 of the Immigration and Nationality Act (Act) to classify aliens as preference immigrants as aliens who are members of the professions holding advanced degrees or the equivalent (EB–2 immigrants). The March 20, 2000, Service Memorandum provided guidance for Service officers who, in adjudicating EB–2 immigrant visa petitions, must determine whether the job offered to the alien beneficiary actually requires a member of the professions holding an advanced degree or the equivalent. The March 20, 2000, Service Memorandum also addresses the issue of what sort of experience the job must require of a person with only a bachelor's degree, in order for the position to qualify as a position requiring an advanced degree or the equivalent. This March 20, 2000, Service Memorandum is particularly relevant in cases in which the labor certification (ETA–750) does not clearly indicate whether a person with a bachelor's degree must have 5 years post-baccalaureate progressive experience in the profession in order to meet the minimum qualifications for the job.

If a person who has standing wants the Service to reconsider a Service decision in a case, the person may file a motion to reconsider the decision. Under 8 CFR 103.5(a)(1)(i), the person

must file the motion no later than 30 days after the Service made the decision. On May 4, 2000, in a case entitled *Chintakuntla* v. *INS,* No. C99–5211 MMC (N.D.Cal.), the United States District Court for the Northern District of California ordered the Service to permit some EB–2 immigrant visa petitioners to file untimely motions to reconsider the decisions in their cases in light of the March 20, 2000, Service Memorandum. This part of the Court's order applies to cases in which the Service decision had already become final before the Service issued the March 20, 2000, Service Memorandum. The purpose of this Notice is to ensure that all persons who are able to file motions to reconsider in accordance with the Court's order have notice of their right to do so.

To Whom Do the Personal Pronouns "I," "Me," "My," "You" and "Your" Refer?

In this Notice, the personal pronouns "I," "me," "my," "you" and "your" refer to any person, firm, or other prospective employer who filed an EB–2 immigrant visa petition with the Service.

Does This Notice Apply To My Case?

This Notice applies to your case if you filed an EB–2 immigrant visa petition on behalf of an alien in the second sub-class that the District Court certified in *Chintakuntla.* The second sub-class includes any alien:

Who is the beneficiary of an I–140 Employment Based Second Preference (EB–2) immigrant visa petition seeking to classify the alien beneficiary as a member of the professions holding an advanced degree, or the equivalent, whose ETA–750 indicated that a bachelor's degree (plus at least five years experience) was required for the position, whose I–140 petition was or may be denied by the Service on the basis that the position did not require an advanced degree; and

In whose case the Service made an administratively final decision on or after July 1, 1997 denying the EB–2 visa petition (whether because the AAO affirmed the initial denial or because the petitioner did not appeal the initial denial to the AAO); and

In whose case there is not already pending a civil action seeking judicial review of the final Service decision in a different case.

If you filed an EB–2 immigrant visa petition on behalf of an alien described in this sub-class, then this Notice applies to your case.

What Does the Court's Order Permit Me To Do?

If this Notice applies to your case, you may obtain a new Service decision on your visa petition. If you want to do so, you must file a motion to reconsider with the Service office that made the last decision on your visa petition. Your motion to reconsider must meet all of the requirements in 8 CFR 103.5(a)(1), including the payment of the filing fee, except that you do not need to file the motion to reconsider within 30 days of the Service decision in your case.

To avoid delays, please make sure that your motion to reconsider says that you are seeking reconsideration of your case in light of the March 20, 2000, Service Memorandum, as permitted by the May 4, 2000, order in *Chintakuntla* v. *INS.* It would also be prudent to clearly mark the envelope that you use to submit the motion with the notation: "EB–2 CLASS MEMBER, DO NOT OPEN IN MAIL ROOM. DELIVER IMMEDIATELY TO DIRECTOR'S OFFICE."

When Must I File a Motion To Reconsider Under the District Court's Order and This Notice?

You must file your motion to reconsider no later than November 1, 2000. The Service will not consider you to have filed a motion to reconsider on time unless the Service actually receives your motion by that date. If you file by mail or by delivery service, you should take care to send your motion in a way that guarantees delivery by November 1, 2000. The Service will accept for filing any motion received after November 1, 2000, but will deny the motion as untimely. The Service will not refund the filing fee.

May I Include Additional Evidence With My Motion?

The March 20, 2000, Service Memorandum provides that the Service may ask a visa petitioner for a statement that supplements the ETA–750. This statement must be an affidavit (or other statement signed under penalty of perjury), signed by a person within your firm who has relevant knowledge concerning the minimum acceptable qualifications for the job. It will speed up the processing of your case if you include a supplemental statement with your motion. If you do, then you should refer to your motion as a "motion to reopen and reconsider." Other than this supplemental statement, you may not include any additional evidence.

What If I Do Not File a Motion To Reconsider by November 1, 2000?

If you do not file a motion to reconsider by November 1, 2000, you will forever lose your right to seek a new Service decision under the District Court's order. You may still, however, seek judicial review of your case under 5 U.S.C. 701, *et seq.*, in any court that has jurisdiction to review your case, if you seek judicial review within the time allowed by 28 U.S.C. 2401.

What If the Service Decided My Case Before July 1, 1997?

If the Service decided your case before July 1, 1997, you do not have a right to file a motion to reconsider under the District Court's order. You may, however, still seek judicial review of your case under 5 U.S.C. 701, *et seq.*, in any court that has jurisdiction to review your case, provided you do so within the time allowed by 28 U.S.C. 2401.

Does the Court's Order Have Any Effect on My Potential Employee's Ability To Apply for Adjustment of Status?

Yes it does; an alien may apply for adjustment of status only if an immigrant visa is immediately available. Ordinarily, this means, under 8 CFR 245.1(g)(1), that an employment-based immigrant alien must have a current priority date and the Service must have approved the visa petition. The Court enjoined the Service from requiring approval of the visa petition before accepting an adjustment application. Any class member who is otherwise eligible to apply for adjustment of status, and who has a current priority date, may, therefore, file an application for adjustment of status even while the visa petition is still pending. The class member must file, no later than November 1, 2000, a complete adjustment application, including the filing and fingerprinting fees and all supporting evidence. The spouse or child of a class member may also do so.

Note that the ability to file an adjustment application is not limited to the second *Chintakuntla* sub-class (that is, those aliens whose petitioners are entitled to file untimely motions to reconsider). Members of the first sub-class under the injunction may also do so. The *Chintakuntla* injunction defines the first sub-class to include:

any alien who is the beneficiary of an I–140 Employment Based Second Preference (EB–2) immigrant visa petition seeking to classify the alien beneficiary as a member of the professions holding an advanced degree, or the equivalent, whose ETA–750 indicated that a bachelor's degree (plus at least five years experience) was required for the

position, whose I–140 petition was or may be denied by the Service on the basis that the position did not require an advanced degree; and in whose case the I–140 petition was still pending before the Service on March 20, 2000, (whether before a Service Center or before the AAO).

To avoid delays, a class member should make sure that he or she includes with the application for adjustment of status a written indication that he or she is filing the application before approval of the visa petition, as permitted by the May 4, 2000, order in *Chintakuntla* v. *INS.* The class member should also clearly mark the envelope used to submit the application with the notation: ''EB–2 CLASS MEMBER, DO NOT OPEN IN MAIL ROOM. DELIVER IMMEDIATELY TO THE DIRECTOR'S OFFICE.'' If your prospective employee is a member of the second sub-class and files for adjustment of status, the alien should also include a copy of your motion to reconsider and proof that you actually filed the motion.

Note that if there is a final decision denying your visa petition, the Service will also deny the class member's adjustment application and will not refund the filing and fingerprinting fees.

Does the Court's Order Have Any Effect on My Potential Employee's Ability To Apply for Employment Authorization or Advance Parole?

If your potential employee is eligible under the Court's order to file an application for adjustment of status before approval of the related visa petition, then your potential employee may also file an application for employment authorization (INS Form I–765), an application for advance parole (INS Form I–131), or both. If the Service approves either application, the Service will issue the appropriate documents. Note that the Service will adjudicate the INS Form I–765 by the day before your potential employee's current employment authorization expires if your potential employee:

—Clearly marks the envelope used to submit the INS Form I–765 with the notation ''EB–2 CLASS MEMBER, DO NOT OPEN IN MAIL ROOM. DELIVER IMMEDIATELY TO DIRECTOR'S OFFICE.'';

—Identifies himself or herself in writing as a member of the first or second sub-class in the *Chintakuntla* case; and

—Advises the Service in writing of the date on which his or her current employment authorization is scheduled to expire.

Where Can I Get a Copy of the March 20, 2000, Service Memorandum?

The Service is including the text of the March 20, 2000, Service Memorandum as an appendix to this notice.

Dated: June 28, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

Note: The following is the text of the March 20, 2000, Service Memorandum, sent to the INS Service Center Directors and Regional Directors, mentioned in the preamble of this notice.

United States Department of Justice
Immigration and Naturalization Service

425 I Street NW Washington DC 20536

March 20, 2000

MEMORANDUM FOR All Service Center Directors All Regional Directors
FROM: /s/ Michael D. Cronin Acting Associate Commissioner Office of Programs
/s/ William R Yates, Deputy Executive Associate Commissioner, Office of Field Operations
SUBJECT: Educational and Experience Requirements for Employment-Based Second Preference (EB–2) Immigrants

This memorandum addresses issues relating to the *Adjudicator's Field Manual,* Appendix 22–1. Chapter 22 provides guidance on employment-based immigrant petitions. This memorandum is being released as an appendix to insure complete Service-wide dissemination. The policies outlined within this document will eventually be incorporated within the text of Chapter 22 of the Adjudicator's Field Manual.

Background

In pertinent part, section 203(b)(2) of the Immigration and Nationality Act (the Act) provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States.

Petitions seeking the classification of alien beneficiaries as EB–2 advanced degree professionals present a number of issues for Service Center adjudicators. This memorandum provides guidance regarding such decisions.

What is an Advanced Degree?

An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level.[1]

What is the Equivalent of an Advanced Degree?

The equivalent of an advanced degree is either a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. Consequently, an alien beneficiary who does not actually hold an advanced degree may still qualify as an EB–2 professional if he or she has the equivalent of an advanced degree.

There are several ways in which an alien seeking EB–2 classification may satisfy the advanced-degree requirement. The simplest is by possessing a U.S. academic or professional degree above the level of baccalaureate. In the alternative, the foreign equivalent of such a degree is equally acceptable.

An alien with a U.S. or foreign equivalent baccalaureate degree who does not possess an advanced degree may still meet this requirement if the baccalaureate-level degree is followed by at least five years of ''progressive experience'' in the specialty.[2]

What Elements Must Be Established Before an EB–2 Petition for an Advanced Degree Professional Can Be Approved?

Two critical elements must be established before an advanced degree EB–2 petition can be approved. First, the position itself must require a member of the professions holding an advanced degree. Second, the alien must possess an advanced degree as shown by a master's degree or its equivalent. The threshold issue regarding the position itself appears to be the most troublesome in adjudicating EB–2 petitions for advanced degree professionals.

The key to making this determination is found on Form ETA–750 Part A. This section of the application for alien labor certification, ''Offer of Employment,'' describes the terms and conditions of the job offered. An adjudicator must review the job requirements contained in blocks 14 and 15 of the ETA–750 and determine whether the position requires an advanced degree professional.

Deciding whether the position requires an advanced degree professional is independent of whether the alien beneficiary is himself an advanced degree professional. If the job itself does not require an advanced degree professional, the petition must be denied, even if the alien beneficiary actually is an advanced degree professional. Likewise, the petition must be denied if the alien beneficiary is not an advanced degree professional, even if the job itself requires an advanced degree professional.

Whether the alien beneficiary actually possesses the advanced degree should be demonstrated by evidence in the form of a transcript from the institution that granted the advanced degree. An adjudicator must similarly consider the baccalaureate transcript and the alien's post-baccalaureate experience for the alien beneficiary claiming the equivalent to an advanced degree.

Does the Job To Be Filled by the Alien Beneficiary Require an Advanced Degree?

A petitioner seeking classification for an EB–2 advanced degree professional must clearly demonstrate that the position requires a member of the professions holding an advanced degree. In other words, blocks 14 and 15 of the ETA–750 must establish that the position requires an employee with either a master's degree or a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty.

[1] 8 CFR 204.5(k)(2).

[2] *Id.*

It should be emphasized that the mere absence of the word ''progressive'' from blocks 14 and 15 on the ETA–750 is not grounds for denial of the petition if the required experience is in fact progressive in nature. Adjudicators should examine the nature of the experience required for the position as described in block 13 of the ETA–750 in order to determine whether such experience is progressive.

What Exactly is Progressive Experience?

''Progressive experience'' is not defined by statute or regulation. Its plain meaning within the context of EB–2 adjudications is relatively simple: employment experience that reveals progress, moves forward, and advances toward increasingly complex or responsible duties. In short, progressive experience is demonstrated by advancing levels of responsibility and knowledge in the specialty.

Recognizing progressive experience in blocks 14 and 15 of the ETA–750, however, is not so simple. Much of the uncertainty concerning such determinations involves petitions for highly technical positions, which invariably describe required experience in highly technical terms. Such descriptions may be difficult to understand for anyone outside that specific industry.

Adjudicators who encounter these types of descriptions should request that petitioners provide, to the extent possible, plain-English explanations of the experience required. Such descriptions may take the form of a supplemental statement filed with the Service Centers indicating why five years of post-baccalaureate and progressive experience would be necessary to perform successfully the duties set forth in highly technical job descriptions. The supplemental statement should be an affidavit (or other statement under penalty of perjury) from some person within the petitioning firm who has relevant knowledge concerning the minimum acceptable qualifications for the position involved in the Form I–140. It is incumbent upon the petitioner to describe the position offered in such a way so that an adjudicator can reasonably determine whether the job actually requires an advanced degree or, in the alternative, five years of post-baccalaureate experience that is progressive in nature.

It is reasonable to infer that highly technical positions are progressive in nature due to the constant state of change in their respective industries. This is not to say, however, that five years of post-baccalaureate experience in a highly technical position automatically translates to an advanced degree in every case. As with any adjudication, a petition seeking classification for an EB–2 advanced degree professional should be decided on a case-by-case basis.

How Can These Requirements Be Demonstrated?

The terms, ''MA,'' '' MS,'' ''Master's Degree or Equivalent'' and ''Bachelor's degree with five years of progressive experience,'' all equate to the educational requirements of a member of the professions holding an advanced degree. The threshold for granting EB–2 classification will be satisfied when any of these terms appear in block 14.

It is also important to read the ETA–750 as a whole. In particular, if the education requirement in block 14 includes an asterisk (*) or other footnote, the information included in the note must be considered in determining whether the educational requirement, as a whole, demonstrates that an advanced degree or the equivalent is the minimum acceptable qualification for the position.

As long as the minimum requirement for the job offered is master's degree or the equivalent, the position should be found to require a member of the professions holding an advanced degree. This is true even if several variations of this requirement are stated.

Examples

The following are examples of actual statements contained at blocks 14 and 15 of the ETA–750. They are by no means exhaustive. Their inclusion here is intended to simply illustrate concepts discussed in this memorandum.

Position 1: Staff Software Engineer

ETA 750 Item 14: Education—B.S. (or foreign equiv.) comp. science, elec. eng., or related field.
Experience—5 years job offered or 5 years related occupation software engineer.
ETA 750 Item 15: Exp. must include: design & development of major software subsystems; RDBMS internals; operating system internals; complex systems software design; symmetric multiprocessing and large scale network systems.

It is unclear whether this job requires 5 years of experience following receipt of the baccalaureate. For this reason, the adjudicator should request that the petitioner provide a supplemental statement clarifying whether the position requires five years of post-baccalaureate experience that is truly progressive in nature. If the supplemental statement establishes that the minimum qualifications for the position require a member of the professions holding an advanced degree and, assuming the beneficiary possesses these qualifications, the petition should be approved.

Position 2: Senior Software Engineer

ETA 750 Item 14: Education—MSCS or equiv. * * *. Major Field of Study—Computer Science or related field.
Experience—3 years in job offered or 3 years in related occupation of Software Engineer.
ETA 750 Item 15: C/C++ Programming; RDBMS Design * * * Will consider candidates with BSCS and 5 years experience as Software Engineer.

Similarly, it is unclear in this position as well whether this job requires 5 years of post-baccalaureate experience as a Software Engineer. Because of the additional requirement of a Master of Science in Computer Science degree or its equivalent, however, the underlying petition may be approvable. For this reason, the adjudicator should request that the petitioner provide a supplemental statement clarifying whether the position requires five years of post-baccalaureate experience that is truly progressive in nature. If the supplemental statement establishes that the minimum qualifications for the position require a member of the professions holding an advanced degree and, assuming the beneficiary possesses these qualifications, the petition should be approved.

Position 3: Software Engineer

ETA 750 Item 14: Education—Master's or equivalent* Major Field of Study**
Experience—3 years in job offered or in the related occupation of software engineer, systems engineer, or programmer/analyst.
ETA 750 Item 15: * Bachelor's degree in Computer Science, Electrical Engineering or academic equivalent, and 5 years of progressive experience will substitute for Master's degree in Computer Science and 3 years of such experience.
** Computer Science, Electrical Engineering or academic equivalent.

This position clearly requires a master's degree or 5 years of progressive experience. Consequently, the position requires a member of the professions holding an advanced degree. Again, assuming the beneficiary possesses these qualifications, the underlying petition should be approved.

Relevance of the Alien Beneficiary's Actual Qualifications

The second and third examples raise an additional question to be decided before approving some petitions—those in which the alien beneficiary does not actually have a Master's degree. The ETA–750 in each of those cases requires that a candidate with a Master's degree must have three years' experience, but that a baccalaureate with five years' experience is acceptable. The question is whether the petitioner can include the alien's 5 years' post-baccalaureate progressive experience both to make the alien's baccalaureate the equivalent of a Master's degree *and* to meet the three years' experience that someone who actually does have a Master's degree must have. The answer will depend on what the ETA–750 actually says. Note that the sample ETA–750s do not require that the three years' experience must follow the receipt of a Master's degree—only that the applicant must have both the degree and the experience. The ETA–750, therefore, does not preclude someone who just received a Master's degree from qualifying for the position on the basis of pre-Master's experience. By the same reasoning, someone with a baccalaureate degree, and experience that makes it equivalent to a Master's, can qualify based on the pre-Master's equivalency experience. If the beneficiary has a baccalaureate with five years' progressive post baccalaureate experience, the petition should be approved unless the ETA–750 clearly and explicitly requires that the level of experience that a Master's applicant must have must be post-magisterial experience.

If the ETA–750 *does* require that the experience must have been post-magisterial experience, and the alien beneficiary just has the baccalaureate plus five years' progressive post-baccalaureate, then the alien beneficiary cannot meet the post-magisterial experience

requirement. In that case, the petition should be denied, not because the alien beneficiary is not an advance degree professional, but because the alien does not meet the actual qualifications as stated on the ETA–750. *See K.R.K. Irvine, Inc.,* v. *Landon,* 699 F.2d 1006 (9th Cir. 1983); *Matter of Wing's Tea House,* 16 I & N Dec. 158 (INS 1977).

Where Do Adjudicators Find Help Concerning EB–2 Petitions for Advanced Degree Professionals?

EB–2 petitions for advanced degree professionals involving unusually complex or novel issues of law or fact can be certified to the Administrative Appeals Office pursuant to 8 CFR 103.4. Questions concerning this guidance can be addressed to Senior Adjudications Officer [officer's name deleted] through channels via cc:Mail.

[FR Doc. 00–16885 Filed 6–29–00; 1:57 pm]

BILLING CODE 4410–10–U

DEPARTMENT OF JUSTICE

Office of Justice Programs

Corrections Program Office; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Justice Programs; Department of Justice.

ACTION: Notice of information collection under review; New collection.

Program Guidance on Environmental Protection Requirements and Project Status Report for the Violent Offender Incarceration/Truth-in-Sentence Grant Program

The Department of Justice, Office of Justice Programs, Corrections Program Office, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by July 12, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, (202) 395–7860, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with the instructions, should be directed to Patricia Malak, Environmental Coordinator, Office of Justice Programs, Corrections Program Office, 810 7th Street, NW, Washington, DC 20531, or facsimile at (202) 307–2019.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Program Guidance on Environmental Protection Requirements and Project Status Report for the Violent Offender Incarceration/Truth-in-Sentencing Grant Program.

(3) *Agency form number, If any, and the applicable component of the Department sponsoring the collection:* Department of Justice, office of Justice Programs, Corrections Program office.

(4) *Affected public who will be required to respond, as well as a brief abstract: Primary:* State and Local Government. *Other:* None.

The Violent Offender Incarceration/Truth-in-Sentencing Grant Program, authorized under Title II, Subtitle A of the Violent Crime Control and Law Enforcement Act of 1994, as amended, provides funds for the construction of prisons and jails to assist states in their efforts to remove violent offenders from the community and to encourage states to implement truth-in-sentencing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The Project Status Report will be completed by approximately 150 respondents with initiated project and is expected to take approximately 60 minutes to complete. The Program Guidance requires the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) for approximately 400–500 projects. An average EA may take 2–6 months to complete and an EIS approximately 12–18 months, although the time required will depend on the scope and nature of the project, the alternatives that are analyzed, the impacts on the environment, and public reaction to the project.

(6) An estimate of the total public burden (in hours) associated with the collection: Average time will vary depending on the scope of the project and the potential environmental impacts.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington DC 20530.

Dated: June 28, 2000.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–16795 Filed 6–30–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1285]

RIN 1121–ZB90

Fiscal Year 2000 Missing and Exploited Children's Program Plan

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Announcement of Fiscal Year 2000 Missing and Exploited Children's Program Plan.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is issuing its Missing and Exploited Children's Program Final Program Plan for Fiscal Year 2000.

FOR FURTHER INFORMATION CONTACT: Ronald C. Laney, Director, Child Protection Division, 202–616–3637. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: On January 7, 2000, OJJDP published the Fiscal Year 2000 Missing and Exploited Children's Program Proposed Program

Plan in the **Federal Register** at 65 FR 1175 and requested public comments on the plan. No comments were received.

OJJDP has determined that the Proposed Program Plan does not need to be modified in any way. Accordingly, the Proposed Plan as published in the January 7, 2000, **Federal Register** is now the Final Missing and Exploited Children's Program Plan for Fiscal Year 2000.

Dated: June 27, 2000.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–16711 Filed 6–30–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

June 23, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by e-mail to Kurz-Karin@dol. gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB 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 submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title: 4,4′-Methylenedianiline (MDA)—29 CFR 1926.60.

Type of Review: Extension.

OMB Number: 1218–0183.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 66.

Number of Annual Responses: 3,220.

Estimated Time Per Response: Varies from 5 minutes to provide information to the examining physician to 2 hours to update and review compliance plans.

Total Burden Hours: 1,520.

Total Annualized capital/startup costs: $0.

Total Annual costs (operating/maintaining systems or purchasing services): $73.500.

Description: The purpose of this standard and its information collection requirements is to provide protection for employees from adverse health effects associated with occupational exposure to MDA. Employers must monitor exposure, keep employee exposures within the permissible exposure limits, provides employees with medical examinations and training, and establish and maintain employee exposure-monitoring and medical records.

Agency: Occupational Safety and Health Administration (OSHA).

Title: 4,4′-Methylenedianiline (MDA)—29 CFR 1910.1050.

Type of Review: Extension.

OMB Number: 1218–0184.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 12.

Number of Annual Responses: 650.

Estimated Time Per Response: Varies from 5 minutes to provide information to the examining physician to 2 hours to update and review compliance plans.

Total Burden Hours: 320.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/mintaining systems or purchasing services: $19,170.

Description: The purpose of this standard and its information collection requirements is to provide protection for employees from adverse health effects associated with occupational exposure to MDA. Employers must monitor exposure, keep employee exposures within the permissible exposure limits, provide employees with medical examinations and training, and establish and maintain employee exposure-monitoring and medical records.

Agency: Employment Standards Administration (ESA).

Title: Notice of Termination, Suspension, Reduction or Increase in Benefit Payments.

Type of Review: Extension.

OMB Number: 1215–0064.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 325.

Number of Annual Responses: 9,000.

Estimated Time Per Response: 12 minutes.

Total Burden Hours: 1,800.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $3,240.

Description: Coal mine operators who pay monthly black lung benefits must notify DCMWC of any change in benefits and the reason for that change. DCMWC uses this notification to monitor payments to beneficiaries.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–16744 Filed 6–30–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Revised Schedule of Remuneration for the UC Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time, after consultation with the Secretary of Defense, a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX).

This notice is to publish a revised schedule that reflects increases in military pay and allowances which were effective in July 2000.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 20 CFR 614.12(c), applies to ''First Claims'' for UCX which are effective beginning with the first day of the first week which begins on or after October 1, 2000.

Pay grade	Monthly rate
(1) Commissioned Officers:	
0–10	13,329
0–9	12,445
0–8	11,465
0–7	10,388
0–6	8,761
0–5	7,341
0–4	6,085
0–3	4,807
0–2	3,834
0–1	2,900
(2) Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member Or Warrant Officer:	
0–3E	5,634
0–2E	4,653
0–1E	3,889
(3) Warrant Officers:	
W–5	6,410
W–4	5,511
W–3	4,599
W–2	3,925
W–1	3,354
(4) Enlisted Personnel:	
E–9	5,086
E–8	4,276
E–7	3,724
E–6	3,273
E–5	2,778
E–4	2,330
E–3	2,055
E–2	1,972
E–1	1,744

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time for which any prior schedule was in effect.

Signed at Washington, DC, on June 26, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor.

[FR Doc. 00–16748 Filed 6–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health: Appointment of Members; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health: Appointment of members; Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH), which was established to advise the Secretary of Labor on issues relating to occupational safety and health programs, policies, and standards in the maritime industries in the United Sates, has been re-chartered. This Notice announces the selection of 15 persons to serve as members of the MACOSH Committee and schedules the first meeting of the re-chartered committee.

DATES: The Committee will meet:

—On July 19, 2000 from 9:30 A.M. until approximately 5 P.M.; and

—On July 20, 2000 from 8:30 A.M. until approximately 4 P.M.

ADDRESSES: The Committee will meet at the U.S. Merchant Marine Academy, 300 Steamboat Road, Kings Point, New York 11024; telephone: (516) 773–5000. Mail comments, views, or statements in response to this notice to Chappell Pierce, Acting Director, Officer of Maritime Standards, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 693–2086; FAX; (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: Chappell Pierce, Acting Director, Officer of Maritime Standards, OSHA; Phone (202) 693–2086.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of MACOSH at the time and place listed above. Individuals with disabilities wishing to attend should contact Theda Kenney at (202) 693–2222 no later than July 11, 2000, to obtain appropriate accommodations.

Background

MACOSH was established pursuant to the authority in Section 7 of the Occupational Safety and Health Act of 1970 to advise the Assistant Secretary of Labor for Occupational Safety and Health on issues relating to occupational safety and health for workers involved in shipbuilding, shipbreaking, ship repair, and longshoring in the maritime industries in the United States. Since its establishment in 1995, the committee, using its unique and collective expertise, has provided invaluable assistance and advice to the Assistant Secretary on maritime matters.

On January 24, 2000, OSHA announced its intention to renew the charter of MACOSH for another two-year term and requested nominations of interested persons to serve on the advisory committee (65 FR 3740). The Agency received the nominations of many highly qualified person. Unfortunately, the Occupational Safety and Health Act limits the number of members that can be on an advisory committee to 15. The following 15 persons were selected to represent the diverse interests of the maritime community on MACOSH.

Employee Representatives

Albert Cernadas, International Longshore Association (ILA)
Jeff Vigna, International Longshore Workers Union (ILWU)
Chico McGill, International Brotherhood of Electrical Workers (IBEW)
Mike Flynn, International Association of Machinists and Aerospace Workers (IAM)
Robert Scott, United Brotherhood of Carpenters
Edwin Lant, Federal Employees Metal Trades Council (Tidewater Virginia)

Employer Representatives

John McNeill, National Maritime Safety Association
Charles Thompson, American Association of Port Authorities
James Thornton, American Shipbuilding Association
Steve Morris, Shipbuilders Council of America
Iona Evans, U.S. Navy
Teresa Preston, Alabama Shipyard

Government Representatives

Laurence Reed, National Institute for Occupational Safety and Health (NIOSH)
Peter Schmidt, Washington State Department of labor and Industry
Lt. Emile Benard, U.S. Coast Guard

Meeting Agenda

This meeting will include discussion of the following subjects: goals and objectives for the next two years, the Maritime ergonomics project, OSHA Standards update, partnership and training initiatives (including OSHA's Electronic Compliance Assistance Tool), vertical tandem lifting of containers, and MACOSH workgroup reports.

Public Participation

Written data, views, or comments for consideration by MACOSH on the various agenda items listed above may be submitted, preferably with copies, to Chappell Pierce at the address listed above. Submissions received by July 5, 2000 will be provided to the members of the committee prior to the meeting. Requests to make an oral presentation to the Committee may be granted if time permits. Anyone wishing to make an

oral presentation to the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Chappell Pierce by July 5, 2000. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC this 21st day of June 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–16823 Filed 6–28–00; 4:35 pm]

BILLING CODE 4510–26–M

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 10, 2000.
Time: 8:30 a.m. to 6:00 p.m.
Room: 420.
Program: This meeting will review applications for History Museums, Historical Societies, and Historic Sites, submitted to the Office of Challenge Grants at the May 1, 2000 deadline.

2. *Date:* July 17, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Latin American History and Studies, submitted to the Division of Research Programs at the May 1, 2000 deadline.

3. *Date:* July 18, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in History and Philosophy of Science, submitted to the Division of Research Programs at the May 1, 2000 deadline.

4. *Date:* July 18, 2000.
Time: 8:30 a.m. to 6:00 p.m.
Room: 420.
Program: This meeting will review applications for Museums, Cultural Centers, and other Humanities Organizations, submitted to the Office of Challenge Grants at the May 1, 2000 deadline.

5. *Date:* July 19, 2000.
Time: 8:30 a.m. to 6:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Religious Studies, submitted to the Division of Research Programs at the May 1, 2000 deadline.

6. *Date:* July 19, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in American and Latin American Literature and Linguistics, submitted to the Division of Research Programs at the May 1, 2000 deadline.

7. *Date:* July 20, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Philosophy, submitted to the Division of Research Programs at the May 1, 2000 deadline.

8. *Date:* July 21, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Music and Dance, submitted to the Division of Research Programs at the May 1, 2000 deadline.

9. *Date:* July 21, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in European History, submitted to the Division of Research Programs at the May 1, 2000 deadline.

10. *Date:* July 21, 2000.
Time: 8:30 a.m. to 6:00 p.m.
Room: 420.
Program: This meeting will review applications for Research Associations, Collections, and Programs, submitted to the Office of Challenge Grants at the May 1, 2000 deadline.

11. *Date:* July 24, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in American History, submitted to the Division of Research Programs at the May 1, 2000 deadline.

12. *Date:* July 24, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in American History, submitted to the Division of Research Programs at the May 1, 2000 deadline.

13. *Date:* July 26, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in East Asian Studies, submitted to the Division of Research Programs at the May 1, 2000 deadline.

14. *Date:* July 27, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in American History, submitted to the Division of Research Programs at the May 1, 2000 deadline.

15. *Date:* July 28, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships in British Literature, submitted to the Division of Research Programs at the May 1, 2000 deadline.

16. *Date:* July 28, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in British Literature, submitted to the Division of Research Programs at the May 1, 2000 deadline.

17. *Date:* July 31, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships in Anthropology and Archaeology I, submitted to the Division of Research Programs at the May 1, 2000 deadline.

Laura S. Nelson,
Advisory Committee Management Officer.
[FR Doc. 00–16692 Filed 6–30–00; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Council on the Humanities; Meeting

June 22, 2000.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, as amended), notice is hereby given the National Council on the Humanities will meet in Washington, DC on July 13–14, 2000.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW, Washington, DC. A portion of the morning and afternoon sessions on July 13–14, 2000, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on July 13, 2000 will be as follows:

Committee Meetings

(Open to the Public)

Policy Discussion

9:00–10:30 a.m.

Education Programs—Room M–07
Federal/State Partnership—Room 507
Preservation and Access/Challenge Grants—Room 415
Public Programs—Room 420
Research Programs—Room 315

(Closed to the Public)

Discussion of Specific Grant Applications and Programs Before the Council

10:30 a.m. until Adjourned
Education Programs—Room M–07
Federal/State Partnership—Room 507
Preservation and Access/Challenge Grants—Room 415
Public Programs—Room 420
Research Programs—Room 315
1:30–3:00 p.m. Jefferson Lecture Committee Meeting—Room 430

The morning session on July 14, 2000 will convene at 9:00 a.m., in the 1st Floor Council Room, M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

Minutes of the Previous Meeting
Reports

A. Introductory Remarks and Presentations
B. Staff Report
C. Congressional Report
D. Reports on Policy and General Matters
1. Overview
2. Research Programs
3. Education Programs
3. Preservation and Access/Challenge Grants
4. Public Programs
5. Federal/State Partnership
6. Jefferson Lecture/Humanities Medals

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Ms. Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Laura S. Nelson,
Advisory Committee Management Officer.
[FR Doc. 00–16693 Filed 6–30–00; 8:45 am]
BILLING CODE 7536–01–M

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/Time: July 20, 2000 8 AM–5 PM.
Place: Room 340, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.
Type of Meeting: Closed.
Contact Person: A. Frederick Thompson, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation; 4201 Wilson Boulevard; Arlington, Virginia 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 Environmental Technology Engineering Unsolicited 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: June 28, 2000.

Karen J. York,
Committee Management Officer.
[FR Doc. 00–16787 Filed 6–30–00; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Committee of Visitors; 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 Biological Sciences (1110): Committee of Visitors.
Date and Time: July, 17–29, 2000; 8:30 a.m. to 5 p.m. each day.
Place: National Science Foundation, Room 680, 4201 Wilson Boulevard, Arlington, VA.
Type of Meeting: Part open (see agenda below):
Contact Person: Dr. Christopher Platt, Division of Integrative Biology and Neuroscience, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, (703) 306–1420.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged information.

Agenda: To provide oversight review of the Division of Integrative Biology and Neuroscience.

Open Sessions: July 17, 8:30 a.m.–10:30 a.m.; July 18, 1 p.m.–2 p.m.; July 19, 1 p.m.–2 p.m.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include information of a proprietary 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.

Reason for Late Notice: Committee membership was not finalized until June 20, 2000 and scheduling dates to include travel could not take place until membership was finalized.

Dated: June 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16785 Filed 6–30–00; 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/Time: August 31, 2000, 8 am–5:30 pm.

Place: Room 330 and 365, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. George Hazelrigg, Program Director, Design and Integration Engineering, National Science Foundation, 4201 Wilson Boulevard, Room 508, Arlington, VA 2230. Telephone: (703) 306–1330.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate ''NSF/SANDIA'' 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 that are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16789 Filed 6–30–00; 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 System (1196).

Date/Time: July 24, 2000–8:30 a.m. to 5 p.m.

Place: National Science Foundation, Room 380, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Usha Varshney, Program Director, Electronic, Photonics and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Blvd, Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals in the Electronics, Photonics and Device Technologies 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 within exemptions 4 and 6 of 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16788 Filed 6–30–00; 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 & Intergrative Activities (1193).

Date/Time: July 24, 2000, 8:30 a.m.–5 p.m.

Place: Room 130, 320, 330, 340, 370, and 470, National Science Foundation, 4201 Wilson Blvd., Arlington, VA

Type of Meeting: Closed.

Contact Person: Dr. Caroline Wardle, Information Technology Workforce, 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 Information Technology Workforce proposals submitted in response to the program announcement (NSF 00–77).

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: June 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16786 Filed 6–30–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental Program To Stimulate Competitive Research; 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 for the Experimental Program to Stimulate Competitive Research (1198).

Date/Time: August 25, 2000; 8 am–5 pm.

Place: Holiday Inn Arlington at Ballston, 4610 Fairfax, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Richard J. Anderson, Senior Science Advisor, Experimental Program to Stimulate Competitive Research (EPSCoR), National Science Foundation, Suite 875, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1683.

Purpose of Meeting: To provide advice and recommendations concerning EPSCoR Infrastructure Improvement proposals submitted to the NSF EPSCoR program for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reasons 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: June 28, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16784 Filed 6–30–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Amergen Energy Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62 issued to AmerGen Energy Company, LLC (the licensee) for operation of the Clinton Power Station (CPS) located in DeWitt County, Illinois.

The proposed amendment would change the leak rate test frequency for the primary containment feedwater penetrations designed to be sealed by the Feedwater Leakage Control System from a specific test interval of 18 months to a frequency based on the performance-based Primary Containment Leakage Rate Testing Program. Additionally, an editorial change was requested to reverse the order of Technical Specification (TS) Surveillance Requirements 3.6.1.3.11 and 3.6.1.3.12. This change was requested because it would group TS 3.6.1.3.12 with other TS having the same applicability and frequency.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change to Technical Specification Surveillance Requirement (SR) 3.6.1.3.12 involves a change in frequency of the combined leakage rate of the primary containment feedwater penetrations that are designed to be sealed by the Feedwater Leakage Control System (FWLCS). Testing performed pursuant to this Surveillance Requirement is not an initiator to any accident previously evaluated. The proposed change does not affect the design, operational characteristics, function or reliability of the FWLCS or the primary containment feedwater penetrations. Further, the change has no impact on plant design or operation, as it is merely a change in the specified frequency for the affected SR. Therefore, the proposed change does not affect any parameters or conditions that may contribute to the initiation of any accidents previously evaluated, and as a result, the probability of initiation of any accident previously evaluated will not be significantly increased.

The proposed change to the specified Frequency for SR 3.6.1.3.12 would permit a longer test interval for this surveillance. An excessively long test interval could result in reduced leak tightness of the feedwater penetrations and, therefore, in reduced effectiveness of the barrier presented by the feedwater penetrations and the FWLCS. However, this potential is precluded by making the SR 3.6.1.3.12 test interval performance based. Such an approach is based on approved industry guidelines reflected in the Primary Containment Leakage Rate Testing Program outlined in Technical Specification 5.5.13. Accordingly, a longer test interval would only be permitted if leak test performance supports the longer interval. It should also be noted that the acceptance criterion for the water-type leak test imposed by SR 3.6.1.3.12 was established on the expected capability of the feedwater penetrations to meet this acceptance criterion. Thus, the proposed change to SR 3.6.1.3.12 will not result in reduced barrier performance of the feedwater penetrations, nor in reduced effectiveness of the FWLCS. These barriers for the prevention or minimization of post-LOCA radioactive release from the containment will not therefore be adversely impacted by the proposed change. The FWLCS and the feedwater penetrations will still be required to be Operable per the Technical Specifications and thus capable of performing their accident mitigation functions assumed in the accident analysis. On this basis, the consequences of any accident previously evaluated are not affected by the proposed change.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences on any accident previously evaluated.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the surveillance Frequency of the combined leakage rate of the primary containment feedwater penetrations that are designed to be sealed by the FWLCS does not involve a change in the design, configuration, or method of operation of the plant. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the method governing normal plant operation. No new accident initiators are introduced as a result of the change in specified surveillance Frequency. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change will not involve a significant reduction in the margin of safety.

The margin of safety related to the proposed change involves the offsite dose consequences that result from the release of radioactive material from the containment following a design basis accident. This release is effected by leakage through the containment, including the feedwater penetrations sealed by the FWLCS. The proposed change to the Frequency for the leakage rate test for these penetrations does not involve a change to the acceptance criteria for the leakage rate test, nor in the effectiveness of the testing since the test interval for the test will be performance based. That is, an acceptable level of reliability (leak tightness) of the feedwater penetrations will be maintained using the performance-based Primary Containment Leakage Rate Testing Program. On this basis, the proposed change does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public

and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By August 2, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Kevin P. Gallen, Morgan, Lewis & Bockius LLP, 1800 M Street, NW, Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated June 19, 2000 (U–603378), which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 28th day of June, 2000.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–16727 Filed 6–30–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[70–1257]

Consideration of License Amendment Request for the Siemens Power Corporation, and Opportunity for Hearing

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability of environmental assessment and finding of no significant impact and opportunity to request a hearing on amendment of materials license SNM–1227, Siemens Power Corporation.

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–1227 to authorize constructing, installing, and operating an addition to the Ammonia Recovery Facility at the Siemens Power Corporation facility located in Richland, WA.

Environmental Assessment

1.0 Introduction

1.1 Background

The Nuclear Regulatory Commission (NRC) staff has evaluated the environmental impacts of Siemens Power Corporation (SPC) constructing, installing and operating an addition to their Ammonia Recovery Facility (ARF). This Environmental Assessment (EA) has been prepared pursuant to the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) and NRC regulations (10 CFR part 51) which implement the requirements of the National Environmental Policy Act (NEPA) of 1969. The purpose of this document is to assess the environmental consequences of the proposed license amendment.

The SPC facility at Richland, Washington, is authorized under SNM–1227 and Washington State Materials License No. WN–1062–1 to possess nuclear materials for the conversion of uranium hexafluoride (UF_6) to uranium dioxide (UO_2), and to fabricate and assemble nuclear fuel assemblies for light-water reactors. The SPC operation uses a dry conversion process to convert UF_6 to UO_2 powder. The UO_2 powder is pressed into pellets, which are sintered and then loaded into fuel rods. The fuel rods are placed into storage and are withdrawn as needed and fabricated into fuel assemblies.

Siemens has six lagoons that contain process waste solutions and sediment from past and current manufacturing operations. Under the terms of a consent decree with the State of Washington Department of Ecology (WDOE), the lagoons will be emptied, decommissioned and removed by the year 2006. To meet this requirement and phase out the lagoons, SPC will install new wastewater treatment equipment into a new containment building attached to the existing ARF Building. The new equipment includes four tanks and an ion exchange column.

The addition will be of the same construction as the ARF Building; *i.e.,* a pre-engineered metal structure on a concrete pad. The floor of the addition will be three feet below grade to provide sealed spill containment (1 ½ times the capacity of the largest tank). Three of the four tanks and the ion exchange column will be located inside the building and the fourth tank will be located outside the addition on a concrete pad under an awning.

Tank 1 will be a 5000 gallon tank which will hold the ion exchange regeneration solution, which will eliminate this material from entering Lagoon 3. Tank 2 will be a 7000 gallon tank which will replace Lagoon 2. Tank 2 will receive the low U, high ammonia effluent from the ammonium diuranate line and will be the feed to the ARF process. Tank 5A will be a 12,000 gallon tank to replace Lagoon 5A. It will receive treated effluent from the ARF as well as low-U, low ammonia effluents from other processes. Tank 5A will feed the ion exchange columns whose output feeds the sewer. The carbonate makeup tank will be located under an awning outside the ARF. This tank will replace Lagoon 4 by holding the carbonate solution used to regenerate the ion exchange columns. The second ion exchange column will be added so that while one column is being regenerated, the ion exchange operation can continue.

1.2 Review Scope

In accordance with 10 CFR part 51, this EA serves to (1) present information and analysis for determining whether to issue a Finding of No Significant Impact (FONSI) or to prepare an Environmental Impact Statement (EIS); (2) fulfill the NRC's compliance with the National Environmental Policy Act (NEPA) when no EIS is necessary; and (3) facilitate preparation of an EIS if one is necessary. Should the NRC issue a FONSI, no EIS would be prepared and the license amendment would be granted.

1.3 Proposed Action

The proposed action is to amend NRC Materials License SNM–1227 to authorize installation and operation of the new equipment in the Ammonia Recovery Facility.

1.4 Need for Proposed Action

Under the terms of the consent decree with the State of Washington, SPC will empty, decommission, and remove their six lagoons by the year 2006. To meet this requirement, SPC will install new wastewater treatment equipment into a new containment building attached to the existing ARF Building. The new equipment will include two new waste tanks, two tanks for the regeneration of existing final ion exchange columns, and a new ion exchange column. The new waste tanks will replace the lagoons, thereby eliminating the concern of any possible leaks or emissions to the environment from the lagoons.

1.5 Alternatives

The alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or
2. Deny the amendment request.

2.0 Affected Environment

The following sections contain a summary of the affected environment at and near the SPC site. A full description of the site and its characteristics is given in the 1995 Environmental Assessment for the Renewal of the NRC license for SPC.

2.1 Location and Land Use

The Siemens Power Corporation (SPC) facility is located on a 131-hectare site just inside the northern boundary of the City of Richland in Benton County, Washington. The site consists of 36 buildings plus various outside facilities. The uranium handling and processing facilities are located within a restricted 21.5-hectare area. The facility is located within a 2,470-hectare land parcel known as the Horn Rapids Triangle, which was part of the U.S. Department of Energy's (DOE) Hanford Site until 1967 when it was annexed to the City of Richland. The Horn Rapids Triangle is bounded to the north by Horn Rapids Road, to the south by the Horn Rapids Irrigation Ditch, to the east by the DOE1100 Area, and on the southeast by the Port of Benton Skypark and Richland Airport. Most developed land within a 16 kilometer radius of the site is used for agriculture, light industry, or residences.

2.2 Geology, Soils, and Seismicity

The site region is characterized as a semi-arid desert of generally flat terrain except for wind formed ridges from 1.5 to 9 meters high. The site is located

between the Columbia and Yakima Rivers at an elevation of 114 meters above mean sea level (MSL). At their closest points, the nominal elevations of the Columbia and Yakima Rivers are approximately 107 and 113 meters above mean sea level, respectively. Basalt flows more than 3,000 meters thick underlie the Pasco basin. Unconsolidated silts, sands, and gravels of the Ringold and Hanford Formations, totaling tens to hundreds of feet in thickness, overlie the basalts. The depth to basalt below the SPC site has not been determined.

The distribution and intensity of historical earthquakes indicate that the Columbia Plateau is an area of moderate seismicity. Seismic activity above magnitude 3.0 on the Richter scale has occurred in this region, but activity above magnitude 3.5 is most commonly found around the northern and western portions of the Columbia Plateau, with a few events occurring along the border between Washington and Oregon.

2.3 Water Resources

Surface Water: Primary surface water features associated with the SPC site are the Columbia and Yakima rivers. The confluence of the Yakima and Columbia rivers is located about 5 kilometers south of Richland and about 8 kilometers south of the SPC site. The Columbia River in the vicinity of the site is classified as Class A (excellent) which requires that industrial uses of this water be compatible with other uses including drinking water, wildlife, and recreation. The water is used for irrigation, power generation, municipal water supplies, transportation, fishing, and water sports. The primary source for water in Richland and at the SPC site is from the Columbia River. There is no storm water runoff from the facility to water bodies, rivers, streams or the municipal sewer system. Surface water runoff from the plant is very limited because of the desert environment and percolation into the soil.

Ground Water: There are three distinct aquifer systems that underlie the SPC site. The deepest aquifer consists of highly productive water-bearing zones within thick basalt flows. A confined aquifer occurs in silt, gravel and sand layers in the lower portion of the Ringold Formation which overlies the basalt. An unconfined aquifer system, consisting of the sands and gravels in the Hanford Formation and in the upper portion of the Ringold Formation, is the shallowest aquifer and the one that is monitored by the SPC site.

2.4 Meteorology and Air Quality

The SPC site region has a dry, continental climate with large temperature variations between winter and summer caused by mountain ranges to the west and the orientation of the Rocky Mountains. The prevailing wind on the site is from the southwest. Severe weather in the area consists of wind, thunderstorms, and occasionally a tornado.

Air quality at the site is good—within the air quality standards set by EPA and the State of Washington.

3.0 Effluent Releases and Monitoring

3.1 Monitoring Program

Monitoring programs at the SPC facility comprise effluent monitoring of air and water and environmental monitoring of various media (air, soil, vegetation, and groundwater). This program provides a basis for evaluation of public health and safety impacts, for establishing compliance with environmental regulations, and for development of mitigation measures if necessary. The proposed activities will be monitored using current monitoring equipment located in the ARF. The tanks will be equipped with alarmed, electronic level detectors and alarmed leak detectors. No near-term changes are planned in the effluent and/or environmental monitoring programs currently committed to in License SNM–1227. Effluents from the new tanks will enter the sewer and will continue to be subject to the same NRC and State of Washington radiological and chemical release limits regardless of whether the effluents are managed via the lagoons or in tanks. In the long-term, close-out of the lagoon system will relieve SPC of its need to conduct inter-liner lagoon sampling and may also decrease lagoon-related groundwater monitoring requirements.

3.2 Effluents

Gaseous, liquid, and solid wastes are produced at the SPC site. These wastes are categorized as low-level radioactive, nonradioactive, hazardous, or mixed wastes. A description of each of these waste categories, control strategies, and an estimate of release quantities is provided in the 1995 Environmental Assessment for the Renewal of the NRC license for SPC.

Each of the effluent streams is monitored at or just prior to the point of release. SPC has a set of action levels for both gaseous and liquid effluent streams. Results from the radiological effluent monitoring program are reviewed quarterly by the plant's As Low As Reasonably Achievable (ALARA) Committee and reported annually to the Siemens Health and Safety Council to determine trends in effluent releases; to determine if effluent controls are being properly used, maintained and inspected; and to determine if effluents could be reduced using the ALARA concept. Results from the monitoring program are also reported in the semiannual effluent reports submitted to the NRC. Impacts on effluent releases resulting from the proposed activities are described below.

3.2.1 Solid Wastes

The amendment request is expected to eventually decease the solid wastes released from the site. The operation of a closed tank system will generate fewer solids wastes than operation of a large open lagoon system due to the generation of contaminated sediments and soils in a lagoon system.

3.2.2 Air Effluents

The release of air effluents is expected to increase minimally and remain within applicable regulatory limits. These additional effluents will be the same composition as what is currently emitted from the ARF. The ARF Feed Collection tank is vented to the existing ARF process feed tank to contain ammonia fumes. The ion exchange feed tank and the ion exchange regeneration tank will be vented to the existing ARF exhaust and stack for the control of low level ammonia releases.

3.2.3 Liquid Effluents

The proposed activity is not expected to impact the quantity or radioactivity of liquid effluents released to the sewer. Essentially the same waste streams will be processed through low residence time tanks as opposed to the longer residence time lagoon system.

4.0 Environmental Impacts of Proposed Action and Alternatives

4.1 Public and Occupational Health

The risk to human health was evaluated as a result of construction, installation, and operation of the new equipment in the new containment building. Personnel are expected to enter the new containment building on an as needed basis rather than working there full time. The licensee's existing radiation protection and environmental programs, as described in their license application, will be used to control the radiation exposures of the licensee's workers and the public. The licensee's existing radiation protection and environmental programs include training, protective clothing, air sampling, surface contamination surveys, bioassays, waste management,

monitoring of effluents, environmental monitoring, etc. In addition, the programs include action levels and actions to be taken to minimize the radiation exposures of workers and the public. Since the radioactive material will be contained in tanks and will be in low concentrations, the exposures to workers and the public are expected to result in no significant increase in worker or public exposure. Thus, the NRC staff has determined that the licensee's existing radiation protection and environmental programs are adequate for the new operations in the new containment building.

4.2 Water Resources

The NRC staff has determined that the proposed amendment will not impact the quality of nearby surface waters.

The tanks will eliminate the concern of any possible leaks or emissions to the environment from the lagoons. Contamination of groundwater is expected to decrease as a result of the phase-out of the lagoons. The tanks will be double-contained and will be monitored for leaks. The design of the building provides for spill containment.

4.3 Air Quality

The construction, installation and operation of the new equipment is expected to have a minimal impact on the air quality on and near the site. Construction activities will be minimal with no major soil disruption. No new stack monitoring will be required because the current monitoring system will be used. The slight increase in air effluents will remain within applicable regulatory limits.

4.4 Demography, Biota, Cultural and Historic Resources

The NRC staff has determined that the proposed amendment will not impact demography, biota, or cultural or historic resources. The proposed construction will occur on an area of the site which has been previously evaluated for these concerns and has been previously impacted by actions at the site (1996 EA).

4.5 Alternatives

The action that the NRC is considering is approval of an amendment request to a Materials License issued pursuant to 10 CFR part 70. The amendment would approve the construction, installation and operation of new equipment in the ARF building. The alternatives available to the NRC are:

1. Approve the license amendment request as submitted; or
2. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant denial of the license amendment. There are no significant environmental impacts associated with the proposed action, and therefore alternatives with equal or greater impacts need not be evaluated. In addition, the approval of the amendment request will decrease the impacts to the groundwater as operation of the tanks pose less of a threat of leaks into the groundwater than operation of lagoons. The staff considers that Alternative 1 is the appropriate alternative for selection.

5.0 Agencies and Persons Contacted

The NRC staff contacted representatives from the State of Washington Department of Health and the State of Washington Department of Ecology. The City of Richland, Development and Permit Services Division completed a State Environmental Policy Act (SEPA) Checklist and issued a Determination of Nonsignificance dated June 11, 1999. The conclusion of the review was that the proposed activities would not have a probable significant adverse impact on the environment.

6.0 References

Siemens Power Corporation(SPC), 1999, Letter from J.B. Edgar to NRC dated July 21, 1999.

SPC, 1999, Letter from J.B. Edgar to NRC dated November 18, 1999.

U.S. Nuclear Regulatory Commission (NRC), June 1995, ''Environmental Assessment for Renewal of Special Nuclear Material License SNM–1227.''

7.0 Conclusions

Based on an evaluation of the environmental impacts of the amendment request, the NRC has determined that the proper action is to issue a FONSI in the **Federal Register**. The NRC staff considered the environmental consequences of constructing, installing and operating new equipment in the ARF building and determined that these activities will have no significant effect on public health and safety or the environment.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License SNM–1227. On the basis of the assessment, the Commission has concluded that environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, the Commission is making a Finding of No Significant Impact.

The Environmental Assessment and the documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

Opportunity for a Hearing

Based on the Environmental Assessment and Finding of No Significant Impact, and a staff safety evaluation to be completed, NRC is preparing to amend License SNM–1227. The NRC hereby provides that this is a proceeding on an application for amendment of a license falling within the scope of subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission either:

1. By delivery to the Rulemakings and Adjudications Staff of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or
2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in section 2.1205(h).
3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for a hearing is timely in accordance with section 2.1205(d).

In accordance with 10 CFR Section 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, Siemens Power Corporation, 2101 Horn Rapids Road, Richland, WA 99352–0130; and

2. The NRC staff, by delivering it to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The NRC contact for this licensing action is Dan E. Martin. Dan E. Martin may be contacted at (301) 415–7254 or by e-mail at dem1@nrc.gov for more information about this licensing action.

Dated at Rockville, Maryland, this 22nd day of June 2000.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–16728 Filed 6–30–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–2]

Virginia Electric and Power Company; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Amendment To Revise Technical Specifications of License No. SNM–2501

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an amendment, pursuant to 10 CFR 72.56, to the Special Nuclear Materials License No. 2501 (SNM–2501) held by Virginia Electric and Power Company (Virginia Power) for the Surry independent spent fuel storage installation (ISFSI). The requested amendment would revise the Technical Specifications of SNM–2501 to specifically permit the continued storage of burnable poison rod assemblies (BPRA) and thimble plug devices (TPD) within the CASTOR V/21, NAC I28, and Westinghouse MC–10 casks used at the Surry ISFSI.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated April 5, 1999, as supplemented on February 29, 2000, Virginia Power requested an amendment to revise the Technical Specifications of SNM–2501 for the Surry ISFSI. The changes would specifically permit the continued storage of BPRAs and/or TPDs within the CASTOR V/21, NAC I28, and Westinghouse MC–10 dry storage casks used at the Surry ISFSI.

Need for the Proposed Action: The proposed action will eliminate the need to physically remove BPRAs and TPDs from irradiated fuel assemblies in order for dry cask storage to continue under the present technical specifications of the license.

Environmental Impacts of the Proposed Action: The NRC has completed its evaluation of the proposed action and concludes that granting the request for an amendment to specifically allow the continued storage of BPRAs and TPDs within the CASTOR V/21, NAC I28, and Westinghouse MC–10 casks used at the Surry ISFSI will not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released off site. With regard to radiological impacts, the addition of irradiated BPRAs and TPDs only affects the gamma source term of the cask. For this amendment, Virginia Power's calculated increase in surface dose rate resulting from the added BPRAs and TPDs remains within the bounds of the currently approved dose rate limit and, consequently, results in no significant increase in occupational or public radiation exposure. Additionally, the applicant made physical dose rate measurements of casks currently loaded with BPRAs and TPDs, and they are less than the calculated dose rates. The measured increase in the surface dose rate remains within the bounds of the currently approved dose rate limit. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

The amendment only affects the requirements associated with the content of the casks and does not affect non-radiological plant effluents or any other aspects of the environment. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action: The alternative to the proposed action would be to deny the request for an amendment (i.e., the ''no-action'' alternative). Denial of the proposed action would result in the need to physically remove BPRAs and TPDs from each fuel assembly possessing them prior to continuing dry cask storage. Physical removal of irradiated BPRAs and TPDs would increase the exposure time and dose to the plant workers. In addition, it would require disposal or storage of additional radioactive material (*i.e.*, BPRAs and TPDs) that would otherwise be safely stored if the BPRAs and TPDs are left intact with their irradiated fuel assembly. The environmental impacts of the alternative action are greater than the proposed action.

Given that there are greater environmental impacts associated with the alternative action of denying the approval for an amendment, the Commission concludes that the preferred alternative is to grant this amendment.

Agencies and Persons Consulted: On September 27, 1999, Mr. Les Foldese of the Virginia Department of Health, Bureau of Radiological Health, was contacted in regard to the proposed action and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an amendment to permit the continued storage of BPRAs and TPDs within the CASTOR V/21, NAC I28, and Westinghouse MC–10 casks used at the Surry ISFSI will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the amendment application dated April 5, 1999, as supplemented on February 29, 2000. In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' a copy of this letter and its enclosure will be available electronically for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 26th day of June 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–16730 Filed 6–30–00; 8:45 am]

BILLING CODE 7890–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–00001; License No. 24–04206–01; EA–00–143]

Mallinckrodt, Inc., St Louis, Missouri; Confirmatory Order Modifying License

I

Mallinckrodt, Inc. (Mallinckrodt), is the holder of NRC License No. 24–04206–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30. The license authorizes Mallinckrodt to use byproduct materials in manufacturing, processing and packaging of radiopharmaceuticals and radiochemicals for distribution to holders of a specific license issued by the Commission or an Agreement State. The license also authorizes Mallinckrodt to use byproduct material for research and development of radiopharmaceuticals. The license was issued on October 8, 1958, was most recently amended on March 27, 1998, and is currently in the renewal process.

II

On April 13, 2000, Mallinckrodt identified a potential extremity exposure in excess of regulatory limits to an individual working on the molybdenum/technetium generator manufacturing line and immediately notified the NRC of the incident. The NRC initiated a special inspection on April 14, 2000, to review the circumstances, and root and contributing causes of the event. On April 28, 2000, Mallinckrodt identified additional potential exposures in excess of regulatory limits involving additional processing areas. Based on the additional potential exposures and the complexity of the processes, the NRC expanded the special inspection to an Augmented Inspection Team (AIT). The AIT inspected Mallinckrodt between May 4 and May 26, 2000.

Based upon the AIT results, the NRC concluded that programmatic deficiencies exist in Mallinckrodt's ability to conduct: (1) Comprehensive assessments of its radiation protection program; (2) accurate root cause determinations for deficiencies identified through its problem identification program; and, (3) radiological evaluations of manufacturing processes. The results of these deficiencies included the failure to identify that significant differences existed in dose rates between fingertips and extremity monitoring devices when handling unshielded containers of radioactive material, the identification that operating procedures did not reflect actual work practices, and that supervisors overseeing laboratory activities did not recognize the potential radiological consequences of work habits in their area. The NRC is concerned that inadequate controls over the safe use of licensed material continue to exist. NRC concerns along with various remedial and corrective actions, designed to improve Mallinckrodt's radiation safety program, were discussed with Mallinckrodt during a telephone call between members of NRC and Mallinckrodt staff on June 8, 2000. By letter dated June 9, 2000, NRC proposed conditions that could be taken to identify and correct the licensee's programmatic weaknesses. By letter dated June 16, 2000, Mallinckrodt agreed to implement the proposed conditions with minor modifications. These modifications have been incorporated into this Order.

III

By letter dated June 16, 2000, Mallinckrodt has agreed to:

(1) Retain an independent organization to assess the radiation safety program and the radiation safety aspects of its radioactive material manufacturing processes;

(2) Provide written assurance that workers have received training and understand procedures and practices in place to maintain radiation exposures as low as is reasonably achievable;

(3) Develop a plan to review operations for the last five years to determine if any individuals have received exposures in excess of regulatory limits; and,

(4) Request an amendment to its license incorporating a program that will identify and correct deficiencies associated with radiation safety.

On June 16, 2000, Mallinckrodt consented to issuance of this Order with the commitments, as described in Section IV below. Mallinckrodt further agreed in its June 16, 2000, letter that this Order is to be effective upon issuance and has waived its right to a hearing. Implementation of these commitments will provide enhanced assurance that sufficient attention will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements.

I find that Mallinckrodt's commitments as set forth in Section IV are acceptable and necessary. Further, I conclude that with these commitments, the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Mallinckrodt's commitments be confirmed by this Order. Based on the above and Mallinckrodt's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 30, *It Is Hereby Ordered, Effective Immediately, That License No. 24–04206–01 Is Modified As Follows:*

A. Mallinckrodt shall retain the services of one or more independent individuals or organizations capable of evaluating radiation safety program implementation and manufacturing processes associated with radioactive materials at large facilities to perform the following:

1. An assessment of Mallinckrodt's radiation protection program. At a minimum the assessment shall include:

a. Roles and responsibilities of the Radiation Safety Office and Officer;

b. Effectiveness of Mallinckrodt's Radiation Safety and Dose Reduction Committees;

c. Current radiation protection organization staffing levels to determine if sufficient resources are available to support plant operations;

d. Effectiveness of the occupational exposure monitoring program (deep-dose equivalent; shallow dose equivalent, whole body and maximum extremity; and committed effective dose equivalent) to assure that all recorded exposures (*e.g.,* finger and hand exposures) are representative of maximum exposures received;

e. Effectiveness of Mallinckrodt in resolving previous radiation protection issues; and

f. Effectiveness of Mallinckrodt's radiation safety training program, including on the job training for radiation workers.

2. A radiation safety assessment of Mallinckrodt's radioactive materials manufacturing processes. At a minimum the assessment shall include:

a. The radiation safety practices and related engineering controls associated with Mallinckrodt's processes involving radioactive materials;

b. Adequacy of and adherence to Standard Operating Procedures affecting radiation safety; and

c. The process that Mallinckrodt uses for evaluating radiation safety issues associated with new and modified product lines involving radioactive materials.

Mallinckrodt shall inform NRC Region III of the individual(s) or

organization(s) hired for each of these assessments. These notifications shall be made within seven days of the date of this Order, and include the audit plan. Each assessment shall be completed within 60 days of the date of this Order. Within 90 days of the date of this Order, Mallinckrodt shall ensure that the individual(s) or organization(s) conducting each assessment submit to Mallinckrodt and NRC Region III, at the same time, the results of each assessment, including the deficiencies identified.

Mallinckrodt shall evaluate the root causes and develop corrective actions associated with any identified findings and submit to NRC Region III the schedules to implement those corrective actions. Mallinckrodt shall provide to NRC Region III the radiation protection program assessment corrective actions within 150 days of the date of this Order. Mallinckrodt shall provide to NRC Region III the corrective actions to the radiation safety assessment of the radioactive materials manufacturing processes within 180 days of the date of this Order. Should Mallinckrodt disagree with any assessment finding or plan not to initiate any corrective action arising from the assessments, Mallinckrodt must provide a written explanation of the rationale for such disagreement to NRC Region III within the respective 150-day or 180-day period.

B. Mallinckrodt shall provide to NRC Region III, a written statement that all applicable Mallinckrodt workers have been trained and that Mallinckrodt has assessed the effectiveness of the training to ensure workers understand the procedures and practices in place to maintain radiation exposures as-low-as-is-reasonably-achievable. This written assurance shall be submitted to NRC Region III within 15 days of the date of this Order.

C. Mallinckrodt shall develop a plan to review past operations to determine if any individuals could have received radiation exposures in excess of the applicable NRC limits in 10 CFR Part 20. This review shall encompass activities for a period of five years prior to the date of this Order. Mallinckrodt shall provide NRC Region III the plan and implementing schedule within 90 days of the date of this Order. The provisions of this Order do not relieve Mallinckrodt from complying with the reporting requirements in 10 CFR Part 20 should an exposure in excess of regulatory limits be identified during the review.

D. Mallinckrodt shall request an amendment to its license incorporating a program that will identify and correct deficiencies associated with radiation safety. This program shall include, as a minimum, provisions for: (1) Worker identification of radiation related safety issues; (2) prompt notification to management of significant issues; (3) root cause analysis, including associated training for all managers, supervisors, and radiation protection staff involved with performing and reviewing root cause evaluations; and (4) tracking of identified deficiencies. This amendment request shall be submitted to NRC Region III within 180 days of the date of this Order.

The Regional Administrator, Region III, may relax or rescind, in writing, any of the above conditions upon a showing by Mallinckrodt of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Mallinckrodt, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, Illinois, and to Mallinckrodt. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 22nd day of June, 2000.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Director, Office of Enforcement.

[FR Doc. 00–16729 Filed 6–30–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: August 1–2, 2000—Carson City, NV: Discussions of a Total System Performance Assessment for a Potential Yucca Mountain, Nevada, Repository for Spent Nuclear Fuel and High-Level Radioactive Waste; Update on Scientific and Engineering Studies Undertaken at the Yucca Mountain Site; and Update on the DOE's Development of a Safety Strategy for a Potential Yucca Mountain Repository

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Tuesday, August 1, Wednesday, August 2, the Nuclear Waste Technical Review Board (Board) will meet in Carson City, Nevada, to discuss technical and scientific issues related to evaluating a possible site for a repository for spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nevada. Among the issues that will be discussed are a total system performance assessment (TSPA), a safety strategy for the potential repository, and scientific and engineering studies being conducted to evaluate the suitability of the Yucca Mountain site. The Board is charged by Congress with reviewing the technical and scientific aspects of the Department of Energy's (DOE) civilian radioactive waste management program, including disposing of, packaging, and transporting the waste.

The Board meeting will be held at Pinon Plaza Resort (Best Western), 2171 Hwy 50 East; Carson City, NV 89701. The telephone number is (775) 885–9000; the fax number is (775)–888–8018. The meeting will start at 8:30 a.m. on both days and will be open to the public.

On Tuesday, August 1, the DOE's Office of Civilian Radioactive Waste Management will present a general overview of the status of the program. The overview will be followed by

presentations by representatives of the State of Nevada, including comments on studies conducted by the state related to materials proposed for use in the waste package. The DOE will present updates on ongoing scientific and engineering studies at the Yucca Mountain site, including results of testing in the exploratory tunnels, isotope studies, and estimating volcanic hazard. In the afternoon, discussions will begin on the TSPA that is used by the DOE to estimate potential repository performance. In particular, the DOE will make presentations on TSPA results, their uncertainties, and the individual components that make up the TSPA. Critical assumptions underlying the models used to estimate the performance of a potential repository also will be discussed.

The presentations on the TSPA will resume on Wednesday, August 2, and will continue until midafternoon, when the DOE will update the Board on the development of the DOE's safety strategy for a potential Yucca Mountain repository, including principal factors affecting repository performance, defense-in-depth, natural analogs, and the vulnerabilities, uses, and limitations of the safety case.

Several opportunities for public comment will be provided: before the lunch break and at the end of the day on August 1 and at the end of the session on August 2. Those wanting to speak are encouraged to sign the ''Public Comment Register'' at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. As time permits, the questions will be answered during the meeting.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff, beginning on September 4, 2000.

A block of rooms has been reserved at the Pinon Plaza Resort. Reservations must be made by July 10 to receive the meeting rate. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. For more information, contact the NWTRB, Karyn Severson, External Affairs, 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495; (e-mail) info@nwtrb.gov.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

Dated: June 26, 2000.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 00–16726 Filed 6–30–00; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. The FEHB Open Season Express IVR System collects the following information from annuitants and survivors: Retirement Claim Number (CSA or CSF), Personal Identification Number (PIN), FEHB plan code for requesting plan brochures, FEHB plan code for making an enrollment change, and dependent information for self and family enrollments. Annuitants and survivors may request a copy of the FEHB Customer Satisfaction Survey results, cancel or suspend FEHB benefits, request payment directly to OPM where FEHB payment is greater than the monthly annuity amount, or request a change of address through the IVR system.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 75,000 requests will be completed annually. Each request takes approximately 10 minutes to complete. The annual estimated burden is 12,525 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before September 1, 2000.

ADDRESSES: Send or deliver comments to—James K. Freiert, Chief, Retirement Services Division, Retirement and Insurance Service, U.S. Office of Personnel Management 1900 E Street, NW, Room 1312, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–16710 Filed 6–30–00; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—Thursday, July 6, 2000; Thursday, July 20, 2000; Thursday, August 3, 2000; Thursday, August 17, 2000.

The meeting will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the

Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: June 22, 2000.

John F. Leyden,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 00–16709 Filed 6–30–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension

Rule 17f–1(c), SEC File No. 270–28, OMB Control No. 3235–0032

Rule 17f–1(c) and Form X–17F–1A, SEC File No. 270–29, OMB Control No. 3235–0037

Rules 17h–1T and 17h–2T, SEC File No. 270–359, OMB Control No. 3235–0410

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 17f–1(b) requires approximately 1,150 entities in the securities industry to register in the Lost and Stolen Securities Program. Registration fulfills a statutory requirement that entities report and inquire about missing, lost, counterfeit, or stolen securities. Registration also allows entities in the securities industry to gain access to a confidential database that stores information for the program.

It is estimated that 1,150 entities will register in the Lost and Stolen Securities Program annually. It is also estimated that each respondent will register one time. The staff estimates that the average number of hours necessary to comply with the Rule 17f–1(b) is one-half hour. The total burden is 575 hours annually for respondents, based upon past submissions. The average cost per hour is approximately $50. Therefore, the total cost of compliance for respondents is $28,750.

Rule 17f–1(b) is a reporting rule and does not specify a retention period. The rule requires a one-time registration for reporting institutions. Registering under Rule 17f–1(b) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Lost and Stolen Securities Program. Reporting institutions required to register under Rule 17f–(b) will not be kept confidential, however, the Lost and Stolen Securities Program database will be kept confidential.

Rule 17f–1(c) and Form X–17F–1A requires approximately 23,000 entities in the securities industry to report lost, stolen, missing, or counterfeit securities to a central database. Form X–17F–1A facilitates the accurate reporting and precise and immediate data entry into the central database. Reporting to the central database fulfills a statutory requirement that reporting institutions report and inquire about missing, lost, counterfeit, or stolen securities. Reporting to the central database also allows reporting institutions to gain access to the database that stores information for the Lost and Stolen Securities Program.

It is estimated that 23,000 reporting institutions will report that securities are either missing, lost, counterfeit, or stolen annually. It is also estimated that each reporting institution will submit this report 56 times each year. The staff estimates that the average amount of time necessary to comply with Rule 17f–1(c) and Form X–17F–1A is five minutes. The total burden is 107,333 hours annually for respondents, based upon past submissions. The average cost per hour is approximately $50. Therefore, the total cost of compliance for respondents is $5,366,666.

Rule 17f–1(c) is a reporting rule and does not specify a retention period. The rule requires an incident-based reporting requirement by the reporting institutions when securities are discovered missing, lost, counterfeit, or stolen. Registering under Rule 17f–1(c) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Lost and Stolen Securities Program. Reporting institutions required to register under Rule 17f–1(c) will not be kept confidential, however, the Lost and Stolen Securities Program database will be kept confidential.

Rule 17h–1T requires a broker-dealer to maintain and preserve records and other information concerning certain entities that are associated with the broker-dealer. This requirement extends to the financial and securities activities of the holding company, affiliates and subsidiaries of the broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires a broker-dealer to file with the Commission quarterly reports and a cumulative year-end report concerning the information required to be maintained and preserved under Rule 17h–1T.

The collection of information required by Rules 17h–1T and 17h–2T are necessary to enable the Commission to monitor the activities of a broker-dealer affiliate whose business activities are reasonably likely to have a material impact on the financial and operational condition of the broker-dealer. Without this information, the Commission would be unable to asses the potentially damaging impact of the affiliate's activities on the broker-dealer.

There are currently 215 respondents that must comply with Rules 17h–1T and 17h–2T. Each of these 215 respondents require approximately 10 hours per year, or 2.5 hours per quarter,

to maintain the records required under Rule 17h–1T, for an aggregate annual burden of 2,150 hours (215 respondents × 10 hours). In addition, each of these 215 respondents must make five annual response under Rule 17h–2T. These five responses require approximately 14 hours per responder per year, or 3.5 hours per quarter, for an aggregate annual burden of 3,010 hours (215 respondents × 14 hours). In addition, there are approximately seven new respondents per year, which must draft an organizational chart required under Rule 17h–1T and establish a system for complying with the rules. The staff estimates that drafting the required organizational chart requires one hour and establishing a system for complying with the rules requires three hours, thus requiring an aggregate of 28 hours (7 new respondents × 4 hours). The total compliance burden per year is approximately 5,188 burden hours (2,150 + 3,010 + 28).

Rule 17h–1T specifies that the records required to be maintained under the rule must be preserved for a period of not less than three years. There is no specific retention period or record keeping requirement for Rule 17h–2T. The collection of information is mandatory and the information required to be provided to the Commission pursuant to these rules are deemed confidential, notwithstanding any other provision of law under Section 17(h)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(h)(5)) and Section 552(b)(3)(B) of the Freedom of Information Act (15 U.S.C. 552(b)(3)(B)).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless its displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Office for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Directive, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Dated: June 26, 2000.

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 00–16742 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:

Form T–6, SEC File No. 270–344, OMB Control No. 3235–0391

Form 11–K, SEC File No. 270–101, OMB Control No. 3235–0082

Form 144, SEC File No. 270–112, OMB Control No. 3235–0101

Regulation S–B, SEC File No. 270–370, OMB Control No. 3235–0417

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Form T–6 is a statement of eligibility and qualification for a foreign corporate trustee under the Trust Indenture Act of 1939. Form T–6 provides the basis for determining if a trustee is qualified. Form T–6 is filed on occasion and the information required is mandatory. All information is provided to the public upon request. Form T–6 takes approximately 17 burden hours to prepare and is filed by 15 respondents. It is estimated that 25% of the 255 total burden hours (64 hours) would be prepared by the filer.

Form 11–K is the annual report designed for use by employee stock purchase, savings and similar plans to facilitate their compliance with the reporting requirement. Form 11–K is necessary to provide employees with information, including financial information, with respect to the investment vehicle or plan itself. Form 11–K provides the employees with the necessary information to assess the performance of the investment vehicle in which their money is invested. Form 11–K is filed on occasion and the information required is mandatory. All information is provided to the public upon request. Form 11–K takes approximately 30 burden hours to prepare and is filed by 774 respondents for a total of 23,220 annual burden hours.

Form 144 is used to report the sale of securities during any three month period that exceeds 500 shares or other units or has an aggregate sales price in excess of $10,000. The information requested is mandatory. Form 144 operates in conjunction with Rule 144. If the information collection was not required, the objectives of the rule could be frustrated. All information is provided to the public upon request. Form 144 takes 2 burden hours to prepare and is filed by 18,096 respondents for a total of 36,192 annual burden hours.

Regulation S–B provides an integrated disclosure system for small business issuers that file registration statements under the Securities Act of 1933 and reports under the Securities Exchange Act of 1934. The information requested is mandatory. The information collected is intended to ensure the adequacy of information available to investors in the registration of securities. All information is provided to the public upon request. Regulation S–B takes approximately one burden hour to review and is filed by one respondent for a total of one annual burden hour. The one hour associated with Regulation S–B is strictly an administrative reporting burden.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 26, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16743 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24547 812–12022]

Evergreen Equity Trust, et al.; Notice of Application

June 27, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the

''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of open-end management investment companies to acquire all of the assets and certain stated liabilities of certain other series of the investment companies. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Evergreen Equity Trust, Evergreen Fixed Income Trust, Evergreen Select Fixed Income Trust, and Evergreen Select Equity Trust (collectively, the ''Evergreen Funds'') and First Union National Bank (''FUNB'').

FILING DATE: The application was filed on March 14, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 20, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. FUNB, 201 S. College Street, Charlotte, NC 28288; Evergreen Funds, 200 Berkeley Street, Boston, MA 02116–9000.

FOR FURTHER INFORMATION CONTACT: Sara P. Crovitz, Senior Counsel, at (202) 942–0667 or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102, (202) 942–8090.

Applicant's Representations

1. The Evergreen Funds, each a Delaware business trust, are registered under the Act as open-end management investment companies. Evergreen Equity Trust has twenty-three series. Six of these series, the Evergreen Stock Selector Fund (''Stock Selector''), Evergreen Small Cap Value Fund (''Small Cap Value''), Evergreen Equity Income Fund (''Equity Income''), Evergreen Income and Growth Fund (''Income and Growth''), Evergreen Capital Balanced Fund (''Capital Balanced''), and Evergreen Foundation Fund (''Foundation''), are involved in the proposed transactions. Evergreen Fixed Income Trust has nine series. Three of these series, Evergreen High Income Fund (''High Income''), Evergreen High Yield Bond Fund (''High Yield Bond''), and Evergreen Capital Preservation and Income Fund (''Capital Preservation and Income''), are involved in the proposed transactions. Evergreen Select Fixed Income Trust has ten series. One of its series, Evergreen Select Adjustable Rate Fund (''Adjustable Rate''), is involved in the proposed transactions. Evergreen Select Equity Trust has twelve series. Five of these series, Evergreen Select Large Cap Blend Fund (''Large Cap Blend''), Evergreen Select Small Company Value Fund (''Small Company Value''), Evergreen Select Social Principles Fund (''Social Principles''), Evergreen Select Special Equity Fund (''Special Equity''), and Evergreen Select Diversified Value Fund (''Diversified Value''), are involved in the proposed transactions.

2. Large Cap Blend, Small Company Value, Social Principles, Diversified Value, Equity Income, Capital Balanced, High Income, and Capital Preservation and Income are the ''Acquired Series.'' Stock Selector, Small Cap Value, Special Equity, Income and Growth, Foundation, High Yield Bond, and Adjustable Rate are the ''Acquiring Series.'' Collectively, the Acquired Series and Acquiring Series are referred to as the ''Series.''[1]

3. FUNB is a national banking association and a banking subsidiary of First Union Corporation, a publicly held bank holding company. First Capital Group (''FCG''), a division of FUNB, is the investment adviser to Large Cap Blend, Social Principles, and Diversified Value. Evergreen Asset Management Corp. (''EAMC''), an indirect wholly-owned subsidiary of FUNB, is the investment adviser to Small Company Value, Small Cap Value, Income and Growth, and Foundation. Evergreen Investment Management Company (''EIMC''), also an indirect wholly-owned subsidiary of FUNB, is the investment adviser to Equity Income, High Yield Bond, Capital Preservation and Income, and Adjustable Rate. Meridian Investment Company (''Meridian''), also an indirect wholly owned subsidiary of FUNB, is the investment adviser to Stock Selector and Special Equity. Mentor Investment Advisors, LLC (''Mentor''), also an indirect wholly owned subsidiary of FUNB, is the investment adviser to Capital Balanced and High Income. EAMC, EIMC, Meridian, and Mentor are registered under the Investment Advisers Act of 1940 (''Advisers Act''). FCG, as a division of FUNB, is not required to register as an investment adviser under the Advisers Act.

4. FUNB, as fiduciary for its customers, owns of record more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Acquired Series. In addition, FUNB, as fiduciary for its customers, owns of record more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Acquiring Series.[2] All such shares are held by FUNB in a fiduciary capacity, and FUNB does not have an economic interest in any such shares.

On March 23–24, 2000, the boards of trustees of the Evergreen Funds (the ''Boards''), including a majority of the trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (the ''Independent Trustees''), approved plans of reorganization (the ''Plans''). Under the Plans, on the closing date (the ''Closing Date''), which is currently anticipated to be July 24, 2000, the Acquiring Series will acquire all of the assets and stated liabilities of the corresponding Acquired Series in exchange for shares of the Acquiring Series that have an aggregate net asset value (''NAV'') equal to the aggregate NAV of the Acquired Series, calculated as of the close of business on

[1] Each Acquired Series and its corresponding Acquiring Series are as follows: Large Cap Blend and Stock Selector; Small Company Value and Small Cap Value; Social Principles and Special Equity; Diversified Value and Stock Selector; Equity Income and Income and Growth; Capital Balanced and Foundation; High Income and High Yield Bond; and Capital Preservation and Income and Adjustable Rate.

[2] FUNB owns approximately 100% of Large Cap Blend, 84% of Stock Selector, 93% of Small Company Value, 16% of Small Cap Value, 100% of Social Principles, 61% of Special Equity, 51% of Diversified Value, and 6% of Adjustable Rate. Although the proposed transactions between Equity Income and Income and Growth, Capital Balanced and Foundation, and High Income and High Yield Bond do not currently require exemptive relief, applicants are requesting relief in the event that FUNB's ownership as fiduciary increases to 5% or more of either of the respective merging Series' assets prior to the proposed transactions. If FUNB does not acquire such ownership, the respective merging Series will not rely on the requested relief.

the business day next preceding the date on which the fund reorganization will occur (the ''Valuation Date''). The net asset value of each Series will be determined in the manner set forth in the Series' current prospectus and statement of additional information. On or as soon as is reasonably practicable after the Closing Date, each Acquired Series will distribute its full and fractional shares of the Acquiring Series pro rata to its shareholders of record, determined as of the close of business on the Valuation Date (the ''Reorganizations''). After the distribution of the Acquiring Series' shares and the winding up of its affairs, each Acquired Series will be terminated.

6. Applicants state that the investment objectives of each Acquired Series and its corresponding Acquiring Series are similar. The investment restrictions and limitations of each Acquired Series and its corresponding Acquiring Series are also similar, but in some cases involve differences that reflect the differences in the general investment strategies utilized by the Series. The respective Acquired Series and Acquiring Series offer identical classes of shares, and after the Reorganizations, the shareholders of the Acquired Series and the Acquiring Series will hold shares with the same distribution-related fees as the shares they currently hold. Shareholders of the Acquired Series will not incur any sales charges in connection with the Reorganizations. For purposes of calculating contingent deferred sales charges, shareholders of the Acquired Series will be deemed to have held corresponding shares of the Acquiring Series since the date the shareholders initially purchased the shares of the Acquired Series. FUNB will be responsible for the fees and expenses related to the Reorganizations other than each Acquiring Series' federal and state registration fees.

7. The Board of each Series, including a majority of the Independent Trustees, determined that the Reorganization is in the best interests of each Series and its shareholders, and that the interests of the shareholders will not be diluted by the Reorganizations. In assessing the Plans, the factors considered by the Boards included, among others, (a) the terms and conditions of the Plans; (b) the expense ratios, fees, and expenses of the Acquired Series and Acquiring Series, (c) the fact that FUNB will bear the expenses incurred in connection with the Reorganizations, and (d) the tax-fee nature of the Reorganizations.

8. The Plans are subject to a number of conditions precedent, including that: (a) the Plans shall have been approved by the Boards on behalf of each of the Series and approved by the shareholders of each of the Acquired Series; (b) definitive proxy solicitation materials shall have been filed with the Commission and distributed to shareholders of the Acquired Series; (c) the Series receive an opinion of tax counsel that the Reorganizations will be tax-free for each Series and its shareholders; and (d) applicants receive from the Commission an exemption from section 17(a) of the Act for the Reorganizations. Each Plan may be terminated and the Reorganizations abandoned at any time by mutual consent of the respective Boards of the Series or by either party in case of a breach of the Plan. Applicants agree not to make any material changes to the Plans without prior Commission approval.

9. Proxy solicitation materials have been filed with the Commission and were mailed to shareholders of the Acquired Series on or about May 26, 2000. A special meeting of shareholders is scheduled for July 14, 2000.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by or under common control with the person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Acquired Series and Acquiring Series may be deemed affiliated persons and thus the Reorganizations may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that they may not rely on rule 17a–8 in connection with the Reorganizations because the Acquiring Series and Acquired Series may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or common officers. FUNB, as fiduciary for its customers, owns of record with power to vote more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Acquired Series and Acquiring Series. Because of this ownership, each Acquiring Series may be deemed an affiliated person of an affiliated person of each of the Acquired Series for a reason other than having a common investment adviser, common directors, and/or common officers.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that each Board determined that the Reorganization is in the best interests of each Series and its shareholders, and that the interests of existing shareholders will not be diluted as a result of the Reorganizations. Applicants state that the exchange of the Acquired Series' shares for shares of the Acquiring Series will be based on relative NAV.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16744 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42983; File No. SR–NASD–00–27]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Amending the Nasdaq By-Laws and Restated Certificate of Incorporation

June 26, 2000.

I. Introduction

On May 11, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the Nasdaq By-laws and Restated Certificate of Incorporation. The proposed rule change was published for comment in the **Federal Register** on May 23, 2000.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of Proposal

The purpose of the proposed rule change was to amend Nasdaq's By-Laws and Restated Certificate of Incorporation (''Certificate'') in accordance with the Restructuring Plan (the ''Restructuring'') approved by NASD members on April 14, 2000. The Restructuring involves broadening the ownership in Nasdaq (which is currently 100 percent owned by the NASD) through a two-phase private placement of common stock and warrants to NASD members, Nasdaq issuers, institutional investors and strategic partners. Nasdaq's By-laws and Certificate must be amended in order to reflect the changes to Nasdaq's ownership structure. Therefore, the proposed rule change included the amendments necessary to implement Phase I of the Restructuring.

Eventually, Nasdaq will submit an Application For, and Amendments to Application For, Registration as a National Securities Exchange or Exemption from Registration Pursuant to Section 5 of the Exchange Act to obtain exchange registration. Prior to its registration as a national securities exchange, however, Nasdaq will continue to operate under the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries (the ''Delegation Plan''), as approved by the Commission. After exchange registration, Nasdaq will no longer be governed pursuant to the Delegation Plan.

This Order does not address provisions of the existing Nasdaq By-laws Certificate and that remain unchanged, and it limits the discussion to the most significant changes to the corporate documents.

Summary of Significant Amendments

1. Authorized Capital Stock

To carry out the recapitalization of Nasdaq, the total number of shares that Nasdaq is authorized to issue has been increased to 330,000,000, consisting of 30,000,000 shares of preferred stock, par value $.01 per share, and 300,000,000 shares of common stock, par value $0.01 per share. In addition, the Nasdaq Board of Directors (''the Board'') is now entitled to issue preferred stock in one or more series, and to fix the powers, preferences, rights, qualifications, limitations, and restrictions of this preferred stock (including, for example, dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, etc). The issuance of preferred stock could have the effect of decreasing the market price of the common stock and could adversely affect the voting and other rights of the holders of common stock.

2. Scaled Voting Provision

The Certificate provides that holders of common stock are entitled to one vote per share on all appropriate matters, except that any person, other than the NASD or any other person approved by the Board prior to the time such person owns more than 5% of the then outstanding shares of common stock will be unable to exercise voting rights in respect of any shares owned in excess of 5%.[4] Exemptions from this scaled voting provision can be granted by the Board. The Certificate, however, provides that in no event shall an exemption from the scaled voting provision be granted to (1) a registered broker or dealer, or an affiliate [5] thereof, or (2) an individual or entity subject to statutory disqualification under Section 3(a)(39) of the Act. The Board may approve an exemption from the scaled voting provision if the Board determines that granting the exemption would (1) not reasonably be expected to diminish the quality of, or public confidence in, the Nasdaq Stock Market or other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

3. Board of Directors

The Certificate provides for a ''classified'' or ''staggered'' Board; that is, the Board will be divided into three classes, with one class to be elected each year to serve a three-year term. The By-laws also create a Chief Executive Officer (''CEO''), who shall have general supervision over the business and affairs of Nasdaq. The By-laws preserve the existing Industry, Non-Industry and Public classifications for Board Directors, and provide that the newly created CEO and President are deemed ''neutral'' directors for classification purposes.

The Certificate provides that the exact number of directors is to be determined by the Board from time to time. The By-laws require that the number of Non-Industry Directors, including at least one Public Director and at least one issuer representative, must equal or exceed the number of Industry Directors, plus the President and CEO (if they are elected Directors), unless the Board consists of 10 or more Directors. If the Board consists of 10 or more Directors, then at least two Directors shall be issuer representatives. The By-laws provide that at least two Industry Directors and two Non-Industry Directors shall be drawn from candidates proposed to the National Nominating Committee by a majority of the non-NASD stockholders of Nasdaq.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42790 (May 16, 2000), 65 FR 33384.

[4] This restriction on voting shares owned in excess of 5% is referred to as the ''scaled voting provision.''

[5] The Certificate provides that an affiliate ''shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity.'' For purposes of this order, references to a broker or dealer will include affiliates, as defined in the By-laws or Certificate.

[6] As previously noted, Nasdaq currently operates under the Delegation Plan which authorizes NASD to elect the Board. Vacancies on the Board are filled by candidates put forward by the NASD's National Nominating Committee (''NNC''). The Board is currently authorized to consist of 10 members. Prior to Exchange registration, it is contemplated that the Board will be increased from 10 voting members to 14. These four new members of the Board will not be current members of the NASD Board of Directors, nor will they be able to serve

The By-laws also authorize the Nasdaq Board, rather than the NASD Board, to fill vacancies on the Nasdaq Board.

Under the Delegation Plan, all stockholders have the right to recommend one or more candidates for consideration by the NNC for nomination to the Board by providing written notice to the Corporate Secretary, containing specified information relating to the candidate (the candidate's name, industry classification, etc.).[7]

4. Removal of Directors and Committee Members

Directors previously could be removed with or without cause. The By-laws and Certificate now provide that Directors may only be removed for cause by an affirmative vote of a supermajority of outstanding shares entitled to vote. Removal of committee members still requires a majority vote of the Board and notice to the committee member, but the provision that committee members may only be removed for refusal, failure, neglect, or inability to discharge the committee member's duties is eliminated.

5. Annual and Special Meetings of Stockholders, and Stockholder Action

Because there will be multiple owners of Nasdaq, the By-laws now provide detailed procedures for the calling and conduct of annual and special meetings of shareholders. The Certificate provides that stockholders are not entitled to act by written consent in lieu of a meeting.

6. Notice Requirements for Stockholder Proposals and Stockholder Nominated Directors

The By-laws allow stockholders to bring business before an annual and special meeting of stockholders, and to nominate candidates for election as directors at an annual meeting of stockholders, provided they comply with the procedures outlined in the By-laws.

7. Amendments to the By-Laws

The By-laws and Certificate state that By-law amendments may be made by a supermajority vote of the shareholders or by the Board. In addition, the Certificate requires a supermajority vote of the outstanding shares of common stock to amend, repeal or adopt certain provisions of the Certificate including, but not limited to, limitations on voting rights of certain persons, the classified Board, removal of Directors, and prohibitions on stockholder action by written consent.

8. Certificate, Article Eleventh—''Constituency Provision'' Relating to Certain Corporate Transactions

A new provision, Article Eleventh of the Certificate, sets forth factors that the Board must consider when evaluating the merits of certain major corporate transactions such as tender or exchange offers, mergers, liquidations, any action relating to the voting cap, or other issues, due to the unique nature of Nasdaq and its operations and status as a self-regulatory organization.[8] Article Eleventh requires that the Board shall to the fullest extent permitted by applicable law, take into account the following factors when evaluating a major corporate transaction: (1) The potential impact on the integrity, continuity and stability of The Nasdaq Stock Market and the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (2) whether such a transaction would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, or assist in the removal of impediments to, or perfection of the mechanisms for, a free and open market and a national market system.

9. Other Changes to Conform the By-Laws and Certificate to Nasdaq's New Corporate Form

Other changes to the By-laws and Certificate are made to reflect Nasdaq's new ownership structure and to institute procedures necessary for Nasdaq to operate as a corporation. For example, references to ''shareholder'' have been changed to ''shareholders,'' to reflect the fact that the NASD no longer owns 100% of Nasdaq and that ownership of Nasdaq will now be broadened to a number of entities and individuals. Similarly, provisions have been added relating to waiver of notice of a meeting by a Director, definitions of new terms (*e.g.,* ''beneficial owner'' and ''subsidiary''), and a provision defining the necessary quorum to approve interested party transactions.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. The proposed rule change also fulfills the division of responsibilities as set forth in the Delegation Plan approved by the Commission. Pursuant to the Delegation Plan, NASD has retained the authority ''[t]o exercise overall responsibility for ensuring that the Association's statutory and self-regulatory obligations are fulfilled.'' [9] However, NASD has delegated to Nasdaq the responsibility to operate The Nasdaq Stock Market, including the responsibility to ''develop and adopt rules, interpretations, policies, and procedures and provide exemptions to maintain and enhance the integrity, fairness, efficiency, and competitiveness of The Nasdaq Stock Market and other markets operated by The Nasdaq Stock Market.[10] Thus, the Commission looks to NASD as the self-regulatory organization with statutory responsibility to implement and enforce the requirements of the Act, but Nasdaq, as a market owned and controlled by NASD, is required to operate The Nasdaq Stock Market and to provide rules, interpretations, policies, and procedures to carry out the purposes of the Act.[11] In the Discussion section below, the Commission applies this ''chain'' of regulatory responsibilities in its analysis and findings in support of this approval order.[12]

In light of the above, the Commission believes that the proposed rule change is consistent with the requirements of Section 15A(b)(2), (4) and (6) [13] of the Act. Section 15A(b)(2) [14] requires that the association be so organized and have the capacity to be able to carry out the purpose of the title and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the

concurrently on the NASD Board of Directors. Two of the four new directors will be Industry Directors and the other two will be Non-Industry or Public Directors. Before exchange registration, or until such time that Nasdaq does not otherwise operate under the Delegation Plan, the Board is expected to consist of 14 members, the majority of whom shall be Public or Non-Industry Directors.

[7] If Nasdaq as a national securities exchange, then the procedures for nomination to the Board may differ.

[8] The Commission notes that, by it terms, Article Eleventh is not operative until the Commission approves nasdaq's registration as a national securities exchange.

[9] Section I(B)(1) of the Delegation Plan.

[10] Section III(A)(1)(e) of the Delegation Plan.

[11] NASD, however, is ultimately responsible for ensuring that the Nasdaq's actions fulfill the statutory and self-regulatory obligations as set forth in the Act.

[12] The Commission also notes that the amendments to the By-laws and Certificate begin the process of implementing the corporate governance changes that will be necessary if Nasdaq registers as a national securities exchange.

[13] 15 U.S.C. 78o–3(b)(2), (4) and (6).

[14] 15 U.S.C. 78o–3(b)(2).

Act.[15] Section 15A(b)(4)[16] requires that the rules of an association assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer.[17] Section 15A(b)(6)[18] requires, among other things, that the association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.[19]

A. Amendments Incident to the Restructuring and Recapitalization of Nasdaq

The Commission finds that the amendments to Nasdaq's By-laws and Certificate authorizing certain corporate actions and implementing procedures that are necessary to allow Nasdaq to function as a for-profit corporation are consistent with Section 15A(b)(2)[20] of the Act. The Commission believes that the amendments relating to the following subject matters, as described in more detail above, are needed to reflect the recapitalization and restructuring of Nasdaq: the issuance of capital stock (both common and preferred shares); the procedures for calling and conducting annual meetings and special meetings of stockholders; the nomination and election procedures for the Board of Directors; the quorum calculations for interested party transactions; the defined terms; and the procedures for amendments to the By-laws and Certificate. These changes satisfy the requirements set forth in Section 15A(b)(2) that NASD be so organized and have the capacity to carry out the purposes of the Act.

B. Structure and Governance of Nasdaq's Board

Section 15A(b)(4)[21] of the Act requires fair representation of an association's members in the selection of its directors and administration of its affairs, and provides that one or more directors shall be representative of issuers and investors and not be associated with a member of the association, broker, or dealer. The NASD, through the Delegation Plan, has the responsibility for ensuring that the Nasdaq Board fulfills the fair representation and public participation requirements.[22] The Commission finds that the proposed structure and composition of the Board fulfills the provisions of Section 15A(b)(4).

The fair representation requirement of Section 15A(b)(4) helps to ensure that no particular constituency is subject to the unfair, unfettered actions of another constituency, and helps to ensure that the NASD, including its Nasdaq subsidiary, is administered in a way that is equitable to NASD members.

In addition, to ensure that the public interest is adequately represented in an association's decision-making process, Section 15A(b)(4) states that an association must provide that one or more of its directors be representatives of issuers and investors. The Commission believes that public directors provide a unique, unbiased perspective that should enhance the ability of a board to address issues in a non-discriminatory fashion.

The Commission finds that the proposed composition of the Board meets the fair representation and public participation criteria as set forth in Section 15A(b)(4) of the Act. The By-laws provide that the number of Non-Industry Directors on the Board, including at least one Public Director and at least one issuer representative, shall equal or exceed the number of Industry Directors, plus the President and CEO (if they are elected Directors), unless the Board consists of 10 or more Directors. If the Board consists of 10 or more Directors, at least two Directors shall be issuer representatives. The Certificate also requires public participation on the Board. This structure ensures that all interests, Industry and Non-Industry, will be adequately represented on the Board. Further, the requirement that the number of Non-Industry Directors equal or exceed the number of Industry Directors, and the requirement of Public Directors helps to ensure that decisions by the Board are not unfairly discriminatory between customers, issuers, brokers, or dealers, and that the protection of investors and the public interest is considered. Therefore, the Commission believes that the Board structure is consistent with the fair representation and public participation requirements of Section 15A(b)(4) of the Act.

C. Scaled Voting, Exemptions From Scaled Voting, and Other Limitations on the Control of Nasdaq

The Commission is concerned that the NASD's self-regulatory obligations may be challenged if a substantial portion of Nasdaq is owned or controlled by a broker or dealer that also trades on Nasdaq. In such a situation, it may be difficult for NASD to carry out its self-regulatory responsibilities if it is required to take action against that broker or dealer. These concerns will be heightened if NASD goes through with its plans to register Nasdaq as a national securities exchange, and sell off additional shares of Nasdaq to investors.

The scaled voting provision is one way of limiting the ability of any entity, particularly a registered broker or dealer, from controlling Nasdaq. However, permitting the Board to lift the voting cap in some cases is necessary to allow Nasdaq flexibility should Nasdaq seek to enter into a business combination in which it would want to use shares of common stock in the transaction. The Certificate therefore provides that the Board may generally lift the voting cap, but that it cannot be lifted for a broker or dealer (or an affiliate of a broker or dealer)[23] or any other individual or entity subject to statutory disqualification as defined in Section 3(a)(39) of the Act. The Board is also required to consider certain factors before lifting the voting cap for any other individual or entity.

The Commission believes that the proposed rule change relating to scaled voting, exemptions from scaled voting, and other limitations affecting the control of Nasdaq fulfill the obligations under Section 15A(b)(2) and (6). The Certificate provides for an absolute bar on a broker, dealer, or statutorily disqualified person, from voting shares owned in excess of 5%. Section 15A(b)(6) requires that rules be in place that prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, facilitate transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The limitation on voting shares owned in excess of 5% satisfies this requirement because it helps to avoid a situation where the integrity of Nasdaq might be compromised if the NASD had to choose between taking action against a broker or dealer that owned, and could vote, a Nasdaq share in excess of 5%,

[15] Again, through the operation of the Delegation Plan, NASD must be responsible for, and Nasdaq must implement, rules, policies and procedures that are consistent with the Act.

[16] 15 U.S.C. 78o–3(b)(4).

[17] See *supra* note 15.

[18] 15 U.S.C. 78o–3(b)(6).

[19] See *supra* note 15.

[20] 15 US.C. 78o–3(b)(2).

[21] 15 U.S.C. 78o–3(b)(4).

[22] The Delegation Plan also provides that the NASD will appoint Nasdaq's Board. Section I(B)(3) of the Delegation Plan.

[23] See *supra* note 5.

and fulfilling its self-regulatory responsibilities.

The Commission also finds that the current requirement that the Board consider factors relating to the qualifications of any shareholder (other than a broker or dealer or statutorily disqualified person) before lifting the voting cap also helps to address the Commission's concern that Nasdaq not be controlled or substantially influenced by an entity that may promote acts or practices that would be inimical to the purposes of the Act.

Two other provisions also act as a deterrent to a shareholder's ability to effect a rapid change in control of Nasdaq. The classified Board structure ensures that it will take at least two shareholder meetings, instead of one, for majority control of the board to shift. As discussed previously, the Certificate also provides that Directors may only be removed for cause and by a supermajority vote of the shareholders. These provisions, together with the scaled voting provision, help to ensure that control of Nasdaq will be attained only in a measured manner and consistent with the requirements set forth in the Act.

Finally, the Commission notes that as currently stated, a person or entity could own a substantial portion of Nasdaq and yet be limited in its actual control of Nasdaq by virtue of the scaled voting provisions, the classified Board structure, and the limitations on the removal of Directors in the By-laws and Certificate. While these provisions help ameliorate the Commission's concern about the control of Nasdaq, concerns about the ability of an entity—in particularly a broker, dealer or affiliate—to own up to 100 percent of Nasdaq remain. Thus, further action to address the ownership of a substantial portion of Nasdaq by a broker, dealer or affiliate may be warranted if Nasdaq registers as a national securities exchange.

D. Certificate, Article Eleventh (''Constituency Provision'')

By its own terms Article Eleventh applies when Nasdaq achieves ''status as a self-regulatory organization,'' and it therefore will become operative only if the Commission approves Nasdaq's anticipated application to register as a national securities exchange. The Commission notes preliminarily, however, that Article Eleventh balances the need to ensure that Nasdaq fulfill the self-regulatory obligations incumbent upon it if it registers as a national securities exchange without unduly hampering Nasdaq's ability to consummate major corporate transactions. Therefore, the Commission finds that new Article Eleventh of the Certificate is consistent with Section 15A(b)(6) of the Act and outlines a legitimate and useful set of criteria that should be considered by the Board if it considers major corporate transactions after exchange registration.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NASD–00–27) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16745 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–M

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42984; File No. SR–NASD–00–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Cap on ACT Risk Management Charges

June 27, 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 June 12, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''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)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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)(6).

[5] Nasdaq provided written notice to the Commission on June 8, 2000, that is intended to file this proposal. The Commission agreed to waive the 5-day pre-filing notice requirement. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq filed the proposed rule change to amend NASD Rule 7010, Systems Services, to establish a cap on the Automation Confirmation Transaction Service (''ACT'') risk management charge. Nasdaq has designated this proposal as non-controversial, and requests that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act,[6] to allow the proposal to be both effective and operative immediately upon filing with the Commission. The text of the proposed rule is below. Proposed new language is in italics.

* * * * *

Rule 7010. Systems Services

(g) Automated Confirmation Transaction Service

The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

Transaction Related Charges:

No change.

Risk Management Charges: $0.035/side and $17.25/month per correspondent firm (*maximum $10,000/month per correspondent firm*)

* * * * *

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 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

ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing of pre-negotiated trades completed in Nasdaq, OTC Bulletin

[6] 17 CFR 240.19b–4(f)(6)(iii).

Board, and other over-the-counter securities. ACT handles transactions negotiated over the telephone or executed through any of Nasdaq's automated trading services. It also manages post-execution procedures for transactions in exchange-listed securities that are traded off-board in the Third Market. Participation in ACT is mandatory for NASD members that are members of a clearing agency registered with the SEC, that have a clearing arrangement with such a member, or that participate in any of Nasdaq's trading services.

The ACT risk management function allows firms that clear for other firms to establish acceptable levels of credit for their introducing firms. ACT risk management enables clearing firms to monitor buy/sell trading activity of their introducing firms, establish trading thresholds, allow/inhibit large trades, add/delete clearing relationships, and access a real-time database of correspondent trading activity.[7] Clearing firms providing clearing services to correspondent firms are assessed risk management charges of $0.035 per trade and $17.50 per month per correspondent firm. Self-clearing firms do not utilize the ACT risk management function and are not assessed risk management charges.

The ACT service for clearing firms and their executing correspondents, including the risk management function, was implemented in October 1990.[8] The ACT risk management service charge was implemented in November 1990.[9] The original ACT risk management charge was calculated to recoup the development costs for ACT programming efforts as well as costs associated with computer and other hardware purchases to meet the capacity requirements to run the risk management system and to reflect the ongoing costs of operating the risk management function of the ACT system. The per trade portion of the charge was calculated based on trading volume in 1990, which was substantially less than it is at the present. For example, in 1990, Nasdaq National Market (''NNM'') securities average 47,000 trades per day; in comparison, NNM securities average 1.26 million trades per day in 1999 (with an average of 1.67 million trades per day in the fourth quarter of 1999). Because the ACT risk management charge is based largely on the number of trades cleared, the expansion in trading volume since 1990 has required some firms to pay increasingly large risk management charges that are disproportionate to the value they receive from ACT, particularly firms that clear for correspondents that execute a large number of trades.

Nasdaq believes that it is appropriate to update the pricing model for ACT risk management charges to reflect current business practices and trading patterns and to ensure that the ACT risk management feature continues to be a valuable, cost-effective service for clearing firms. Nasdaq proposes to revise the ACT service charges and establish a cap of $10,000 on the monthly risk management charge that a clearing firm must pay on behalf of a correspondent firm. Nasdaq will implement the cap retroactive to April 1, 2000.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A(b)(6) of the Act[10] in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system, and, in general, to protect investors and the public interest. Nasdaq also believes the proposed rule change is consistent with Section 15A(b)(5) of the Act[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls.

B. Self-Regulatory Organization's Statement on 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.

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] 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.

Nasdaq has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become immediately operative upon filing, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow NASD members to reap the benefits of the cap on ACT risk management charges retroactive to April 1, 2000 immediately, rather than having to wait 30 days before implementing the cap. For these reasons, the Commission finds good cause to waive the 5-day pre-filing requirement, and to designate that the proposal become operative immediately.[14]

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 submission 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

[7] *See* NASD Rule 6150, ACT Risk Management Functions.

[8] *See* Securities Exchange Act Release No. 28583 (October 26, 1990), 55 FR 46120 (November 1, 1990)(SR–NASD–89–25). ACT was implemented for self-clearing firms in March 1990. *See* Securities Exchange Act Release No. 27229 (September 8, 1989), 54 FR 38484 (September 18, 1989)(SR–NASD–89–25).

[9] *See* Securities Exchange Act Release No. 28595 (November 5, 1990), 55 FR 47161 (November 9, 1990)(SR–NASD–90–57).

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–00–35 and should be submitted by July 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 00–16747 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42982; File No. SR–NSCC–00–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Dividend Processing of AT&T Corporation's When-Issued Trades

June 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 23, 2000, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is facilitate the processing through NSCC's continuous net settlement (''CNS'') system of a dividend declared by AT&T Corp. payable on both its regular way and its when-issued securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to facilitate the processing in NSCC's CNS system of a dividend declared by AT&T Corp. to which firms with both regular way and when-issued positions as of a certain date are entitled. NSCC's procedures for the processing of the dividend are set forth in NSCC's Important Notice dated June 22, 2000, which is attached to this Notice and Order as Exhibit A.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder the particularly with the requirements of Section 17A(b)(3)(F).[4] Section 17A(b)(3)(A)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Allowing the dividend which is payable on both when-issued and regular way securities to be processed in the CNS system should help ensure the dividend will be promptly and accurately cleared and settled.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will facilitate the processing in NSCC's CNS system of a dividend declared by AT&T Corp.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–00–08 and should be submitted by July 24, 2000.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–NSCC–00–08) be and hereby is approved.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

Important

June 22, 2000.

To: All Participants

Attention: Managing Partner/Officer, Cashier, Manager Reorganization Department, Data Processing Manager, Manager Dividend Department

Subject: AT&T Corp

On June 15, 2000, the New York Stock Exchange (NYSE) began trading in AT&T Corp When-Issued (CUSIP 001957109 Symbol TWD).

On June 21, 2000, AT&T announced the payment of a quarterly cash dividend to be paid based on the following:

Ex-Dividend June 28, 2000
Record Date June 30, 2000
Payable Date August 1, 2000

The Ex-Dividend will apply to *both* the Regular-Way *and* When-issued securities trades occurring prior to the ex-dividend date.

Dividend processing for regular way trades will occur in accordance with NSCC's current procedures. In order to permit NSCC to process dividend debits and credits for the when-issued trades occurring prior to the ex-dividend date the following procedures will apply:

1. NSCC will carry two (2) separate CUSIP numbers in CNS

CUSIP number 001957109 for trades prior to ex-dividend date

CUSIP number 001957125 for trades on or after ex-dividend date

2. NSCC will calculate a net when-issued position for when-issued trades eligible for the dividend. (CUSIP 001957109) Participants will be debited or credited the appropriate dividend amounts on payable date August 1, 2000 based on the net positions.

For Settlement purposes, all compared When-Issued trades will settle via the Continuous Net Settlement System (CNS). When-Issued trades compared using CUSIP 001957109 will be combined with any regular way positions in AT&T common stock (normal when-issued processing). When-Issued trades compared using CUSIP number 001957125 will be merged into the AT&T CUSIP (001957109) using the CNS Reorg system. These entries will occur on When-Issued Settlement Date and will appear on your CNS Miscellaneous Activity Report as Code 51 Merger.

At the opening of trading on June 28, 2000, The New York Stock Exchange will suspend trading in AT&T Corp When-Issued CUSIP 001957109 (Symbol TWD) and begin trading in AT&T Corp When-Issued CUSIP 001957125 (Symbol TWD). The NYSE will announce the actual Settlement Date once it has been determined. The same settlement date will apply to *both* AT&T When-Issued CUSIPS.

Please refer to the New York Stock Exchange Information Notice dated June 22, 2000 for additional information regarding this security.

Questions regarding this notice can be directed to the Joe Conte, NYSE @ 212–656–5024, Tony Aliberti, NYSE @ 212–656–5034 or the undersigned @ 212–412–8662.

Kevin A. Brennan,

Director, Operations.

[FR Doc. 00–16746 Filed 6–30–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3352]

Culturally Significant Objects Imported for Exhibition Determinations: ''Art and the Empire City''

AGENCY: 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 of October 19, 1999, I hereby determine that the objects to be included in the exhibition ''Art and the Empire City, '' 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 Metropolitan Museum, New York, NY from September 11, 2000 through January 7, 2001 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 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, SW, Room 700, Washington, DC 20547–0001.

Dated: June 22, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–16767 Filed 6–30–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3354]

Culturally Significant Objects Imported for Exhibition Determinations: ''Egyptian Art at Eton College: Selections from the Myers Museum''

AGENCY: 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 objects to be included in the exhibition ''Egyptian Art at Eton College: Selections from the Myers Museum,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY from on or about September 25, 2000 to on or about January 21, 2001, 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, SW, Room 700, Washington, DC 20547–0001.

Dated: June 23, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–16769 Filed 6–30–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF STATE

[Public Notice 3353]

Culturally Significant Objects Imported for Exhibition Determinations: ''Queen Victoria and Thomas Sully''

AGENCY: 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 of October 19, 1999, I hereby determine that the objects to be included in the exhibition ''Queen Victoria and Thomas Sully,'' 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 Metropolitan Museum, New York, NY from September 18 to December 31, 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 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, SW, Room 700, Washington, DC 20547–0001.

Dated: June 19, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–16768 Filed 6–30–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6404]

Petition for Grandfathering of Non-Compliant Equipment: National Railroad Passenger Corp.; Closure of Comment Period; Date and Location of Public Hearing

On October 18, 1999, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for grandfathering approval of non-compliant passenger equipment manufactured by Renfe Talgo of America (Talgo) for use on rail lines between Vancouver, British Columbia and Eugene, Oregon; between Las Vegas, Nevada and Los Angeles, California; and between San Diego, California and San Luis Obispo, California. Notice of receipt of such petition was published in the **Federal Register** on November 2, 1999, at 64 FR 59230. Interested parties were invited to comment on the petition before the end of the comment period (then December 2, 1999).

Through published notice in the **Federal Register**, FRA extended the comment period in this proceeding and explained the reasons therefor. See 65 FR 5723; Feb. 4, 2000. By notice published on February 29, 2000, FRA announced that the comment period in this proceeding would remain open to permit the resolution of issues involving Freedom of Information Act (FOIA) requests for information related to this proceeding. 65 FR 10851. FRA has completed its responses to the FOIA requests, and placed copies of the documents provided to the FOIA requester in the public docket for this proceeding. Accordingly, FRA hereby announces that the comment period in this proceeding will close on August 2, 2000.

FRA also announces that, in accordance with 49 CFR 211.25 and 238.203(h), it has scheduled a public hearing on Amtrak's petition for grandfathering approval of the Talgo passenger trainsets. A public hearing is set for 9:30 a.m. on Friday, July 21, 2000, at the Federal Railroad Administration, 7th floor, conference room 1, 1120 Vermont Avenue, N.W., Washington, D.C. Interested parties are invited to present oral statements at the hearing. The hearing will be an informal one and will be conducted in accordance with FRA's Rules of Practice (49 CFR 211.25) by a representative designated by FRA. The hearing will be a non-adversarial proceeding; therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which initial statements were made. Additional procedures, as necessary for the conduct of the hearing, will be announced at the hearing.

All written comments concerning this proceeding should be identified with Docket Number FRA–1999–6404 and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. Comments received within 30 days of publication of this notice will be considered by FRA before final action is taken on Amtrak's petition. Comments received after that date will be considered by FRA to the extent practicable.

Amtrak's petition, documents inserted in the docket, and written communications concerning this proceeding are available for examination during regular business hours (9 a.m. to 5 p.m.) at the DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh, S.W., Washington, D.C. 20590. Documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.* Documents that cannot be accessed on the Internet, due to limitations on scanning large documents and color documents, are available for inspection and copying at the Federal Railroad Administration, Docket Clerk, 7th floor, 1120 Vermont Avenue, N.W., Washington, D.C.

Issued in Washington, D.C. on June 27, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–16724 Filed 6–30–00; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to OMB for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Extension of a currently approved collection.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

Title: System Diagram Maps.
OMB Form Number: 2140–0003.
No. of Respondents: 38.
Total Burden Hours: 76.

DATES: Persons wishing to comment on this information collection should submit comments by July 31, 2000.

ADDRESSES: Direct all comments to Case Control, Surface Transportation Board, Room 705, 1925 K Street, NW., Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Charles L. Renninger, 202 565–1631. Requests for copies of the information collection may be obtained by contacting Ellen R. Keys (202) 565–1654.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by

statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996 abolished the Interstate Commerce Commission and transferred the responsibility for regulating rail transportation, including the proposed abandonment and discontinuance of rail lines, to the Surface Transportation Board. All railroads are required to keep current system diagram maps on file. These maps designated all lines in a particular railroad's sytem according to various categories. Carriers are obligated to amend these maps as the need to change the caregories of particular lines arose. If no amendment had taken place within a one-yer period, a verified statement to that effect must be filed with the Board. The Board will use this information to facilitate informed decision making. Respondents will be railroads initiating abandonment exemption proceedings.

Dated June 22, 2000.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16705 Filed 6–30–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to OMB for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Extension of a currently approved collection.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

Title: Financial Assistance of Railroad Lines.

OMB Form Number: 2140–0003.

No. of Respondents: 11.

Total Burden Hours: 350.

DATES: Persons wishing to comment on this information collection should submit comments by July 31, 2000.

ADDRESSES: Direct all comments to Case Control, Surface Transportation Board, Room 705, 1925 K Street, NW., Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Charles L. Renninger, 202 565–1631. Requests for copies of the information collection may be obtained by contacting Ellen R. Keys (202) 565–1654.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996 abolished the Interstate Commerce Commission and transferred the responsibility for regulating rail transportation, including the proposed abandonment and discontinuance of rail lines, to the Surface Transportation Board. The Board needs, in each abandonment exemption proceeding, a detailed map of the rail line, depicting its relation to other rail lines, roads, water routes, and population centers. The Board will use the information concerning the value of the property involved to set the fair market value of the property and conditions of sale or the terms of the subsidy. Interested parties have a statutory right to file offers of financial assistance. The Board has the Congressionally mandated responsibility to handle offers of financial assistance. The consequences of failure to collect data related to offers of financial assistance will be an inability to fullfill responsibilities under 49 U.S.C. 10904.

Dated: June 22, 2000.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16706 Filed 6–30–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to OMB for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Extension of a currently approved collection.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

Title: Maps To Be Submitted in Abandonment Exemption Proceedings.

OMB Form Number: 2140–0003

No. of Respondents: 84.

Total Burden Hours: 84.

DATES: Persons wishing to comment on this information collection should submit comments by July 31, 2000.

ADDRESSES: Direct all comments to Case Control, Surface Transportation Board, Room 705, 1925 K Street, NW, Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Charles L. Renninger, 202 565–1631. Requests for copies of the information collection may be obtained by contacting Ellen R. Keys (202) 565–1654.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996 abolished the Interstate Commerce Commission and transferred the responsibility for regulating rail transportation, including the proposed abandonment and discontinuance of rail lines, to the Surface Transportation Board. The Board needs, in each abandonment exemption proceeding, a detailed map of the rail line, depicting its relation to other rail lines, roads, water routes, and population centers. The Board will use this information in processing abandonment exemption proceedings. Review of the map often assists in determining the precise location of the rail line, which helps in determining the scope of the transaction or service, and to some degree the impact of the proposed transaction on shippers or receivers on the line.

Dated: June 22, 2000.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16707 Filed 6–30–00; 8:45 am]

BILLING CODE 4915–00–U

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. app. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on August 1, 2000, of the following debt management advisory committee: the Bond Market Association, Treasury Borrowing Advisory Committee.

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9:00 a.m. Eastern time and will be opened to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. app. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. app. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. app. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: June 26, 2000.

Lee Sachs,

Assistant Secretary, Financial Markets.

[FR Doc. 00–16717 Filed 6–30–00; 8:45 am]

BILLING CODE 4810–25–M

Federal Register

Monday,
July 3, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424, and 484

Medicare Program; Prospective Payment System for Home Health Agencies; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424, and 484

[HCFA–1059–F]

RIN 0938–AJ24

Medicare Program; Prospective Payment System for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes requirements for the new prospective payment system for home health agencies as required by section 4603 of the Balanced Budget Act of 1997, as amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999. The requirements include the implementation of a prospective payment system for home health agencies, consolidated billing requirements, and a number of other related changes. The prospective payment system described in this rule replaces the retrospective reasonable-cost-based system currently used by Medicare for the payment of home health services under Part A and Part B.

EFFECTIVE DATE: These regulations are effective October 1, 2000.

FOR FURTHER INFORMATION CONTACT:
Bob Wardwell (Project Manager), (410) 786–3254
Susan Levy (Payment Policy), (410) 786–9364
Debbie Chaney (Data), (410) 786–8164
Randy Throndset (Data), (410) 786–0131

SUPPLEMENTARY INFORMATION:

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. 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**.

This Federal Register document is also available from the Federal Register online database through GPO Access, a service of the U.S. Government Printing Office. The Website address is: http://www.access.gpo.gov/nara/index.html.

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In addition, because of the many terms to which we refer by abbreviation in this rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL	Activities of Daily Living
BBA	Balanced Budget Act of 1997
BBRA	Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999
COPs	Conditions of participation

DME	Durable medical equipment
FIs	Fiscal intermediaries
FFY	Federal fiscal year
FMR	Focused medical review
FY	Fiscal year
HHA	Home health agency
HIC	Health insurance claim
HHRGs	Home Health Resource Groups
IADL	Instrumental Activities of Daily Living
IPS	Interim payment system
LUPA	Low-utilization payment adjustment
MS	Medical social services
MSA	Metropolitan Statistical Area
NCSB	Neurological, cognitive, sensory, and behavioral variables
OASIS	Outcome and Assessment Information Set
OBQI	Outcome based quality improvement
OCESAA	Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999
OSCAR	On-line Survey and Certification System
OT	Occupational therapy
PEP	Partial episode payment
PPS	Prospective payment system
PT	Physical therapy
RHHI	Regional Home Health Intermediary
RUGs	Resource Utilization Groups
SCIC	Significant Change in Condition
SN	Skilled nursing service
SP	Speech-language pathology

I. Background

A. Current System for Payment of Home Health Agencies

The Balanced Budget Act of 1997 (BBA), Public Law 105 33, enacted on August 5, 1997, significantly changed the way we pay for Medicare home health services. Until the implementation of a home health prospective payment system (PPS), home health agencies (HHAs) receive payment under a cost-based reimbursement system, referred to as the interim payment system and generally established by section 4602 of the BBA. The interim payment system imposes two sets of cost limits for HHAs. Section 4206(a) of the BBA reduced the home health per-visit cost limits from 112 percent of the mean labor-related and nonlabor-related, per-visit costs for freestanding agencies to 105 percent of the median. In addition, HHA costs are subjected to an aggregate per-beneficiary cost limitation. For those providers with a 12-month cost reporting period ending in Federal fiscal year (FFY) 1994, the per-beneficiary cost limitation is based on a blend of costs (75 percent on 98 percent of the agency-specific costs and 25 percent on 98 percent of the standardized regional average of the costs for the agency's census region). For new providers and those providers without a 12-month cost-reporting period ending in FFY 1994, the per-beneficiary limitation is the national median of the per-beneficiary limits for HHAs. Under the interim payment system, HHAs are paid the lesser of (1) actual reasonable costs; (2) the per-visit limits; or (3) the per-beneficiary limits. Effective October 1, 1997, the interim payment system exists until prospective payment for HHAs is implemented.

On October 21, 1998, the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 (OCESAA), Public Law 105–277, was signed into law. Section 5101 of OCESAA amended section 1861(v)(1)(L) of the Social Security Act (the Act) by providing for adjustments to the per-beneficiary and per-visit limitations for cost-reporting periods beginning on or after October 1, 1998. We had published a notice with comment period establishing the cost limitations for cost reporting periods beginning on or after October 1, 1998 in the **Federal Register** that was entitled ''Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1998'' on August 11, 1998 (63 FR 42912). OCESAA made the following adjustments to these limitations:

Providers with a 12-month cost reporting period ending during FY 1994, whose per-beneficiary limitations were less than the national median, which is to be set at 100 percent for comparison purposes, will get their current per-beneficiary limitation plus ⅓ of the difference between their rate and the adjusted national median per-beneficiary limitation. New providers and providers without a 12-month cost-reporting period ending in FFY 1994 whose first cost-reporting period begins before October 1, 1998 will receive 100 percent of the national median per-beneficiary limitation.

New providers whose first cost-reporting periods begin during FFY 1999 will receive 75 percent of the national median per-beneficiary limitation as published in the August 11, 1998 notice. In the case of a new provider or a provider that did not have a 12-month cost-reporting period beginning during FFY 1994 that filed an application for HHA provider status before October 15, 1998 or that was approved as a branch of its parent agency before that date and becomes a subunit of the parent agency or a separate freestanding agency on or after that date, the per-beneficiary limitation will be set at 100 percent of the median. The per-visit limitation effective for cost-reporting periods beginning on or after October 1, 1998 is set at 106 percent of the median instead of 105 percent of the median, as previously required in the BBA.

There was contingency language for the home health PPS provided in the BBA that was also amended by section 5101 of OCESAA. The language provided that if the Secretary, for any reason, does not establish and implement the PPS for home health services by October 1, 2000, the Secretary will provide for a reduction by 15 percent to the per-visit cost limits and per-beneficiary limits, as those limits would otherwise be in effect on September 30, 2000. Section 302 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), Public Law 106–113, enacted on November 29, 1999, however, subsequently removed the contingency language governing the 15 percent reduction to the IPS cost limits for FFY 2001. It also increased the per-beneficiary limit for those providers with limits below the national median.

B. Requirements of the Balanced Budget Act of 1997, the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, and the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999 for the Development of a Prospective Payment System for Home Health Agencies

Section 4603(a) of the BBA provides the authority for the development of a PPS for all Medicare-covered home health services paid on a reasonable cost basis that will ultimately be based on units of payment by adding section 1895 to the Act entitled ''Prospective Payment For Home Health Services.''

Section 5101(c) of OCESAA amends section 1895(a) of the Act by removing the transition into the PPS by cost-reporting periods and requiring all HHAs to be paid under PPS effective upon the implementation date of the system. Section 1895(a) of the Act now states ''Notwithstanding section 1861(v), the Secretary shall provide, for portions of cost reporting periods occurring on or after October 1, 2000, for payments for home health services in accordance with a prospective payment system established by the Secretary under this section.''

Section 1895(b)(1) of the Act requires the Secretary to establish a PPS for all costs of home health services. Under this system all services covered and paid for on a reasonable cost basis under the Medicare home health benefit as of

the date of enactment of the BBA, including medical supplies, will be paid on the basis of a prospective payment amount. The Secretary may provide for a transition of not longer than 4 years during which a portion of the prospective payment may be agency-specific as long as the blend does not exceed budget-neutrality targets.

Section 1895(b)(2) of the Act requires the Secretary in defining a prospective payment amount to consider an appropriate unit of service and the number, type, and duration of visits furnished within that unit, potential changes in the mix of services provided within that unit and their cost, and a general system design that provides for continued access to quality services.

Section 1895(b)(3)(A)(i) of the Act requires that (1) the computation of a standard prospective payment amount include all costs of home health services covered and paid for on a reasonable-cost basis and be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case-mix and wage levels among HHAs.

Section 5101(c) of OCESAA modifies the effective date of the budget-neutrality targets for HHA PPS by amending section 1895(b)(3)(A)(ii) of the Act. Section 1895(b)(3)(A)(ii) of the Act, as amended, requires that the standard prospective payment limitation amounts be budget neutral to what would be expended under the current interim payment system with the limits reduced by 15 percent at the inception of the PPS on October 1, 2000. Section 302 of the BBRA, delayed the application of the 15 percent reduction in the budget neutrality target for PPS until one year after PPS implementation. The law further requires the Secretary to report within 6 months of implementation of PPS on the need for the 15 percent reduction.

Section 5101(d)(2) of OCESAA also modifies the statutory provisions dealing with the home health market basket percentage increase. For fiscal years 2002 or 2003, sections 1895(b)(3)(B)(i) and (b)(3)(B)(ii) of the Act, as so modified, require that the standard prospective payment amounts be increased by a factor equal to the home health market basket minus 1.1 percentage points. In addition, for any subsequent fiscal years, the statute requires the rates to be increased by the applicable home health market basket index change. Section 306 of the BBRA amended the statute to provide a technical correction clarifying the applicable market basket increase for PPS in each of FYs 2002 and 2003. The technical correction clarifies that the update in home health PPS in FY 2002 and FY 2003 will be the home health market basket minus 1.1 percent.

Section 1895(b)(3)(C) of the Act requires the Secretary to reduce the prospective payment amounts if the Secretary accounts for an addition or adjustment to the payment amount made in the case of outlier payments. The reduction must be in a proportion such that the aggregate reduction in the prospective payment amounts for the given period equals the aggregate increase in payments resulting from the application of outlier payments.

Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix adjustment factor that explains a significant amount of the variation in cost among different units of services. Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services in a geographic area compared to the national average applicable level. These wage-adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to grant additions or adjustments to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Total outlier payments in a given fiscal year cannot exceed 5 percent of total payments projected or estimated.

Section 1895(b)(6) of the Act provides for the proration of prospective payment amounts between the HHAs involved in the case of a patient electing to transfer or receive services from another HHA within the period covered by the prospective payment amount.

Section 1895(d) of the Act limits review of certain aspects of the HHA PPS. Specifically, there is no administrative or judicial review under sections 1869 or 1878 of the Act, or otherwise, of the following: the establishment of the transition period under 1895(b)(1) of the Act, the definition and application of payment units under section 1895(b)(2) of the Act, the computation of initial standard prospective amounts under 1895(b)(3)(A) of the Act (including the reduction described in section 1895(b)(3)(A)(ii) of the Act), the establishment of the adjustment for outliers under 1895(b)(3)(C) of the Act, the establishment of case-mix and area wage adjustments under 1895(b)(4) of the Act, and the establishment of any adjustments for outliers under 1895(b)(5) of the Act.

Section 4603(b) of the BBA amends section 1815(e)(2) of the Act by eliminating periodic interim payments for HHAs effective October 1, 2000.

Section 4603(c) of the BBA sets forth the following conforming amendments:

- Section 1814(b)(1) of the Act is amended to indicate that payments under Part A will also be made under section 1895 of the Act;
- Section 1833(a)(2)(A) of the Act is amended to require that home health services, other than a covered osteoporosis drug, are paid under HHA PPS;
- Section 1833(a)(2) is amended by adding a new subparagraph (G) regarding payment of Part B services at section 1861(s)(10)(A) of the Act; and
- Section 1842(b)(6)(F) is added to the Act and section 1832(a)(1) of the Act is amended to include a reference to section 1842(b)(6)(F), both governing the consolidated billing requirements.

Section 4603(d) of the BBA was amended by section 5101(c)(2) of OCESAA by changing the effective date language for the HHA PPS and the other changes made by section 4603 of the BBA. Section 4603(d) now provides that: ''Except as otherwise provided, the amendments made by this section shall apply to portions of cost reporting periods occurring on or after October 1, 2000.'' This change requires all HHAs to be paid under HHA PPS effective October 1, 2000 regardless of the current cost-reporting period.

Section 4603(e) of the BBA sets forth the contingency language for HHA PPS noting that if the Secretary, for any reason, does not establish and implement HHA PPS on October 1, 2000, the per-visit cost limits and per-beneficiary limits under the interim payment system will be reduced by 15 percent. Section 302(a) of the BBRA of 1999 eliminated the interim payment system contingency language by striking this section from the statute.

Section 305 of the BBRA refined the consolidated billing requirements under PPS. The new law excludes durable medical equipment (DME) from the home health consolidated billing requirements.

C. Summary of the Proposed Rule

We published a proposed rule in the **Federal Register** on October 28, 1999 at (64 FR 58134) that set forth proposed

requirements that would establish the new prospective payment system for home health agencies as required by the Balanced Budget Act (BBA) of 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA), of 1999, and the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA). The PPS would replace the retrospective reasonable cost-based system currently used by Medicare for the payment of home health services under Part A and Part B.

1. Transition to PPS

The statute provides authority for a transition period of no longer than 4 years to PPS. We proposed a full transition to the PPS. The overwhelming majority of the industry seems eager to move to PPS. However, some individual home health agencies (HHAs) will object to PPS because they currently enjoy a competitive advantage with high cost limits under the interim payment system. Furthermore, the statute now requires that we pay all providers under PPS on October 1, 2000 rather than phasing in by cost reporting period.

2. Unit of Payment (60-Day Episode)

We proposed a 60-day episode as the basic unit of payment under the HHA PPS. Evidence from the Phase II per-episode HHA PPS demonstration illustrated that the length of a 60-day episode captured a majority of the patients. Moreover, the 60-day episode would coordinate with the 60-day physician recertification of the plan of care and with the 60-day reassessment of the patient using the Outcomes and Assessment Information Set (OASIS). This would encourage physicians' involvement in the plan of care.

3. Split Percentage Payment Approach to the 60-Day Episode Payment (Periodic Interim Payments Statutorily Eliminated With PPS)

Because the PPS system must maintain a cash flow to agencies accustomed to billing on 30-day cycles or receiving periodic interim payments, we proposed a split percentage billing for each 60-day episode. Under this system, an agency would receive a partial episode payment (50 percent) as soon as it notifies us of an admission and a final percentage (50 percent) payment at the close of the 60-day episode.

4. Partial Episode Payment Adjustment (PEP Adjustment)

The partial episode payment adjustment (PEP adjustment) provides a simplified approach to the episode definition and accounts for key intervening events in a patient's care defined as:

—A beneficiary elected transfer, or

—A discharge and return to the same HHA that would warrant a new clock for purposes of payment, OASIS assessment, and physician certification of the new plan of care. When a new 60-day episode begins, the original 60-day episode payment is proportionally adjusted to reflect the length of time the beneficiary remained under the agency's care before the intervening event. The proportional payment is the PEP adjustment.

The proposed PEP adjustment is based on the span of days including the start-of-care date/first billable service date through and including the last billable service date under the original plan of care before the intervening event. The PEP adjustment is calculated by using the span of days (first billable service date through and including the last billable service date) under the original plan of care as a proportion of 60. The proportion is multiplied by the original case-mix and wage-adjusted 60-day episode payment.

We also proposed to close out the initial episode payment with a PEP adjustment and restart the 60-day episode clock under an existing episode due to a beneficiary elected transfer. We are concerned that these transfer situations could be subject to manipulation. Therefore, we proposed that we will not apply the PEP adjustment if the transfer is between organizations of common ownership.

In addition, the discharge and return to the same HHA during the 60-day episode period is only recognized when a beneficiary reached the treatment goals in the original plan of care. The original plan of care must be terminated with no anticipated need for additional home health services for the balance of the 60-day period. The discharge cannot be a result of a significant change in condition. In order for the situation to be defined as a PEP adjustment due to discharge and return to the same HHA during the 60-day episode, the discharge must be a termination of the complete course of treatment in the original plan of care. We would not recognize any PEP adjustment in an attempt to circumvent the payment made under the significant change in condition payment adjustment discussed below.

5. Significant Change in Condition Adjustment (SCIC Adjustment)

We proposed that the third intervening event over a course of a 60-day episode of home health care that could trigger a change in payment level to be a significant change in the patient's condition. We proposed the significant change in condition payment adjustment (SCIC adjustment) as the proportional payment adjustment reflecting the time both before and after the patient experienced a significant change in condition during the 60-day episode. The proposed SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. In order to receive a new case-mix assignment for purposes of SCIC payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in treatment approach in the patient's plan of care.

The SCIC adjustment is calculated in two parts. The first part of the SCIC adjustment reflects the adjustment to the level of payment *before* the significant change in the patient's condition during the 60-day episode. The second part of the SCIC adjustment reflects the adjustment to the level of payment *after* the significant change in the patient's condition occurs during the 60-day episode. The first part of the SCIC adjustment uses the span of days of the first billable service date through the last billable service date before the intervening event of the patient's significant change in condition that warrants a new case-mix assignment for payment. The first part of the SCIC adjustment is determined by taking the span of days before the patient's significant change in condition as a proportion of 60 multiplied by the original episode payment amount. The original episode payment level is proportionally adjusted using the span of time the patient was under the care of the HHA before the significant change in condition that warranted an OASIS assessment, physician change orders indicating the need for a significant change in the course of the treatment plan, and the new case-mix assignment for payment at the end of the 60-day episode.

The second part of the SCIC adjustment reflects the time the patient is under the care of the HHA after the patient experienced the significant change in condition during the 60-day episode that warranted the new case-mix assignment for payment purposes. The second part of the SCIC adjustment is a proportional payment adjustment reflecting the time the patient will be under the care of the HHA after the significant change in condition and

continuing until the end of the 60-day episode. Once the HHA completes the OASIS, obtains the necessary physician change orders reflecting the need for a new course of treatment in the plan of care, and assigns a new case-mix level for payment, the second part of the SCIC adjustment begins. The second part of the SCIC adjustment is determined by taking the span of days (first billable service date through the last billable service date) after the patient experiences the significant change in condition through the balance of the 60-day episode as a proportion of 60 multiplied by the new episode payment level resulting from the significant change. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the SCIC adjustment (or any applicable medical review or low utilization payment adjustment (LUPA) discussed below) determined at the final billing for the 60-day episode.

6. Low-Utilization Payment Adjustment (LUPA)

We proposed payments for low-utilization episodes by paying those episodes at a standardized average per-visit amount. Episodes with four or fewer visits would be paid the per-visit amount times the number of visits actually provided during the episode. ''Savings'' from reduced episode payments would be redistributed to all episodes.

7. Case-Mix Methodology

In the proposed rule, we described a home health case-mix system developed under a research contract with Abt Associates, Inc., of Cambridge, Massachusetts. The case-mix system uses selected data elements from the OASIS assessment instrument and an additional data element measuring receipt of therapy services of at least 8 hours (the 8-hour threshold has been defined as 10 visits for purposes of case-mix adjustment of PPS reimbursements). The data elements are organized into three dimensions to capture clinical severity factors, functional severity factors, and services utilization factors influencing case-mix. The process of selecting data elements for each dimension was described in the proposed rule. In the clinical and functional dimensions, each data element is assigned a score value derived from multiple regression analysis of the Abt research data. The score value measures the impact of the data element on total resource use. Scores are also assigned to data elements in the services utilization dimension. To find a patient's case-mix group, the case-mix grouper sums the patient's scores within each of the three dimensions. The resulting sum is used to assign the patient to a severity level on each dimension. There are four clinical severity levels, five functional severity levels, and four services utilization severity levels. Thus there are 80 possible combinations of severity levels across the three dimensions. Each combination defines one of the 80 groups in the case-mix system. For example, a patient with high clinical severity, moderate functional severity, and low services utilization severity is placed in the same group with all other patients whose summed scores place them in the same set of severity levels for the three dimensions.

8. Outlier Payments

Outlier payments are payments made in addition to the 60-day episode payments for episodes that incur unusually large costs. Outlier payments would be made for episodes whose estimated cost exceeds a threshold amount for each case-mix group. The outlier threshold for each case-mix group, PEP adjustment or total SCIC adjustment would be the episode payment amount, PEP adjustment, or total SCIC adjustment for that group plus a fixed dollar loss amount that is the same for all case-mix groups. The outlier payment would be a proportion of the amount of estimated costs beyond the threshold. Costs would be estimated for each episode by applying standard per-visit amounts to the number of visits by discipline reported on claims. The fixed dollar loss amount and the loss-sharing proportion are chosen so that total outlier payments are estimated to be no more than 5 percent of estimated total payments. There is no need for a long-stay outlier payment because we would not be limiting the number of continuous episode payments in a fiscal year that may be made for Medicare covered home health care to eligible beneficiaries.

9. Consolidated Billing/Bundling

Under the consolidated billing requirement, we would require that the HHA submit all Medicare claims for the home health services included in 1861(m) of the Social Security Act while the beneficiary is under the home health plan of care established by a physician and is eligible for the home health benefit. The proposed rule included an approach that was superseded by changes to the law made by the BBRA.

II. Provisions of Proposed Rule

In the proposed rule that was published on October 28, 1999 (64 FR 54134), we proposed a number of revisions to the regulations in order to implement the prospective payment system, the HHA consolidated billing provision, and conforming statutory changes. We proposed to make conforming changes in 42 CFR parts 409, 424, and 484 to synchronize all timeframes for the plan of care certification, OASIS Recertification (follow-up) assessment, and episode payments to reflect a 60-day period. In addition, we proposed to add a new subpart in part 484 to set forth our new payment system for HHAs. These revisions and others are discussed in detail below.

First, we proposed to revise part 409, subpart E, and discussed the requirements that must be met for Medicare to make payment for home health services. We proposed to make a conforming change in § 409.43 regarding the plan of care requirements. Specifically, we proposed to revise the frequency for review in paragraph (e) of this section by replacing the phrase ''62 days'' with ''60 days unless there is—

- An intervening beneficiary elected transfer;
- A significant change in condition resulting in a new case-mix assignment; or
- A discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment and a new physician certification of the new plan of care.

In addition, we proposed to revise subpart H of this part regarding payments of hospital insurance benefits. We proposed to revise paragraph (a) in § 409.100, which discusses payment for services, to specify the conditions under which Medicare may pay hospital insurance benefits for home health services. We proposed to provide introductory text to paragraph (a) and to redesignate the current paragraph (a) as paragraph (a)(1). Proposed paragraph (a)(2) of this section would require that Medicare may pay hospital insurance benefits for the home health services specified at section 1861(m) of the Act, when furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA, to the HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

We proposed to make similar changes in part 410, subpart I, which deals with payment of benefits under Part B. We

proposed to add a new paragraph (b)(19) to § 410.150 to specify the conditions under which Medicare Part B pays for home health services. Specifically, proposed paragraph (b)(19) specified that Medicare Part B pay a participating HHA, for home health services furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

We also proposed to revise part 411 subpart A, which discusses excluded services. We proposed to add a new paragraph (q) to § 411.15 to specify the conditions under which HHA services are excluded from coverage. Proposed paragraph (q) specified that a home health service as defined in section 1861(m) of the Act furnished to an individual who is under a plan of care of an HHA is excluded from coverage unless that HHA has submitted a claim for payment for such services.

We also proposed to simplify the authority citation for part 413. In § 413.1 in the introduction to the section on principles of reasonable cost reimbursement, we proposed to add a new paragraph (h) to include the timeframe under which home health services will be paid prospectively. Paragraph (h) under this section specified that the amount paid for home health services as defined in section 1861(m) of the Act that are furnished beginning on or after October 1, 2000 to an eligible beneficiary under a home health plan of care is determined according to the prospectively determined payment rates for HHAs set forth in part 484, subpart E of this chapter. In addition, we proposed to amend § 413.64 concerning payments to providers. Specifically, we proposed to amend paragraph (h)(1) of this section by removing Part A and Part B HHA services from the periodic interim payment method.

We also proposed to revise part 424, which explains the conditions for Medicare payment. We proposed to revise § 424.22 regarding the certification requirements as a condition for payment. We proposed to add a new paragraph (a)(1)(v) that would specify that as a condition for payment of home health services under Medicare Part A or Medicare Part B, a physician must certify that the individual is correctly assigned to one of the HHRGs. We proposed to make a conforming change at paragraph (b)(1) of this section regarding the timing of the recertification. Specifically, we proposed to amend § 424.22(b) by replacing the phrase ''at least every 2 months'' with ''at least every 60 days,'' and adding the following sentence: ''Recertification is required at least every 60 days preferably unless there is a beneficiary elected transfer, a significant change in condition resulting in a new case-mix assignment, or a discharge and return to the same HHA during the 60-day episode that warrants a new 60-day episode payment and a new physician certification of the new plan of care.''

We proposed to add a new statutory authority, section 1895 of the Act, to paragraph(a) of § 484.200, ''Basis and scope.'' Section 1895(a) provides for the implementation of a prospective payment system for HHAs for portions of cost-reporting periods occurring on or after October 1, 2000.

We proposed to revise the regulations in 42 CFR part 484, which set forth the conditions that an HHA must meet in order to participate in Medicare. First, we proposed to revise the part heading from ''Conditions Of Participation: Home Health Agencies'' to the more generic heading ''Home Health Services.'' We proposed to make a conforming change in § 484.18(b) by replacing the phrase ''62 days'' with ''60 days'' unless there is—

- A beneficiary elected transfer;
- A significant change in condition resulting in a change in the case-mix assignment; or
- A discharge and return to the same HHA during the 60-day episode.

Also, we proposed to revise § 484.55(d)(1) by replacing ''every second calendar month'' with language that reflects the 60-day episode and possible PEP Adjustment or SCIC Adjustment. We proposed to require that the comprehensive assessment be updated and revised as frequently as the patient's condition warrants but not less frequently than every 60 days beginning with the start-of-care date unless there is—

- A beneficiary elected transfer;
- A significant change in condition resulting in a change in the case-mix assignment; or
- A discharge and return to the same HHA during the 60-day episode.

In addition, we proposed to add and reserve a new subpart D, then add a new subpart E, ''Prospective Payment System for Home Health Agencies.'' This proposed subpart sets forth the regulatory framework of the new prospective payment system. It specifically discussed the development of the payment rates, associated adjustments, and related rules. In § 484.202, ''Definitions,'' we proposed the following definitions for purposes of this new subpart:

As used in this subpart—

Case-mix index means a scale that measures the relative difference in resource intensity among different groups in the clinical model.

Clinical model means a system for classifying Medicare-eligible patients under a home health plan of care into mutually exclusive groups based on clinical, functional, and intensity-of-service criteria. The mutually exclusive groups are defined as Home Health Resource Groups (HHRGs).

Discipline means one of the six home health disciplines covered under the Medicare home health benefit (skilled nursing services, home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, and medical social services).

Market basket index means an index that reflects changes over time in the prices of an appropriate mix of goods and services included in home health services.

In proposed § 484.205 ''Basis of payment,'' we discussed the Medicare payment to providers of services. Proposed § 484.205(a) described the method by which the provider would receive payment. Specifically, § 484.205(a)(1) provided that an HHA receives a national 60-day episode payment of a predetermined rate for a home health service paid on a reasonable cost basis. We determine this national 60-day episode payment under the methodology set forth in § 484.215. Paragraph (a)(2) specified that an HHA may receive a low-utilization payment adjustment (LUPA) of a predetermined per-visit rate. We proposed to determine the LUPA under the methodology set forth in § 484.230. Paragraph (a)(3) of this section provided that an HHA may receive a partial episode payment (PEP) adjustment due to an intervening event during an existing 60-day episode that initiates the start of a new 60-day episode payment and a new patient plan of care. We proposed to determine the PEP Adjustment under the methodology set forth in § 484.235. Paragraph (a)(4) of this section specified that a HHA may receive a significant change in condition (SCIC) Adjustment due to the intervening event defined as a significant change in the patient's condition during an existing 60-day episode. We proposed to determine the SCIC adjustment under a methodology set forth in 484.237.

Proposed paragraph (b) discussed the 60-day episode payment and circumstances surrounding adjustments to the payment method. This paragraph

proposed that the national 60-day episode payment represents payment in full for all costs associated with furnishing a home health service paid on a reasonable cost basis as of August 5, 1997 (the date of the enactment of the BBA) unless the national 60-day episode payment is subject to a low-utilization payment adjustment as set forth in § 484.230, a partial episode payment adjustment as set forth in § 484.235, a significant change in condition payment adjustment as set forth in 484.237, or an additional outlier payment as set forth in § 484.240. All payments under this system may be subject to a medical review adjustment. We noted that DME provided as a home health service as defined in section 1861(m) of the Act would continue to be paid the fee schedule amount.

In paragraph (c) of this section, we proposed the low-utilization payment adjustment to the 60-day episode payment. We would require that an HHA receive a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless we determine at the end of the 60-day episode that the HHA furnished minimal services to a patient during the 60-day episode. The low-utilization payment adjustment would be determined under the methodology set forth in § 484.230.

In paragraph (d), we discussed the partial episode payment adjustment. We describe that an HHA receives a national payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless there is an intervening event that warrants the initiation of a new 60-day episode payment and a new physician certification of the new plan of care. The initial HHA receives a partial episode payment adjustment reflecting the length of time the patient remained under its care. A partial episode payment adjustment would be determined under the methodology set forth in § 484.235.

In paragraph (e), we discussed the significant change in condition adjustment. We discussed that the HHA receives a national 60-day episode payment of a pre-determined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines an intervening event defined as a beneficiary experiencing a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. In order to receive a new case-mix assignment for purposes of payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in the treatment approach in the patient's plan of care. The significant change in condition payment adjustment is a proportional payment adjustment reflecting the time both before and after the patient experienced a significant change in condition during the 60-day episode.

In paragraph (f), we discussed how we treat payment for outliers. In this paragraph we would provide that an HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable-cost basis as of August 5, 1997, unless the estimated cost of the 60-day episode exceeds a threshold amount. The outlier payment is defined to be a proportion of the estimated costs beyond the threshold. An outlier payment is a payment in addition to the national 60-day episode payment. The total of all outlier payments is limited to 5 percent of total outlays under the HHA PPS. An outlier payment would be determined under the methodology set forth in § 484.240.

In proposed § 484.210, we specified the data used for the calculation of the national prospective 60-day episode payment. These data include the following:

- Medicare cost data on the most recent audited cost report data available.
- Utilization data based on Medicare claims.
- An appropriate wage index to adjust for area wage differences.
- The most recent projections of increases in costs from the HHA market basket index.
- OASIS assessment data and other data that account for the relative resource utilization for different HHA Medicare patient case-mix.

Proposed § 484.215, paragraphs (a) through (e) specified the methodology used for the calculation of the national 60-day episode payment. Proposed paragraph (a) specified that in calculating the initial unadjusted national 60-day episode payment applicable for a service furnished by an HHA using data on the most recent available audited cost reports, we determined each HHA's costs by summing its allowable costs for the period. We then determined the national mean cost per visit.

Proposed paragraph (b) of this section specified that in calculating the initial unadjusted national 60-day episode payment, we determined the national mean utilization for each of the six disciplines using home health claims data.

Proposed paragraph (c) of this section specified that we used the HHA market basket index to adjust the HHA cost data to reflect cost increases occurring between October 1, 1996 through September 30, 2001. For each fiscal year from 2002 or 2003, we would update the cost data by a factor equivalent to the annual market basket index percentage minus 1.1 percentage points.

Proposed paragraph (d) regarding standardization of the data for variation in area wage levels and case-mix specified that we would standardize the cost data described in paragraph (a) of this section to remove the effects of geographic variation in wage levels and variation in case-mix. We would then standardize the cost data for geographic variation in wage levels using the hospital wage index. We standardized the cost data for HHA variation in case-mix using the case-mix indices and other data that indicate HHA case-mix.

Proposed paragraph (e) of this section described how we calculated the unadjusted national average prospective payment amount for the 60-day episode. Specifically, we calculated this payment amount by—

- Computing the mean standardized national cost per visit;
- Computing the national mean utilization for each discipline; then
- Multiplying the mean standardized national cost per visit by the national mean utilization summed in the aggregate for each discipline.

Proposed § 484.220 described how we calculated the national adjusted prospective 60-day episode payment rate for case-mix and area wage levels. This section specified that we adjusted the national prospective 60-day episode payment rate to account for HHA case-mix using a case-mix index to explain the relative resource utilization of different patients. We also adjusted the national prospective 60-day episode payment rate to account for geographic differences in wage levels using an appropriate wage index.

In proposed § 484.225, we explained our methods for annually updating the national adjusted prospective payment rates for inflation. We proposed to handle it in the following manner:

- We update the unadjusted national 60-day episode payment rate on a fiscal year basis.
- For FY 2001, the unadjusted national 60-day episode payment rate is adjusted using the latest available market basket factors.
- For fiscal year 2002 or 2003, the unadjusted national 60-day episode payment rate is equal to the rate for the previous period or fiscal year increased

by a factor equal to the HHA market basket minus 1.1 percentage point.

• For any subsequent fiscal years, the unadjusted national rate is equal to the rate for the previous fiscal year increased by the applicable HHA market basket index amount.

In proposed § 484.230, we explained the methodology we use for the calculation of the low-utilization payment adjustment. In this section, we specified that in calculating the low-utilization payment adjustment, an episode with four or fewer visits is paid the national average standardized per-visit amount by discipline for each visit type. We also specified that the national average standardized per-visit amount is determined by using cost data set forth in § 484.210(a) and adjusting by the appropriate wage index.

Proposed § 484.235 illustrated the methodology we used to calculate the partial episode payment adjustment. The intervening event of either a beneficiary elected transfer or discharge and return to the same HHA during the 60-day episode warrants a new 60-day episode payment and a new physician certification of a new plan of care. The original 60-day episode payment is adjusted with a partial episode payment that reflects the length of time the beneficiary remained under the care of the original HHA. The partial episode payment is calculated using the actual days served by the original HHA as a proportion of 60 multiplied by the initial 60-day episode payment.

Proposed 484.237 illustrated the methodology we used to calculate the significant change in condition payment adjustment. The intervening event, here, a beneficiary experiencing a significant change in condition during a 60-day episode that was not envisioned in the original plan of care, initiates the significant change in condition payment adjustment. The significant change in condition is calculated in two parts. The first part of the SCIC adjustment reflects the adjustment to the level of payment prior to the significant change in the patient's condition during the 60-day episode. The second part of the SCIC adjustment reflects the adjustment to the level of payment after the significant change in the patient's condition occurs during the 60-day episode. The first part of the SCIC adjustment is determined by taking the span of days prior to the patient's significant change in condition as a proportion of 60 multiplied by the original episode amount. The original episode payment level is proportionally adjusted using the span of time the patient was under the care of the HHA prior to the significant change in condition that warranted an OASIS assessment, physician change orders indicating the need for a significant change in the course of the treatment plan, and the new case-mix assignment for payment at the end of the 60-day episode. The second part of the SCIC adjustment is a proportional payment adjustment reflecting the time the patient will be under the care of the HHA after the significant change in condition and continuing until the end of the 60-day episode. The second part of the SCIC adjustment is determined by taking the span of days (first billable visit date through the last billable visit date) after the patient experiences the significant change in condition through the balance of the 60-day episode as a proportion of 60 multiplied by the new episode payment level resulting from the significant change. The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second part of the SCIC adjustment.

Proposed § 484.240 described the methodology we used to calculate the outlier payment. The methodology for the calculation of the outlier payment would involve the following:

• We make an outlier payment for an episode whose estimated cost exceeds a threshold amount for each case-mix group.

• The outlier threshold for each case-mix group is the episode payment amount for that group plus a fixed dollar loss amount that is the same for all case-mix groups.

• The outlier payment is a proportion of the amount of estimated cost beyond the threshold.

• We estimate the cost for each episode by applying the standard per-visit amount to the number of visits by discipline reported on claims.

• The fixed dollar loss amount and the loss-sharing proportion are chosen so that the estimated total outlier payment is no more than 5 percent of total episode payment.

Proposed § 484.250 related to data that must be submitted for the development of a reliable case-mix. Specifically, we would require an HHA to submit the OASIS data described at the current § 484.55(b)(1) and (d)(1) (that we proposed to revise in the proposed rule) to administer the payment rate methodologies described in § 484.215 (methodology used for the calculation of the national 60-day episode payment), § 484.230 (methodology used for the calculation of the LUPA) and 484.237 (methodology used for the calculation of the SCIC adjustment).

Proposed § 484.260 discussed the limitation for review with regard to our new payment system. In this section, we specified that judicial or administrative review under sections 1869 or 1878 of the Act, or otherwise, is prohibited with regard to the establishment of a payment unit including the national 60-day episode payment rate and the LUPA. This prohibition includes the establishment of the transition period, definition and application of the unit of payments, the computation of initial standard prospective payment amounts, the establishment of the adjustment for outliers, and the establishment of case-mix and area wage adjustment factors.

III. Analysis and Responses to Public Comments

We received approximately 381 timely comments on the HHA prospective payment system proposed rule HCFA–1059–P published on October 28, 1999 (64 FR 58134). Comments were submitted by HHAs and other health care providers, national industry associations, suppliers and practitioners (both individually and through their respective trade associations), State associations, health care consulting firms, and private citizens. The comments centered on various aspects of the proposed policies governing our approach to the home health prospective payment system. We have considered all comments received during the 60-day public comment period in this final rule and have set forth our responses to the comments and corresponding policy modifications in the following section.

As noted in the proposed rule, because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable to respond to them individually. In particular, a number of commenters on the proposed rule raised extremely technical and detailed questions, many of which were not directly related to the proposed rule, regarding OASIS, the cost report, RHHI systems and the billing process. These questions are of the nature that would more appropriately be addressed through manual instructions and other issuances than in these regulations. In this final rule, we are addressing the policy concerns raised by the commenters that are related to the proposed rule. Summaries of the major issues and our responses to those comments are set forth below.

A. 60-Day Episode Payment Definition (§ 484.205)

Comment: We received several comments on our proposed definition of

a 60-day episode as the unit of payment under HHA PPS. The majority of commenters supported the 60-day episode approach. A few commenters suggested a shorter time period for the unit of payment.

Response: We believe the 60-day episode definition is the most appropriate approach to define the unit of payment under HHA PPS. Public support for the 60-day episode as the unit of payment under PPS centered on the general consensus that HHAs and physicians predict home care needs over a 60-day period due to current plan of care requirements and OASIS assessments that basically follow a 60-day period. As discussed in detail in the proposed rule, research indicated that the 60-day episode captures the majority of stays experienced in the Phase II per-episode HHA PPS demonstration.

We will continue to monitor the appropriateness of the 60-day unit of payment and may consider modifying our approach to the episode definition in subsequent years of PPS, if warranted.

Comment: A few commenters raised concerns with the change to a 60-day episode from the current plan of care certification and OASIS assessments requirements that follow a bimonthly period, that is, at least every 62 days. Some of the concerns centered on confusion and the possible burden associated with the change to a 60-day episode.

Response: The statute requires us to establish an appropriate unit of payment. We believe the 60-day episode is the most suitable time frame upon which to base payment and to manage home care needs of patients. To effectively implement a payment system that is built on a foundation of (1) OASIS assessments for case-mix adjustment and (2) plan of care certifications to ensure the appropriate plan of treatment, all schedules for assessment, certification and payment term should be on a parallel track. The current schedules for OASIS assessment and plan of care certification basically mirror a 60-day episode. Thus, for purposes of payment, assessment, and care planning, we do not believe it is an undue burden to adjust to a 60-day episode from a bimonthly period.

Comment: A few commenters recommended that we re-examine the language we proposed to govern the 60-day episode. The commenters referred specifically to the following statement in the proposed rule: ''An HHA that accepts a Medicare eligible beneficiary for home health care for the 60-day episode period and submits a bill for payment may not refuse to treat an eligible beneficiary who has been discharged from the HHA during the 60-day episode, but later requires Medicare covered home health services during the same 60-day episode period and elects to return to the same HHA * * *'' (64 FR 58201) Commenters suggested that HHAs should be allowed to refuse to readmit a Medicare eligible beneficiary in accordance with HHA policies when the safety of HHA staff or the patient are threatened; when the HHA does not have the staff necessary to meet the patient's needs; or when the patient or caregiver refuses to cooperate or comply with the plan of care.

Response: We proposed this policy to indicate that we would not accept a refusal to treat the beneficiary when only the HHA's economic interests were the cause of the refusal. It was not our intent to restrict the legitimate rights of an HHA that has a well-documented individualized situation that results in a determination to refuse further care of a patient. This would include threats to the safety of HHA staff or patients or failure of patients to cooperate in the care plan. As long as agencies treat all similarly situated patients equally, document the individualized situation, and comply with all Federal and State laws, they have the right to refuse to treat patients in certain well-documented situations.

B. Definition of Non-Routine Medical Supplies Included in the Episode Definition

Comment: We received several comments regarding certain non-routine medical supply costs that were not included in the computation of the 60-day national episode rate. Specifically, the commenters suggested that we include non-routine medical supplies both paid on the cost report and non-routine medical supply amounts that could have been unbundled to part B prior to PPS in the 60-day episode rate. Commenters also provided several suggestions for a revised approach to the payment for non-routine medical supplies under HHA PPS. Recommendations included the following:

- Providing for a separate payment for non-routine medical supplies used by a patient designated as a new designated home health supply payment amount separate from the prospective payment rate.
- Allowing all non-routine medical supplies to be billed under Part B.
- Carving out or adjusting the medical supply amount due to the variation in intermediary coverage guidelines.
- Adjusting the medical supply amounts to reflect the costs associated with wound patients, chux and diaper supply patients.
- Paying medical supplies as used because of the wide variation in use due to patients who sustain out-of-pocket payments.
- Carving out wound care and diabetes related medical supplies and re-examining the overall calculation of the non-routine supply costs, both bundled and non-routine supply costs that could have been unbundled, because commenters viewed the amounts inadequate to care for patients requiring supplies which then might lead to access issues.

Commenters further noted problems with the 199 HCPCs codes we used to calculate the non-routine medical supply amounts that could have been unbundled to Part B before implementation of PPS. We adjusted the proposed rate to account for the non-routine medical supply behavior prior to PPS. Several commenters suggested that the inclusion of glucose test strips codes were inappropriate codes included in the original 199 code list for non-routine medical supply costs. Other commenters believed we inadvertently omitted certain codes in the original list of 199 codes. Furthermore, several commenters centered on consolidated billing requirements for non-routine medical supplies. We note that all consolidated billing comments and responses are included under the consolidated billing portion of this section of the regulation.

Response: The goal of reviewing and calculating the non-routine medical supply costs that could have been unbundled to Part B was to ensure adequate payment for non-routine medical supplies used by a patient under a home health plan of care in the prospective payment rate. As stated in the proposed rule, we developed a list of 199 codes that could have possibly been unbundled to Part B before implementation of PPS, linked those Part B supply claims that included any of the 199 codes to home health claims for beneficiaries under a home health plan of care during calendar year 1997. We have replicated the exact claims analysis on corresponding calendar year 1998 claims data to develop an updated supply amount for this final regulation. This calculation was performed on an adjusted list of codes based upon review of comments and is described below.

As stated in the proposed rule, section 1895(b)(1) of the Act, which governs the development of the unit of payment under HHA PPS, requires all services covered and paid on a reasonable cost

basis as of the date of enactment of the BBA, including medical supplies, to be paid on the basis of a prospective payment amount under HHA PPS. The statutory language specifically refers to the inclusion of medical supplies in the prospective payment rate. We believe the statute requires the inclusion of costs of non-routine medical supplies in the episode rate. However, as stated in the proposed rule, since DME covered as a home health service as part of the Medicare home health benefit is not currently paid on a reasonable cost basis, DME will continue to be paid under the DME fee schedule as a separate payment amount from the prospective payment rates under HHA PPS.

As mentioned above, commenters also supplied us with an additional 79 codes that they believed should be included on our list of non-routine medical supplies that could have been unbundled to Part B. We re-examined our approach to the original 199 codes used to calculate the amounts that could have been unbundled non-routine medical supplies. We found that several of the recommended codes had been discontinued. Further, upon re-examination of our original list, we found that several of the original codes were inappropriately included, for example, glucose test strips. These codes have subsequently been deleted. Our analysis results in a final list of 178 codes as listed below. We have provided the following analysis in order to clarify our revised approach.

59 codes proposed in comments were discontinued codes as of 12/31/96.

A4190 ..... Transparent film each
A4200 ..... Gauze pad medicated/non-med
A4202 ..... Elastic gauze roll
A4203 ..... Non-elastic gauze roll
A4204 ..... Absorptive drsg
A4205 ..... Nonabsorptive drsg
K0197 ..... Alginate drsg > 16 <=48 sq in
K0198 ..... Alginate drsg > 48 sq in
K0199 ..... Alginate drsg wound filler
K0203 ..... Composite drsg <= 16 sq in
K0204 ..... Composite drsg > 16 <=48 sq in
K0205 ..... Composite drsg > 48 sq in
K0206 ..... Contact layer <= 16 sq in
K0207 ..... Contact layer > 16 <= 48 sq in
K0208 ..... Contact layer > 48 sq in
K0209 ..... Foam drg <= 16 sq in w/o bdr
K0210 ..... Foam drg > 16 <=48 sq in w/o b
K0211 ..... Foam drg > 48 sq in w/o brdr
K0212 ..... Foam drg <= 16 sq in w/bdr
K0213 ..... Foam drg > 16 <=48 sq in w/bdr
K0214 ..... Foam drg > 48 sq in w/bdr
K0215 ..... Foam dressing wound filler
K0219 ..... Gauze <= 16 sq in w/bdr
K0220 ..... Gauze > 16 <=48 sq in w/bdr
K0221 ..... Gauze > 48 sq in w/bdr
K0222 ..... Gauze <= 16 in no w/sal w/o b
K0223 ..... Gauze > 16 <=48 no w/sal w/o b
K0224 ..... Gauze > 48 in no w/sal w/o b
K0228 ..... Gauze <= 16 sq in water/sal
K0229 ..... Gauze > 16 <=48 sq in watr/sal
K0230 ..... Gauze > 48 sq in water/salne
K0234 ..... Hydrocolloid drg <= 16 w/o bdr
K0235 ..... Hydrocolloid drg > 16 <=48 w/o b
K0236 ..... Hydrocolloid drg > 48 in w/o b
K0237 ..... Hydrocolloid drg <= 16 in w/bdr
K0238 ..... Hydrocolloid drg > 16 <=48 w/bdr
K0239 ..... Hydrocolloid drg > 48 in w/bdr
K0240 ..... Hydrocolloid drg filler paste
K0241 ..... Hydrocolloid drg filler dry
K0242 ..... Hydrogel drg <= 16 in w/o bdr
K0243 ..... Hydrogel drg > 16 <=48 w/o bdr
K0244 ..... Hydrogel drg > 48 in w/o bdr
K0245 ..... Hydrogel drg <= 16 in w/bdr
K0246 ..... Hydrogel drg > 16 <=48 in w/b
K0247 ..... Hydrogel drg > 48 sq in w/b
K0248 ..... Hydrogel drsg gel filler
K0249 ..... Hydrogel drsg dry filler
K0251 ..... Absorpt drg <= 16 sq in w/o b
K0252 ..... Absorpt drg > 16 <=48 w/o bdr
K0253 ..... Absorpt drg > 48 sq in w/o b
K0254 ..... Absorpt drg <= 16 sq in w/bdr
K0255 ..... Absorpt drg > 16 <=48 in w/bdr
K0256 ..... Absorpt drg > 48 sq in w/bdr
K0257 ..... Transparent film <= 16 sq in
K0258 ..... Transparent film > 16 <=48 in
K0259 ..... Transplant filmpercent 48 sq in
K0261 ..... Wound filler gel/paste/oz
K0262 ..... Wound filler dry form/gram
K0266 ..... Impreg gauze no h20/sal/yard

Seven codes included in original list should be removed because they are considered routine medical supplies and as such would not be separately billable by an HHA.

A4214 ..... 30 CC sterile water/saline
K0216 ..... Non-sterile gauze <= 16 sq in
K0217 ..... Non-sterile gauze > 16 <= 48 sq
K0218 ..... Non-sterile gauze > 48 sq in
K0263 ..... Non-sterile elastic gauze/yd
K0264 ..... Non-sterile no elastic gauze
K0265 ..... Tape per 18 sq inches

Four codes are not valid for Medicare.

A4206 ..... 1 CC sterile syringe & needle
A4207 ..... 2 CC sterile syringe & needle
A4208 ..... 3 CC sterile syringe & needle
A4209 ..... 5+ CC sterile syringe & needle

Three codes are for items that are not covered under Medicare.

A4210. ..... Nonneedle injection device
K0250 ..... Skin seal protect moisturizer
K0260 ..... Wound cleanser any type/size

One code is a DME Fee Schedule code and should not be included in accordance with the statute.

A4221 ..... Maint drug infus cath per wk

One code is not separately paid by Part B.

A4211 ..... Supp for self-adm injections

Three codes mentioned by commenters had already been included in our original list of 199 codes.

A4212 ..... Non coring needle or stylet
A4213 ..... 20+ CC syringe only
A4215 ..... Sterile needle

After further re-examination based upon the comments, we added the following code to the list:

A4554 ..... Disposable underpads

Upon further review of the original 199 codes used in the proposed rule, the following codes were deemed inappropriate to be included in the definition of non-routine medical supplies and were deleted from the list used in this final rule:

A4206 ..... 1 CC sterile syringe & needle
A4207 ..... 2 CC sterile syringe & needle
A4208 ..... 3 CC sterile syringe & needle
A4209 ..... 5+ CC sterile syringe & needle
A4210 ..... Nonneedle injection device
A4211 ..... Supp for self-adm injections
A4214 ..... 30 CC sterile water/saline
A4253 ..... Blood glucose/reagent strips
A4255 ..... Glucose monitor platforms
A4256 ..... Calibrator solution/chips
A4258 ..... Lancet device each
A4259 ..... Lancets per box
A4454 ..... Tape all types all sizes
A6216 ..... Non-sterile gauze <= 16 sq in
A6217 ..... Non-sterile gauze > 16 <= 48 sq
A6218 ..... Non-sterile gauze > 48 sq in
A6263 ..... Non-sterile elastic gauze/yd
A6264 ..... Non-sterile no elastic gauze
A6265 ..... Tape per 18 sq inches
K0137 ..... Skin barrier liquid per oz
K0138 ..... Skin barrier paste per oz
K0139 ..... Skin barrier powder per oz

The following is the *final* list of *178* codes for non- Routine Medical Supplies that have a duplicate Part B code that could have been unbundled and billed under Part B before implementation of PPS. The following codes were used to calculate additional non-routine medical supply costs to the national rate. The revised rate calculation is found in section IV.C. of this preamble.

A4212 ..... Non coring needle or stylet
A4213 ..... 20+ CC syringe only
A4215 ..... Sterile needle
A4310 ..... Insert tray w/o bag/cath
A4311 ..... Catheter w/o bag 2-way latex
A4312 ..... Cath w/o bag 2-way silicone
A4313 ..... Catheter w/bag 3-way
A4314 ..... Cath w/drainage 2-way latex
A4315 ..... Cath w/drainage 2-way silcne
A4316 ..... Cath w/drainage 3-way
A4320 ..... Irrigation tray
A4321 ..... Cath therapeutic irrig agent
A4322 ..... Irrigation syringe
A4323 ..... Saline irrigation solution
A4326 ..... Male external catheter
A4327 ..... Fem urinary collect dev cup
A4328 ..... Fem urinary collect pouch
A4329 ..... External catheter start set
A4330 ..... Stool collection pouch
A4335 ..... Incontinence supply
A4338 ..... Indwelling catheter latex
A4340 ..... Indwelling catheter special
A4344 ..... Cath indw foley 2 way silicn
A4346 ..... Cath indw foley 3 way

A4347 ..... Male external catheter
A4351 ..... Straight tip urine catheter
A4352 ..... Coude tip urinary catheter
A4353 ..... Intermittent urinary cath
A4354 ..... Cath insertion tray w/bag
A4355 ..... Bladder irrigation tubing
A4356 ..... Ext ureth clmp or compr dvc
A4357 ..... Bedside drainage bag
A4358 ..... Urinary leg bag
A4359 ..... Urinary suspensory w/o leg bag
A4361 ..... Ostomy face plate
A4362 ..... Solid skin barrier
A4363 ..... Liquid skin barrier
A4364 ..... Ostomy/cath adhesive
A4365 ..... Ostomy adhesive remover wipe
A4367 ..... Ostomy belt
A4368 ..... Ostomy filter
A4397 ..... Irrigation supply sleeve
A4398 ..... Ostomy irrigation bag
A4399 ..... Ostomy irrig cone/cath w brs
A4400 ..... Ostomy irrigation set
A4402 ..... Lubricant per ounce
A4404 ..... Ostomy ring each
A4421 ..... Ostomy supply misc
A4454 ..... Tape all types all sizes
A4455 ..... Adhesive remover per ounce
A4460 ..... Elastic compression bandage
A4462 ..... Abdmnl drssng holder/binder
A4481 ..... Tracheostoma filter
A4622 ..... Tracheostomy or larngectomy
A4623 ..... Tracheostomy inner cannula
A4625 ..... Trach care kit for new trach
A4626 ..... Tracheostomy cleaning brush
A4649 ..... Surgical supplies
A5051 ..... Pouch clsd w barr attached
A5052 ..... Clsd ostomy pouch w/o barr
A5053 ..... Clsd ostomy pouch faceplate
A5054 ..... Clsd ostomy pouch w/flange
A5055 ..... Stoma cap
A5061 ..... Pouch drainable w barrier at
A5062 ..... Drnble ostomy pouch w/o barr
A5063 ..... Drain ostomy pouch w/flange
A5071 ..... Urinary pouch w/barrier
A5072 ..... Urinary pouch w/o barrier
A5073 ..... Urinary pouch on barr w/flng
A5081 ..... Continent stoma plug
A5082 ..... Continent stoma catheter
A5093 ..... Ostomy accessory convex inse
A5102 ..... Bedside drain btl w/wo tube
A5105 ..... Urinary suspensory
A5112 ..... Urinary leg bag
A5113 ..... Latex leg strap
A5114 ..... Foam/fabric leg strap
A5119 ..... Skin barrier wipes box pr 50
A5121 ..... Solid skin barrier 6x6
A5122 ..... Solid skin barrier 8x8
A5123 ..... Skin barrier with flange
A5126 ..... Disk/foam pad +or− adhesive
A5131 ..... Appliance cleaner
A5149 ..... Incontinence/ostomy supply
A6020 ..... Collagen wound dressing
A6154 ..... Wound pouch each
A6196 ..... Alginate dressing <= 16 sq in
A6197 ..... Alginate drsg > 16 <= 48 sq in
A6198 ..... Alginate dressing > 48 sq in
A6199 ..... Alginate drsg wound filler
A6200 ..... Compos drsg <= 16 no bdr
A6201 ..... Compos drsg > 16 <=48 no bdr
A6202 ..... Compos drsg > 48 no bdr
A6203 ..... Composite drsg <= 16 sq in
A6204 ..... Composite drsg > 16 <=48 sq in
A6205 ..... Composite drsg > 48 sq in
A6206 ..... Contact layer <= 16 sq in
A6207 ..... Contact layer > 16 <= 48 sq in
A6208 ..... Contact layer > 48 sq in
A6209 ..... Foam drsg <= 16 sq in w/o bdr
A6210 ..... Foam drg > 16 <=48 sq in w/o b
A6211 ..... Foam drg > 48 sq in w/o brdr
A6212 ..... Foam drg <= 16 sq in w/bdr
A6213 ..... Foam drg > 16 <=48 sq in w/bdr
A6214 ..... Foam drg > 48 sq in w/bdr
A6215 ..... Foam dressing wound filler
A6219 ..... Gauze <= 16 sq in w/bdr
A6220 ..... Gauze > 16 <=48 sq in w/bdr
A6221 ..... Gauze > 48 sq in w/bdr
A6222 ..... Gauze <= 16 in no w/sal w/o b
A6223 ..... Gauze > 16 <= 48 no w/sal w/o b
A6224 ..... Gauze > 48 in no w/sal w/o b
A6228 ..... Gauze <= 16 sq in water/sal
A6229 ..... Gauze > 16 <=48 sq in watr/sal
A6230 ..... Gauze > 48 sq in water/salne
A6234 ..... Hydrocolld drg <= 16 w/o bdr
A6235 ..... Hydrocolld drg > 16 <= 48 w/o b
A6236 ..... Hydrocolld drg > 48 in w/o b
A6237 ..... Hydrocolld drg <= 16 in w/bdr
A6238 ..... Hydrocolld drg > 16 <=48 w/bdr
A6239 ..... Hydrocolld drg > 48 in w/bdr
A6240 ..... Hydrocolld drg filler paste
A6241 ..... Hydrocolloid drg filler dry
A6242 ..... Hydrogel drg <= 16 in w/o bdr
A6243 ..... Hydrogel drg > 16 <=48 w/o bdr
A6244 ..... Hydrogel drg > 48 in w/o bdr
A6245 ..... Hydrogel drg <= 16 in w/bdr
A6246 ..... Hydrogel drg > 16 <=48 in w/b
A6247 ..... Hydrogel drg > 48 sq in w/b
A6251 ..... Absorpt drg <= 16 sq in w/o b
A6252 ..... Absorpt drg > 16 <=48 w/o bdr
A6253 ..... Absorpt drg > 48 sq in w/o b
A6254 ..... Absorpt drg <= 16 sq in w/bdr
A6255 ..... Absorpt drg > 16 <=48 in w/bdr
A6256 ..... Absorpt drg > 48 sq in w/bdr
A6257 ..... Transparent film <= 16 sq in
A6258 ..... Transparent film > 16 <=48 in
A6259 ..... Transparent film > 48 sq in
A6261 ..... Wound filler gel/paste/oz
A6262 ..... Wound filler dry form/gram
A6266 ..... Impreg gauze no h20/sal/yard
A6402 ..... Sterile gauze <= 16 sq in
A6403 ..... Sterile gauze > 16 <= 48 sq in
A6404 ..... Sterile gauze > 48 sq in
A6405 ..... Sterile elastic gauze/yd
A6406 ..... Sterile non-elastic gauze/yd
K0137 ..... Skin barrier liquid per oz
K0138 ..... Skin barrier paste per oz
K0139 ..... Skin barrier powder per oz
K0277 ..... Skin barrier solid 4x4 equiv
K0278 ..... Skin barrier with flange
K0279 ..... Skin barrier extended wear
K0280 ..... Extension drainage tubing
K0281 ..... Lubricant catheter insertion
K0407 ..... Urinary cath skin attachment
K0408 ..... Urinary cath leg strap
K0409 ..... Sterile H2O irrigation solut
K0410 ..... Male ext cath w/adh coating
K0411 ..... Male ext cath w/adh strip
K0419 ..... Drainable plstic pch w fcplt
K0420 ..... Drainable rubber pch w fcplt
K0421 ..... drainable plstic pch w/o fp
K0422 ..... Drainable rubber pch w/o fp
K0423 ..... Urinary plstic pouch w fcplt
K0424 ..... Urinary rubber pouch w fcplt
K0425 ..... Urinary plstic pouch w/o fp
K0426 ..... Urinary hvy plstc pch w/o fp
K0427 ..... Urinary rubber pouch w/o fp
K0428 ..... Ostomy faceplt/silicone ring
K0429 ..... Skin barrier solid ext wear
K0430 ..... Skin barrier w flang ex wear
K0431 ..... Closed pouch w st wear bar
K0432 ..... Drainable pch w ex wear bar
K0433 ..... Drainable pch w st wear bar
K0434 ..... Drainable pch ex wear convex
K0435 ..... Urinary pouch w ex wear bar
K0436 ..... Urinary pouch w st wear bar
K0437 ..... Urine pch w ex wear bar conv
K0438 ..... Ostomy pouch liq deodorant
K0439 ..... Ostomy pouch solid deodorant

We believe our revised approach to the calculation that incorporates both non-routine medical supplies provided under a plan of care and those non-routine medical supplies that could have been unbundled to Part B prior to the consolidated billing requirements results in an equitable payment methodology. As stated above, we have re-examined the list of non-routine medical supplies that could have been unbundled to Part B, recalculated the costs, and have adjusted the rates accordingly. We have also included any additional medical supply costs included in the audited cost report data from the sample that became available after the publication of the proposed rule.

We have thoroughly re-examined the issue of all non-routine medical supplies included in the rate. The statute does not provide for an exception for the removal of any or all supplies for certain type of patients from the PPS rate. We have used the best data available to calculate the non-routine medical supply component of the rates. We will continue to monitor the issue of non-routine medical supply costs with implementation of PPS.

Comment: Several commenters recommended that we re-examine the amount we added to adjust the LUPA per-visit amounts to account for non-routine medical supply costs. Many commenters suggested that the amount was inadequate, especially for wound care patients.

Response: As stated above, we have re-examined the issue of the appropriate level of non-routine medical supply costs in terms of wound care supplies and all non-routine medical supplies as they relate to all rates in the proposed rule, including the LUPA amounts. Based on comments, we have decided to increase the LUPA amount by paying the updated, prospective per-visit amount by discipline. We believe this per-visit amount accurately reflects an appropriate per-visit payment level, including medical supplies and other services furnished during LUPA visits. This provision is set forth in regulations at § 484.230. The revised LUPA approach is discussed in section IV.D. of this rule.

Comment: Commenters requested clarification of the application of 20 percent co-payment of non-routine medical supplies not related to the plan of care.

Response: Medical supplies are specifically listed in section 1861(m) of the Act as a covered home health service. All covered home health services are ordered by a physician for a patient under a plan of care. The 20 percent copayment does not apply to non-routine medical supplies covered as a home health service. There is currently no imposition of copayment on home health services except for DME. There is a 20 percent copayment on DME covered as a home health service. However, as stated above in section I.B. of this rule, BBRA of 1999 removed DME covered as a home health service from the consolidated billing requirements.

We note that Part B does not provide coverage of and payment for items termed ''non-routine medical supplies.'' DME may have a DME supply component, but that supply cost is related to the DME and included in the DME fee schedule payment. Further, the statute governing consolidated billing specifically refers to a patient under a plan of care. Providers cannot circumvent the consolidated billing requirements by attempting to exclude certain non-routine medical supplies from the plan of care by distinguishing between non-routine medical supplies related and unrelated to the plan of care. The comment may reflect concern with Part B services such as parenteral or enteral nutrition that are neither currently covered as home health services nor defined as a non-routine medical supply. Parenteral or enteral nutrition would therefore not be subject to the requirements governing home health consolidated billing because those Part B services are not home health services as defined in section 1861(m)of the Act. The applicable copayment or deductible requirements governing Medicare Part B outside of the Medicare home health benefit defined in section 1861(m) of the Act are not changed by this rule.

Comment: A few commenters stated that if a beneficiary has a continuing medical need for medical supplies due to a chronic illness unrelated to the condition the HHA is treating, the patient should be excluded from the PPS rate and consolidated billing.

Response: As we indicated in the proposed rule and the response to the previous comment, the law is very specific regarding the inclusion of medical supplies in the prospective rates. The law requires all services covered and paid on a reasonable cost basis as of the date of enactment of the BBA, including medical supplies, to be paid on the basis of a prospective payment amount under HHA PPS. The consolidated billing requirements at section 1842(b)(6)(F) of the Act, as amended by section 305 of BBRA, specifically require ''in the case of home health services (including medical supplies described in section 1861(m)(5), but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who (at the time the item or service is furnished) is under a plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise).''

The statutory language governing consolidated billing clearly states that the patient is under the plan of care. If the patient requires medical supplies that are currently covered and paid for under the Medicare home health benefit during a certified episode under HHA PPS, the billing for those medical supplies falls under the auspices of the HHA due to the consolidated billing requirements. As stated in previous comments, there is no statutory latitude for an exception or carve-out of medical supplies from the PPS rate for patients under a plan of care under HHA PPS. We have included the costs of all such supplies in the rates.

Comment: A few commenters suggested that we establish clear guidelines so that providers of medical supplies receive adequate notice when items they may be furnishing to a beneficiary become subject to HHA PPS.

Response: The law refers to a patient under a home health plan of care. All routine and non-routine medical supplies that are currently covered as a Medicare home health service are subject to the home health PPS requirements. We believe the proposed rule and this final rule as well as current Medicare policies governing coverage of medical supplies under the home health benefit provide the notice of the requirements governing the HHA PPS. We will be directing our carrier to inform suppliers of this change and will be developing efforts to prevent erroneous billings. Further clarification of routine and non-routine medical supplies can be found in section 204.1 of the Medicare home health agency manual.

Comment: A few commenters suggested that we review the non-routine medical supply coverage policies of the various RHHIs and establish a consistent national coverage policy. Adjustments to the medical supply component of the rate should be made based on the analysis of the coverage variations in the original data used to establish the PPS rates.

Response: We have re-examined our approach to the national coverage policy governing non-routine medical supplies under the Medicare home health benefit. We do not have any indication of the existence of significant inconsistencies in coverage policies across RHHIs. As stated in previous comments, we will continue to monitor the coverage and utilization of non-routine medical supplies in subsequent years of PPS implementation.

Comment: Commenters suggested that medical supplies should be paid as used due to the wide variation in supply usage across patients and because some patients have historically paid out-of-pocket for supplies although HHAs were required to furnish them.

Response: As indicated above, the law specifically includes costs of medical supplies in determining the PPS rates. We are concerned that commenters even suggested that HHAs have historically permitted or even encouraged eligible Medicare beneficiaries to pay out-of-pocket for Medicare services that patients were not required to pay. We emphasize that agencies are obligated to furnish and Medicare will pay for needed medical supplies covered under the home health benefit.

C. Possible Inclusion of Medicare Part B Therapy Services in the Episode

Comment: We received a few comments regarding certain Part B therapy costs that were not included in the computation of the PPS rates. Several commenters suggested that we collect Medicare Part B Claims information for all therapy services provided to patients while receiving home health services under the home health benefit and adjust the episode definition, payment rate, and budget neutrality factor accordingly. Commenters believed that HHAs prior to PPS, as with non-routine medical supplies, had the option to unbundle therapy services outside of the home health benefit to Part B therapy providers. Because such services cannot be unbundled under PPS, commenters suggested that, based on our analysis of Part B therapy claims during a home health stay, an adjustment to the non-standardized amount should be made to account for this additional cost for therapy services.

Response: Before implementation of PPS, HHAs were not clearly prohibited from unbundling therapies to Part B. Consistent with our approach to non-routine medical supplies that could have been unbundled to Part B prior to PPS, we again analyzed Part B therapy claims data. Section IV.B.3. of this rule describes our claims analysis of the Part B therapy claims. Based on the analysis, we have adjusted the rates accordingly with the methodology described in section V. of this rule.

D. Continuous Episode Recertification

Comment: Several commenters support continuous episode certifications because the policy permits access to home health services for eligible beneficiaries. A few commenters requested clarification of continuous episode recertification with regard to long term utilizers of Medicare home health services. In addition, commenters requested further clarification of the definition of terms associated with continuous episode recertification. Some commenters requested specific clarification of the dates governing continuous episode recertification.

Response: We proposed continuous recertifications and payment, as appropriate, for beneficiaries who continue to be eligible for home health services. The payment system set forth in this final rule will permit continuous episode recertification for Medicare eligible beneficiaries. We believe this policy negates the need for a day or time (length of stay) outlier because beneficiaries will continue to be recertified for continuous episodes as long as they remain eligible for the Medicare home health benefit. In order to address the needs of longer stay patients, we are not limiting the number of 60-day episode recertifications permitted in a given fiscal year assuming a patient remains eligible for the Medicare home health benefit.

In response to comments, our explanation of the dates governing continuous episode recertification and clarification of terms associated with subsequent episode recertifications is given below. The first day of a subsequent second episode is day 61. The first day of all subsequent episodes, whether it is the second or third, etc. continuous episode, will be termed the ''subsequent episode date.'' The first day of a subsequent episode is not necessarily the first billable visit date. Unlike the initial episode, the first day of a subsequent episode may not occur on the first billable service date. Therefore, one must distinguish between the definition of the subsequent continuing episode date and the initial episode. Further technical examples of continuous care will be found in billing instructions that will be issued after publication of this rule.

E. Transition/Blend

Comment: Several commenters and most national industry associations supported full transition to a national rate. Conversely, only one industry association supported a four-year blend of agency-specific and national PPS rates. A few commenters suggested the continuation of IPS for the first certification or assessment period or next discharge date or a blend with IPS related data. A few commenters provided other creative alternative blend approaches that fell out of the scope of the statutory authority for the transition blend.

Response: Section 1895(b)(1) of the Act provides the option for a four-year transition to HHA PPS by blending agency-specific and national rates. We proposed full transition to the 60-day national episode rate. We believed blending cost based IPS with an episode rate was not a viable, effective option. After thorough re-examination of the comments and subsequent analysis, we continue to believe that full transition to national PPS rates without any blend of current IPS on October 1, 2000 is the most appropriate alternative. A blended rate system would be overly complex, distort the positive incentives in PPS, and reallocate limited resources from more efficient HHAs to less cost-conscious providers. A national PPS system has significant advantages over IPS. It recognizes case-mix and provides additional payments for higher cost outliers.

Comment: Several commenters objected to all HHAs being paid under home health PPS effective October 1, 2000. Many commented that this was unprecedented and recommended that the implementation date should be transitioned based on cost reporting year.

Response: The law governing the effective date for home health PPS implementation is very specific. In fact, section 5101(c)(1)(A) of OCESSA amended section 1895(a) of the Act to change the effective date for PPS from a transition by cost reporting periods to an immediate start-up date for all HHAs, effective October 1, 2000. The law, as amended, does not provide implementation by cost reporting period.

F. Split Percentage Payment

Comment: Current regulations require a physician signed plan of care before a HHA can bill Medicare for payment. Several commenters suggested the need to receive the initial percentage payment based on verbal orders. Many commenters were concerned about cash flow. Further, commenters believed that if we adopt a policy that permits initial payment based on verbal orders the need for a notice of admission would be eliminated.

Response: A number of commenters expressed concerns about cash flow to providers under the proposed system. Many reasons centered on the percentage of total payment provided upfront, as opposed to the end of the episode and the potential delays in receiving payments as a result of claims processing times, documentation requirements, and medical review. We appreciate these issues and are very interested in ensuring HHAs have adequate cash flow to maintain quality services to beneficiaries. As a result, we have taken a number of steps in this final rule that include increasing the amount of the initial percentage payment for initial episodes and a number of adjustments detailed below to significantly shorten the amount of time between the submission of the request for anticipated payment (defined below) and the receipt of payment. We believe these changes will significantly lessen the time for the receipt of payment as opposed to the approach set forth in the proposed rule. We are revising our approach to the split percentage payment as originally set forth in our proposed rule. We view the initial percentage payment as a ''request for anticipated payment'' rather than a Medicare ''claim'' for purposes of the Act. However, a request for anticipated payment is a ''claim'' for purposes of Federal, civil, criminal, and administrative law enforcement authorities, including but not limited to the civil monetary penalties law (as defined in 42 U.S.C. 1320a–7a(i)(2)), the Civil False Claims Act (as defined in 31 U.S.C. 3729(c)), and the Criminal False Claims Act (18 U.S.C. 287)). We also note that where we use the term ''claim'' in this final regulation, it refers to a ''Medicare claim.'' The first percentage payment will not require a physician signed plan of care before submission. The request for anticipated payment reflecting the initial percentage payment for the episode may be submitted based on verbal orders. All physician verbal orders must: (1) Be put in writing; (2) reflect the agreement between the home health agency and the physician with the appropriate detail regarding the patient's condition and the services to be rendered; (3) be compatible with the regulations governing the plan of care at

§ 409.43, § 424.22, and § 484.18; and (4) be signed by a physician prior to submission of the claim. In order to request anticipated payment for the initial percentage payment based on physician verbal orders, a copy of the plan of care with all physician verbal orders placed in writing and dated with the date of receipt by the registered nurse or qualified therapist (as defined in § 484.4) responsible for furnishing or supervising the ordered service must be completed. A copy of the plan of care, which includes the verbal orders, must also be transmitted to the physician for his or her records. We believe this documentation need is consistent with current practice. Alternatively, the request for anticipated payment may be submitted if the HHA has a signed referral prescribing the physician's detailed orders for the services to be rendered and the patient's condition. Signed orders must, however, be obtained as soon as possible and before the submission of the claim for services is submitted for the final percentage payment for each episode. The final percentage payment including all of the utilization data for the episode is the Medicare claim. The claim for the residual final percentage payment requires a signed plan of care prior to billing for payment. Since the request for anticipated payment may be submitted based on verbal orders that are copied into the plan of care with the plan of care being immediately submitted to the physician and is not considered a Medicare claim, the request for anticipated payment will be canceled and recovered unless the claim for the episode is submitted within the greater of 60 days from the end of the episode or 60 days from the issuance of the anticipated payment. The request of anticipated payment for the initial percentage payment is a request for payment of anticipated services. The claim for final payment of the residual percentage payment constitutes the claim for services furnished. We believe this revised approach to split percentage payment will alleviate cash flow concerns raised in the public comments. We revised current § 409.43(c) governing physician signature of the plan of care. Specifically, paragraph (c)(1) of this section specifies, ''If the physician signed plan of care is not available, the request for anticipated payment of the initial percentage payment must be based on—

• A physician's verbal order that—

++ Is recorded in the plan of care;

++ Includes a description of the patient's condition and the services to be provided by the home health agency;

++ Includes an attestation (relating to the physician's orders and the date received) signed and dated by the registered nurse or qualified therapist (as defined in 42 CFR 484.4) responsible for furnishing or supervising the ordered service in the plan of care; and

++ Is copied into the plan of care and the plan of care is immediately submitted to the physician; or

• A referral prescribing detailed orders for the services to be rendered that is signed and dated by a physician.''

In paragraph (c)(2) of this section, we specify that ''HCFA has the authority to reduce or disapprove requests for anticipated payments in situations when protecting Medicare program integrity warrants this action. Since the request for anticipated payment is based on verbal orders as specified in paragraphs (c)(1)(i) and/or a prescribing referral as specified in (c)(1)(ii) of this section and is not a Medicare claim for purposes of the Act (although it is a ''claim'' for purposes of Federal, civil, criminal, and administrative law enforcement authorities, including but not limited to the Civil Monetary Penalties Law (as defined in 42 U.S.C. 1320a–7a(i)(2), and the Civil False Claims Act (as defined in 31 U.S.C. 3729(c), and the Criminal False Claims Act (18 U.S.C. 287), the request for anticipated payment will be canceled and recovered unless the claim is submitted within the greater of 60 days from the end of the episode or 60 days from the issuance of the request for anticipated payment.''

Paragraph (c)(3) of this section specifies that ''The plan of care must be signed and dated—

• By a physician as described who meets the certification and recertification requirements of § 424.22 of this chapter and;

• Before the claim for each episode for services is submitted for the final percentage payment.''

Paragraph (c)(4) of this section specifies that ''Any changes in the plan must be signed and dated by a physician.''

We agree with the commenter and believe that our revised approach eliminates the need for an additional notice of admission as originally proposed. We believe that the requests for anticipated payment of the initial percentage payment based on physician verbal orders responds directly to commenters concerns with current requirements governing physician signatures prior to claim submission. Commenters were concerned that the current signature requirements could disrupt necessary cash flow under PPS. We believe the request for anticipated payment for the initial percentage payment alleviates the cash flow concerns. Further, the request for anticipated payment of the initial percentage payment will provide appropriate cash flow to all providers because the requests are not subject to the current payment floor processing restrictions. The revised request for anticipated payment approach to the split percentage payment ensures adequate cash flow to providers who rely on Medicare resources to ensure continued quality care. Both the request for anticipated payment and the claim will be subject to medical review determinations. Subsequent payment withholdings may occur, as applicable. If a provider is targeted for medical review due to a history of excessive claim denials, it may not be able to submit requests for anticipated payment.

Comment: In the proposed rule, we proposed a 50/50 split percentage payment approach to the 60-day episode payment. The majority of commenters recommended a higher initial percentage payment in order to recognize the front loading of administrative costs associated with patient admissions. Many commenters requested increasing the initial percentage payment on at least the first episode due to the up-front costs associated with new patients.

Response: Based on comments that we have received, we believe the public has raised serious issues regarding cash flow under PPS. Therefore, we have re-evaluated our original split percentage proposal and have decided to revise our proposed approach to incorporate a 60/40 split for all initial episodes in order to recognize the up-front costs associated with new admissions. This new split percentage payment approach for all initial episodes is set forth in regulations at § 484.205(b)(1). All subsequent episodes will be paid at the 50/50 percentage payment split. The split percentage payment approach for subsequent episodes is set forth in regulations at § 484.205(b)(2). We believe our revised approach to the split percentage payment will provide appropriate financial relief to HHAs, adequate cash flow, and preserve the integrity of the Medicare trust funds. We believe our revised approach to the split percentage payment to include both the higher up-front percentage for first episodes and the submission of the request for anticipated payment of the initial percentage payment based on verbal orders, alleviates the cash flow issue for non-PIP providers as well as ongoing cash flow issues for PIP

providers. PIP providers will receive their last September PIP payments during October. That continuing payment flow during the transition combined with the ability to submit all requests for anticipated payment of the initial percentage payment based on verbal orders at the onset of PPS will ensure adequate cash flow to PIP providers. The ability to submit all requests for anticipated payment of the initial percentage payment based on physician verbal orders responds directly to commenters concerns with current requirements governing physician signatures prior to submission of the claim. Commenters were concerned that the current signature requirements could disrupt necessary cash flow under PPS. We believe the request for anticipated payment for the initial percentage payment alleviates the cash flow concerns. Further, the request for anticipated payment of the initial percentage payment will provide appropriate cash flow to all providers because the requests are not subject to the current payment floor processing restrictions. We plan to continue to study the up-front rate of utilization under PPS.

G. Statutory Elimination of Periodic Interim Payments (PIP)

Comment: The majority of commenters recommended the reinstatement of PIP or a PIP-like accelerated payment under PPS to ensure adequate cash flow to PIP providers as well as all providers. One commenter specifically suggested accelerated payments for high volume HHAs.

Response: Section 4603(b) of the BBA amended section 1815(e)(2) of the Act to eliminate periodic interim payments. PIP payments are a method to periodically pay in advance before receiving a claim. Accordingly, we proposed to revise § 413.64(h)(1) to eliminate PIP for HHAs for services furnished on or after October 1, 2000. In this final rule, we are also removing paragraph (h)(2)(iv) of this section to comply with the BBA requirement that eliminates PIP for home health services upon implementation of PPS.

Based on comments received, we believe the public has raised critical issues regarding the need to provide adequate cash flow to all providers and specifically to PIP providers during the transition to PPS. However, traditional PIP is related to cost-based payment reconciliations and cannot be readily adopted to PPS rates.

As stated previously, we believe our revised approach to the split percentage billing to include both the higher up-front percentage for first episodes and the submission of the request for anticipated payment of the initial percentage payment based on verbal orders, that are copied into the plan of care with the plan of care being immediately submitted to the physician, eliminates the cash flow issue for non-PIP providers as well as ongoing cash flow issues for PIP providers. With regard to transition payments to PIP providers, they will be receiving their last September PIP payments during October. That continuing payment flow during transition combined with the ability to submit all requests for anticipated payment of the initial split percentage payment at the onset of PPS as of October 1, 2000, will also ensure adequate cash flow to PIP providers. We believe our revised methodology will reduce payment flow issues and meet the needs of all providers equitably.

In addition, accelerated payments, as historically available, may be available to HHAs that are disadvantaged by delayed payments due to unanticipated HCFA claims processing system failures or delays to ensure adequate cash flow. In regulations at § 413.64(g) for cost-reimbursed providers, and in §§ 412.116(f) and 413.350(d) for hospitals and skilled nursing facilities, respectively, that receive payment under a prospective payment system, we have provided for the availability of accelerated payments for non-PIP providers in certain situations. We do not believe that HHAs should be penalized for unanticipated claims processing system delays and are extending the availability of accelerated payments to all HHAs under PPS. Therefore, we are adding a new § 484.245 to provide HHAs the ability to request accelerated payments under home health PPS if the HHA is experiencing financial difficulties due to delays by the intermediary in making payment to the HHA.

H. Low Utilization Payment Adjustment (LUPA) (§ 484.230)

Comment: Commenters on the LUPA centered on such issues as the total elimination of the LUPA, retaining the four or fewer visit threshold at a minimum, the lack of recognition of additional costs associated with the first visit in the episode due to patient admission responsibilities, negative impact on rural and small providers, and the inadequate payment amount proposed for each standardized per-visit amount per-discipline. Many commenters suggested we increase the proposed LUPA amounts to reflect the current per-visit limits by discipline or cost per visit by discipline or by a percentage increase approach. A few commenters suggested the elimination of LUPA for the first episodes, but supported application of the LUPA for subsequent episodes.

Response: We proposed a low utilization payment adjustment in order to moderate provision of minimal or negligible care, that is, to discourage HHAs from providing a minimal number of visits in an episode. We proposed episodes with four or fewer visits be paid the wage adjusted national standardized per-visit amount by discipline for each of the four or fewer visits rendered during the 60-day episode. We solicited comments on the most appropriate threshold and specifically solicited comments on the use of the higher threshold of six or fewer visits. We will retain the original four or fewer visit threshold as no commenters supported moving the threshold to six or fewer visits. In this final rule, we respond to the recommendation to increase the proposed LUPA amount by now calculating the LUPA based on a higher national average per-visit amount by discipline updated by the market basket to FY 2001. This will provide a higher level of payment and fully compensate HHAs for such visits. We are revising our regulations at § 484.230 to reflect the higher per-visit amounts that will be used to calculate the LUPA payments. We are not adopting the comment to increase the payment only for the first visit to account for the front-loading of costs in an episode because we believe the approach set forth in this rule will adequately account for the costs for low utilization episodes. We will continue to monitor the impact of the four or fewer visit threshold and the revised LUPA per-visit amounts on all types of providers under PPS. The revised LUPA methodology and rate tables are found in section IV. of this rule.

Comment: Commenters suggested that we apply LUPA only to acute patients and not to chronic patients who require B–12 injections or catheter changes.

Response: The LUPA payment approach does not distinguish between an acute or chronic home care patient. The goal of the LUPA is to appropriately pay for low utilization episodes. As stated above we have revised § 484.230 to reflect the higher per-visit amounts that will be used to calculate the LUPA payments. We believe the revised approach to calculating the LUPA per-visit amounts by discipline will more adequately reflect average costs associated with low volume episodes.

Comment: A few commenters suggested the removal of wage index adjustment in the LUPA payment

approach. Commenters also suggested that we case-mix adjust the LUPA.

Response: The LUPAs are not case-mix adjusted because they are calculated using national claims data for episodes with four or fewer visits. The claims data is only wage adjusted, not case-mix adjusted. We believe it is important to adjust the labor component of the LUPA based on the most recent pre-floor and pre-reclassified hospital wage index as historically reflected in the labor portion of home health services.

Comment: One commenter requested clarification of whether telephone contact or a telemedicine visit will count as a visit for purposes of the LUPA policy.

Response: The current definition of a Medicare home health visit has not changed with the implementation of home health PPS. The definition of a visit is set forth in § 409.48(c) of the regulations specifies that ''A visit is an episode of personal contact with the beneficiary by staff of the HHA or others under arrangements with the HHA for the purpose of providing a covered service.'' A telephone contact or telemedicine visit does not meet the definition of a visit and therefore would not count toward a LUPA visit.

Comment: A few commenters requested clarification of the type of practitioner that would provide a LUPA visit.

Response: The current personnel qualifications and coverage guidelines governing the provision of covered home health services are not changed by home health PPS. All visits provided under HHA PPS regardless of the provision under an episode rate or LUPA rate must meet current Medicare coverage guidelines.

Comment: A few commenters requested a specific HHRG level for LUPA cases.

Response: We do not believe the case-mix weight methodology as proposed would accommodate an HHRG specific weight for the LUPA. The LUPA is a wage adjusted per-visit payment. Constructing a LUPA specific HHRG would confuse the concept of case-mix adjustment and per-visit payment for LUPAs. However, we will continue to consider this proposal as we further refine PPS in the future.

I. Partial Episode Payment Adjustments (PEP Adjustment)

Comment: Several commenters did not support the use of billable visit dates to calculate the PEP adjustment due to possible gaps in days that may not be recognized in the payment. Many commenters recommended the use of the first billable visit date through the day before the intervening event or discharge date as the span of time used to calculate the proportional payment. Many commenters did not believe the PEP reflected the increased costs associated with admission during the start of the episode. Commenters proposed eliminating the proportional payment aspect of the provision thus yielding a full episode payment for the initial HHA and a full episode payment for the HHA receiving the patient due to the intervening event. Several commenters provided alternative payment approaches to the PEP policy as set forth in the proposed rule.

Response: In the October 28, 1999 proposed rule, we proposed a PEP Adjustment to address the key intervening events of the beneficiary elected transfer to another HHA and the discharge of a beneficiary who returns to the same HHA during the 60-day episode. We proposed to restart the 60-day episode clock due to the two intervening events and end the original episode payment with a proportional payment adjustment. The proportional payment adjustment would be calculated by using the span of billable visit dates prior to the intervening event. We are not adopting the commenters' suggestions to use the day before the intervening event or discharge date to calculate the proportional payment. We are retaining the use of billable service dates to determine the appropriate payments because of the HHAs involvement in decisions influencing the intervening events for a beneficiary elected transfer or the beneficiary is discharged and returns to the same HHA during the same 60-day episode period. Proportional payments based on billable visit dates will continue to be the payment methodology for the initial HHA as a result of the intervening event. We believe the new 60/40 percentage payment split for first episode payments as specified in regulations at § 484.205(b)(1) will alleviate concerns with costs associated with new patients.

Comment: A few commenters requested clarification of the calculation of the therapy hour threshold in the case of the transfer PEP Adjustment.

Response: The therapy threshold will apply separately to the proportional portion of the first episode and the new episode that results from the intervening event. The initial HHA will have the period of time of the first billable service date through the last billable visit date in the original plan of care prior to the intervening event to reach the therapy threshold. The new episode resulting from the intervening event will not incorporate therapy usage from the prior period but will determine the therapy needs for the patient resulting from the new certified plan of care. Each part of the episode, the PEP adjusted portion and the new 60-day episode resulting from the intervening event is subject to separate therapy thresholds. The therapy threshold is not combined or prorated across episodes. Each episode whether full or proportionally adjusted is subject to its own unique therapy threshold for purposes of case-mix adjusting the payment for that individual patient's resource needs. This PEP approach to the therapy threshold applies to both intervening events of the beneficiary elected transfer and the discharge and return to the same HHA during the same 60-day episode period.

Comment: Several commenters suggested the elimination or modification of the proposed policy that prevents the PEP adjustment when a beneficiary elects to transfer to an HHA that is under common ownership with the initial HHA. We proposed that transfers among HHAs under common ownership would be paid as an under arrangement situation. Commenters believed that the proposed common ownership policy should not apply when the transfer was made because the patient moved out of the first HHA's geographic service area defined by the agency's license. Further, commenters were concerned that if the proposed language regarding common ownership was not changed to conform to the rules currently governing related parties, it would be viewed as an attempt by HCFA to pierce the corporate veil and offset the liabilities of one corporation against payments due to another.

Response: In response to these concerns, we are providing further clarification of our definition of common ownership for purposes of the PEP adjustment for beneficiary elected transfers. If an HHA has a significant ownership interest as defined in § 424.22 (Requirement for home health services), then the PEP adjustment would not apply. Those situations would be considered services provided under arrangement on behalf of the originating HHA by the receiving HHA with the ownership interest until the end of the episode. The common ownership exception to the transfer PEP adjustment does not apply if the beneficiary moved out of their MSA or non-MSA during the 60-day episode before the transfer to the receiving HHA. The transferring HHA not only serves as the billing agent, but must also exercise professional responsibility over the

arranged-for services in order for the services provided under arrangements to be paid.

Comment: A few commenters requested that we clarify how we apply our PEP policy when a home health patient elects hospice before the end of the episode. The comments focused on a hospice that is under common ownership with the HHA.

Response: If a patient elects hospice before the end of the episode and the patient did not experience an intervening event of discharge and return to the same HHA, or transfer to another HHA during an open 60-day episode prior to the hospice election, the HHA receives a full episode payment for that patient. Upon hospice election, the beneficiary is no longer eligible for the home health benefit. The common ownership restriction for the PEP adjustment applies only to the relationship between two HHAs providing covered home health services to a home health eligible beneficiary.

Comment: A few commenters requested clarification of whether a PEP adjustment will apply to the initial HHA when a physician or patient-initiated termination of home health services occurs and the treatment goals have not been reached. In addition, commenters further requested clarification of the beneficiary elected transfer PEP policy when the beneficiary transfers because the HHA provided minimal or negligible services.

Response: To account for the situation when a patient initiates the termination of services for any reason and requests a transfer to another HHA, we developed the PEP adjustment to assure that the patient's freedom of choice was honored and that the Medicare Trust funds were protected by a policy that ensures adequate payment levels that reflect the time each HHA served the patient under a transfer situation. Unless the beneficiary refused further care or was a safety risk to the HHA staff, we do not envision a situation in which a physician would terminate care prior to the completion of treatment goals. However, we would focus survey or medical review resources to investigate complaints of minimal or negligible service delivery as a motivating factor for a beneficiary's election to transfer from the original HHA.

Comment: A few commenters suggested that we allow the physician to reinstate the initial plan of care rather than requiring a new plan of care in the situation of discharge and return to the same HHA during the same 60-day episode.

Response: We are not adopting this comment. We believe that a new certified plan of care is a critical feature of any episode payment, regardless of whether prior treatment goals were met and the patient was formally discharged. We do not believe that it is unduly burdensome because the HHA will be receiving access to an entire 60-day episode payment. Further, a patient that returns to the HHA for admission after discharge would require a new OASIS assessment and new plan of care under current practice guidelines.

Comment: Some commenters asked if the PEP adjustment is applied when a patient dies.

Response: A full episode payment will be paid in the event of a patient's death during a 60-day episode. No PEP adjustment will be calculated due to a patient's death during an episode.

Comment: A few commenters argued that the PEP adjustment policy approach does not adequately address ''snow birds'', persons who seasonally migrate from one place to another.

Response: We believe the PEP adjustment will adequately address this situation. As stated previously, if for any reason, a beneficiary elects to transfer to another HHA, the original HHA's episode payment would be proportionately adjusted with a PEP adjustment to reflect the time the HHA served the patient prior to the intervening event of the transfer. This would include the ''snow bird'' situation. We do not believe there is a need for an exception from the transfer policy regarding ''snow birds''. Our PEP adjustment policy governing transfers provides for a clean slate for a 60-day episode payment, OASIS assessment, and certification for the receiving HHA. We believe this is an equitable approach to intervening events during the 60-day episode.

Comment: Commenters argued PEP adjustment governing discharge and return should not apply when there is a readmission for the same diagnosis. Commenters stated that the discharge and return to the same HHA during the 60-day episode PEP adjustment requires the goals in the original plan of care to be met prior to discharge. Commenters requested further clarification of meeting treatment goals in the original plan of care.

Response: We will not provide for payment for two full episodes at any time during a given certified 60-day episode. If an HHA discharges a patient, it is assumed that the patient has met the course of treatment set forth in conjunction with physician orders in the patient's original plan of care. If the patient returns with the same diagnosis, it may not indicate the same plan of care. Even if the HHRG level did not change upon return, the patient's initial discharge indicated completion of the original course of treatment. The original episode payment would be proportionately adjusted to reflect the time prior to discharge with a PEP adjustment.

J. Significant Change in Condition Payment Adjustment (SCIC Adjustment) (§ 484.237)

In the October 28, 1999 proposed rule, we proposed a significant change in condition adjustment to recognize the event of a significant change in patient condition that was not envisioned in the original plan of care. The SCIC adjustment is calculated as a proportional payment reflecting the time both before and after the patient experienced the significant change in condition. Billable visit dates are used to calculate the proportional payments.

Comment: Some commenters did not support the use of billable visit dates due to the potential gaps in payment days used to calculate the SCIC adjustment. Commenters suggested using the dates that the patient received comprehensive case management or all the days in the 60-day episode. Many commenters suggested the restart of the 60-day episode clock due to the patient's significant change in condition, resulting in two full episode payments or a prorated payment plus a full new episode payment. Other commenters suggested that the admission to an inpatient facility should indicate close of a previous episode for outcome data collection, similar to the PEP proportional payment approach. Other SCIC comments centered on prorating payments based on visits or increasing the SCIC proportional payments by an equitable percentage increase to each proportional payment for the original diagnosis.

Response: The use of billable visit dates as the boundaries for the payment adjustment encourages appropriate service use and supports the delivery of all needed care. We further believe that the current SCIC adjustment policy provides financial relief to HHAs who would otherwise be locked into a case-mix adjusted payment based on a point in time of the patient's condition at the beginning of the episode. We will retain the current SCIC adjustment policy and are not adopting the commenters' suggestions. The SCIC adjustment ensures HHAs will have adequate resources to meet the changing patient needs of its mix of patients. The SCIC adjustment provides HHAs with the

ability to meet the changing resource needs of their patients.

Comment: Many commenters requested clarification, and others requested removal, of the policy set forth in the preamble of the proposed rule governing intervening hospital stays during a 60-day episode. In the proposed rule, we stated that if a patient experiences an intervening hospital stay during an existing 60-day episode under an open plan of care, then the patient would not have met all of the treatment goals in the plan of care. Therefore, the intervening hospital admission during an existing 60-day episode could result in a SCIC adjustment, but could not be considered a discharge and return to the same HHA PEP adjustment. Currently, HHAs are provided the option to discharge patients upon transfer to an inpatient facility.

Response: We believe that HHAs should be given the option to discharge the patient within the scope of their own operating policies; however, when an HHA discharges a patient as a result of a hospital admission during the 60-day episode that discharge will not be recognized by Medicare for payment purposes. Either an intervening hospital stay will result in an applicable SCIC adjustment or if the Resumption of Care OASIS assessment upon return to home health does not indicate a change in case-mix level, a full 60-day episode payment will be provided spanning the home health episode start of care date prior to the hospital admission, through and including the days of the hospital admission, and ending with the 59th day from the original start of care date of the episode.

Comment: Commenters requested clarification that the SCIC adjustment will only apply in cases of deterioration, that is, increased payment due to a new HHRG and not improvement resulting in a possible decrease in payment for the second part of the SCIC adjustment.

Response: We designed the SCIC adjustment to permit the HHA to adjust the assessment and the concomitant HHRG assignment when the patient's condition changes in a significant way that was unanticipated in the context of the initial assessment. The SCIC adjustment will occur in both situations of significant patient deterioration and improvement. Excessive use of the SCIC adjustment for patient deterioration will be monitored under PPS to ensure the legitimacy of claims for increased payment.

Comment: A few commenters asked if there is a limit to the number of SCIC adjustments in one 60-day episode.

Response: Although there is the clinical possibility of more than one SCIC adjustment during a given 60-day episode, we believe it will be a rare occurrence. While we will permit more than one SCIC per episode, providers who demonstrate a pattern of multiple SCIC adjustments will likely be subject to review to assure the validity of such situations.

Comment: Several commenters suggested the use of a modified OASIS assessment for purposes of SCIC Adjustments. Commenters requested that we require only those OASIS and other items necessary for case-mix for the determination of a SCIC adjustment.

Response: Totally apart from PPS, the current protocol governing OASIS assessment schedules, requires the complete OASIS assessment at points in time when the patient experiences a significant change in condition. Further, we believe it is necessary to have all OASIS items relevant for outcome measures to monitor the use of SCIC adjustments under PPS. We are not adopting this comment on the approach to SCIC adjustments. The SCIC adjustment provides an additional payment adjustment without which PPS would have locked the HHA and patient in a 60-day episode payment level according to the patient's status at the beginning of the 60-day episode. We do not believe the completion of the full OASIS assessment generates a cost that outweighs the benefit of the SCIC adjustment from a payment and quality of care perspective.

Comment: Commenters had additional questions regarding our policies governing the SCIC adjustment. Specifically, commenters asked if physician verbal orders would suffice to precipitate a SCIC adjustment or would the form 485 have to be completed.

Response: The SCIC adjustment occurs when a beneficiary experiences a significant change in condition during the 60-day episode that was not accounted for in the original plan of care. In order to receive a new case-mix assignment for purposes of the SCIC adjustment payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain necessary change orders reflecting the significant change in treatment approach in the patient's plan of care. While the physician's verbal order and the corresponding OASIS reassessment may precipitate the new case-mix level and corresponding payment grouping the HHRG for the balance of the 60-day episode, the SCIC adjusted episode, like any other episode, requires a signed plan of care prior to submission of the claim for the final percentage payment.

Comment: Commenters requested clarification of whether the LUPA will apply in situations of the SCIC adjustment.

Response: A SCIC adjusted episode payment could be further adjusted to reflect the LUPA, if applicable. However, because a LUPA payment is not case-mix adjusted, the SCIC would have no payment consequence on an episode paid at the LUPA level. This would be a limited, but not inconceivable, occurrence that would likely be targeted by medical review.

K. Case-Mix

Caregiver Variables on OASIS Not Used in Case-Mix System

Comment: In the proposed rule we stated that caregiver variables would be omitted from the case-mix model. Some commenters were concerned that failure to consider caregiver availability may result in inadequate payment. One commenter stated that returning to independence or assuming care on a long-term basis often depends on the patient's support system or lack thereof. Commenters stressed that caregiver availability is a particularly strong factor in rural areas where patients have fewer community supports to make up for the lack of caregiver assistance in the home.

Response: In the proposed rule, we discussed our basis for excluding such variables. We recognize that adjusting payment in response to the presence or absence of a caregiver may be seen as inequitable by patients and their families. To the extent the availability of caregiver services, particularly privately paid services, reflects socioeconomic status differences, reducing payment for patients who have caregiver assistance may be particularly sensitive in view of Medicare's role as an insurance program rather than a social welfare program. Furthermore, adjusting payment for caregiver factors risks introducing new and negative incentives into family and patient behavior. It is questionable whether Medicare should adopt a payment policy that could weaken informal familial supports currently benefiting patients at times when they are most vulnerable.

Notwithstanding these considerations, we examined the usefulness of caregiver factors but found them to be only minimally helpful in explaining or predicting resource use. A variable on the availability of a caregiver had no impact on average resource cost (Abt Associates, Second Interim Report, September 24, 1999), and only a modest impact after controlling for other patient characteristics (Abt Associates, First Interim Report, July 1998 [Revised December 1998]). This could result if patients who are able to remain in the

home without a caregiver are inherently less impaired and more able to provide self-care than other home care patients. (One commenter seemed to confirm this hypothesis in stating that caregiver availability can determine whether a patient can safely live at home.) A strong relationship between caregiver assistance and patient health/functional status could make it difficult analytically to identify a cost impact resulting from the caregiver's lack of availability. As a technical matter, this problem could hinder accurate incorporation of caregiver availability into the case-mix system, were it deemed appropriate.

Results from the Phase II per-episode prospective payment demonstration lend credence to the limited value of caregivers in explaining resource use under a PPS system. Evaluation of the demonstration indicated that reductions in service utilization among PPS patients were the same, regardless of whether the patient had other caregiving (Mathematica Policy Research, Inc., ''Per Episode Prospective Payment for Medicare Home Health Care Sharply Reduces Service Use,'' Draft Report, December 1998). The findings suggest that, despite intentions to rely more heavily on other caregivers as a way of reducing home care costs, PPS agencies did not target their service reductions more heavily on patients with caregivers. The reason for this outcome is unclear. (There was also little or no indication that PPS agencies tried to avoid patients without caregivers.)

Other caregiver variables examined in the case-mix study, measuring frequency of assistance and caregiver health/psychosocial status, also exhibited a relatively modest impact on resource cost. When added to the existing model they added less than one point to the model's explanatory power (R-squared) (Abt Associates, Second Interim Report, September 24, 1999). These findings weaken the assertion that failure to adjust for caregiver factors could render payments inadequate. It should also be noted that, based on preliminary data, these caregiver variables did not have particularly strong item reliability (Abt Associates, Second Interim Report, September 24, 1999, Appendix G). Low reliability means an assessment item is prone to mis-measurement. In measuring case-mix for payment purposes, we wish to avoid, to the extent possible, items with weaker reliability. (We will continue to examine the reliability data as they are finalized.)

In summary, we believe that in light of data that support our policy concerns surrounding caregiver variables, and their insignificant contribution to predicting resource use, these OASIS items are not appropriate for use in the case-mix adjuster.

Comment: Several commenters urged us to continue to study the issue of caregiver impacts, including further study of language used in the caregiver items for the OASIS.

Response: We will continue to examine OASIS caregiver variables and their impact as we analyze national OASIS and claims data to pursue refinements to the case-mix system. However, in the absence of policy consensus that caregiver variables are appropriate to include, it would not be cost-effective to commission further studies of alternative wording of caregiver-related assessment items.

Variables Identifying Preadmission Location in the Services Utilization Dimension

In the proposed rule we set forth a services utilization dimension within the case-mix model. We proposed including variables indicating whether certain inpatient stays occurred in the 14-day period immediately preceding the home health episode. Not only are pre-admission inpatient stays a traditional indication of need in clinical practice, but also such variables were useful correlates of resource cost in our analyses of the case-mix data (Abt Associates, First Interim Report, July 1998 [Revised December 1998], Abt Associates, Second Interim Report, September 24, 1999).

Comment: Several commenters requested clarification about the derivation of the scores and severity grouping in the services utilization dimension.

Response: Our data indicate that an acute care hospital discharge (without follow up post-acute inpatient stay) within the 14 days immediately preceding admission to home care is associated with the lowest costs during the 60-day episode. Other research has shown similar findings. For example, in the home health Phase II per-episode prospective payment demonstration research, multivariate analysis of home care utilization in the year following admission also suggested that pre-home-care hospital stays were associated with reduced home care utilization. In the case-mix data, episodes involving patients with no pre-admission inpatient stay had the second-lowest cost; episodes involving patients who had both a hospital and post-acute-care institutional stay (that is, skilled nursing facility (SNF) or rehabilitation facility) had the third-lowest cost; and episodes involving patients who had only a SNF or rehabilitation facility stay had the highest cost. The highest-cost category (SNF or rehabilitation stay alone, given a 14-day window) may actually be comprised predominantly of relatively long stays. These stays appear to be indicators for patients who, upon their return home, have high care needs during the 60 days following home health admission.

In the case-mix data, if a patient who had a hospital stay in the 14 days preceding admission is evaluated to need significant home therapy, then the resource costs increase sharply. Likewise, therapy utilization markedly increased resource cost for the episodes preceded by the other three pre-admission locations. Because the therapy utilization was to be considered simultaneously with the preadmission location in the services utilization dimension, we examined the resource cost according to eight categories. These eight categories are the four pre-admission locations (hospital stay alone, no inpatient hospital or SNF/rehab stay, a hospital-stay-plus-SNF/rehab-stay, or a SNF/rehab stay alone) with and without therapy utilization of at least eight hours.

The resulting array of average resource cost indicated that among episodes not meeting the therapy threshold, those following a hospital stay, no inpatient hospital or SNF/rehab stay, or a hospital-stay-plus-SNF/rehab-stay all had similar resource costs. We assigned increasing scores—zero to 2—for these groups, in accordance with the trend in the data overall, but ultimately grouped them into a single severity level reflecting their similar resource costs. Episodes not meeting the therapy threshold but with a SNF/rehab stay alone were effectively assigned a score of three (from the combination of scoring for the hospital stay and SNF/rehab response categories) and grouped separately into the second severity level, because their resource cost was significantly higher than patients with a score of zero to 2.

The remaining two severity groups were for episodes that met the therapy threshold. Therapy-threshold patients coming from the first three locations were grouped together into a third severity level because of the similarity in their resource costs. Scoring for these patients again reflected the overall trend by preadmission location (scores of zero, one, and two for hospital stay, no inpatient hospital or SNF/rehab stay, or a hospital-stay-plus-SNF/rehab-stay, respectively) but included an additional four points to reflect the cost impact of the therapy. High-therapy patients from the fourth pre-admission location (SNF/

rehab stay alone) had the highest costs of any group, so we placed them in the fourth and final severity category. Following the existing scoring logic, these episodes had a total score of seven based on three points for the preadmission location and four points for the therapy need.

Comment: Some commenters stated that their own experience did not confirm the relationship between pre-admission institutional stays and resource cost as indicated in our case-mix research data. Specifically, commenters indicated that patients coming from the hospital are often more acutely ill and resource-intensive than other patients, particularly patients who had no preadmission institutional care. For example, these patients typically need more frequent visits and teaching. As a result, according to these comments, the case-mix system fosters a disincentive to admit post-acute-hospital patients.

Response: The conclusion reached by the commenters is incorrect because the severity grouping (though not the scoring) is neutral with regard to pre-admission hospital stays. Patients with such stays, as well as patients without any institutional stays, and patients with hospital-plus-SNF/rehab care, are all grouped together in the same severity category. The patients who were admitted with only a SNF/rehab stay in the previous 14 days are grouped into a separate severity category. Within each of these two severity categories, the patients meeting the therapy threshold are split off into an analogous severity category reserved for therapy patients. It is the severity category that determines the case-mix weight. (In the services utilization dimension, the scoring system is simply a device to organize the assessment data on preadmission location and therapy threshold.)

Comment: Several commenters suggested that the 14-day definition for the preadmission location on OASIS actually encompasses a heterogeneous group of patients, and that comparison of patients admitted to home care within 1 or 2 days of discharge with patients admitted within 5 to 14 days of discharge would reveal a cost difference.

Response: While this distinction or others related to the time since discharge might prove useful, the OASIS assessment does not provide the level of detail necessary to recognize any difference. In analyzing the data available to us, we examined the cost separately for the subset of patients who experienced a SNF/rehab stay as well as an acute care stay (and thus were unlikely to be among the patients admitted to home care within one to two days of discharge). This subset of patients was generally about as costly as the hospital-stay-only patients. This suggests that in the absence of the SNF/rehab stay, the agency would have otherwise incurred higher resource costs by admitting the patient to home care directly from the acute-care-hospital. The timing of the home health admission is to some extent correlated with SNF use, which in turn may be correlated with case severity. Under these conditions, it may be difficult to quantify a suspected relationship between the timing of the admission and resource use. (This is similar to the comment noted earlier concerning caregiver variables; that is, a variable such as caregiver availability or SNF use may tend to offset resource cost for particularly costly patients, making it difficult to observe the relationship between these patients' severity and their presumed costliness.) We will continue to examine this issue in the future using claims and linked OASIS data.

Comment: Another comment stated that paying a higher rate for patients experiencing a pre-episode SNF or rehab stay puts rural agencies at a disadvantage, because many patients elect to return directly home from the hospital due to a shortage of post-acute institutional care facilities.

Response: As stated earlier, three pre-admission location categories are all grouped in the same severity level. The fourth category was grouped separately—patients experiencing only a SNF/rehab stay within the previous 14 days. As we noted in the proposed rule, these patients likely experienced a relatively long SNF stay, which appears to be an indicator for exceptionally high case severity. Whether such cases from rural areas systematically fail to be placed appropriately in post-acute-care institutions deserves further study. Our impact analysis suggests, however, that rural agencies will experience payment increases under PPS (see Table 11). Examination of payment-to-cost ratios in the Abt case-mix data also suggests that rural agencies will experience payments under the PPS system that exceed their historical cost levels (Second Interim Report, September 24, 1999).

Comment: One commenter stated that recent hospitalization affects the plan of care, particularly within the first 30 days. We also received a comment noting the costliness of care for ''chronic, long-term'' patients coming from the community as their pre-admission location, but with high clinical and functional severity.

Response: We emphasize that the resource cost used to develop the case-mix system was measured over the patient's first 60 days under the care of the HHA. Thus, it is entirely possible that patients with contrasting pre-admission locations could have similar total resource costs albeit with different care trajectories. For example, for relatively healthy patients who are bound for recovery from an acute illness, and who may therefore be discharged from home care fairly soon after a short, intensive period of teaching and support, the total 60-day resource cost may be comparable to the cost for certain chronically ill patients who have less-intensive but more sustained needs over the course of the 60-day episode.

Comment: A commenter urged us to revise the services utilization scoring of OASIS item M0170 because a patient coming from the community is similar in resource need to one coming from a rehabilitation hospital or SNF, but they have different scores on the services utilization category.

Response: We have not revised the scoring of M0170 because the combination of scoring for M0170, lines 1, 2, and 3, allows for differentiation between SNF or rehabilitation patients with and without hospital discharge. This distinction is important in case-mix system grouping.

Comment: Commenters also indicated concern about the accuracy of reporting on the OASIS for the preadmission location.

Response: We agree that assessing clinicians may have difficulty in some instances obtaining accurate data on the type of institution and the dates of discharge. The fact that the severity levels in the services utilization dimension are neutral with respect to most pre-admission location scenarios partially mitigates this concern. Assessing clinicians would be well-advised to confirm information with multiple sources (for example, the patient, family, referring physician, local hospital) to ensure its accuracy. The clinician may also ask to see the patient's discharge instructions. Virtually all institutional stays that require ascertainment for case-mix purposes are covered by Medicare. The National Claims History and other data bases eventually record these events, potentially affording Medicare's fiscal intermediaries opportunities for reviewing case-mix accuracy on a post-pay basis. We will instruct the fiscal intermediaries to take into consideration the challenges faced by agencies in accurately reporting the preadmission

location, and formulate review policies accordingly.

Comment: A commenter expressed concern that preadmission location variables are a matter of timing for a service rather than a measure of acuity. The commenter questioned why a SNF discharge 16 days before would differ from one 14 days before home health admission.

Response: The preadmission location item M0170 was originally included in OASIS as one of many variables useful for risk adjusting outcome measures. A recent institutional stay (discharge within two weeks) continues to be a frequent event preceding home care. The two-week definition is unambiguous, and has proven statistical impact in both a case-mix and outcomes research context. Using a longer recall period would present measurement problems and would be less helpful in explaining resource use.

Comment: A commenter stated that the OASIS item on prior location (M0170) creates an artificial distinction between patients who received care in a rehabilitation wing of an acute care hospital and patients who received care in a rehabilitation facility.

Response: OASIS instructions define a rehabilitation facility as a freestanding rehabilitation hospital or a rehabilitation distinct part unit of a general acute care hospital. Therefore, a rehabilitation wing (that is, distinct part unit) is included in the OASIS rehabilitation facility definition.

Comment: A commenter stated that the language regarding nursing facilities was inconsistent between Table 7 in the proposed rule and OASIS. A related comment suggested that we clarify the response categories in OASIS item number MO170 to distinguish between stays in skilled nursing facilities and extended care facilities.

Response: We are revising the OASIS MO170 response categories to allow separate reporting of skilled nursing facility discharges within the previous 14 days. This change will resolve the inconsistency.

Comment: A commenter requested clarification of Case 1 in the proposed rule (page 58179) and asked whether the case information or Table 7 is correct.

Response: We apologize for this error in the case description. The Service Dimension should have read ''Service Domain=4 (therapy more than 8 hours).''

Comment: A commenter stated that there should be much less emphasis on where the patient is located and more on the patient's clinical needs.

Response: We included preadmission location information in the services utilization dimension because it has traditionally been associated with variation in home care services utilization, and in our case-mix research it helped to explain variation in home care resource use. We do not believe the case-mix system places excessive emphasis on this type of predictor variable. Clinical needs are addressed in the clinical dimension.

Variables Measuring Therapy Utilization in the Services Utilization Dimension

To ensure that patients who require therapy would maintain their access to appropriate services under the HHA prospective payment system, in the proposed rule we grouped patients according to their therapy utilization status. Specifically, we defined a therapy threshold of at least eight hours of combined physical, speech, or occupational therapy over the 60-day episode, to identify high therapy cases. We proposed a threshold of eight hours of therapy based on clinical judgment about the level of therapy that reflects a clear need for rehabilitation services and that would reasonably be expected to result in meaningful treatment over the course of 60 days. Subsequently, further development and refinement of the Abt case-mix model assumed this threshold as part of the grouper logic.

The 15-minute-increment billing requirement in principle allows the RHHI payment system to verify the case-mix therapy threshold. However, there is uncertainty about the completeness and accuracy of the 15-minute reporting. This led us to propose that, pending resolution of this issue, the therapy threshold be expressed in a defined number of visits. Returning to the resource use data of the Abt study, we determined that on average a therapy visit lasted approximately 48 minutes. This implies that on average eight hours of therapy would be exhausted in 10 visits.

Comment: Several commenters urged us to change the conversion to eight visits to be consistent with current cost reporting and salary equivalency practice equating one visit to one hour. Commenters suggested that, without such a change, the proposal effectively reduces therapy payments. Some commenters argued that a conversion to eight visits (or fewer—other commenters proposed six visits and four visits) would compensate for excluding time spent on a case outside of the home from the calculation of resource cost in the Abt study. In addition, commenters pointed out that some patients will achieve eight or more hours in fewer than 10 visits, so HCFA should recognize that the therapy threshold has been met as soon as the eight hours are achieved.

Response: We see no reason to associate the cost reporting and salary equivalency practices with the independent, congressionally mandated 15-minute-increment reporting requirement. The origin of this requirement was Congress's intent that adequate data be available to both develop and refine the HHA prospective payment system. We see these data potentially as key resources for improving the case-mix system in the future. Upon linking the claims with the OASIS assessments, a data resource comparable to the Abt case-mix study data will be available for research purposes. This resource promises to improve upon the Abt data by virtue of the large sample sizes it would provide. Many suggestions from commenters for improvements that need study can be pursued once these data are assembled. We believe there are advantages to the continued gathering of 15-minute billing information. We urge home health agencies to continue their diligent collection of these data so that eventually the therapy threshold can be used as originally defined—in terms of time spent in the home, not visits.

The PPS pricer developed for the first year of PPS will determine the case-mix adjustment based on the 10-visit threshold without consideration of the 15-minute-increment billing data on the claim. Upon analysis of national claims data under PPS, we will determine whether the pricer should be changed to take into account information from the 15-minute-increment reporting. We are concerned that counting visits rather than hours to satisfy the therapy threshold in the case-mix groupings could become a source of potential abuse. Therefore, if we identify providers whose therapy visits are systematically and significantly shorter than the 48-minute standard, yet meet the 10-visit threshold, we will examine such cases and reduce the case-mix assignment if evidence documents that therapy hours were well below the 8-hour threshold.

The commenters' suggestion that we compensate for excluded time spent outside the home by adopting a lower therapy threshold does not resolve a significant issue that requires further study. The commenters' proposal can result in diminished payment accuracy, because the relative weights are based on groups defined from the 8-hour threshold. If, over time, the composition of the therapy groups shifts to lower-cost patients, the relative weights would need to be adjusted accordingly.

If we adopted a lower therapy threshold or a graduated threshold, as some commenters suggested, we believe the result would be an increase in the incentive to maximize payment by manipulating the delivery of therapy. Comments proposing that Medicare prorate the therapy factor in transfer or in cases where the therapy utilization is spread over more than one episode, present problems for this reason as well. The comment suggesting that the therapy factor be prorated when utilization is spread over more than one episode appears to reflect a misunderstanding of our intent to have the therapy threshold, as applied within the 60-day episode, target patients with significant therapy needs. The rationale for recognizing a therapy utilization factor is to ensure that agencies will be adequately compensated for delivering this high-cost service, thus preserving access for patients with therapy needs. It is the same rationale that underlies case-mix adjustment itself. Payment weights for groups containing patients whose therapy utilization is spread over multiple episodes reflect the reduced resource costs of these patients per each 60-day episode. As discussed previously, in a PEP situation (for example, a transfer), the therapy threshold is separately measured for the proportional episode and the new episode resulting from the beneficiary elected transfer. In the SCIC situation, the therapy threshold applies to the total therapy visits provided to the beneficiary during the episode both before and after the significant change in condition occurred.

Further suggestions that skilled nursing time as well as aide time be measured and treated the same as therapy hours would also seem to reinforce these undesirable incentives, as skilled nursing visits make up the single largest discipline category in home health care, and aide visits the second largest, with both far outweighing therapy visits.

Comment: Several commenters questioned the decision to use a therapy threshold in the case-mix adjustment system.

Response: We recognize that, as we indicated in the proposed rule, using a utilization variable such as the therapy measure is susceptible to manipulation. However, currently our best available data requires us to rely in part on the therapy measure. Without it, we cannot achieve the preferred level of payment accuracy, notwithstanding its potential susceptibility to manipulation. We note that the case-mix system for home health is similar to the other major Medicare case-mix systems, in that these others also use measures of treatment planned or received. We will continue to review the use of a utilization variable in this system over the long term.

Comment: We received several suggestions from commenters that amounted to changing the group assignment for certain types of patients so that the payment weights for these patients would be comparable to or even higher than the existing therapy-group weights. For example, one suggestion was to award points to the services utilization dimension when the patient is assessed at the highest level of the clinical and functional dimensions. Another suggestion was to add points to the services utilization dimension when the patient is a user of multiple therapies, perhaps by defining a fifth severity level within the services utilization dimension.

Response: We appreciate these comments as they will aid us as we further refine the case-mix model. At this time, however, it is not clear that such changes would provide a satisfactory remedy for the problems the commenters have raised. In deciding on the basic structural characteristics of the case-mix system, we had to balance clinical acceptability, complexity, and technical issues, such as the feasibility of estimating payment weights from varying group sample sizes. Thus, suggestions that imply a larger number of groups must be evaluated in terms of their potential to impact the accuracy of the payment weights, the system's clinical logic add to, not lessen, the complexity of administering the system. Any grouping changes potentially affect the entire array of payment weights because they are relative values.

Comment: One commenter stated that it will be very difficult for agencies to comply with the requirement to project the number of therapy hours at the start of care, because physicians' orders in the plan of care do not typically indicate the number of anticipated therapy hours or visits.

Response: The Home Health Certification and Plan of Care (HCFA 485) requires the physician orders to specify the amount, frequency, and duration for disciplines and treatments. We expect agencies to make the projection from these orders.

Comment: A commenter sought confirmation that the reconciliation of projected therapy use with actual therapy services furnished during the 60-day episode has the potential to either decrease or increase final payment.

Response: The commenter is correct. The final payment may increase or decrease in response to a difference between the therapy projected at the start of care and the therapy received by the patient by the end of the 60-day episode.

Comment: A commenter stated that the Phase II per-episode prospective payment demonstration research indicated barriers to occupational therapy (OT) services under PPS. The commenter recommended that we consider a more interdisciplinary approach to OASIS so occupational therapy would not be underutilized.

Response: The therapy threshold in the case-mix adjuster is based on all three therapy disciplines combined. The design of the demonstration did not include a case-mix adjuster with a therapy threshold of any sort. It does not necessarily follow that the national PPS would introduce a barrier to OT services.

Comment: A commenter recommended that therapists should assess the patient's functional status to minimize errors in measurement. In addition, the commenter believes monitoring will be needed to prevent payment incentives from distorting functional assessment measurements.

Response: We expect that agencies will measure functional status as accurately as possible, consistent with incentives for efficiency in the prospective payment system. We have no authority to mandate functional status assessment by a particular discipline. We agree that medical review activities should include review of functional assessment results.

Comment: A commenter stated that, as a result of the therapy threshold, the case-mix system will divert utilization of the home health benefit away from the frail elderly and in favor of the short-term patient.

Response: It is not our intention to change access under the home health benefit through a case-mix adjusted prospective payment system. Moreover, the payment for continuous 60-day episodes of care under PPS will be more conducive to the care of longer stay patients than the current interim payment system. We expect that evaluations of the system's impact will study the question raised by this commenter.

Comment: A commenter recommended standardizing therapy visits in hours or 15-minute increments to meet the current statutory requirements of section 4603 of the BBA that specify that home health visits are reported in 15-minute increments.

Response: We have not accepted this recommendation. We believe this would

restrict agencies' ability to manage care efficiently.

Comment: One commenter was concerned about the high relative payment weight associated with therapy-threshold case-mix groups, and because of this concern, questioned whether the Abt Associates sample was representative of agencies in the industry offering therapy programs.

Response: The Abt Associates sample used to develop the case-mix groups was selected to be representative of national service delivery patterns. The 90 participating agencies were selected from all four census regions of the country, from among different ownership categories (freestanding for-profit, freestanding voluntary/private nonprofit; hospital-based; and government), from both urban and rural areas, and from among agencies with high, medium, or low practice patterns (as measured by the number of visits per-episode in 1995). As we note elsewhere in this rule, in our subsequent analysis of OASIS data and utilization data for the nation as a whole, we have found that these agencies on average appear to resemble the nation closely. We have no reason to believe that their therapy service delivery is unusual and would result in an inaccurate relative weight for therapy-threshold cases.

Wound Care Patients

Comment: Many commenters argued that services for many wound patients would be inadequately reimbursed under the proposed case-mix system. One often cited reason was the high cost of wound supplies for some patients. Some commenters recommended that wound supplies costs should be directly reimbursed, rather than being bundled into the episode payment.

Response: We have not adopted this recommendation. We have no statutory authority to unbundle the wound supplies costs. All supplies costs are now in the base costs used in determining the payment amount. As we note in our response to comments on omission of time spent outside the home from the calculation of resource costs, the current system of relative weights assumes that the omitted costs are directly proportional to time spent in the home. We will consider methods for testing this assumption, including the impact on wound care reimbursement. Case-mix model revisions, adopted in response to comments concerning wound care patients, have resulted in increased payments for wound care patients. These are described below and in the section on changes to the case-mix model.

Comment: Several commenters noted that the clinical dimension does not address wounds from trauma.

Response: In response to this comment, we have added a variable to identify trauma and burn patients who have wounds. This variable is now included in the clinical dimension. If a patient has a primary diagnosis of trauma or burns and OASIS item M0440 indicates that there is a wound, the clinical score is increased by 21 points.

Comment: A commenter recommended that the scoring for pressure ulcers in the clinical dimension should take into account their number, size, condition, or complexity.

Response: The clinical dimension in the proposed rule took into account the stage of the most problematic observable pressure ulcer, if any. OASIS does not record the size of pressure ulcers. The assessment covers the number of pressure ulcers at each stage. The status of the most problematic observable pressure ulcer is also reported. These stage and status measures are intended to measure the condition and complexity of the pressure ulcers.

In accordance with the comments on pressure ulcers, we re-examined the impact of the pressure ulcer stage and status variables, and the number of pressure ulcers by stage, in the Abt data. We analyzed a newly available larger learning sample of 11,503 episodes. As a result of these analyses, we identified a statistically significant score to add to the clinical dimension score if the number of pressure ulcers at stage three or four is two or more. This variable is now included in addition to the original variable measuring the stage of the most problematic pressure ulcer. It adds 17 points to the clinical score. As in our earlier investigations, the status of the most problematic observable pressure ulcer did not contribute significantly to the model after the other variables were included. As we continue to study revisions to OASIS, we will consider including additional data on such factors as the size of pressure ulcers.

Comment: Several commenters indicated that wound variables should be more detailed to provide better reimbursement for wound patients who score low on the clinical dimension but nevertheless incur high costs. For example, a commenter stated that if a stasis ulcer status is early/partial granulation, no points are given, but this does not make sense if the goal is to heal the wound. Another commenter recommended that early/partially granulating stasis ulcers should be given 24 points to make the case-mix system's treatment of stasis ulcers consistent with its treatment of surgical wounds.

Response: In addition to analyses on pressure ulcers (described above), we re-examined the definition of the case-mix variables for the status of stasis ulcers and surgical wounds. We used the newly available larger learning sample of 11,503 episodes. As a result, we have identified separate score values to add to the clinical dimension for early/partial granulation. These scores are 14 and 7 for the early/partially granulating most problematic stasis ulcer and early/partially granulating most problematic surgical wound, respectively. Revised scores for the most problematic nonhealing stasis ulcer and most problematic nonhealing surgical wound are 22 and 15, respectively.

In further attempts to more accurately measure the severity of wound patients, we investigated interactions between wound severity and several comorbidities (for example, diabetes) and immobility, but statistical results generally did not support including such interactions as additional score-bearing variables. In future work refining the case-mix model, we plan to use national claims and OASIS data to continue investigating comorbidities. Agencies could assist such efforts by reporting diagnosis codes on OASIS at the complete four-digit or five-digit level, as recommended by the official coding guidelines.

Comment: One commenter reasoned that costly wound patients, especially severe pressure ulcer patients, often may receive additional points in the clinical dimension for other problems (for example, diabetes or vision problems), but there is no recognition in the case-mix system for a sum of clinical points exceeding 27. In a similar vein, another commenter recommended creating a fifth severity level in the clinical dimension to increase payments for severe wound patients.

Response: In addition to refining measures for pressure ulcers, stasis ulcers, and surgical wounds, in a further effort to improve payment accuracy for wound patients, we have revised the case-mix system by re-defining the clinical severity score intervals. The revised score intervals are as follows: minimal severity: 0–7; low severity: 8–19; moderate severity: 20–40; high severity: 41+. The relative frequencies in the Abt sample for the revised clinical severity levels are 30 percent, 36 percent, 28 percent, and 6 percent, for minimal, low, moderate, and high clinical severity, respectively. (In the proposed rule, the corresponding percentages were 30 percent, 30 percent, 23 percent, 17 percent) This change has

generally resulted in higher case-mix relative weights for the case-mix groups involving moderate and high clinical severity. It has also resulted in a wider range of weights for therapy-threshold case-mix groups and non-therapy-threshold case-mix groups. We have not added a fifth level of clinical severity. Given the array of the clinical scores in the sample, the amount of sample data available, and our objective of administrative feasibility, at this time we believe that four clinical severity levels is an appropriate structure for the case-mix model.

Comment: In commenting on the status of wound care patients under the case-mix system, several commenters specifically stated that services for daily care wound patients would be inadequately reimbursed under the proposed rule. Some commenters recommended that we add a variable to the services utilization dimension that recognizes skilled nursing hours, analogous to our use of therapy hours in the services utilization score. They suggested that this would be a way to remedy inadequate payment for daily wound care patients while recognizing the skilled wound treatments that contribute to their higher costs.

Response: The wound care patient must be deemed eligible for the Medicare Home Health Benefit which dictates that the skilled nursing care be provided on an ''intermittent'' basis, as required by sections 1814(a)(2)(C) and 1835(a)(2)(A). The ''intermittent'' skilled care provided must be either provided or needed on fewer than 7 days each week or less than 8 hours of each day for periods of 21 days or less (with extensions in exceptional circumstances when the need for additional care is finite and predictable). The need for skilled nursing care for a wound care patient on a continuing basis is contingent upon evidence documented in the patient's record that the wound is improving in response to the wound care provided. It is neither reasonable nor medically necessary to continue a given type of wound care if evidence of wound improvement cannot be shown.

For the following reasons, we are not accepting the recommendation that skilled nursing hours be treated comparably with therapy hours in order to address the needs of costly wound care patients. First, as described previously concerning changes to the case-mix system, we have made additions and modifications to the clinical dimension in an attempt to better capture variations in clinical severity associated with wound care patients. Second, we are concerned that adopting an additional utilization-based measure strongly compromises the intention of home health payment reform to move away from a cost-based system. Finally, we are also concerned that in some instances extended wound care episodes may reflect inattention to the statutory eligibility requirement regarding ''finite and predictable'' need, and to our policy that continuing wound care must be efficacious. We will, however, continue reviewing the OASIS wound measures and the case-mix system's ability to adequately reflect the needs of wound care patients.

Daily Insulin Injection Patients

Comment: Many commenters identified diabetic patients requiring daily insulin injection as a group similar to daily wound care patients in terms of their extraordinary costs. They maintained that such patients might experience access barriers because the case-mix system does not account for their extraordinary care needs. They further indicated that the proposed outlier payment methodology would not necessarily result in payments adequate to compensate agencies for the cost of these patients.

Response: The OASIS does not provide information allowing accurate identification of these diabetic patients. Daily insulin patients appear to be a heterogeneous group, some of whom can be taught self-injection. There are no variables on the OASIS assessment that clearly distinguish such patients from others unable or unwilling to self-inject. As the outlier payment is intended to compensate for difficulties in case-mix measures, we have determined that daily insulin injection patients are likely candidates for outlier payments. We assume that daily injection visits tend to be low-cost visits, so it is likely that outlier payments will be adequate for many daily insulin patients.

Diagnoses Included and Excluded From the Clinical Dimension

Comment: The case-mix system discussed in the proposed rule recognized three diagnostic categories in the clinical dimension. These were certain orthopedic and neurological diagnoses, and diabetes. Diagnoses in these groups are assigned a score to help determine the patient's clinical dimension total score when the diagnoses appear in the OASIS primary home care diagnosis field (M0230A). A commenter suggested that we classify all diagnoses. Other commenters stated that the three categories proposed do not include all high-acuity diagnoses.

Response: From our work with the Abt Associates sample, we concluded that a complete classification of all diagnoses would not necessarily make the case-mix system appreciably more accurate, but it would make the grouping system more complex. In developing the clinical dimension, we studied the effect of placing every patient in one of several defined groups of diagnoses (such as orthopedic, cardiovascular/pulmonary, psychiatric). We investigated how this classification contributed to explaining resource use in home care. The three groups in the proposed rule stood out as accounting for significantly higher costs on average than other groups we defined. Adding the other groups to the model did not appreciably raise the explanatory power of the case-mix adjuster. Consequently, we believe that restricting recognition in the clinical dimension to the orthopedic, neurological, and diabetes groups balances our payment policy objectives of payment accuracy and administrative feasibility. We have not added any diagnoses to these three groups published in the proposed rule. However, we have added a variable to identify certain wound patients. This variable uses selected diagnoses codes from the primary diagnosis (OASIS item M0230, line a). We added this new variable to respond to comments we received about wound patients.

We are continuing to study a variation of the case-mix system that recognizes more diagnostic groups, but it would be a more complicated system with a substantially larger number of groups. We would require any such system to explain significantly more variation in resource cost than does the current model, in order to justify the added administrative complexity.

Currently, the OASIS instructions do not require complete four-digit and five-digit coding of the primary and secondary home care diagnoses. Three-digit coding of the category code is allowed, although agencies may voluntarily report complete four and five-digit coding. In the interests of future case-mix refinement, we will consider requiring that all agencies report the complete code. Such a requirement would conform OASIS with existing coding guidelines in the Medicare program and nationally.

Comment: One commenter pointed out that we did not list all diagnoses in the three groups in the clinical dimension, and requested confirmation that this was an error.

Response: The list of code categories presented in the proposed rule was complete. We omitted certain code categories based on clinical judgment and knowledge of coding practices in the community. We believe that

including these codes would reduce the explanatory power of the model, because they are likely to consist of heterogeneous or low-cost cases. When we examined the resource cost of orthopedic diagnoses omitted from the orthopedic group, we found indications that confirmed our decision.

Comment: Several commenters indicated that they believed the list should not exclude common diagnoses.

Response: Some of the diagnoses cited by commenters are frequently encountered in home care. It was not our objective to identify common diagnoses, but to pinpoint conditions that were associated with variations in resource cost. Some common diagnoses are associated with widely varying needs for home care services, which would tend to make them poor predictors statistically.

Comment: Some commenters suggested that the case-mix system recognize certain diagnoses in addition to those listed. Several commenters mentioned cardiac, respiratory, cardiopulmonary, and ''other circulatory'' diagnoses.

Response: As noted previously, cardiac, vascular, and respiratory diagnoses were a category studied during development of the clinical dimension, but the category did not demonstrate a contribution to the model sufficient to justify its inclusion, after we accounted for existing elements such as dyspnea and wound problems. We will continue to study this group of diagnoses.

Comment: We received various comments suggesting that we should have included psychiatric, mental health, or behavioral diagnoses. A commenter stated that three points for mental health conditions is inadequate, citing the additional credentials Medicare requires for psychiatric nurses as a reason for higher costs of psychiatric patients. Another commenter noted that depression, common among many elderly patients with health problems, negatively affects response to treatment. One commenter suggested the addition of ''780 (alteration of consciousness)'', in order to ensure access for psychiatric patients.

Response: In the clinical dimension, we included MO610 on behavioral problems to capture both cognitive and behavioral factors affecting resource cost. If the assessing clinician checks one or more of the response categories, three points are added to the clinical dimension. During case-mix system development, we examined diagnoses and various OASIS assessment items relating to mental health, sensory, and cognitive status. Specific to mental health, we looked at the relationship between home health resource use and mental health diagnoses (psychoses, drug psychoses, and neurotic disorders). We found that this group of conditions did not greatly contribute to explaining variation in resource use in home care after including functional, clinical, and service factors in the case-mix model.

However, we do *not* interpret our statistical results as necessarily indicating that mental health issues are unimportant in home care. One reason our statistical findings do not support including further information specific to mental health status is that the remaining functional and service factors in the case-mix system already capture the costliness of these patients. Thus, the impact of behavioral health issues is being recognized in factors other than diagnosis-specific elements. Other possible reasons for our statistical findings may stem from the extreme impairment of many psychiatric patients, which can lead to periods of institutional care and extensive informal support in the home. Such factors may tend to reduce the measured resource cost.

In future review of the case-mix system, we will continue to study case-mix measures for mental health patients.

Comment: A few commenters suggested that we include cancer diagnoses in the list of diagnoses for clinical dimension scoring.

Response: Several cancer diagnosis code categories appear in the orthopedic and neurological lists used in the case-mix model. We found no evidence during case-mix development activities that cancer diagnoses should be a separate group in the clinical dimension. We believe that part of the reason is that care needs for certain cancer patients (for example, functional assistance, wound care, pain management) are already accounted for in the case-mix model. Therefore, we have not added any more cancer diagnoses to the final regulation.

Comment: A commenter suggested that we include terminal cancer patients as a diagnosis group. Another commenter stated that end-stage cardiac/respiratory disease cases should be included.

Response: We have not added terminal cancer patients or end-stage cardiac/respiratory cases as a special diagnostic category. There are no OASIS items directly identifying these cases. In developing the case-mix model, we considered including OASIS items assessing overall prognosis and life expectancy, which potentially have a use in identifying terminal cancer patients. However, we concluded that these items are inappropriate elements for payment policy because of their inherent subjectivity and vulnerability to gaming. Moreover, statistical analyses have suggested the life expectancy item has poor scientific reliability.

Comment: A commenter suggested that we add category code 438, ''late effects of cerebrovascular disease'', to the list of neurological diagnostic categories because it is extremely common in home care and is the correct code assignment following hospitalization for an acute cerebrovascular accident (codes 434 and 436). The commenter added that we should delete codes 434 and 436 because coding guidelines reserve them for hospital coding.

Response: We have not adopted this suggestion. Codes 434 and 436 are being used in home care, notwithstanding the coding guidelines. In the Abt case-mix data, episodes coded with 436 are about nine times as common as episodes coded with 438. Code 434 is also used, but appears only about one-third as often as 438. The definition of 438 encompasses sequelae whose lags may be of any length. For this reason, we believe that including 438 presents significant risks of inappropriate payment. We will continue to examine the applicability of code 438 in future work.

Comment: A few commenters suggested that we include joint replacement diagnoses in the orthopedic diagnosis group.

Response: Joint replacement diagnoses are V-codes, which are not used on the OASIS assessment. Therefore, we did not study or specify including such codes in the case-mix system. However, care needs of many joint replacement patients are addressed in the therapy-threshold variable of the services utilization dimension and in the functional dimension. In setting the therapy threshold, based primarily on clinical judgment, we had in mind the treatment needs of the many joint replacement patients covered by the Medicare home health benefit.

Comment: Several commenters requested clarification about the omission of certain orthopedic diagnosis codes from the orthopedic group. These comprised 715 (osteoarthrosis and allied disorders), 719 (other and unspecified disorders of joint), 726 (peripheral enthesopathies and allied syndromes), 727 (other disorders of synovium, tendon and bursa), and 729 (other disorders of soft tissues).

Response: The exclusion of these diagnoses was intentional, based on clinical judgment that they are often

reflective of low case severity, and therefore unsuitable for the purposes of the groups defined in the proposed rule. Statistical information supports this judgment. In the Abt data, the average resource cost of the omitted diagnoses was 85 percent of the average resource cost of the included diagnoses, an indication that the excluded codes' cost impact is significantly lower. We also found statistical evidence that including these code categories in the current orthopedic diagnosis group does not improve, and may slightly reduce, the predictive value of the diagnosis groups included in the clinical dimension.

Comment: A commenter recommended that we add category code 733, ''other disorders of bone and cartilage'', to the orthopedic group because this category includes pathological fractures. The commenter added that requiring greater specificity in code assignment, beyond the three-digit category code, would allow inclusion of the pathological fracture codes without inclusion of other diagnoses in category 733.

Response: We disagree. We did not add 733 because the range of severity in this category may be very wide. For example, this code category includes osteoporosis, a very common condition in the elderly population. On the other hand, 733 also contains aseptic necrosis of bones, and aseptic necrosis of the femoral head is an indication for hip joint replacement. Without more information about the specific frequency of diagnoses, we expect that the osteoporosis cases would be much more common. We believe that adding this category code to the orthopedic group increases the risks of inappropriate payment. We will continue to study the excluded diagnosis codes. We agree that greater specificity in coding could solve this problem. Agencies can assist our efforts to develop information about the usefulness of specific codes in case-mix models by reporting diagnoses at the complete four-digit and five-digit code level.

Comment: One commenter suggested that we add diagnosis code category 707 (chronic ulcers) to the orthopedic category because these patients may present high costs for such services as debridement and dressing changes.

Response: The orthopedic group is not an appropriate placement for this code. However, as noted elsewhere in this rule, we have added assessment items to the clinical dimension in an attempt to strengthen the case-mix measurement for wound patients.

Comment: A commenter stated that we should include the diagnosis severity index on OASIS in the clinical dimension scoring.

Response: We did not include this assessment item because we believe its inherent subjectivity and vulnerability to gaming make it unsuitable for use in the case-mix model. Preliminary statistical analysis suggests the scientific reliability of the index is low for orthopedic and neurological diagnoses.

Comment: One commenter stated that the categories included in the diagnosis groups were unrealistic and unrelated to the need for home care services in an elderly population.

Response: Our statistical information indicates otherwise. The statistical results are shown in Abt Associates, Second Interim Report, September 24, 1999, Appendix H. They indicate that the incremental cost associated with each of the diagnosis groups is large and highly statistically significant.

Comment: We received various general and specific comments suggesting the use of secondary or multiple diagnoses in the clinical dimension. Some commenters stated that comorbidities are important in determining patient needs, and therefore they should be recognized in the case-mix system. A commenter suggested that, to improve the accuracy of the clinical dimension score, patients with multiple diagnoses from the existing groups should be credited with additional points in their clinical dimension measurement. One commenter suggested considering the first three diagnoses in order of importance. A couple of commenters mentioned diabetes as a secondary diagnosis that may appear in conjunction with wound care as a primary diagnosis, a situation that, if accounted for in scoring, might improve payment accuracy.

Response: Although we agree that multiple diagnoses and comorbidities warrant consideration, we have not used any of these suggestions because data and time constraints do not allow adequate evaluation of their contribution and impact on resource cost. To conduct an orderly exploration of the impact on case-mix measurement, and to assign a valid score in such cases, would require more observations than the Abt data set contains. We did test the impact of diabetes on severe wound patients, but the results suggested that some of the most severe wound patients would be paid inappropriately if the clinical score was increased. Further analysis of these suggestions to fully understand the implications can be undertaken with appropriate resources. We intend to use national claims data linked to OASIS to investigate multiple diagnoses/comorbidity issues in future case-mix analyses. We believe that such an effort would be significantly aided by complete four-digit and five-digit diagnosis coding on the OASIS record.

Comment: Commenters suggested that we credit the points published in the proposed rule for the neurological, orthopedic, or diabetes groups to the patient's clinical dimension score whether the diagnosis is primary or secondary.

Response: We believe such suggestions should be tested empirically to derive an appropriate score as there is more than one way to implement this suggestion. These are subjects for study when larger data resources become available.

Comment: Two commenters stated that the adjuster's use of a limited number of diagnosis groups will lead to more coding of the specified diagnoses as the primary diagnosis, distorting national data that would be used to make refinements of the system.

Response: We believe such practices would be counterproductive. Payment-motivated coding can eventually lower the predictive ability of a case-mix measure, and result in less differentiation among case-mix groups. We will continue to examine the accuracy of the case-mix model and the reliability of the data used for determining payments. If necessary, we would adjust the case-mix weights in response to those studies. As stated in the proposed rule, we intend to revise the case-mix weights over time to adjust for changes in patient population, actual changes in home health care practice patterns, and changes in the coding or classification of patients that do not reflect real changes in case-mix.

Comment: A commenter expressed concern that the quality of the diagnosis codes reported for home care are of such poor quality that they would be of no value in the development of the prospective payment system.

Response: We recognize the commenter's position, but we believe diagnoses are still useful in developing a case-mix model. The three diagnosis code categories in the model are the strongest contributors of all the diagnosis groups we defined in conducting our analyses on the Abt sample. We will continue to study the usefulness of diagnoses, and believe that agencies can assist our efforts by reporting diagnoses at the complete four-digit and five-digit code level.

Comment: One commenter urged us to clearly define ''primary home care diagnosis'' to prevent inappropriate upcoding.

Response: The OASIS implementation manual suggests strategies for the assessor to use in identifying the diagnoses for the diagnosis reporting items (M0230 and M0240). There is no specific guidance on differentiating the primary from secondary diagnoses. However, a definition for the primary diagnosis on the physician certification and plan of care (HCFA form 485) is discussed in the Medicare Home Health Agency Manual. We believe agencies are very familiar with the instructions in the Manual. The diagnosis guidance in the Manual is consistent with the language used in the OASIS instructions. (One difference, however, is that the Manual allows V-codes and the OASIS does not.) Nonetheless, we agree that it might be desirable to expand the instructions on the OASIS in the future. We will consider this in modifications to the OASIS form.

Comment: One commenter stated that the OASIS diagnosis reporting requirement that allows only three-digit ICD–9–CM category codes to be reported has a severe adverse impact on clinical severity data and, thus, adversely impacts the design of the home health classification system. The commenter noted that this practice violates official coding guidelines.

Response: We agree that a lack of specificity in code assignment somewhat diminishes accurate case-mix development and ascertainment. To help rectify the situation, we urge agencies to voluntarily code to the complete four-digit or five-digit code level.

Comment: A commenter expressed concern that the OASIS reporting requirements do not allow V-codes, in contrast to official coding guidelines approved by HCFA which accept V-codes as potentially the most appropriate codes in some circumstances in the home health setting. The commenter cited the distinction between acute fracture codes in the hospital setting and aftercare codes in the home health setting. According to the commenter, this conflict with the official coding guidelines threatens the consistency and uniformity of national health care data, resulting in data that are of poor quality and little value.

Response: The OASIS instructions state that instead of V-codes the agency should list the relevant diagnosis. This requirement was installed to serve the needs of OASIS as it was originally designed—as a quality assurance tool. We have adopted OASIS as a valuable quality assurance tool. Therefore, any changes in coding policy on OASIS would have to balance the quality assurance objectives with the consistency and uniformity objectives articulated by the commenter. At this time we do not believe that adopting V-codes is consistent with the needs of either OASIS or the case-mix system. Regarding case-mix, one of our objectives is to classify patients with minimal reliance on treatments planned or received. Given that objective, there is little clear benefit from adopting the applicable V-codes intended to indicate aftercare services.

Comment: A commenter stated that certain category codes in the three diagnosis groups to be identified from the OASIS primary diagnosis field (M0230) should never be reported as primary diagnoses, according to ICD–9–CM coding rules and official coding guidelines. These diagnoses must be used with a higher-coded diagnosis that indicates the etiology. The affected ICD–9–CM category codes are 711, 712, 713, 720, 730, 731, 320, 321, 323, 330, 331, 334, 336, 337, 357, and 358.

Response: In accordance with this comment, we have listed the affected codes (not code categories) in Table 8 as either primary or secondary diagnoses at the applicable four- or five-digit level. We will recognize these diagnosis codes in the case-mix adjuster only if the following conditions are met: (1) Manifestation codes (that is, codes that can never be used as the primary diagnosis) must appear as the first secondary diagnosis (line b, under ''other diagnoses'' in OASIS M0240) and must appear with all digits required by ICD–9–CM coding rules. (2) Remaining codes from the affected categories must appear as the primary diagnosis (line a, under OASIS M0230) and must appear with all digits required by ICD–9–CM coding rules. The requirement to report manifestation codes as the first secondary diagnosis is consistent with our intention to recognize the primary diagnosis for case-mix purposes. In this circumstance, the primary diagnosis is indicated by the combination of the manifestation code preceded by the underlying disease code in the primary field.

Structure of the Case-Mix System

Comment: Several commenters suggested adding a fifth level of severity to the clinical dimension, in view of the large score range in the fourth and highest severity level. In contrast, other commenters suggested that 80 groups was too large a number; they recommended greatly reducing the number of groups. A related question was why some groups with a small incidence of episodes warranted establishment of an HHRG.

Response: At this time, we have not changed the basic structure resulting in 80 groups. Adding a fifth clinical severity level would increase the number of groups to 100. Reducing the number of groups may obfuscate the clinical logic we used to help shape the system. Also, we feel it is prudent at this early stage of the model's application to avoid imposing additional structural streamlining before larger data sets become available allowing exploration of refinements to the model.

Comment: A commenter stated that the case-mix system should have as many episodes at the high end of the scale as the low end.

Response: We disagree. It is more important for the structure of the groups to differentiate episodes with similar severity and costliness. Severity and costliness are not evenly distributed in the population of episodes. The most resource intensive episodes are infrequently encountered.

Comment: A commenter criticized the use of a scoring range from 27 to 160 for the highest level of severity in the clinical dimension, saying it is too broad.

Response: In response to several comments on the adequacy of payment for severe wound cases, we have revised the severity score intervals along with making additions to elements in the clinical dimension. We discuss changes to the case-mix system in section IV.G.1.

Comment: It was suggested that the case-mix assignment be made at the end of the episode, because of difficulties agencies may have in obtaining accurate information about patient status early in the episode.

Response: OASIS data collected as part of the comprehensive assessment must be collected within 5 days of the start of care. After collection, agencies have 7 days to ''lock'' the assessment. Therefore, agencies have a maximum of 12 days to establish the case-mix assignment. We think this time period is adequate to resolve uncertainties about the health and functional status items on the OASIS. Further, the therapy threshold used in the case-mix system is projected at the start of care, and is updated by the end of the episode to determine the final case-mix adjusted payment.

Omission of Time Spent Outside the Home From the Calculation of Resource Costs

Comment: We received comments faulting the case-mix adjuster for limiting the measurement of resource costs to time spent in the home. Commenters argued that time spent

outside of the home, travel time, and resource costs of equipment and supplies should be included. One commenter maintained that failure to account for medical supplies leads to two inconsistent reimbursement methodologies, one for services and the other for supplies. In the case of wound patients using very expensive dressings and supplies, commenters argued the resource cost is seriously underestimated.

Response: We acknowledge the underlying concern from the commenter but we are limited in our ability to address this comment in the near term. Variation in costs other than visit time is a subject for careful empirical study that will take time. Were we to adopt imprecise estimates in a hasty attempt to rectify perceived errors in the payment weights, we would risk introducing other errors and potential inequities into the payment system. The model as developed to date assumes that the omitted resource costs are directly proportional to time spent in the home. In future years, we plan to consider methods for testing this assumption. Studies to directly account for costs beyond time spent in the home pose significant challenges in terms of their feasibility, cost, and reliability. The Abt study did not attempt to measure non-home resource costs because it was believed the complexity of the necessary measurement procedures would jeopardize agency recruitment and data accuracy.

Use of OASIS Data To Validate the Case-Mix System

Comment: Several commenters advised us against using early OASIS data to validate the case-mix grouping system. They believe that the data are flawed because agency personnel are still learning how to conduct assessments. A couple of commenters sought confirmation that we validated the system, and requested information about how we validated the system.

Response: It is not possible to use the OASIS data for complete system validation, because validation requires information about resource cost as well as patient characteristics. OASIS data provide only patient characteristics. However, as discussed in the proposed rule, we did validate the case-mix grouping system using a split sample methodology with the Abt case-mix data (see Abt Associates, Second Interim Report, September 24, 1999).

Our primary purpose for using the OASIS data was for payment allocation during the first year of PPS. Specifically, we hoped the OASIS data could be used to estimate the distribution of case-mix in the population, which is information needed to accurately establish the standardized payment amount. As described elsewhere in this regulation, we used OASIS data to achieve this purpose.

Comment: A few commenters recommended allowing therapy assistant services and rehabilitation nurse services to count towards the therapy threshold.

Response: We do not believe that any changes to the current coverage rules governing the coverage of physical therapy, occupational therapy, and speech-language pathology services under the Medicare home health benefit is warranted at this time. If we believe coverage revisions are necessary for future refinements to the HHA PPS, we may consider revisiting the coverage guidelines at that later time. Under the case mix methodology, patients with intense therapeutic needs are classified in higher payment groups. A physical therapist, occupational therapist or speech-language pathologist would have to diagnose the therapeutic needs of the patient. If significant assistant substitution occurs under PPS, we may focus medical review efforts or reprice the case-mix groups. Rehabilitation nurses have never met the personnel qualifications or coverage criteria for physical therapy, occupational therapy or speech-language pathology services under the Medicare home health benefit.

Other Comments

Comment: A commenter stated that we should add more variables to the case-mix system to increase the R-squared.

Response: In an effort to better capture resource cost for severe wound patients, we have added several more variables as explained in the discussion of changes to the case-mix system in section IV.G. The R-squared has increased. Future refinement activities may result in more additions and better ways to use existing variables.

Comment: A few commenters asserted that an R-squared (proportion of variation explained) of .32 for the case-mix system is too low, and one asked whether the system was validated.

Response: We used a split sample methodology to validate the case-mix system. The R-squared for the validation sample changed little. The R-squared for the initial case-mix system is comparable to that for other case-mix systems in their early stages. We should expect future research, using better data (such as improved diagnosis coding) and more observations, to result in higher predictive power.

Comment: Some commenters recommended that we add to the case-mix model OASIS items measuring such nonclinical factors as safety hazards and other environmental variables, and socioeconomic status variables.

Response: OASIS includes these variables to use as risk factors in analyses of the outcomes of home health care. But as we discussed in the proposed rule, we do not believe they are appropriate factors in determining payment.

Comment: Some commenters disagreed with our decision to exclude items dealing with signs and symptoms such as fluid retention and diet, on the grounds that these are important clinical changes with a direct relationship to care quality and outcomes.

Response: As we noted in the proposed rule, we are concerned about the vulnerability to manipulation for payment maximization of some possibly transient clinical items. Our statistical analysis also suggests weakness in their scientific reliability. Moreover, inclusion of these items would require a change to the OASIS data collection procedure, causing additional burden on home health agencies. Lastly, after all other elements are included in the model, they do not make any independent contribution to explaining variation in resource use.

Comment: A commenter stated that patients with low or moderate scores who need to be observed and assessed, and taught how to manage their medication and diagnosis, would not receive adequate reimbursement. A couple of other commenters suggested adding variables concerning multiple medications.

Response: During the early phases of model development, there were indications that a variable measuring multiple medications would be useful, but as it was not an OASIS variable we sought to substitute similar OASIS items. We found substitutes in the two OASIS variables measuring the patient's ability to manage oral and injectable medications. Statistical results suggest only one of these variables (injectable medications management) contributes independently to explaining resource variation after accounting for the other variables in the case-mix model. However, we believe using this variable makes the case-mix system vulnerable to manipulation, and have decided against including it at this time. As we refine the case-mix system, we will continue to look for ways to capture nursing functions mentioned in the comment.

Comment: Two commenters responded critically to the absence of

respiratory treatments from the clinical dimension.

Response: This variable was excluded from the model because it was statistically insignificant and inversely related to resource cost.

Comment: Several commenters stated that the system should specifically allocate points for limitations affecting medication management, meal preparation, feeding, and the ability to structure time.

Response: Measures of medication administration, meal preparation, and feeding dependence were tested but did not contribute significantly to explaining home health resource use. We note the case-mix system recognizes patients with memory deficit, impaired decision-making and behavior problems.

Comment: Stating that patients with multiple treatments at home (intravenous infusion, parenteral/enteral therapies, OASIS M0250) are often observed in home care, a commenter asked why these patients are not assigned the sum of scores for each treatment.

Response: At this time the case-mix model does not assign the sum of two scores when patients are receiving multiple treatments. In terms of care quality, we are concerned about the potential incentive to make patients' care more complex if scores for this OASIS item are additive. Currently, patients who receive both intravenous infusion and enteral nutrition, the most plausible combination, would receive 24 points for enteral nutrition, the highest score possible among the three treatments and the second-highest single score in the clinical dimension. Given our understanding of the needs these patients may present, this score seems appropriate pending further review of data for multiple-treatment patients. The Abt sample did not contain any patients receiving more than one of these treatments. As these treatments do not appear to produce additive work, we believe it is prudent to wait until more-reliable scores for multiple-treatment patients can be developed during refinement activities using larger data sets.

Comment: Commenters also criticized us for omitting types of specific OASIS items or response categories that indicate lower severity than items/categories currently in the case-mix model. For example, one commenter stated, the presence of ''any pain'' would affect the plan of care. The pain response categories that are allocated points are ''daily but not constantly'' and ''all of the time'.

Response: We understand the commenter's recommendation for more specificity in the case-mix system. We note that generally, the case-mix model captures levels of severity that were reliably associated with variations in resource use. Constructing variables for the model involved both statistically based decisions as well as judgments about how many grades of distinction are desirable from clinical, policy, and structural points of view. For example, in response to comments about wound care patients, we have elaborated certain wound variables to capture finer distinctions in wound status, while retaining statistical reliability for the clinical dimension. We have traded off some structural parsimony for slightly increased accuracy. As larger data sets become available to refine the case-mix system, we may have an opportunity to incorporate still more detailed variable levels, but we will continue to evaluate them in light of their clinical, policy, and structural implications.

Comment: A commenter wondered whether listing M0530 (when does urinary incontinence occur?) rather than M0520 (urinary incontinence or urinary catheter presence) in the clinical dimension was a typographical error.

Response: No, it is not. As we noted in the proposed rule, we avoided M0520 because of concern that using it might promote negative practice patterns. M0530 is a stronger measure of the impact of incontinence on home care because it takes timed voiding into account.

Comment: A couple of commenters stated that the case-mix adjuster should identify patients with urostomy because services and teaching requirements exceed those for bowel ostomy patients.

Response: OASIS does not currently allow identification of urostomy patients. We will consider this suggestion for future OASIS studies.

Comment: A commenter asked why hearing status is not included, while vision status is.

Response: We tested hearing problems as part of a set of neurological, cognitive, sensory, and behavioral impairments during our development of the case-mix system. Few of these variables contributed meaningfully to the case-mix model, and for some types of clinically severe patients these impairments were inversely related to resource cost. We were ultimately able to include both vision problems (M0390) and behavioral problems (M0610) in the clinical dimension as statistically significant variables positively related to resource cost.

Comment: One commenter suggested that we change OASIS item M0390 on vision status to identify patients who have difficulty accommodating to distance.

Response: We will consider testing this change in research on modifications to OASIS.

Comment: A commenter requested clarification of the definition in the vision status item (M0390).

Response: All OASIS items, including this item, are discussed in the OASIS Implementation Manual available on the HCFA Web site.

Comment: A commenter stated that OASIS functional items are not sensitive to patient progression, so that the patient who improves is still rated at the same level after improvement. The commenter cited the case of the patient who is dependent in bathing in bed, and progresses to independent in bathing in bed.

Response: This comment appears to address the use of OASIS items for outcome measurement. During the testing of outcome measures for use in home health care, it was necessary to balance several competing demands. One of these demands was for sufficient ''rigor'' in the outcome measures and data items, including the data item's likelihood of consistent application by the clinicians making the assessment. Another demand was a more practical one—would the home health agency's staff be able to use the item in its day-to-day functioning? Because every OASIS item that now has several levels of a scale could most likely be expanded to many more scale levels, several questions must be asked as part of the evaluation of OASIS items. For example, would the item be perceived as practical for use by clinicians? Would the resulting outcome measures be valuable in evaluating quality of care across agencies? Would the item have a high incidence of consistent application? These are among the evaluation criteria we would apply as the outcome measures and the OASIS items continue to evolve over time.

Comment: A commenter said the system should recognize medically underserved patients.

Response: The OASIS assessment does not clearly identify medically underserved patients. However, a variable relating to Medicaid status is reported on the OASIS assessment and can be considered a proxy indicator. During our system development work on the Abt sample we tested the Medicaid variable (which indicates whether Medicaid was among the patient's payment sources). We found that it did not contribute to explaining variation in resource use.

Comment: A commenter stated that home health aide supervisory visits should be included in the case rates, and the agency should be able to bill for those visits.

Response: Time spent in the home, including time spent on supervisory visits, was recorded in the visit log data submitted to Abt Associates by agencies participating in the case-mix research. This means that the case-mix relative weights should reflect any case-mix group differences in supervisory time. Supervisory visits are also in the cost base for the average cost per-visit computations used in the PPS episode rates. We are making no changes in payment policy regarding billing for supervisory visits.

Comment: A commenter, stating that the case-mix system inadequately accounts for costs of behavioral patients, asked how well such patients were represented in the Abt sample.

Response: We believe these patients were adequately represented. Approximately 4.5 percent of the Abt sample had a primary diagnosis code of a mental disorder. Approximately 2.6 percent received psychiatric nursing services at home. About 14 percent were classifiable as having chronic cognitive, mental, or behavioral problems. Approximately one-quarter of the sample had current problems due to one or more of the behaviors listed in OASIS M0610.

Comment: A commenter suggested that refinement activities include examining outliers to see whether the case-mix categories involved are improperly weighted.

Response: We plan to examine the data as suggested.

Comment: One commenter questioned whether we examined the validity of the relative weights. A related recommendation was to validate the relative weights on a large national data set after the first year of PPS.

Response: We examined various measures of fit of the case-mix model to episode-cost data to judge the model's performance and, by implication, the validity of the relative case-mix weights derived from it. Most of these fit measures are reported and discussed in the Abt Associates Second Interim Report (September 24, 1999). As explained in the proposed rule, we derived the relative weights from a straightforward regression equation that estimates the average addition to resource cost due to each severity level above the lowest-severity case-mix group (C0F0S0). This regression equation, estimated from the Abt sample data, performed well. We used case-mix-group means estimated from the coefficients of the regression equation to compute the relative case-mix weights. We plan to re-examine the accuracy of the relative weights periodically.

Comment: A commenter asked whether the mean or median was used to calculate the relative case-mix weights.

Response: We used the mean estimated from the regression equation described in the previous response.

Comment: A commenter requested that we disclose the computations for independent review.

Response: In the section of the rule regarding the calculation of the case-mix relative weights, we show the regression equation coefficients and the mean resource cost calculated for each case-mix group from the regression coefficients.

Comment: A commenter stated that we should release data showing the incidence of cases in the groups used to define the relative weights.

Response: Appendix C in the Abt Associates Second Interim Report (available on the HCFA website) shows the incidence of cases in each case-mix group in the sample.

Comment: A commenter questioned whether hospital-based agencies were adequately represented in the sample used to develop the case-mix system.

Response: We believe that hospital-based agencies were adequately represented in the sample. About one-third of the 90 agencies participating in the Abt study were hospital-based and one-third of the episodes in the Abt analytic sample came from hospital-based agencies. The hospital-based agencies were distributed across the four census regions, urban and rural locations, and represented varying practice patterns. The total development sample included more than 9,000 episodes (Abt Associates Second Interim Report, September 24, 1999). The sample for deriving case-mix weights in the final rule included more than 26,500 episodes.

Phase II Per-Episode PPS Demonstration

Comment: One commenter asked whether demonstration agencies deliberately avoided higher-acuity patients while participating in the demonstration project.

Response: The demonstration evaluation study examined this question. Analyses suggested that PPS agencies were no less likely than non-PPS agencies to admit a patient with a serious medical condition, limitations in activities of daily living, or other conditions predictive of higher-than-average service needs. Furthermore, the demonstration did not appear to affect the admission of patients expected to have relatively high costs per visit.

Comment: A commenter wanted to know why data on pages 58143 and 58150 in the proposed rule showed different percentages of discharges at 60 days and 120 days. Page 58143 cites completion rates of 60 percent and 73 percent in 60 and 120 days, respectively. Page 58150 cites completion rates of 46 percent and 62 percent, respectively.

Response: Data cited on page 58143 were completion rates for 39 agencies paid prospectively under the Phase II per-episode prospective payment demonstration in the first year of the demonstration (1995-96). Data cited on page 58150 are national averages from an episode file constructed from 1997 paid claims. Research would suggest that the differences stem mainly from the incentives of prospective payment.

L. Episode Rate Methodology

Comment: Several commenters suggested that we include the amounts for new billing and financial systems in the PPS episode rate.

Response: We do not foresee any major changes to the billing and financial systems for home health agencies that would justify an increase in the rate amount. Home health agencies will still use and submit the same claim forms that are currently being used under IPS. With only minimal changes in bill content we will be furnishing free grouping software to all HHAs. If an HHA elects to purchase different or more deluxe software from its vendors, that would be an individual business decision of the HHA. It is primarily the fiscal intermediaries systems that will require changes in order to process home health claims under PPS. We will not reimburse agencies for modifications to their internal billing and financial systems beyond what is already included as overhead costs reported on the cost report.

Comment: Several commenters requested that we not use the most current data for developing the home health PPS episode rates in order to avoid incorporating the effects of IPS.

Response: In developing the final PPS episode payment rate, the primary influence for the final amount is the budget neutrality target. The statute requires that the total amounts payable under HHA PPS be equal to the total amount that would have been made if HHA PPS had not been in effect. This numeric value is based on actuarial estimates of future home health spending and utilization in the aggregate. Since the projected spending

is based on historical trends derived using the most recent data available, IPS cannot be ignored. Using data prior to the implementation of IPS would not reflect current home health utilization and spending.

Comment: One commenter suggested that we revise the computations of the average cost per visit to only apply the cost limit adjustment factor to those disciplines that were over the per-visit cost limits.

Response: The per-visit cost limit has been applied on an aggregate basis, not on a per-discipline basis. Separating the disciplines proved too difficult to achieve and would be of questionable worth. The cost limit adjustment factor was determined by dividing the aggregate cost limit amount by the aggregate reasonable cost amount. If the factor was less that 1.0, then the factor was applied across all disciplines. If we had only applied it to the disciplines that were over the limits, then we would not have recognized the actual impact of the cost limits.

M. Audited Cost Report Sample

Comment: Several commenters questioned the accuracy and use of the statutorily required most current audited cost report data available to the Secretary to calculate the PPS rates. Commenters questioned whether better, more accurate data may exist than the 1997 audited cost report data set forth in the proposed rule.

Response: For the proposed rule, data from audited cost reports received by an HCFA determined deadline date were used for the calculation of the proposed HHA PPS rates. Even though all audited cost reports were not available (for reasons such as, suspensions, investigations, natural disasters, etc.), HCFA had to set a cut-off date to meet the stringent time constraints for completing the proposed rule. Any additional audited cost report data files that were received by HCFA Central Office (CO) beyond the deadline were not included in the rate calculations for the proposed rule. Since then, audited cost reports from the sample may have been appealed, reopened, and revised resulting in an updated version of the cost report data available for calculation of the rates for the final rule. Even after the publication of the proposed rule, we required fiscal intermediaries to resubmit any reopened audited cost reports and have that more recent, accurate data available for final rule calculations through the first week of January, 2000. This process resulted in an additional seven providers for which we now have audited cost reports for FY 1997. Additionally, during the above-described additional time period, we received 23 reopened audited cost reports with newer and more accurate data for use in the final rule calculations.

Comment: Commenters were concerned with pre-IPS cost data being used and that 1997 data may not be an adequate time period to reflect the cost of providing care today.

Response: HCFA is required, in its development of a PPS for home health agencies, to use the most current audited cost report data available. At present, 1997 audited cost reports are the most current audited cost reports available of a representative sample of HHAs. The 1997 audited cost data is updated by the market basket in order to make it more reflective of the cost of providing care today.

Comment: Commenters were concerned that not all types of HHAs, with respect to their being considered large, small, urban, rural, for profit, not-for-profit, for example, were adequately represented in the audited cost report sample used to construct the PPS rates.

Response: The sample was designed to be representative of the home health industry, including census region, urban versus rural location, and large versus small agencies. The sample included each provider type (freestanding not-for-profit, freestanding for-profit, freestanding governmental, and provider-based), which are referred to as strata in sampling terms. The design of the sample then took into account the number of providers and the variation in cost and beneficiaries in each stratum, resulting in a representative sample of the home health industry.

Comment: A few commenters were concerned with the sample design which excluded ''very small'' agencies.

Response: Agencies with fewer than 50 Medicare beneficiaries were excluded from the sample list of agencies for development of the home health PPS. These agencies were judged to be atypical in their costs and utilization. This would particularly be the case if the agency is a large agency that happens to have only a small Medicare business. Prior PPS demonstrations also excluded these low-volume providers from participation for similar reasons.

Comment: Commenters raised concern about rebasing for FY 2002 based on a 100 percent sample of cost reports. Commenters further recommended that if the future PPS data varies from the FY 2001 base year or their proposed revised approach to rebase for FY 2002, that adjustments be made to the standards on which the system is based.

Response: HCFA has no statutory authority to rebase the home health PPS on 100 percent cost report data. We will continue to monitor the effects of the policies governing the PPS system.

N. Cost Outlier Payments

Comment: Commenters generally supported the outlier policy but often disagreed with specific aspects of the proposed policy. Many commenters stated that protection from the financial risk of catastrophic cases was important. These commenters frequently identified severe wound care patients and non-self injecting diabetics as the types of patients that pose the greatest financial risk because of the concern that the HHRG system may not adequately recognize their costs. In addition, commenters tended to support greater financial protection against large losses, favoring a greater concentration of outlier payments on the most expensive cases, which can be accomplished by using a higher fixed dollar loss amount and a higher loss sharing ratio. Several commenters wanted provisions totally incompatible with the statutory constraint that total outlier payments be no greater than 5 percent of total payments including outliers, such as no fixed dollar loss and a higher loss sharing ratio, or even full cost reimbursement of outlier cases. However, several commenters argued that if greater catastrophic protection could not be provided, 5 percent higher episode payments for all episodes would be preferable to the proposed outlier policy.

Response: As stated in the proposed rule, the provision for outlier payments is optional under section 1895(b)(5) of the Act. However, if outlier payments are included in the PPS, the statute requires that total outlier payments be no more than 5 percent of total payments, including outlier payments. Section 1895(b)(3)(C) of the Act also requires that the episode payment amounts be adjusted to effectively pay for outlier payments within the same level of estimated total spending. These statutory requirements place rather strict limits upon the additional payments that can be directed to unusually expensive cases.

Before deciding to exercise our discretionary authority to include a home health PPS outlier policy in this final rule, we carefully considered the arguments presented in the public comments. We have decided that the benefit to the home health community of adopting an outlier policy consistent with the statute outweighs no outlier policy. However, based on the majority of public comments, we have decided to

increase the loss sharing ratio from the 60 percent set forth in the proposed rule to 80 percent, the same ratio that is used in the inpatient hospital PPS.

Accordingly, the fixed dollar loss amount has also been changed. Our preliminary estimates reported in the proposed rule indicated that a loss-sharing ratio of .80 was consistent with a fixed dollar loss amount equal to 1.35 times the standard episode amount. However, estimates based on the most recent data indicate that the fixed dollar loss amount should be changed to 1.13 times the standard episode amount. Among the commenters supporting a higher loss sharing ratio, while no one suggested a loss sharing ratio lower than .75; some stated that the ratio should be the same as in the inpatient hospital PPS (.80), and others stated that the ratio should be .80 or even .90.

Comment: Several commenters argued that the proposed outlier policy was not sufficient to cover the costs of patients with intensive service needs and would result in inadequate home care being provided to patients with the greatest needs. Some commenters cited the effects of the fixed dollar loss and the loss sharing ratio in severely limiting the additional payment that would be made to outlier cases. Another commenter stated that the outlier threshold should be based on medical necessity without any qualifying financial loss being suffered by the provider, and others stated, in effect, that there should be no fixed dollar loss. Yet another commenter questioned the sufficiency of 5 percent for these types of cases.

Response: As noted above, section 1895(b)(5) of the Act limits the total amount of outlier payments that can be targeted to outlier cases to no more than 5 percent of estimated total payments. It is impossible to eliminate the fixed dollar loss and to pay the full estimated cost in excess of the episode payment. To do so would result in outlier payments far in excess of the 5 percent allowed by the statute. It is also inconsistent with a basic premise of the episode based payment, which is based on average episode costs, and anticipates that ''underpayment'' of some episodes will tend to be balanced by ''overpayment'' of other episodes.

Given the constraint on total outlier payments, we were presented with determining how to beneficially distribute the limited amount of additional payments among the expensive cases. If only the very most expensive of the costly cases qualify for outlier payments, a higher proportion of the total costs of those cases can be paid. Alternatively, if a larger number of costly cases qualify for outlier payments, it is necessary to pay a lower proportion of their total costs. If the fixed dollar loss were eliminated, so that all cases whose estimated costs exceeded the episode amount qualified for outlier payments, the amount of the outlier payment per case would of necessity be so small that there would be little or no benefit for the expensive cases.

As discussed in another comment, we have chosen a loss-sharing ratio of .80 for the final rule instead of the .60 set forth in the proposed rule. We believe that a loss-sharing ratio of 1.00 would go too far in concentrating outlier payments on the most expensive cases. It would further limit the number of cases that could receive any outlier payment and would provide no incentive for agencies to attempt to provide care cost-effectively for outlier cases.

Comment: A number of commenters raised concerns regarding the method used to estimate the cost of an episode in determining outlier payments. Several commenters stated that the ''outlier-standardized per-visit rates'' do not reflect the real cost of visits. Another commenter appeared to misunderstand that we would use per-visit costs for each of the six home health disciplines.

Response: In this final rule, we are revising proposed § 484.240 to modify the per-visit rate used to estimate per-visit costs. We will now use the average cost per visit from the PPS audit sample including the average cost for nonroutine medical supplies and the average OASIS adjustment costs. The only standardization applied to these per-visit costs will be the wage index standardization factor. See Table 6 of the proposed rule (64 FR 58169) and Table 6 in section IV.C. of this final rule.

The wage index standardization factor is included in the per-visit cost because the estimated episode cost will be adjusted by the wage index, just as is the episode payment amount. As a result of these changes from the proposed rule, our estimated cost of an episode will be higher, and more episodes will qualify for higher outlier payments than would have occurred under the originally proposed method. This change in cost methodology will require increasing the fixed dollar loss in order to stay within the 5 percent constraint.

The estimated cost of an episode will be calculated by multiplying the per-visit cost of each discipline by the number of visits in the discipline and computing the total cost for all disciplines.

We understand that the estimated cost will not necessarily accurately measure the actual cost of any individual episode or the actual costs of any single agency. Our method of cost estimation will measure differences among episodes in three factors: the total number of visits, the skill mix of those visits, and the wage costs of the geographical area where the care was provided. This methodology will assume an equitable and timely application of outlier payments among HHAs without introducing the complex and idiosyncratic elements of individual agency cost finding using cost report analysis.

Comment: Several commenters suggested that we consider reimbursing reasonable costs for outlier cases. Other commenters stated that the estimated cost does not include the cost of non-routine medical supplies provided during each outlier episode, and that if we estimated costs in the same manner that is used in the inpatient hospital PPS, we could include the costs of non-routine medical supplies.

Response: It is correct that while the total costs of non-routine medical supplies were included in the episode payment amount, the non-routine medical supplies of an individual episode are not accounted for in calculating the payment for an episode or in outlier calculations. In the inpatient hospital PPS, costs of outlier cases are estimated by multiplying total charges for the services provided during the hospital stay by a hospital-specific cost-to-charge ratio that is determined from the Medicare hospital cost report. Applying this method to the home health PPS would provide a means of including the cost of non-routine medical supplies in the estimated cost of an episode. However, there are two major reasons why we believe that using the estimated visit cost method is necessary. First, we do not have charges for non-routine medical supplies or agency cost-to-charge ratios in the Abt case-mix data that we are using to estimate the outlier policy for the first year of the PPS. Therefore, we are unable to use the cost-to-charge ratio method at this time. Second, we would like to avoid making the Medicare cost report a necessary part of determining an agency's payments under the home health PPS. In particular, we would like to make the new system independent of the burdensome and idiosyncratic cost-finding process of the previous, reasonable cost-based payment system.

Comment: Some commenters indicated a misunderstanding about the application of the wage index in calculating outlier payments. The

confusion was whether the fixed dollar loss was adjusted by the wage index.

Response: The fixed dollar loss amount is wage-adjusted in exactly the same manner that the standard episode payment is wage-adjusted. As a result, the fixed dollar loss will be the same proportion of the episode payment in all wage index areas. In nominal dollars, the outlier threshold for an episode in a low wage index area is lower than the outlier threshold for an episode in the same HHRG in a high wage index area. The outlier payment is also wage-adjusted. Hence, the outlier payment for an episode will be the same proportion of the total payment for that episode whether the episode of care is provided in a low or a high wage index area.

Comment: Several commenters asked operational questions about the outlier policy and how outlier payments would actually be made. For example, one commenter asked us to clarify how and when outlier payments would be made. Another asked who initiates an outlier request and whether it would be automated. Others asked how the 5 percent would be determined and how information on outlier payments would be communicated to agencies. Another commenter asked what our policy would be if total outlier payments are significantly different than the 5 percent amount. Another commenter asked how outlier payments would be tracked and capped nationally and how agencies would know when the outlier pool had been exhausted. Finally, there was the question whether the 5 percent applied to individual agencies or all agencies in the aggregate.

Response: Outlier payments will be made automatically by RHHI through the normal claims processing system. When the RHHI determines the final episode payment based on the claim submitted by the agency, as part of determining the appropriate payment for the episode, the RHHI system estimates the imputed cost of the episode under the outlier methodology. If the cost exceeds the outlier threshold for the HHRG to which the episode is assigned, then an outlier payment will automatically be calculated for the episode. The agency will know when it receives an outlier payment for an episode because it will be part of the final payment for the episode and noted on the remittance advice.

It is important to understand that, according to section 1895(b)(5) of the Act, the 5 percent constraint applies to estimated total payments, not actual total payments. Each year, we will establish, the loss-sharing ratio and the fixed dollar loss values that will be used throughout the next fiscal year to calculate outlier payments. There will be no reconciliation of actual outlier payments to the 5 percent target either during a current fiscal year or in any subsequent fiscal years. If actual outlier payments during a given year exceed 5 percent of actual total payments, there will be no attempt to recoup the difference. Similarly, if total outlier payments in a year fall short of 5 percent of actual total payments, there will be no additional payments made to agencies. Such information will, however, be part of the analysis conducted for setting the appropriate threshold in subsequent years.

Finally, there is no direct relationship between the 5 percent limit on total outlier payments and the percent of outlier payments that an individual agency may receive. Depending on the agency's caseload during the year, the percentage of outlier payment to its total payments as outlier payments will likely vary. The 5 percent constraint applies to all agencies in the aggregate and not to individual agencies.

Comment: One commenter questioned why we have no outlier policy for LUPA episodes.

Response: No additional payments will be made for LUPA episodes beyond the LUPA payment. However, it should be noted that in this final rule, we have changed the per-visit costs to be used in computing the LUPA payment so that the same per-visit amounts will be used for the LUPA payment as that used in estimating the cost of a regular 60-day episode.

Comment: A commenter stated that we should implement a payment ceiling for outlier cases (such as 175 percent of the HHRG payment) and use a 15 percent adjustment to fund the outlier pool.

Response: Since a basic objective of outlier payments is to increase payments to the most costly cases, we do not think that outlier payments should be limited to some percent of the HHRG payment. The effect of such a ceiling would be to allow other less costly cases to receive higher relative outlier payments. As to the latter comment, a 15 percent outlier adjustment is not permitted by the statute, which sets 5 percent of total estimated payments as the maximum amount of outlier payments.

Comment: One commenter suggested that we eliminate outliers and recalculate the case-mix to include long stay cases as part of the HHRG system.

Response: ''Long stay'' cases are as much a part of the HHRG system as shorter term cases, and will not necessarily become outlier cases. As the system provides for unlimited 60-day periods, provided that patients continue to be eligible for Medicare home health services for each 60-day period, HHAs will receive additional episode payments based on the assigned HHRG for each episode. Thus, length of stay is not a factor leading to underpayments. The purpose of the outlier policy is to provide additional payments to cases requiring unusually intensive services within a 60-day episode.

Comment: One commenter stated that a transition policy would be a preferable alternative to the proposed outlier policy.

Response: As discussed previously, we have decided against implementing a transition policy. However, we note that a transition policy could serve some of the same purposes as an outlier policy early in system implementation. For example, a transition policy bases a proportion of the episode payment on the estimated cost (using the same method as we apply in the outlier policy) and the rest of the episode payment on the case-mix and wage adjusted episode amount. Such a policy could provide higher total payments to episodes whose estimated cost exceeds the episode payment. However, for all cases whose estimated cost is less than the episode payment, this blended payment would be lower than the episode payment. Because it would potentially change the payment to all episodes, a transition policy has a greater impact on total payments than that of the outlier policy. Whereas the outlier policy is self-financing under the terms of the statute, a broader transition policy would require a different and possibly greater adjustment for budget neutrality. Finally, a transition policy is, as the name indicates, intended to be temporary, and intended to allow providers time to adjust to a new system. In contrast, we intend the outlier policy to be a permanent feature of the payment system.

Comment: One commenter urged us to carefully monitor the impact of the outlier policy and stressed the importance of maintaining an appropriate balance between the total number of outlier patients and the payment per outlier case. Another commenter expressed a preference for refinement of the case-mix system as an alternative to the outlier policy.

Response: We fully agree with the suggestion of both commenters. We will monitor the impact of the outlier policy with the intention of refining it where possible. We will also explore case-mix refinements as we gather the data needed to support the necessary analyses. We are also hopeful that, over time, case-mix refinement may reduce

the need for an outlier policy. We will examine the issue in the future when more information is available.

Comment: Three commenters raised concern about the impact of outliers on specific types of home health agencies. They expressed concern for financial losses that would be incurred by rural agencies, a provider of ''last resort'' whose cases are in need of intensive services, and agencies in States where there are no other publicly funded home and community based services. In addition, a commenter stated that the wage adjusted per-visit costs would be significantly less than the actual per-visit costs in a particular geographical area.

Response: These comments suggest that the outlier policy might be tailored to increase outlier payments for specific agencies on the basis of their location or case-mix. The outlier policy set forth in this rule provides greater compensation for agencies based on the imputed cost of an agency's episodes. There is no data available to us which objectively identifies providers for whom, on some basis, additional payments would be warranted. We believe the PPS system with its various adjustments provides a sound basis for distributing payment in accordance with patient need.

Comment: Some commenters suggested that we apply different outlier criteria to different types of cases. For example, one commenter stated that the outlier payments should be restricted to the 40 non-therapy HHRGs.

Response: We believe that estimated total cost is the best measure we have for identifying outlier cases. The fact that the fixed dollar loss is the same for all cases means that the estimated loss that must be incurred is the same for all cases and thus achieves equity. Even though a therapy case receives a higher episode payment than a non-therapy case, the estimated loss that must be incurred before it qualifies for outlier payments will be the same.

Comment: One commenter recommended a lower fixed dollar loss for wound care cases than for other outlier cases.

Response: We note that a lower fixed dollar loss for wound care cases than for other cases would direct a greater proportion of outlier payments to wound care cases. We have decided against adopting such a policy at this time. As indicated in a previous response, we believe that it is more equitable to let the estimated cost of each episode determine the amount of outlier payments without singling out specific types of cases for special treatment.

Comment: One commenter seemed to argue that a fixed dollar loss equal to or greater than the episode payment amount was impossible empirically and resulted from assumptions we made about episode costs and payments.

Response: This commenter seemed to misunderstand the method we used to estimate the fixed dollar loss amount and the loss-sharing ratio. The estimates of fixed dollar loss amounts and loss-sharing ratios presented in the proposed rule and in this final rule were not based on any assumptions about internal data relationships. As described in the proposed rule, the estimates were derived from modeling simulated payments and estimated costs for the episodes included in the Abt case-mix data set. For this final rule, we conducted the simulations again using an updated Abt data set. We were unable to perform simulations using early OASIS data from the OASIS national repository, because data lags prevented us from linking OASIS data to claims such that they could be included in this final rule. However, we were able to perform a variety of case-mix comparisons between the national OASIS data and the Abt sample data. These comparisons indicated a high degree of conformity between the two data sources. Further, we were able to compare the 1998 episode file developed from Medicare claims and the Abt data to determine how well the distribution of expensive cases matched in the two files. This analysis also supported the use of the Abt data.

O. Budget Neutrality

Comment: A number of commenters raised concerns regarding the budget neutrality target. A few commenters were concerned about the budget target of IPS limits reduced by 15 percent. Another felt expenditures should be based on the Congressional Budget Office projection of expenditures.

Response: Section 302 of BBRA of 1999 amended the statute to delay the 15 percent reduction in spending until one year after the implementation of PPS and further requires the Secretary to report to Congress within 6 months after implementation of PPS on the need for the 15 percent reduction. The statute also requires the budget target to be based on the Secretary's estimate of spending in FY 2001, not the Congressional Budget Office estimate.

Comment: Some commenters asked if we intend to re-evaluate the budget neutrality factor in the future.

Response: Re-evaluating the experience over the next few years and adjusting the rates accordingly could be beneficial. However, the statute does not provide for any adjustment in the budget neutrality factor nor an adjustment to change the program budget target.

Comment: Several commenters were concerned about our projection of the number of episodes in FY 2001. Some mentioned specific reasons for declining episodes such as the changes in venipuncture rules.

Response: Since the time we published the preliminary notice, we have obtained more meaningful data about home health spending and utilization changes. We now have two consecutive year's episode files and have clarified issues related to spending projections such as unsubmitted claims and sequential billing. We are no longer projecting the same number of episodes as we had in CY 1997. Utilization has dropped substantially since that time. However, the reasons for the drop, such as venipuncture changes, cannot be quantified. We have a two-year comparison relating the drop in episodes to the drop in visits within an episode. Based upon the most recent data, we are dropping the projected number of episodes substantially.

Comment: Several commenters took issue with the data to be used as the basis for the rate setting. They felt that we should not use the 1998 data to establish rates as the low utilization associated with IPS would be built into this analysis.

Response: Because the law requires us to establish a PPS that is budget neutral to what would have been paid under IPS, we need the most recent data to help us develop a model of what would have happened under IPS in 2001. Since utilization did drop so dramatically, we feel that it is important to know how the mix of services changed. Use of 1997 data or 1998 data does not necessarily have a direct effect on the level of payment because of the budget neutrality requirement. For example, using 1998 data, with a lower number of visits in an episode than 1997 data, will result in less of an adjustment to obtain budget neutrality to reach projected FY 2001 spending.

Comment: Some commenters suggested that we increase the budget target to reflect the cost of Part B therapies that were provided outside the home health benefit that will now be covered by the PPS rate.

Response: We determined how much of this type of therapy is being provided to current beneficiaries receiving home health services. We added this amount to the target for spending.

Comment: One commenter believed that we should have performed an impact study for rural areas because

such an analysis would have shown the need for separate budget neutrality factors for rural versus urban areas.

Response: We did look at costs per visits in several different types of rural areas versus urban areas. There was no significant difference, therefore we did not create distinct rates for urban versus rural.

Comment: Several commenters argued that we did not provide support for the behavioral adjustment assumed about the percentage of LUPA payments.

Response: Analysis of the 1998 episode file showed that when home health services were broken into 60-day blocks, for 16 percent of the time either a beneficiary had 1 to 4 visits extending outside a continuous period of service or that a beneficiary simply had only 1 to 4 visits within a 60-day period. Of this 16 percent, only 26 percent or 4 percent of the total were cases where only 1 to 4 visits were provided in a single 60-day, non-contiguous period. This four percent would clearly classify as LUPA episodes. It is not clear that those visits simply falling outside the 60 days would, under PPS, qualify as an episode. A plan of care would probably simply include those straggler visits with the preceding episode in many cases. The episode file was created to help us determine the average number of visits and the mix of visits in an episode. The file was not meant to fully reflect a system where payments are made prospectively. The incentives and the management of care under the prospective system we have designed have many differences from a cost-based reimbursement system. Our assumption about the percentage of LUPA episodes is not so much a reflection of a behavioral change but a clarification of how the episode file was constructed. It would not be reasonable to assume that the distribution of visits under PPS will replicate that of IPS. Our assumption that 5 percent of episodes will be LUPA is based on the actuaries' best estimate of what will actually happen under PPS.

Comment: One commenter suggested that we include appropriate assumptions regarding the PEP in the budget neutrality adjustment.

Response: We developed the PEP and the SCIC to benefit both agencies and beneficiaries. The SCIC was created so that beneficiaries whose condition had changed since the start of the episode could continue to be cared for by the same agency. There is a cost to the payment system in allowing this change in condition. Because we do not have adequate data to estimate this cost, our rate setting assumptions could not incorporate the increased cost of changing to a higher case-mix mid-episode. There are some slight savings from using an end date to the PEP which does not equal the start date of the next episode. Again, we did not specifically account for this in determining the budget neutrality factor because as in the case of the SCIC, we do not have concrete data on which to base any cost estimate. We feel that the cost of the SCIC will outweigh any savings from the PEP. This being the case, the rates are not lower than they should be because of assumptions about the PEP.

P. Discharge Issues

Comment: Several commenters raised concern over possible impacts of discharge policies under the new PPS. Commenters requested clarification of our policy governing the situations of patients who are discharged because they are no longer homebound and therefore ineligible for the Medicare home health benefit during the 60-day episode, the patient refuses services or is discharged because of safety, abuse, non-compliance concerns, or dies.

Response: We believe the documented and legitimate event of a patient's death would result in a full episode payment for the HHA. Therefore, if a patient dies on day 35 of an episode, the HHA would receive a full episode payment for that individual. There would be no proportional payment adjustments to the full episode payment. If a patient is discharged because he or she becomes no longer homebound and therefore ineligible for the home health benefit, refuses services, or becomes a documented safety, abuse or non-compliance discharge during the 60-day episode, the HHA would receive a full 60-day episode payment unless the patient became subsequently eligible for the home health benefit during the same 60-day episode and later transferred to another HHA or returned to the same HHA, then the latter situation would result in a PEP adjustment.

Comment: Commenters requested clarification of discharge policies governing an intervening hospital, SNF or hospice admission.

Response: We believe that HHAs should be given the option to discharge the patient within the scope of its own operating policies; however, an HHA discharging a patient as a result of hospital admission during the 60-day episode will not be recognized by Medicare as a discharge for billing and payment purposes. An intervening hospital stay will result in either an applicable SCIC adjustment or, if the Resumption of Care OASIS assessment upon return to home health does not indicate a change in case-mix level, a full 60-day episode payment will be provided spanning the home health episode start of care date prior to the hospital admission, through and including the days of the hospital admission, and ending with the 59th day from the original start of care date.

Comment: Several commenters asked whether a patient could be discharged before the end of the 60-day episode and whether the final bill could be submitted upon discharge before the end of the 60-day episode.

Response: The claim may be submitted upon discharge before the end of the 60-day episode. However, subsequent adjustments to any payment based on the claim may be made due to an intervening event resulting in a PEP adjustment, such as a transfer to another HHA prior to the end of the 60-day episode or discharge and return to the same HHA prior to the end of the 60-day episode.

Comment: A commenter requested clarification of the situation where an HMO fails to notify the HHA of a transfer of coverage, asking whether the HHA would be responsible for that portion of the PPS payment deducted by Medicare.

Response: The common working file data base includes enrollment data that should inform the HHA of the enrollment status of patients under a home health plan of care with their agency. If the beneficiary becomes HMO eligible mid-episode, the 60-day episode payment will be proportionally adjusted with a PEP adjustment. The episode payment will be proportionally adjusted using the span of days based on the billable visit date that the beneficiary was under the care of the HHA prior to the beneficiary transfer to an HMO.

Q. Consolidated Billing

Comment: Several commenters requested clarification of the services governed by the statutorily required consolidated billing requirements under sections 1842(b)(6)(F) and 1862(a) of the Act as amended by section 305 of BBRA. Some commenters were concerned with possible False Claims Act violations.

Response: Section 1842(b)(6)(F) of the Act, enacted by the BBA , and amended by the BBRA, requires the consolidated billing of all covered home health services listed in section 1861(m) of the Act, except for DME covered as a Medicare home health service. Section 305 of BBRA revised the statute to exclude DME covered under the Medicare home health benefit from the consolidated billing requirements. Under PPS, HHAs will be required to bill and receive payment for all covered

home health services listed in section 1861(m) of the Act, except DME during the 60-day episode. Under the current system, issues concerning the False Claims Act are within the purview of the Inspector General who will review any possible claims violation.

Comment: Commenters requested reassurance that parenteral and enteral nutrition was not included in the consolidated billing requirements governing home health PPS.

Response: Perenteral and enteral nutrition services are currently not a covered home health service. Therefore, perenteral and enteral nutrition services are not subject to the consolidated billing requirements and are not included in the PPS episode rate.

Comment: Several commenters requested the elimination of non-routine medical supplies, osteoporosis drugs and the therapies from the consolidated billing requirements governing PPS.

Response: The statute requires all covered home health services listed in section 1861(m) of the Act, except for DME, to be governed by the consolidated billing requirements. HHAs cannot unbundle non-routine medical supplies that are currently covered as a Medicare home health service that may coincidentally have a duplicate Part B payment code for payment. In addition, HHAs cannot unbundle the osteoporosis drug or therapies covered under the Medicare home health benefit. Although the osteoporosis drug covered under the Medicare home health benefit is not included in the PPS rate, it is still governed by the statutorily required consolidated billing requirements.

Comment: Commenters suggested that we remove the requirement for consolidated billing of intern and resident services unless it is a choice of the hospital and the HHAs. Commenters suggested a separate payment amount to those HHAs that will bill for their intern and resident services.

Response: To the extent these services were paid on a reasonable cost basis and covered under the home health benefit, there cannot be separate payment for these services under home health PPS. These services will be subject to the consolidated billing requirements. However, the HHA PPS rates and consolidated billing requirements do not affect Medicare payments to hospitals for graduate medical education or billing requirements.

Comment: Commenters suggested that we establish, at a minimum, a partial episode payment to a nonprimary HHA that can demonstrate they followed the recommended Common Working File (CWF) procedures for CWF verification of home health status before providing care, but received incorrect information about the episode status of the beneficiary.

Response: We believe that HCFA systems will provide the appropriate information in a timely manner so that HHAs may establish primacy for purposes of consolidated billing and corresponding payment. In future refinements to the system we will certainly not rule out the feasibility of this proposal if the data shows that this situation occurs frequently.

Comment: Commenters requested clarification of the procedures HHAs and other providers will follow to communicate the necessary charges of DME and the osteoporosis drug.

Response: The current communication level that is necessary to effectively meet the DME and osteoporosis drug needs of home health patients will continue under PPS. Both DME and the osteoporosis drug are paid outside of the PPS rates. As DME covered as a home health service, is no longer subject to the consolidated billing requirements governing home health PPS, the status quo for the provision of DME will continue under PPS. The osteoporosis drug is subject to the consolidated billing provisions although it is paid outside of the PPS rates. HHAs will no longer be able to unbundle the osteoporosis drug to a Part B supplier. The HHA will have to bill Medicare directly for the osteoporosis drug and any applicable supplier will have to look to the HHA for payment.

Comment: Commenters requested clarification of consolidated billing requirements governing billings and payments for services at hospitals, skilled nursing facilities, and rehabilitation centers when they include equipment too cumbersome to bring to the home.

Response: Payments for services at hospitals, SNFs, and rehabilitation centers when they include equipment too cumbersome to bring to the home have been incorporated into the baseline cost data used to develop the PPS rates and are included in those rates. Those services are also subject to the consolidated billing requirements. Therefore, the HHA cannot unbundle the services to a Part B supplier. The HHA must provide the services either directly or under arrangement and bill Medicare directly for payment.

R. Physician Certification of the HHRG (§ 484.22)

Comment: Several commenters requested the elimination of the proposed requirement governing physician certification of the HHRG. In general, commenters objected to the burden associated with this requirement and questioned its logic. Commenters also argued that physicians would not be able to comply with the requirement of certification of the HHRG.

Response: We proposed to require the physician to certify the appropriate case-mix weight/HHRG as part of the required physician certification of the plan of care. This was an attempt to have the physician more involved in the decentralized delivery of home health services. However, based on the number of negative responses from commenters and our reevaluation of this issue, we have decided to eliminate this requirement and focus our attention on physician certification efforts and education in order to better involve the physician in the delivery of home health services. In this final rule, we are deleting proposed § 424.22(a)(1)(v) to remove this requirement from our regulations.

S. Small Rural Providers

Comment: Several commenters suggested that we recognize several small rural exceptions to the national episode payment rate and LUPA policy that would more appropriately recognize the special needs of small rural providers. Commenters suggested that the payment rates are inadequate to meet the special travel needs and potential economy of scale challenges that commenters believe small rural HHAs encounter. Commenters believed the data used to develop the PPS did not include or adequately reflect the behavior of small rural HHAs, and therefore believed it would be difficult to predict the impact of PPS on small rural HHAs. Conversely, other commenters specifically recommended no exception for small rural HHAs.

Response: In our re-examination of the small rural impact issue, we did not find data to support the rural differentiation suggested in the comments submitted. Our analysis included the subcategorization of data into increasing degrees of rural remoteness. As demonstrated in the analysis below, the subcategories did not yield a significant differentiation in costs associated with resource needs and service delivery in rural areas. We do not believe that rural providers will be disadvantaged under HHA PPS. However, we will continue to look at alternatives regarding beneficiary access to Medicare home health services in remote areas. We will continue to analyze this complex issue with new data under HHA PPS. If and when an adjustment is justified, we will refine the system accordingly.

RURAL CONTINUUM CODE STATUS TABLE

Provider type	Continuum code [1]	Average cost per beneficiary 1997 [2]	Average cost per beneficiary 2001 [3]
Free Standing For Profit Agencies	0	$6,622	$4,079
Free Standing For Profit Agencies	1	12,632	3,939
Free Standing For Profit Agencies	2	7,367	5,397
Free Standing For Profit Agencies	3	7,965	6,577
Free Standing For Profit Agencies	4	6,400	5,330
Free Standing For Profit Agencies	5	7,014	5,997
Free Standing For Profit Agencies	6	6,367	4,230
Free Standing For Profit Agencies	7	7,671	4,333
Free Standing For Profit Agencies	8	5,838	4,971
Free Standing For Profit Agencies	9	4,871	4,266
Free Standing Governmental Agencies	0	3,758	2,589
Free Standing Governmental Agencies	1	2,325	2,370
Free Standing Governmental Agencies	2	4,117	2,938
Free Standing Governmental Agencies	3	4,054	3,407
Free Standing Governmental Agencies	4	3,683	2,975
Free Standing Governmental Agencies	5	4,459	3,495
Free Standing Governmental Agencies	6	3,204	2,375
Free Standing Governmental Agencies	7	3,905	3,253
Free Standing Governmental Agencies	8	3,046	2,572
Free Standing Governmental Agencies	9	3,170	2,477
Free Standing Non-Profit Agencies	0	5,341	3,035
Free Standing Non-Profit Agencies	1	4,258	3,871
Free Standing Non-Profit Agencies	2	4,897	2,991
Free Standing Non-Profit Agencies	3	4,069	3,162
Free Standing Non-Profit Agencies	4	3,279	2,810
Free Standing Non-Profit Agencies	5	6,124	4,630
Free Standing Non-Profit Agencies	6	5,730	3,320
Free Standing Non-Profit Agencies	7	5,146	3,638
Free Standing Non-Profit Agencies	8	3,620	3,692
Free Standing Non-Profit Agencies	9	6,546	4,899
Provider Based Agencies	0	5,488	3,233
Provider Based Agencies	1	4,049	3,498
Provider Based Agencies	2	4,553	3,845
Provider Based Agencies	3	4,418	3,015
Provider Based Agencies	4	2,834	2,757
Provider Based Agencies	5	4,358	3,322
Provider Based Agencies	6	3,973	3,212
Provider Based Agencies	7	4,221	2,938
Provider Based Agencies	8	2,355	1,496
Provider Based Agencies	9	4,553	3,580

[1] Source: Bureau of Census' urban and rural classification of populations.
[2] Source: Audited Cost Report Sample Data.
[3] Source: Audited Cost Report Sample Data updated to FY 2001.

CODE DEFINITIONS*

0 Central counties of metro areas of 1 million population or more
1 Fringe counties of metro areas of 1 million population or more
2 Counties in metro areas of 250,000 to 1 million population
3 Counties in metro areas of fewer than 250,000 population
4 Urban population of 20,000 or more, adjacent to a metro area
5 Urban population of 20,000 or more, not adjacent to a metro area
6 Urban population of 2,500 to 19,999, adjacent to a metro area
7 Urban population of 2,500 to 19,999, not adjacent to a metro area
8 Completely rural or fewer than 2,500 urban population, adjacent to a metro area
9 Completely rural or fewer than 2,500 urban population, not adjacent to a metro area

RURAL FRONTIER STATUS TABLE

Provider type	Frontier status [1]	Average cost per beneficiary 1997 [2]	Average cost per beneficiary 2001 [3]
Free Standing For Profit Agencies	No	$6,858	$4,664
Free Standing For Profit Agencies	Yes	4,179	4,620
Free Standing Governmental Agencies	No	3,579	2,803
Free Standing Governmental Agencies	Yes	2,450	1,758
Free Standing Non-Profit Agencies	No	4,921	3,118
Free Standing Non-Profit Agencies	Yes	6,926	2,785
Provider Based Agencies	No	4,500	3,344
Provider Based Agencies	Yes	3,999	2,942

[1] Frontier Status is defined as 6 or fewer persons per square mile.
Source: ''Definitions of Rural: A Handbook for Health Policy Makers and Researchers (HRSA).''
[2] Source: Audited Cost Report Sample Data.
[3] Source: Audited Cost Report Sample Data updated to FY 2001.

T. Wage Index

Comment: We received several comments regarding the wage index that is used to standardize and adjust the rates. The commenters suggested that the hospital wage index might not adequately represent wages paid by HHAs. Many commenters suggested the development of a home health specific wage index. Several of the commenters that suggested the home health specific wage index believed the hospital wage index did not adequately represent the cost of rural wages. A few commenters expressed concern with our proposed approach that continues to apply the wage index adjustment based on the site of service of beneficiaries rather than the location of the parent office. Several commenters suggested that a few wage index values included in Table 4 of the proposed rule were incorrect. A commenter suggested the application of the latest hospital wage index with exclusion of physician and resident costs and hours from the calculation. Several commenters were concerned with the application of the wage index when the patient transfers mid-episode or relocates during the episode.

Response: As indicated in the proposed rule, we are using the latest pre-floor and pre-reclassified hospital wage index. We used the latest pre-floor and pre-reclassified hospital wage index that was available at the time of publication of the proposed rule.

While we appreciate the intent of a home health specific wage index, we want to point out that our previous efforts in developing such an index resulted in weights that the industry immediately repudiated because it was viewed less favorable than the pre-floor and pre-reclassified hospital wage index. The industry had concerns with the methodology used to develop a home health specific wage index. These concerns coupled with our lack of applicable home health specific data resulted in our adoption of the hospital wage index in our approach to adjusting the labor portion of the formulas. In future refinements to the PPS we will certainly not rule out the feasibility of this recommendation.

We have decided to continue basing the application of the wage index on the site of service of the beneficiary under PPS. We believe this is the most equitable recognition of the wage component for service delivery. Based on commenters concerns with incorrect values included in Table 4 of the proposed rule, we re-examined our data. Based on the data available at the time of publication of the proposed rule, both Tables 4A and B in the proposed rule are correct. We use, and will continue to use the pre-floor and pre-reclassified hospital wage index values which are not published in the annual inpatient hospital PPS notice. We believe this may be the source of some confusion reflected in the comments.

If there is a PEP adjustment, whether it is a transfer or discharge and return to the same HHA during the 60-day episode, the patients site of service is the location of application of the appropriate wage index value. The wage index based on the beneficiary site of service adjusts the labor portion of the original proportional payment and will also adjust the labor portion of the new 60-day episode payment resulting from the intervening event. The PEP adjustment is viewed as two discrete situations: (1) The labor adjustment of the original proportional payment and (2) the labor adjustment of the new 60-day episode payment resulting from the intervening event. If a beneficiary changes locations during the episode (for example, moves in with a family member), then the MSA or non-MSA at the start of the episode governs the labor adjustment of the episode payment for the balance of the episode. The new MSA or non-MSA corresponding to the new location would begin with the subsequent episode.

U. Market Basket

Comment: One commenter requested further clarification of the market basket used to update the cost data for inflation.

Response: We believe the market basket update was adequately described in the proposed rule (64 FR 58149). See section IV.B.2. of this rule for further clarification on the home health market basket. We are available to answer specific questions any commenters may have on an individual basis.

V. Alternative Methods of Care

Comment: Some commenters suggested the need to recognize alternative methods of care under PPS such as telemedicine or other innovations. Commenters recommended such alternative methods as a way to improve service delivery to patients and promote efficiencies.

Response: While we appreciate the intent of this comment, at this point the modality of telemedicine has not been adequately defined nor are there established safety and effectiveness standards across the continuum of products. Thus, we do not intend to change the current definition of a visit governed by § 409.48(c) which states, ''A visit is an episode of personal contact with the beneficiary by staff of the HHA or others under arrangements with the HHA for the purpose of providing a covered service.'' There is nothing to preclude an HHA from adopting telemedicine or other technologies that they believe promote efficiencies, but those untested technologies will not be specifically recognized and reimbursed by Medicare under the home health benefit.

W. Discrimination

Comment: A few commenters argued that the PPS as proposed discriminates

against States, provider types, classes of patients, and the impoverished and poorly educated due to their disproportionate numbers in certain States and regions of the country.

Response: The PPS was developed based on national norms and is intended to eliminate previous patterns of care that never related to patient need. We believe the case-mix methodology, significant change in condition adjustment, and cost outlier payments as developed in the system, treats all patients across the country equitably in relation to their condition.

X. Other Federal Requirements

Comment: A few commenters suggested that HHAs should not be required to comply with new Occupational Safety and Health Administration standards or any other new Federal requirements prior to PPS implementation.

Response: While we appreciate the concerns of the commenters, it is beyond the scope of our authority to place a moratorium on the application of regulations from other Federal agencies or other statutory Medicare requirements.

Y. OASIS Assessment and Plan of Care Certification Transition Concerns

Comment: Several commenters requested clarification of requirements governing OASIS assessments and plan of care certifications for implementation October 1, 2000. Commenters raised concerns regarding burden and costs associated with complying with the requirement that all patients be grouped into appropriate case-mix classifications and plan of care certifications for the October 1, 2000 implementation date.

Response: We addressed this concern in the proposed rule. We proposed to provide a one-time grace period in order to ease the transition to PPS for patients under an established OASIS assessment and certified plan of care prior to PPS implementation on October 1, 2000. We proposed if a beneficiary is under a home health plan of care before October 1, 2000 and the HHA has completed a Start of Care or Follow-Up OASIS assessment earlier than September 1, 2000, the HHA must complete a one-time additional Follow-up OASIS assessment using the modified OASIS B–1(8/2000) at least 5 days before October 1, 2000 for purposes of case-mix classification. The modified OASIS B–1(8/2000) is available on the HCFA Internet site at: http://www.hcfa.gov. If a beneficiary is under an established home health plan of care before October 1, 2000, and the HHA completed a Start of Care or Follow-Up OASIS assessment using the modified OASIS data set B–1(8/2000) on or after September 1, 2000 and does not wish to do a one-time OASIS at the inception of PPS, the HHA may use the earlier OASIS assessment.

We proposed a similar one-month grace period for physician certifications of the plan of care. In the October 28, 1999 proposed rule (64 FR 58195), we proposed, ''If a beneficiary is under an established home health plan of care before October 1, 2000 and the certification date is on or after September 1, 2000 and the HHA in conjunction with a certifying physician does not wish to do a one-time additional recertification of the plan of care at the inception of PPS, the HHA may use the recertification date (September 1, 2000 through September 30, 2000) from the earlier version of the plan of care. This is a one time grace period.'' We believe it is important to allow a one time grace period for plan of care certifications to ease transition concerns.

A beneficiary under an established plan of care as of September 1, 2000, may have a one-time implementation grace period for the plan of care certification requirements for a maximum period of up to 90 days (September 1, 2000 through and including November 29, 2000). This one-time grace period to alleviate implementation burden must be done in conjunction with a certifying physician. The regulatory requirements governing the Medicare home health benefit before implementation of PPS would apply to the certification period up to and including September 30, 2000. Home health agencies in conjunction with a certifying physician will have to document a break in ordered services for the pre-PPS physician ordered services (September 1, 2000 through and including September 30, 2000) and all post-PPS physician ordered services as of PPS implementation on October 1, 2000. The documented break in services during the one-time implementation grace period for the plan of care certification requirements for a maximum period of up to 90 days is required in order to ensure the alignment of all certified episodes and OASIS assessments as of PPS implementation on October 1, 2000.

For example, a Medicare home health eligible patient is under a physician's plan of care and the first billable visit date/start of care date in the plan of care is September 15, 2000. The one-time implementation grace period would reflect a plan of care that specifies physician orders for services furnished both before and after implementation of HHA PPS. The physician orders in the plan of care would reflect services from September 15, 2000 through and including September 30, 2000. All current coverage and payment rules would apply to the services provided on September 15, 2000 through and including September 30, 2000. The plan of care would also specify any services ordered on October 1, 2000 through and including November 29, 2000. The plan of care would reflect the break in services both before and after implementation of HHA PPS. The start of care date/first billable visit date for this patient under PPS in the plan of care is October 1, 2000. The one-time implementation grace period would require the documentation of services in the plan of care that were furnished both before and after implementation of HHA PPS and the documentation of the new PPS start of care date under PPS.

Many commenters raised concern about the potential burden associated with patients who are under a plan of care prior to October 1, 2000, but due to timing, their OASIS schedule did not fall in the post September 1, 2000 grace period time frame. These patients would require OASIS reassessment during the last 5 days of September in order to group the patients for purposes of case-mix classification for the October 1, 2000 PPS effective date. For some HHAs, this could potentially pose a significant implementation burden. Thus, we are revising our proposed approach to permit the completion of the next scheduled OASIS follow-up assessment for those patients under an established home health plan of care prior to September 1, 2000, but on or after August 1, 2000, to be completed at the HHA's discretion during the month of September. Therefore, if the patient is under a home health plan of care that overlaps the month of August 2000, the HHA will have the discretion to complete the next scheduled Follow-Up OASIS Assessment during the month of September. Under the one-time transition grace period, we are not requiring that the OASIS assessment be completed during the required time frame during the last 5 days of the episode certification requirement for August and September 2000. The requirement that the OASIS assessment must be completed during the last 5 days of the certification period in order to case-mix adjust the patient for a subsequent episode certification will resume with PPS implementation effective October 1, 2000. If the patient is under an established certified home health plan of care as of August 1, 2000 through and including August 31, 2000, then the HHA may complete the next

scheduled OASIS follow-up assessment anytime during the month of September 2000. For patients under an established home health plan of care on September 1, 2000 through and including September 30, 2000, then the HHA may use the most recent start of care or follow-up assessment on file for the month of September 2000 to group patients for purposes of case-mix PPS implementation on October 1, 2000.

Z. Billing Issues

Comment: Several commenters requested clarification regarding the billing instructions governing the new PPS.

Response: Due to the highly technical nature of these comments, we will not address those comments in this final rule. However, we will release operational billing instructions to accompany the publication of this final rule.

AA. Cost Reporting Under PPS

Comment: Several commenters recommended that the requirement for an HHA cost report end with PPS implementation.

Response: Cost reporting requirements for HHAs will not end with PPS. As with all other PPS systems there is continued demand for this data. Importantly, the data may be used to monitor, refine, and improve PPS in the future.

Comment: Several commenters requested clarification of the cost reporting requirements governing the October 1, 2000 PPS implementation date. Commenters were concerned with cost reporting periods that do not parallel the implementation date of PPS, October 1, 2000.

Response: All providers will file a full 12-month cost report regardless of their specific cost reporting year. There will be a statistical break in the cost report based on Medicare statistics up through and including September 30, 2000. Under PPS, the cost report will capture all statistical data for both costs and statistics for all subsequent periods. A provider's cost reporting year will not be affected by the implementation of PPS. We will provide more detailed instructions on PPS cost reporting instructions in subsequent program instructions and revisions to the Provider Reimbursement Manual.

Comment: Commenters requested clarification of the application of the interim payment system cost limits for the period of a cost reporting period that may overlap the date of implementation of PPS. Commenters wanted clarification on whether or not the interim payment system cost limits will be prorated.

Response: The interim payment system cost limits (per-visit limit and per-beneficiary limit) will not be prorated. Full application of the limits will apply to the cost reporting year subject to the interim payment system limits.

Comment: A commenter suggested a cost reporting mechanism for the identification of nontraditional home health services and their costs.

Response: Currently, there is no cost reporting mechanism for the separate identification of non-traditional Medicare costs. At their own option, providers may accumulate detailed statistics within their own accounting system.

BB. OASIS Data and Grouper Issues

Many of the OASIS comments were highly technical or not within the parameters of this final rule. Interested parties can get assistance with their queries on an individual basis as well as through the RHHIs and on HCFA's home page. We have provided general responses to the following OASIS data comments:

Comment: A few commenters reported that State OASIS personnel are stating that payments to HHAs under PPS will be based upon actual bills submitted.

Response: This information is incorrect. We have provided State OASIS Educational Coordinators (OEC) with the authority and responsibility to educate HHA providers about the implementation of the clinical aspects of the OASIS data set in their agency, and with the reporting and transmission requirements of the data set needed to go from the agency to the State system. They are not trained to answer questions about reimbursement. The RHHIs have the background and knowledge to educate HHA providers on the reimbursement aspect of HHA PPS. HHAs are free to contact their RHHI on questions concerning reimbursement under HHA PPS.

Comment: One commenter requested that we use the criteria of hospitalization as an indicator for a PEP adjustment due to concerns with the impact on outcome tracking.

Response: As discussed previously in our response to comments concerning the PEP adjustment, we have re-examined our approach due to intervening hospitalizations and potential discharge concerns. We have provided consistency to the extent possible to ensure adequate payment levels and corresponding outcome tracking for quality purposes.

Comment: A few commenters requested clarification of the payment approach for pre- and post-partum Medicare disability patients who are not required to have an OASIS assessment.

Response: While the OASIS data set was not designed for the assessment of the clinical needs of the maternity patient, and the maternity patient is excluded by regulation from the collection of the data set, the reimbursement system will require a home health resource group (HHRG) to be submitted on the claim. In the rare case of a pre-or post-partum Medicare maternity patient, the HHA will need to complete the comprehensive assessments at the specified time points, which are required for production of the HHRG. The HHA can place that HHRG group case-mix number on the claim to receive payment. The HHA is not required to transmit the assessments to the State Agency, but must include those assessments in the clinical record at the agency.

We believe the majority of this type of maternity patient will be held at the LUPA level. If, in the rare instance the patient requires more than four visits, we would suggest the HHA complete an OASIS in order to ensure adequate payment levels. We believe this would be true for the Medicare disabled population under 18. If the patient was at the LUPA level, in all likelihood he or she would be classified into the lowest HHRG level and ultimately paid at the LUPA level at the end of the episode.

Comment: A few commenters requested clarification on the proper OASIS schedule that should be used for a private pay or Medicaid patient who is in a current OASIS assessment period that becomes eligible for Medicare home health benefits during that period.

Response: All Medicare cases require a new Start of Care OASIS assessment to group the patient for payment purposes and assess the patient for care planning at the time the patient becomes Medicare eligible.

Comment: Several commenters requested access to the grouper prior to the publication of the final rule.

Response: We provided draft grouper software on the HHA PPS HCFA website during the comment period of the proposed rule. Providers could download the grouper software in a PC EXCEL format. We plan to also provide the final grouper on the HCFA HHA PPS website.

Comment: Some commenters questioned the affect untimely reporting of OASIS date or the absence of it would have on payment.

Response: An HHRG cannot be generated without a completed OASIS. The RHHI will not accept a billed HHRG unless the OASIS that supports the billed case-mix classification is encoded by the agency, electronically transmitted and accepted by the State's OASIS repository.

Comment: A few commenters were concerned with potential implementation costs associated with the OASIS schedules used to group patients for case-mix purposes.

Response: In section IV.C. of this rule, we set forth the payment methodology for the first year of PPS one-time adjustment reflecting implementation costs associated with revised OASIS schedules needed to classify patients into appropriate categories for payment. We have provided clarification of the proper OASIS assessment schedule used to group patients for case-mix based on the patient's episode status. Further clarification will be provided in subsequent program instructions.

Type of episode or adjustment	OASIS assessment: M0100 & M0825 response selection
1. Initial, whether first or new 60-day episode resulting from PEP Adjustment.	Start of Care: (M0100) RFA 1 and (M0825) select 0—No or 1—Yes*
2. SCIC *with* intervening Hospital Stay during current episode	Resumption of Care: (M0100) RFA 3 and (M0825) is 0—No or 1—Yes* If a patient was transferred to the hospital without agency discharge during the current episode, the required assessment upon return to home is the Resumption of Care assessment (RFA 3). The Resumption of Care assessment is required within 48 hours of the patient's return from the inpatient facility. The Resumption of Care assessment (RFA 3) also serves to determine the appropriate new case-mix assignment for the SCIC adjustment.
3. SCIC *with* intervening Hospital Stay at the end of an episode	Resumption of Care: (M0100) RFA 3 and (M0825) is 0—No or 1—Yes* and Follow up (M0100) RFA4 and (M0825) is 0—No or 1—Yes* If a patient was transferred to the hospital without agency discharge, the required assessment upon return to home is the Resumption of Care assessment (RFA 3). The Resumption of Care assessment is required within 48 hours of the patient's return from the inpatient facility. The recertification (Follow-up, RFA 4) comprehensive assessment is required in the last five days of the certification period; for payment purposes, this assessment is used to determine the case-mix assignment for the subsequent 60-day period. If the second part of the SCIC adjustment occurs in the last five days of the certification period, two comprehensive assessments are required. One assessment will be done for the resumption of care (RFA 3) and (M0825) select 0—No or 1—Yes; the other will be done for the recertification (Follow-up) assessment (RFA4) and (M0825) select 0—No or 1—Yes.* The reason two assessments are required is that therapy need must be predicted and reported on the OASIS record for each discrete 60 day episode.
4. SCIC *without* intervening Hospital Stay	Other Follow-Up Assessment: (M0100) RFA 5 and (M0825) select 0—No or 1—Yes*
5. Subsequent 60-day episode due to the need for continuous home health care after an initial 60-day episode.	Recertification (Follow-up): (M0100) RFA 4 and (M0825) select 0—No or 1—Yes*

* (M0825) = NA is applicable only when response (M0150)—response 1 (traditional Medicare fee-for-service) is not selected.

CC. Medical Review Under PPS

Comment: A number of commenters expressed concerns pertaining to the initiation of medical review activities for home health claims under the prospective payment system and suggested there should be a moratorium on or a delay of medical review. Others proposed a limit on the amount of and/or the kind of medical review performed.

Response: We believe it is important to implement medical review activities at the start-up of the new prospective payment system. As problems with specific home health claims are identified, contractors will be able to educate the home health agencies to prevent future billing errors. We have been working hard to develop an effective medical review strategy that will guard against program vulnerabilities unique to the PPS environment, be fair to home health providers, and meet the goal of paying claims correctly.

Comment: Commenters asked that we clarify the medical review process. One commenter asked if the RHHIs will change the case-mix assignment based on the medical review determination, and if so, asked what appeals process will be available to the agencies.

Response: For the most part, medical reviewers will continue to perform the same types of reviews that were conducted prior to implementation of PPS. For example, they will review to ensure that the beneficiary meets the requirements for Medicare home health coverage, and that services provided were reasonable and necessary and appropriately documented. One additional aspect of the review strategy will focus on the OASIS information and whether it is supported by documentation in the medical record. If the RHHI determines that a case-mix assignment is not appropriate, they will adjust the case-mix group accordingly. Agencies will continue to have all appeal rights currently associated with home health claims.

Comment: A commenter suggested that we impose time limits on contractors to complete medical review activities within a prescribed amount of time after receiving requested medical documentation.

Response: We have not prescribed specific contractor medical review time frames. We agree that this may be an issue that warrants further consideration; however, it is beyond the scope of this regulation and we will revisit this issue if warranted.

Comment: Several commenters expressed concerns about cash flow

issues if providers are placed on focused medical review and recommended that we prohibit sequential billing. Other commenters asked how medical review of an episode would affect subsequent episodes.

Response: We are sensitive to provider cash flow concerns and desires to balance legitimate provider concerns with Medicare's stewardship responsibilities. Sequential billing is not a requirement in the home health PPS, therefore medical review of one episode will not automatically delay payment for subsequent episodes. However, we may reduce or disapprove requests for anticipated payments in those situations in which protecting Medicare program integrity warrants these actions.

Comment: Several commenters expressed concerns about vulnerabilities presented by the prospective payment system.

Response: We recognize that there are unique program vulnerabilities related to the prospective payment environment. However, we believe we have identified possible vulnerabilities and random review will assist us in assessing vulnerabilities and problems on an ongoing basis. We are working with the RHHIs and home health providers to address them as we develop the medical review strategy.

Comment: A commenter recommended that RHHIs review the patient's plan of care (POC) and all visit documentation before determining whether or not patients qualify for full episode payments or therapy thresholds.

Response: We agree, and for claims selected for medical review, RHHIs will consider all available information from the agency for the episode billed in determining payment. That information may include all visit information such as nursing and therapy notes, treatment and flow charts, and vital sign records, weight charts, and medication records. In addition, the solicited information may also include the OASIS, the patient's POC, physician orders, hospital discharge summaries and transfer forms.

Comment: One commenter asked if HCFA expects significant changes in the numbers of denials under PPS.

Response: It is our goal to reduce payment errors. Because this is a new payment methodology, it is difficult to predict whether there will be changes in the denial rate for home health claims. We believe that education and early intervention is key to ensure proper billing under the new payment methodology, and can help reduce both denials and errors by increasing compliance.

DD. Quality Under PPS

Comment: We received a few comments requesting clarification of the quality improvement approach proposed under PPS.

Response: Efforts are currently underway to develop systems to generate outcome based quality improvement reports based on the OASIS that can be used to assess the quality of care at home health agencies, assist the States in their survey and certification responsibility, and provide information to home health agencies to assist them in ongoing quality improvement. Part of this effort is the implementation of the Home Health Outcome Based Quality Improvement System pilot project where the Peer Review Organizations (PROs) will act in a supportive role to assess and support quality improvement efforts in home health agencies. The Home Health Outcome Based Quality Improvement (HH OBQI) System is being implemented as a pilot project in five States through the PRO program. The HH OBQI system will explore the feasibility of providing assistance to HHAs in their efforts to implement and manage new programs for quality improvement. After a competitive solicitation to all PROs, HCFA selected the Maryland PRO, the Delmarva Foundation for Medical Care, Inc., as the lead or Home Health PRO (HH PRO). As the HH PRO, Delmarva will oversee the implementation of the project, coordinate the efforts of the four pilot PROs, and also serve as the fifth pilot PRO. The PROs for Michigan, New York, Rhode Island, and Virginia have also been selected as pilot PROs. The HH PRO will distribute information and guidance to the pilot PROs based on OASIS outcome reports, and its own analysis of OASIS data obtained from the national OASIS repository. The pilot PROs will, in turn, provide education and consultation to home health agencies to assist them in developing and managing their outcome based quality improvement programs. The pilot PROs will also provide consultation to State agencies, RHHIs and HCFA components in interpreting and using the outcome reports to assess home health quality.

EE. Medicare Secondary Payor (MSP) Under PPS

Comment: A few commenters raised concerns regarding the treatment of MSP under home health PPS.

Response: The statute governing home health PPS was silent regarding the treatment of MSP. The current requirements governing MSP will continue under the home health PPS environment. If warranted, further technical clarification will be provided in operational program instructions.

FF. Appeal Rights Under PPS

Comment: Several commenters requested clarification of provider appeal rights under home health PPS.

Response: Under the home health PPS, HHAs will have appeal rights comparable to the current environment. They will not be able to appeal the request for anticipated payment of the initial percentage payment for the episode, but they will be able to appeal a denial or down-coding by the intermediary where items or services were found as to be noncovered custodial care or were not reasonable and necessary AND where the intermediary finds that the beneficiary or provider should have known that they were excluded from coverage under the program (42 CFR § 405.704(c)).

Comment: Some commenters asked about beneficiary appeal rights under home health PPS, specifically demand billing procedures.

Response: We are currently reviewing demand billing procedures to determine whether they must be modified to take into account differences between HHA reasonable cost billing and the HHA PPS.

GG. Suggestions for HCFA

Comment: Several commenters sent comments on other regulations that were outside the scope of this rule. In addition, some commenters requested changes to the current statutorily required eligibility requirements, plan of care certification requirements, other coverage requirements that were not set forth in the proposed rule and the request to publish aspects of the final regulation on a faster publication track.

Response: These comments cannot be addressed in this rule, as this rule does not pertain to current law governing eligibility or plan of care certification requirements and therefore, we cannot amend these requirements as requested by the commenters. Due to tight timeframes for publication of this rule, we were unable to publish any portion of this rule in a separate rule under a quicker timeframe.

Comment: Several commenters recommended that we review all regulations and manual instructions for consistency.

Response: We have reviewed and will continue to review all current instructions and provide corresponding manual revisions and operational

instructions that reflect the final policies set forth in this rule.

Comment: Several commenters suggested the need for formal quarterly meetings with industry representatives or other industry groups to develop the final rule and provide a forum of open communication.

Response: We will continue to strive to keep the lines of communication open with our external environment. There are several requirements that govern the rulemaking process that inhibit consultation with outside groups. However, we will continue to ensure that we are available to clarify concerns and listen to our stakeholders throughout the process.

IV. Overview of Final Regulation

This final rule sets forth the methodology for the national PPS applicable to all Medicare home health services covered under both Part A and Part B. This final rule incorporates a national 60-day episode payment for all of the reasonable costs of services furnished to an eligible beneficiary under a Medicare home health plan of care. This section describes the components of the national 60-day episode payment and the methodology and data used in computation.

A. Costs and Services Covered by the Payment

The prospective payment applies to all home health services set forth in section 1861(m) of the Act that are covered and paid on a reasonable cost basis under the Medicare home health benefit (except osteoporosis drugs as defined in 1861(kk) which are paid outside PPS) as of the date of the enactment of the BBA, including medical supplies. DME is a covered home health service that is not currently paid on a reasonable cost basis, but is paid on a fee schedule basis when covered as a home health service under the Medicare home health benefit. Under the HHA PPS, DME covered as a home health service as part of the Medicare home health benefit will continue to be paid under the DME fee schedule. A separate payment amount in addition to the prospective payment amount for home health services will be made for DME currently covered as a home health service under the PPS. Although the covered osteoporosis drug under the home health benefit is currently paid on a reasonable cost basis, section 4603(c)(2)(A) of the BBA amended section 1833(a)(2)(A) of the Act to specifically exclude it from the prospective payment rate. In addition, unlike DME which is now excluded from the statutorily required consolidated billing requirement, the osteoporosis drug is included in the consolidated billing requirements.

B. Data Sources Used for the Development of the Payment

1. Audited Cost Report Data

Audit Sample Methodology: As discussed in the response to comments section, we provided an additional time period for intermediaries serving providers in the audited sample to resubmit audited cost reports ending in FY 1997 if the cost reports had been appealed and reopened. This provided us with the opportunity to include revised data in the calculation of the final rates if any of the audited cost reports in the original sample had been appealed, reopened or revised as of January 2000. The result was that we added an additional seven providers from whom we have audited cost report data for FY 1997, resulting in a total of 574 cost reports that have been used in the final rate calculations in this rule. The ''window of opportunity'' resulted in an additional seven audited cost reports. Although the new total number of audited cost reports increased to 574, however, we used only 563 of the 574 providers in the developing of the impacts. From 1997 to 1998, 11 of the 574 providers either closed or merged with another provider. As stated above, we are using CY 1998 utilization data in the PPS rate calculation. There was not 1998 utilization data to match to the audited cost report data for the 11 providers that closed or merged.

- Updating to September 30, 2001. Before computing the average cost per visit for each discipline that would be used to calculate the prospective payment rate, we adjusted the costs from the audit sample by the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods ending in FY 1997 to September 30, 2001. Multiplying nominal dollars for a given FY end by their respective inflation adjustment factor will express those dollars in the dollar level for the FY ending September 30, 2001. Therefore, we multiplied the total costs for each provider by the appropriate inflation factor shown in the table below. See section IV.B.2. of this regulation for a detailed description of the market basket.
- Nonroutine Medical Supplies Paid on a Reasonable Cost Basis Under a Home Health Plan of Care. Before computing the average cost per episode for non-routine medical supplies paid on a reasonable cost basis under a home health plan of care, we also adjusted the audited cost report data for nonroutine medical supplies using the latest market basket factors to reflect expected cost increases occurring between the cost reporting periods ending in FY 1997 to September 30, 2001.
- Adjusting Costs for Providers Impacted by the Per-Visit Limits. For cost reporting periods ending in FY 1997, Medicare recognized reasonable costs as the lower of the provider's actual costs or the per-visit limit applied in the aggregate for the six disciplines. Because some providers' costs were higher than the per-visit limits applied in the aggregate for the six disciplines, it was necessary to adjust their costs in order to reflect only those costs on which the provider's payment was based. The adjustment factor was calculated by dividing a provider's total visit limit by the total Medicare costs, but only if the total visit limit was less than the total Medicare costs. For those providers who were not impacted by the visit limit, (that is, those subject to their actual reasonable costs) no adjustment was necessary and the adjustment factor was set equal to one. The adjustment factor was applied to each provider's total costs for each discipline. Summing each provider's updated, weighted, and adjusted total costs by the sum of visits for each discipline results in the non-standardized, updated, weighted, and visit limit adjusted average cost per visit by discipline.

2. Home Health Agency Market Basket Index

The data used to develop the HHA PPS payments were adjusted using the latest available market basket factors to reflect expected cost increases occurring between cost reporting periods contained in our database and September 30, 2001. The following inflation factors were used in calculating the HHA PPS:

FACTORS FOR INFLATING DATABASE DOLLARS TO SEPTEMBER 30, 2001

FY end	1996	1997
October 31	1.15736	.....
November 30	1.15468	.....
December 31	1.15203	.....
January 31	.....	1.14946
February 28	.....	1.14697
March 31	.....	1.14451
April 30	.....	1.14203
May 31	.....	1.13952
June 30	.....	1.13693
July 31	.....	1.13420
August 31	.....	1.13132
September 30	.....	1.12841

For each of fiscal years 2002 and 2003, section 1895(b)(3)(B)(ii) of the Act

requires the standard prospective payment amounts to be increased by a factor equal to the home health market basket minus 1.1 percentage points. In addition, for any subsequent fiscal years, the statute requires that the rates be increased by the applicable home health market basket index change.

3. Claims Data

We also conducted analysis on an episode database created from the 1997 and 1998 National Claims History Files using 60-day episodes to define episode lengths. These data were based on use of home health services under the current system. We built a CY 1998 episode data base parallel to the construction of the CY 1997 episode data base set forth in the proposed rule at 64 FR 58149.

Table 1 illustrates the comparison of the distribution of consecutive 60-day episodes that occurred in calendar years 1997 and 1998.

Total number of consecutive 60-day episodes	Distribution based on only 60-day episodes that occurred in the CY 1997 period (percent)	Distribution based on only 60-day episodes that occurred in the CY 1998 period (percent)
1	51	59.5
2	18	19.3
3	8	7.7
4	5	4.1
5	4	2.5
6	3	1.7
7	10	5.2

Table 2 is a comparison of the average number of visits per episode for each discipline for CY 1997 and CY 1998 and Episodes in CY 1997 and CY 1998 with five or more visits.

Average number of visits by discipline	Average based on only 60-day episodes that fell into the CY 1997 period	Average based on only 60-day episodes that fell into the CY 1997 period with visit >4	Average based on only 60-day episodes that fell into the CY 1998 period	Average based on only 60-day episodes that fell into the CY 1998 period with visit >4
Skilled Nursing Services	12.55	14.69	12.1	14.08
Physical Therapy Services	2.35	2.74	2.59	3.05
Occupational Therapy Services	0.41	0.48	0.45	0.53
Speech Pathology Services	0.15	0.18	0.15	0.18
Medical Social Services	0.31	0.36	0.28	0.32
Home Health Aide Services	14.59	17.59	11.28	13.4
Total for all Disciplines	30.36	36.04	26.85	31.56

Table 3 provides analysis of the distribution of disciplines across a series of 60-day episodes in CY 1998.

Total number of 60-day episodes	Episode number within series of 60-day episodes	Percent of skilled nursing services	Percent of home health aide services	Percent of occupational therapy services	Percent of speech pathology services	Percent of medical social services	Percent of physical therapy services
1	1	50	24	3	1	2	20
2	1	46	34	3	1	1	15
2	2	46	37	2	1	1	13
3	1	46	38	2	1	1	11
3	2	45	41	2	1	1	10
3	3	46	42	2	1	1	9
4	1	45	43	2	1	1	8
4	2	45	46	1	1	1	7
4	3	45	46	1	0	1	7
4	4	46	45	1	0	1	6
5	1	45	46	1	0	1	6
5	2	44	48	1	0	1	5
5	3	44	49	1	0	1	5
5	4	44	49	1	0	1	5
5	5	45	47	1	0	1	5
6	1	44	48	1	0	1	6

Total number of 60-day episodes	Episode number within series of 60-day episodes	Percent of skilled nursing services	Percent of home health aide services	Percent of occupational therapy services	Percent of speech pathology services	Percent of medical social services	Percent of physical therapy services
6	2	43	50	1	0	1	5
6	3	43	51	1	0	1	4
6	4	43	51	1	0	1	4
6	5	44	50	1	0	1	4
6	6	45	49	1	0	1	4
7	1	40	56	1	0	1	3
7	2	41	55	0	0	1	3
7	3	41	56	0	0	1	3
7	4	41	56	0	0	1	2
7	5	41	55	0	0	1	2
7	6	42	55	0	0	1	2
7	7	42	55	0	0	0	2
8	1	42	53	1	0	1	4
8	2	42	54	1	0	1	3
8	3	42	53	0	0	1	3
8	4	43	54	0	0	1	3
8	5	43	54	0	0	0	3
8	6	43	53	0	0	0	3
8	7	44	53	0	0	0	3
8	8	44	52	0	0	0	3

National Part B Claims History File—Medical Supplies. Nonroutine medical supplies are also a covered home health service listed in section 1861(m)(5) of the Act. The law governing PPS requires medical supplies to be included in the prospective payment rate and to be subject to the consolidated billing requirements. As discussed in the proposed rule, before PPS implementation, HHAs were not required to bundle all home health services. Specifically, nonroutine medical supplies that have a duplicate Part B code could have been furnished by a supplier rather than the HHA and paid under Part B prior to PPS. Under the current IPS, some HHAs may have chosen to unbundle those non-routine medical supplies that had a corresponding Part B payment. In order to determine the scope of the non-routine medical supplies that could have been unbundled under the current system, we identified 199 HCPCs codes representing those items that would fall into the possible ''unbundled nonroutine medical supply'' category.

As discussed in the response to comment section of this rule, based on several comments we re-examined our approach to the original list of 199 codes. Our analysis yielded a payment approach to non-routine medical supplies included in the PPS rates that uses 178 Part B codes that could have possibly been unbundled to Part B before PPS. We performed the same data analysis on the CY 1998 claims data and the revised list of 178 Part B codes to develop the appropriate payment adjustment amount for non-routine medical supplies that could possibly be unbundled to Part B before PPS that is added to the non-standardized episode payment.

We pulled all claims with the corresponding HCPCs codes from the Part B national claims history file. In order to determine whether the HCPCs codes were related to the beneficiary receiving home health services under a home health plan of care, we linked every Part B claim with one or more of the 199 HCPCs codes to home health episodes from our episode database for both CY 1997 and CY 1998 by beneficiary and dates of service. If a beneficiary received home health services during a 60-day episode and there was a corresponding Part B claim with one of the 178 HCPCs codes that was billed during the same 60-day episode, we identified the item as related to the home health stay. We proposed an additional payment amount of $6.08 to the 60-day episode base rate for those nonroutine medical supplies with corresponding Part B codes that may have been unbundled under the interim payment system.

National Part B Claims History File—Therapies. As discussed above in section III. of this final rule. *Analysis and Responses to Public Comments,* we conducted a parallel analysis of Part B therapy claims that could possibly be related to a home health stay during CY 1997 and CY 1998. Prior to consolidated billing requirements governing PPS, HHAs may have unbundled therapy services to Part B. We believe that this was a rare occurrence. Under PPS, HHAs will be responsible for providing physical therapy, speech language pathology services and occupational therapy either directly or under arrangement. Under subsequent analysis, based upon comments received, we believe that there is a need to recognize these therapy services that could have been unbundled to Part B before PPS in the PPS rates. We conducted claims analysis similar to our approach to identify those non-routine medical supplies that could have been unbundled to Part B. We identified the three therapy services in both Part B outpatient and Part B physician/supplier claims data.

HCFA identified 54 HCPCs codes that represent those services that could fall into the possible ''unbundled therapy related services'' category under Part B Physician/Supplier claims for patients under a home health plan of care before implementation of PPS. We also identified under Part B, therapy services that could have been unbundled and provided in an hospital outpatient setting to patients under a home health plan of care before implementation of PPS. We identified the 17 revenue center code ranges for physical, occupational, and speech therapy services that could have been billed under Part B in a hospital outpatient setting for patients under a home health plan of care before implementation of PPS. HCFA pulled all claims from the Part B Physician/Supplier claims with the corresponding 54 codes above and all claims from the Part B hospital outpatient claims with the corresponding 17 revenue center code ranges. As with our analysis of nonroutine medical supplies that could have been unbundled to Part B before implementation of PPS, HCFA matched

claims for a beneficiary receiving home health services under a home health plan of care by linking the Part B claims to home health episodes from our 1998 episode database, by beneficiary and dates of service. If a beneficiary received home health services during a 60-day episode and there was a corresponding part B claim with either one of the 54 HCPCs or a revenue center code within one of the 17 revenue center code ranges for therapy services, we identified the Part B service as related to the home health stay.

As a result of our therapy analysis, we are recognizing an additional adjustment to the 60-day non-standardized episode amount for therapy services that could have been unbundled to Part B before implementation of PPS. The per episode possible unbundled therapy related service amounts billed under Part B included in the PPS rate were calculated by summing the allowed charges for the 54 HCPCs for physician/supplier and the costs for the 17 therapy revenue center code ranges for hospital outpatient in calendar year 1998 for beneficiaries under a home health plan of care. That total was divided by the total number of episodes in calendar year 1998 from the episode database. The methodology for the adjustment is set forth in section IV.C. of this regulation.

4. Hospital Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act, require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of health services and to provide appropriate adjustments to the episode payment amounts under PPS to account for area wage differences. The wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act. The statute allows the Secretary to use the area where the services are furnished or such area as the Secretary may specify for the wage index adjustment. To be consistent with the wage index adjustment under the current interim payment system, we proposed and will retain applying the appropriate wage index value to the labor portion of the PPS rates based on the geographic area in which the beneficiary received home health services.

In addition, section 1895(b)(3)(A)(i) of the Act requires the Secretary to standardize the cost data used in developing the PPS payment amount for wage levels among different HHAs in a budget-neutral manner. The wage index adjustment to the PPS rates must be made in a manner that does not result in aggregate payments that are greater or less than those that would have otherwise been made if the PPS rates were not adjusted by the wage index.

Each HHA's labor market area is determined based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). In establishing the final HHA PPS rates, we used the most recent pre-floor and pre-reclassified hospital wage index without regard to whether these hospitals have been classified to a new geographic area by the Medicare Geographic Reclassification Board. As stated in the response to comments, we believe the use of the pre-floor and pre-reclassified hospital wage index data results in an appropriate adjustment to the labor portion of costs as required by law.

TABLE 4A.—FY 2000 WAGE INDEX FOR RURAL AREAS—PRE-FLOOR AND PRE-RECLASSIFIED

Nonurban area	Wage Index
Alabama	0.7391
Alaska	1.2058
Arizona	0.8545
Arkansas	0.7236
California	0.9952
Colorado	0.8814
Connecticut	1.2414
Delaware	0.9167
Florida	0.8987
Georgia	0.8095
Guam	0.7268
Hawaii	1.0728
Idaho	0.8652
Illinois	0.8048
Indiana	0.8397
Iowa	0.7927
Kansas	0.7461
Kentucky	0.8043
Louisiana	0.7382
Maine	0.8640
Maryland	0.8632
Massachusetts	1.1370
Michigan	0.8815
Minnesota	0.8670
Mississippi	0.7307
Missouri	0.7724
Montana	0.8396
Nebraska	0.8008
Nevada	0.9098
New Hampshire	0.9906
New Jersey [1]	.....
New Mexico	0.8379
New York	0.8637
North Carolina	0.8290
North Dakota	0.7648
Ohio	0.8650
Oklahoma	0.7256
Oregon	0.9868
Pennsylvania	0.8525
Puerto Rico	0.4249
Rhode Island [1]	.....
South Carolina	0.8264

TABLE 4A.—FY 2000 WAGE INDEX FOR RURAL AREAS—PRE-FLOOR AND PRE-RECLASSIFIED—Continued

Nonurban area	Wage Index
South Dakota	0.7577
Tennessee	0.7651
Texas	0.7471
Utah	0.8907
Vermont	0.9408
Virginia	0.7904
Virgin Islands	0.6389
Washington	1.0447
West Virginia	0.8069
Wisconsin	0.8760
Wyoming	0.8860

[1] All counties within the State are classified as urban.

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED

MSA	Urban area (constituent counties)	Wage index
0040	Abilene, TX	0.8180
	Taylor, TX	
0060	Aguadilla, PR	0.3814
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	1.0164
	Portage, OH	
	Summit, OH	
0120	Albany, GA	1.0373
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY.	0.8755
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	0.8500
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	0.7870
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA.	1.0228
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	0.9343
	Blair, PA	
0320	Amarillo, TX	0.8381
	Potter, TX	
	Randall, TX	
0380	Anchorage, AK	1.2860
	Anchorage, AK	
0440	Ann Arbor, MI	1.1484
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston, AL	0.8463
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI.	0.8913

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.4815
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	0.8885
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	0.9705
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	1.0051
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	DeKalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic-Cape May, NJ ..	1.1311
	Atlantic, NJ	
	Cape May, NJ	
0580	Auburn-Opelka, AL	0.9619
	Lee, AL	
0600	Augusta-Aiken, GA–SC	0.9014
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX	0.9082
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	0.9531
	Kern, CA	
0720	Baltimore, MD	0.9892
	Anne Arundel, MD	
	Baltimore, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Anne's, MD	
0733	Bangor, ME	0.9610
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA.	1.3303
	Barnstable, MA	
0760	Baton Rouge, LA	0.8708
	Ascension, LA	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	East Baton Rouge, LA	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX.	0.8624
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.1395
	Whatcom, WA	
0870	Benton Harbor, MI	0.8458
	Berrien, MI	
0875	Bergen-Passaic, NJ	1.2029
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	1.0039
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS.	0.7868
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	0.8751
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	0.8995
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.7759
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	0.8593
	Monroe, IN	
1040	Bloomington-Normal, IL	0.8994
	McLean, IL	
1080	Boise City, ID	0.9060
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH.	1.1359
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125	Boulder-Longmont, CO	0.9945
	Boulder, CO	
1145	Brazoria, TX	0.8517
	Brazoria, TX	
1150	Bremerton, WA	1.1012
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX.	0.9213
	Cameron, TX	
1260	Bryan-College Station, TX.	0.8510
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY.	0.9605
	Erie, NY	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Niagara, NY	
1303	Burlington, VT	1.0559
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310	Caguas, PR	0.4561
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH ...	0.8772
	Carroll, OH	
	Stark, OH	
1350	Casper, WY	0.9200
	Natrona, WY	
1360	Cedar Rapids, IA	0.9019
	Linn, IA	
1400	Champaign-Urbana, IL ..	0.9164
	Champaign, IL	
1440	Charleston-North Charleston, SC.	0.8989
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	0.9096
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-Rock Hill, NC–SC.	0.9434
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanly, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.0575
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN–GA ...	0.9732
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580	Cheyenne, WY	0.8176
	Laramie, WY	
1600	Chicago, IL	1.0874
	Cook, IL	
	DeKalb, IL	
	DuPage, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620	Chico-Paradise, CA	1.0391
	Butte, CA	
1640	Cincinnati, OH–KY–IN ..	0.9419
	Dearborn, IN	
	Ohio, IN	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
1660	Clarksville-Hopkinsville, TN–KY.	0.8090
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH.	0.9689
	Ashtabula, OH	
	Cuyahoga, OH	
	Geauga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
1720	Colorado Springs, CO	0.9218
	El Paso, CO	
1740	Columbia, MO	0.8905
	Boone, MO	
1760	Columbia, SC	0.9358
	Lexington, SC	
	Richland, SC	
1800	Columbus, GA–AL	0.8511
	Russell, AL	
	Chattahoochee, GA	
	Harris, GA	
	Muscogee, GA	
1840	Columbus, OH	0.9908
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	0.8702
	Nueces, TX	
	San Patricio, TX	
1890	Corvallis, OR	1.1088
	Benton, OR	
1900	Cumberland, MD–WV	0.8802
	Allegany, MD	
	Mineral, WV	
1920	Dallas, TX	0.9607
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950	Danville, VA	0.9062
	Danville City, VA	
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA–IL.	0.8707
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH	0.9461
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL	0.8988
	Flagler, FL	
	Volusia, FL	
2030	Decatur, AL	0.8680
	Lawrence, AL	
	Morgan, AL	
2040	Decatur, IL	0.8322
	Macon, IL	
2080	Denver, CO	1.0190
	Adams, CO	
	Arapahoe, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	0.8755
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.0422
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	0.7799
	Dale, AL	
	Houston, AL	
2190	Dover, DE	0.9336
	Kent, DE	
2200	Dubuque, IA	0.8521
	Dubuque, IA	
2240	Duluth-Superior, MN–WI	1.0166
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY	1.0553
	Dutchess, NY	
2290	Eau Claire, WI	0.8958
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	0.8948
	El Paso, TX	
2330	Elkhart-Goshen, IN	0.9380
	Elkhart, IN	
2335	Elmira, NY	0.8534
	Chemung, NY	
2340	Enid, OK	0.7954
	Garfield, OK	
2360	Erie, PA	0.9024
	Erie, PA	
2400	Eugene-Springfield, OR	1.0604
	Lane, OR	
2440	Evansville-Henderson, IN–KY.	0.8304
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520	Fargo-Moorhead, ND–MN.	0.8621
	Clay, MN	
	Cass, ND	
2560	Fayetteville, NC	0.8495
	Cumberland, NC	
2580	Fayetteville-Springdale-Rogers, AR.	0.7774
	Benton, AR	
	Washington, AR	
2620	Flagstaff, AZ–UT	1.0349
	Coconino, AZ	
	Kane, UT	
2640	Flint, MI	1.1021
	Genesee, MI	
2650	Florence, AL	0.7928
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	0.8619
	Florence, SC	
2670	Fort Collins-Loveland, CO.	1.0303
	Larimer, CO	
2680	Ft. Lauderdale, FL	1.0173
	Broward, FL	
2700	Fort Myers-Cape Coral, FL.	0.8951
	Lee, FL	
2710	Fort Pierce-Port St. Lucie, FL.	0.9999
	Martin, FL	
	St. Lucie, FL	
2720	Fort Smith, AR–OK	0.7844
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750	Fort Walton Beach, FL	0.8714
	Okaloosa, FL	
2760	Fort Wayne, IN	0.9097
	Adams, IN	
	Allen, IN	
	DeKalb, IN	
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800	Forth Worth-Arlington, TX.	0.9836
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840	Fresno, CA	1.0263
	Fresno, CA	
	Madera, CA	
2880	Gadsden, AL	0.8689
	Etowah, AL	
2900	Gainesville, FL	1.0103
	Alachua, FL	
2920	Galveston-Texas City, TX.	0.9733
	Galveston, TX	
2960	Gary, IN	0.9391
	Lake, IN	
	Porter, IN	
2975	Glens Falls, NY	0.8607
	Warren, NY	
	Washington, NY	
2980	Goldsboro, NC	0.8334
	Wayne, NC	
2985	Grand Forks, ND–MN	0.9098
	Polk, MN	
	Grand Forks, ND	
2995	Grand Junction, CO	0.9189
	Mesa, CO	
3000	Grand Rapids-Muskegon-Holland, MI.	1.0136
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040	Great Falls, MT	1.0460

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Cascade, MT	
3060	Greeley, CO	0.9723
	Weld, CO	
3080	Green Bay, WI	0.9133
	Brown, WI	
3120	Greensboro-Winston-Salem-High Point, NC.	0.9038
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC	
	Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadkin, NC	
3150	Greenville, NC	0.9501
	Pitt, NC	
3160	Greenville-Spartanburg-Anderson, SC.	0.9189
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	0.8843
	Washington, MD	
3200	Hamilton-Middletown, OH.	0.8947
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA.	0.9918
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT [1 2]	1.1716
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285	Hattiesburg, MS	0.7634
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton-Lenoir, NC.	0.9113
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawba, NC	
3320	Honolulu, HI	1.1477
	Honolulu, HI	
3350	Houma, LA	0.7837
	Lafourche, LA	
	Terrebonne, LA	
3360	Houston, TX	0.9388
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	
	Montgomery, TX	
	Waller, TX	
3400	Huntington-Ashland, WV–KY–OH.	0.9758
	Boyd, KY	
	Carter, KY	
	Greenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440	Huntsville, AL	0.8823
	Limestone, AL	
	Madison, AL	
3480	Indianapolis, IN	0.9793
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500	Iowa City, IA	0.9608
	Johnson, IA	
3520	Jackson, MI	0.8841
	Jackson, MI	
3560	Jackson, MS	0.8387
	Hinds, MS	
	Madison, MS	
	Rankin, MS	
3580	Jackson, TN	0.8601
	Madison, TN	
	Chester, TN	
3600	Jacksonville, FL	0.8958
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	0.7853
	Onslow, NC	
3610	Jamestown, NY	0.7858
	Chautauqua, NY	
3620	Janesville-Beloit, WI	0.9657
	Rock, WI	
3640	Jersey City, NJ	1.1676
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN–VA.	0.8854
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680	Johnstown, PA	0.8641
	Cambria, PA	
	Somerset, PA	
3700	Jonesboro, AR	0.7232
	Craighead, AR	
3710	Joplin, MO	0.7679
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI.	0.9982
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740	Kankakee, IL	0.8599
	Kankakee, IL	
3760	Kansas City, KS–MO	0.9322
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800	Kenosha, WI	0.9034
	Kenosha, WI	
3810	Killeen-Temple, TX	0.9933
	Bell, TX	
	Coryell, TX	
3840	Knoxville, TN	0.9200
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850	Kokomo, IN	0.8919
	Howard, IN	
	Tipton, IN	
3870	La Crosse, WI–MN	0.8934
	Houston, MN	
	La Crosse, WI	
3880	Lafayette, LA	0.8340
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920	Lafayette, IN	0.8810
	Clinton, IN	
	Tippecanoe, IN	
3960	Lake Charles, LA	0.7967
	Calcasieu, LA	
3980	Lakeland-Winter Haven, FL.	0.8816
	Polk, FL	
4000	Lancaster, PA	0.9256
	Lancaster, PA	
4040	Lansing-East Lansing, MI.	0.9978
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080	Laredo, TX	0.8323
	Webb, TX	
4100	Las Cruces, NM	0.8591
	Dona Ana, NM	
4120	Las Vegas, NV–AZ	1.1259
	Mohave, AZ	
	Clark, NV	
	Nye, NV	
4150	Lawrence, KS	0.8900
	Douglas, KS	
4200	Lawton, OK	09533
	Comanche, OK	
4243	Lewiston-Auburn, ME ...	0.8900
	Androscoggin, ME	
4280	Lexington, KY	0.8532
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320	Lima, OH	0.8906
	Allen, OH	
	Auglaize, OH	
4360	Lincoln, NE	0.9671

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Lancaster, NE	
4400	Little Rock-North Little Rock, AR.	0.8615
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420	Longview-Marshall, TX	0.8739
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480	Los Angeles-Long Beach, CA.	1.2052
	Los Angeles, CA	
4520	Louisville, KY–IN	0.9382
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600	Lubbock, TX	0.8412
	Lubbock, TX	
4640	Lynchburg, VA	0.8815
	Amherst, VA	
	Bedford, VA	
	Bedford City, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680	Macon, GA	0.8531
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720	Madison, WI	0.9730
	Dane, WI	
4800	Mansfield, OH	0.8476
	Crawford, OH	
	Richland, OH	
4840	Mayaguez, PR	0.4675
	Anasco, PR	
	Cabo Rojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880	McAllen-Edinburg-Mission, TX.	0.8121
	Hidalgo, TX	
4890	Medford-Ashland, OR ...	1.0493
	Jackson, OR	
4900	Melbourne-Titusville-Palm Bay, FL.	0.9297
	Brevard, FL	
4920	Memphis, TN–AR–MS ..	0.8245
	Crittenden, AR	
	DeSoto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940	Merced, CA	1.0278
	Merced, CA	
5000	Miami, FL	1.0234
	Dade, FL	
5015	Middlesex-Somerset-Hunterdon, NJ.	1.1123
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080	Milwaukee-Waukesha, WI.	0.9846
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120	Minneapolis-St. Paul, MN–WI.	1.0930
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherburne, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140	Missoula, MT	0.9086
	Missoula, MT	
5160	Mobile, AL	0.8268
	Baldwin, AL	
	Mobile, AL	
5170	Modesto, CA	1.0112
	Stanislaus, CA	
5190	Monmouth-Ocean, NJ ...	1.1259
	Monmouth, NJ	
	Ocean, NJ	
5200	Monroe, LA	0.8222
	Ouachita, LA	
5240	Montgomery, AL	0.7704
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280	Muncie, IN	1.0835
	Delaware, IN	
5330	Myrtle Beach, SC	0.8530
	Horry, SC	
5345	Naples, FL	0.9840
	Collier, FL	
5360	Nashville, TN	0.9450
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford, TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380	Nassau-Suffolk, NY	1.4076
	Nassau, NY	
	Suffolk, NY	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT.	1.2357
	Fairfield, CT	
	New Haven, CT	
5523	New London-Norwich, CT.	1.2429
	New London, CT	
5560	New Orleans, LA	0.9090
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600	New York, NY	1.4519
	Bronx, NY	
	Kings, NY	
	New York, NY	
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640	Newark, NJ	1.1647
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
5660	Newburgh, NY–PA	1.0910
	Orange, NY	
	Pike, PA	
5720	Norfolk-Virginia Beach-Newport News, VA–NC.	0.8441
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	Isle of Wight, VA	
	James City, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
	York, VA	
5775	Oakland, CA	1.5059
	Alameda, CA	
	Contra Costa, CA	
5790	Ocala, FL	0.9616
	Marion, FL	
5800	Odessa-Midland, TX	0.8874
	Ector, TX	
	Midland, TX	
5880	Oklahoma City, OK	0.8588
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910	Olympia, WA	1.0933
	Thurston, WA	
5920	Omaha, NE–IA	1.0456
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	
5945	Orange County, CA	1.1591
	Orange, CA	
5960	Orlando, FL	0.9796
	Lake, FL	
	Orange, FL	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Osceola, FL	
	Seminole, FL	
5990	Owensboro, KY	0.8105
	Daviess, KY	
6015	Panama City, FL	0.9170
	Bay, FL	
6020	Parkersburg-Marietta, WV–OH.	0.8415
	Washington, OH	
	Wood, WV	
6080	Pensacola, FL	0.8443
	Escambia, FL	
	Santa Rosa, FL	
6120	Peoria-Pekin, IL	0.8350
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160	Philadelphia, PA–NJ	1.1161
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Montgomery, PA	
	Philadelphia, PA	
6200	Phoenix-Mesa, AZ	0.9465
	Maricopa, AZ	
	Pinal, AZ	
6240	Pine Bluff, AR	0.7698
	Jefferson, AR	
6280	Pittsburgh, PA	0.9635
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323	Pittsfield, MA	1.0256
	Berkshire, MA	
6340	Pocatello, ID	0.8974
	Bannock, ID	
6360	Ponce, PR	0.4971
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403	Portland, ME	0.9476
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440	Portland-Vancouver, OR–WA.	1.0976
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
	Clark, WA	
6483	Providence-Warwick-Pawtucket, RI.	1.0691
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
6520	Provo-Orem, UT	0.9819
	Utah, UT	
6560	Pueblo, CO	0.8854
	Pueblo, CO	
6580	Punta Gorda, FL	0.9509
	Charlotte, FL	
6600	Racine, WI	0.9217
	Racine, WI	
6640	Raleigh-Durham-Chapel Hill, NC.	0.9545
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660	Rapid City, SD	0.8364
	Pennington, SD	
6680	Reading, PA	0.9537
	Berks, PA	
6690	Redding, CA	1.1265
	Shasta, CA	
6720	Reno, NV	1.0656
	Washoe, NV	
6740	Richland-Kennewick-Pasco, WA.	1.1225
	Benton, WA	
	Franklin, WA	
6760	Richmond-Petersburg, VA.	0.9546
	Charles City County, VA	
	Chesterfield, VA	
	Colonial Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780	Riverside-San Bernardino, CA.	1.1211
	Riverside, CA	
	San Bernardino, CA	
6800	Roanoke, VA	0.8139
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820	Rochester, MN	1.1430
	Olmsted, MN	
6840	Rochester, NY	0.9185
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
6880	Rockford, IL	0.8784
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895	Rocky Mount, NC	0.8735
	Edgecombe, NC	
	Nash, NC	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
6920	Sacramento, CA	1.2285
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960	Saginaw-Bay City-Midland, MI.	0.9287
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980	St. Cloud, MN	0.9422
	Benton, MN	
	Stearns, MN	
7000	St. Joseph, MO	0.8944
	Andrew, MO	
	Buchanan, MO	
7040	St. Louis, MO–IL	0.9053
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
	Franklin, MO	
	Jefferson, MO	
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
7080	Salem, OR	0.9950
	Marion, OR	
	Polk, OR	
7120	Salinas, CA	1.4711
	Monterey, CA	
7160	Salt Lake City-Ogden, UT.	0.8855
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200	San Angelo, TX	0.7846
	Tom Green, TX	
7240	San Antonio, TX	0.8318
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320	San Diego, CA	1.1931
	San Diego, CA	
7360	San Francisco, CA	1.4002
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400	San Jose, CA	1.3610
	Santa Clara, CA	
7440	San Juan-Bayamon, PR	0.4658
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460	San Luis Obispo-Atascadero-Paso Robles, CA.	1.0471
	San Luis Obispo, CA	
7480	Santa Barbara-Santa Maria-Lompoc, CA.	1.0820
	Santa Barbara, CA	
7485	Santa Cruz-Watsonville, CA.	1.3929
	Santa Cruz, CA	
7490	Santa Fe, NM	1.0438
	Los Alamos, NM	
	Santa Fe, NM	
7500	Santa Rosa, CA	1.3001
	Sonoma, CA	
7510	Sarasota-Bradenton, FL	0.9906
	Manatee, FL	
	Sarasota, FL	
7520	Savannah, GA	0.9954
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560	Scranton—Wilkes-Barre—Hazleton, PA.	0.8373
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600	Seattle-Bellevue-Everett, WA.	1.1291
	Island, WA	
	King, WA	
	Snohomish, WA	
7610	Sharon, PA	0.8284
	Mercer, PA	
7620	Sheboygan, WI	0.8203
	Sheboygan, WI	
7640	Sherman-Denison, TX	0.9330
	Grayson, TX	
7680	Shreveport-Bossier City, LA.	0.9050
	Bossier, LA	
	Caddo, LA	
	Webster, LA	
7720	Sioux City, IA–NE	0.8549
	Woodbury, IA	
	Dakota, NE	
7760	Sioux Falls, SD	0.8777
	Lincoln, SD	
	Minnehaha, SD	
7800	South Bend, IN	0.9794
	St. Joseph, IN	
7840	Spokane, WA	1.0800
	Spokane, WA	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
7880	Springfield, IL	0.8689
	Menard, IL	
	Sangamon, IL	
7920	Springfield, MO	0.7992
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003	Springfield, MA	1.0678
	Hampden, MA	
	Hampshire, MA	
8050	State College, PA	0.9139
	Centre, PA	
8080	Steubenville-Weirton, OH–WV.	0.8815
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120	Stockton-Lodi, CA	1.0519
	San Joaquin, CA	
8140	Sumter, SC	0.8239
	Sumter, SC	
8160	Syracuse, NY	0.9413
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200	Tacoma, WA	1.1479
	Pierce, WA	
8240	Tallahassee, FL	0.8485
	Gadsden, FL	
	Leon, FL	
8280	Tampa-St. Petersburg-Clearwater, FL.	0.9045
	Hernando, FL	
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320	Terre Haute, IN	0.8571
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	
8360	Texarkana, AR-Texarkana, TX.	0.8136
	Miller, AR	
	Bowie, TX	
8400	Toledo, OH	0.9816
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440	Topeka, KS	0.9327
	Shawnee, KS	
8480	Trenton, NJ	1.0103
	Mercer, NJ	
8520	Tucson, AZ	0.8743
	Pima, AZ	
8560	Tulsa, OK	0.8087
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600	Tuscaloosa, AL	0.8065
	Tuscaloosa, AL	
8640	Tyler, TX	0.9370
	Smith, TX	
8680	Utica-Rome, NY	0.8299
	Herkimer, NY	
	Oneida, NY	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
8720	Vallejo-Fairfield-Napa, CA.	1.3347
	Napa, CA	
	Solano, CA	
8735	Ventura, CA	1.1456
	Ventura, CA	
8750	Victoria, TX	0.8379
	Victoria, TX	
8760	Vineland-Millville-Bridgeton, NJ.	1.0518
	Cumberland, NJ	
8780	Visalia-Tulare-Portersville, CA.	1.0412
	Tulare, CA	
8800	Waco, TX	0.8076
	McLennan, TX	
8840	Washington, DC–MD–VA–WV.	1.1055
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpeper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	
	Berkeley, WV	
	Jefferson, WV	
8920	Waterloo-Cedar Falls, IA	0.8518
	Black Hawk, IA	
8940	Wausau, WI	0.9446
	Marathon, WI	
8960	West Palm Beach-Boca Raton, FL.	1.0013
	Palm Beach, FL	
9000	Wheeling, WV–OH	0.7644
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040	Wichita, KS	0.9422
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080	Wichita Falls, TX	0.7653
	Archer, TX	
	Wichita, TX	
9140	Williamsport, PA	0.8450
	Lycoming, PA	
9160	Wilmington-Newark, DE–MD.	1.1275
	New Castle, DE	
	Cecil, MD	
9200	Wilmington, NC	0.9708
	New Hanover, NC	

TABLE 4B.—WAGE INDEX FOR URBAN AREAS—FY 2000 PRE-FLOOR AND PRE-RECLASSIFIED—Continued

MSA	Urban area (constituent counties)	Wage index
	Brunswick, NC	
9260	Yakima, WA	1.0333
	Yakima, WA	
9270	Yolo, CA	0.9720
	Yolo, CA	
9280	York, PA	0.9310
	York, PA	
9320	Youngstown-Warren, OH.	0.9997
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340	Yuba City, CA	1.0663
	Sutter, CA	
	Yuba, CA	
9360	Yuma, AZ	0.9925
	Yuma, AZ	

C. Methodology Used for the Calculation of the 60-Day Episode Payment Amount

The methodology used to compute the standardized national 60-day episode payment rates was a multistep process combining each of the data sources described above. As stated above, section 1895(b)(3)(A)(i) of the Act requires that—(1) the computation of a standard prospective payment amount that includes all costs of home health services covered and paid for on a reasonable-cost basis be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case-mix and wage levels among HHAs. The budget neutrality provision, with the 15-percent reduction and contingency reduction to IPS, originated from the BBA, was delayed by OCESAA, and further amended by BBRA to delay the 15 percent reduction by one year, while eliminating the contingency reduction to IPS. The data used to develop the HHA PPS rates were adjusted using the latest available market basket increases occurring between the cost reporting periods contained in our database and September 30, 2001.

With data described above, we calculated the standard average prospective payment amount for the 60-day episode using the following formula:

• We multiply the national mean cost per visit updated for inflation for each of the six disciplines (skilled nursing, physical therapy, occupational therapy, speech-language pathology services, medical social services, and home health aide services) in a 60-day episode by the national mean utilization for each of the six disciplines in a 60-day episode summed in the aggregate. We add to the figure derived from the above calculation, amounts for—

++ Nonroutine medical supplies paid on a reasonable-cost basis under a home health plan of care;

++ Nonroutine medical supplies that could have been unbundled to Part B that will be included under the PPS rate;

++ Therapy services that could have been unbundled to Part B that will be included under the PPS rate;

++ An OASIS adjustment to pay HHAs for estimated ongoing OASIS assessment reporting costs; and

++ A one-time implementation adjustment to pay HHAs for estimated costs associated with implementing the revisions to the OASIS assessment schedules in order to classify patients into the appropriate case-mix categories for payment for the first year of PPS.

• Nonroutine Medical Supplies. The per-episode nonroutine medical supply amounts, paid on a reasonable cost basis under a home health plan of care, were calculated by summing the nonroutine medical supply costs for all of the providers in the audited cost report sample weighted to represent the national population and updated to FY 2001. That total was divided by the number of episodes for the providers in the audited cost report sample weighted to represent the national population and updated to FY 2001.

The per-episode possible unbundled nonroutine medical supply amounts billed under Part B included in the PPS rate were calculated by summing the allowed charges for the revised 178 HCPCs codes (described in sections II.B and IV.) in calendar year 1998 for beneficiaries under a home health plan of care. That total was divided by the total number of episodes in calendar year 1998 from the episode database.

• Possible unbundled therapies billed to Part B that will be included under the PPS Rate. As discussed in the response to comments and section III. of this regulation, prior to consolidated billing requirements governing PPS, HHAs may have been unbundled therapy services to Part B. Although this was a rare occurrence, we re-examined our approach to calculating the PPS rate. There is an additional therapy adjustment to the nonstandardized 60-day episode. For further detail, see section IV.B.3. The rate methodology is provided in Table 5 below.

• Ongoing OASIS Cost Adjustments. In the August 11, 1998 IPS Per-Visit and Per-Beneficiary Limitations notice (63 FR 42912) HCFA discussed a proposed adjustment for HHAs for the agency collection of the Outcome Assessment Information Set (OASIS) Data. Collecting and reporting OASIS is a condition of Medicare participation for HHAs. As we stated in the August 11, 1998 IPS notice, we believe there will be no permanent ongoing incremental costs associated with OASIS collection. Additionally, we believe that there will be no further one-time, start-up, OASIS reporting costs beyond those recognized at the inception of OASIS collection under IPS. However, we do believe that ongoing costs are associated with reporting OASIS data. Our proposed adjustment for the ongoing costs associated with OASIS reporting is based on information from the ongoing Medicare Quality and Improvement Demonstration, as well as the OASIS demonstration data. We assume, for purposes of deriving the OASIS proposed adjustment, that the typical HHA has 486 admissions and 30,000 visits per year and an 18 person staff. OASIS reporting adjustments are unlike the one-time OASIS collection adjustments published in the August 11, 1998 **Federal Register** which were based only on the number of skilled visits. These reporting adjustments are based on total Medicare visits. The following are HCFA's estimates of costs that a typical HHA will incur for OASIS reporting which form the basis of the per-visit OASIS reporting adjustment and the per-episode OASIS adjustment. The first descriptive chart below shows the base OASIS reporting costs for an HHA which include the following: audits to ensure data accuracy; data entry, editing and auditing; supplies; and telephone costs. We estimate these ongoing OASIS costs to total $.101228 per visit. The second descriptive chart shows the OASIS personal computer costs for those HHAs that are unable to run OASIS because they lack the requisite hardware needed to support automation of the assessment tool. We estimate this percentage to be 50 percent (64 FR 3759). These costs consist of the depreciation of a personal computer and printer. For years one through three, HHAs are able to depreciate both their personal computer and printer. We estimate this OASIS cost to be $.026778 per visit. For years four and five, HHAs can only depreciate their printer. We estimate this OASIS cost to be $.004 per visit. In order for HHAs to keep pace with the ever evolving computing standards, to include enhancements to computer hardware and software, as well as future versions of Haven's OASIS software, this process of the depreciation of computer hardware is one that would repeat itself every five

years. Similarly, a yearly average computer hardware depreciation adjustment was computed to yield an OASIS adjustment for each of the five years. This was accomplished by multiplying the first three years' computer hardware depreciation adjustment of $.026778 by 3, multiplying the following two years' computer hardware depreciation adjustment of $.004 by 2, summing those two factors, and dividing that sum by the total number of depreciable years (five), to get a yearly average for the computer hardware depreciation adjustment of $.017667. This yearly average for computer hardware depreciation adjustments ($.017667), when added to the base OASIS adjustment ($.101228), results in a total OASIS adjustment of $.118895 rounded to $.12 per visit.

For purposes of calculating the ongoing OASIS adjustment for the 60-day episode payment, we multiplied the average number of visits per 60-day episode (36 visits) by the total rounded per-visit OASIS adjustment ($.12 per visit). The calculation resulted in a per-episode OASIS adjustment of $4.32 for each 60-day episode under HHA PPS. The home health prospective payment calculation is provided in Table 5.

We calculated the ongoing OASIS adjustment for the low utilization payment adjustments by adding the total rounded per-visit OASIS adjustment ($.12 per visit) to the national standardized average cost per visit by discipline for each of the four or fewer visits provided in the episode. The low utilization payment adjustment calculation is provided in Table 6.

CONTINUOUS OASIS ADJUSTMENT: BASE

[For data reporting]

Type of adjustment	Source	Formula	Cost per visit
Audits to ensure data accuracy	University of Colorado (CHPR), BLS Occupational Employment Survey (1996), 1994 & 1995 HCFA Cost Report Data.	(((((10 records per month * 12 months)) * .25 hrs) * $25.42) / 30,000 avg visits)...professional staff.	$.02542
Data entry, editing, & auditing	University of Colorado(CHPR), Estimated average salary for clerical staff, 1994 & 1995 HCFA Cost Report Data.	((((8.5 hrs per month * 12) + (5 hrs per month * 12) + (1 hr per month * 12) + (5 hrs per year)) * $10 per hour) / 30,000 avg visits).	.059667
Supplies	HCFA–3006–IFC OASIS Reporting (64 FR 3748), 1994 & 1995 HCFA Cost Report Data.	$250 avg cost / 30,000 avg visits	.008333
Ongoing telephone costs	Bell Atlantic, 1994 & 1995 HCFA Cost Report Data (for average size HHA).	((($13.14 per month, per line) + ($ 6.38 per month subscriber fee)) * 12 months) / 30,000 avg visits).	.007808
Total			.101228

CONTINUOUS OASIS ADJUSTMENT: 5 YEAR DEPRECIATION AVERAGING

[For data reporting]

Type of adjustment	Source	Formula	Cost per visit
Computer Hardware	American Hospital Association's, Health Data & Coding Standards Group's, Estimated Useful Lives of Depreciable Hospital Assets {revised 1998}.		
Computer	Average cost for PC with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data.	$2050 computer depreciated over 3 years (($2050/3) / 30,000 avg visits.	$.022778
Printer	Average cost for printer with minimal acceptable standards 1994 & 1995 HCFA Cost Report Data.	$600 printer cost depreciated over 5 years (($600/5) / 30,000 avg visits.	.004
	First 3 Year's Adjustment	*Note: computer & printer depreciation	.026778
	Next 2 Year's Adjustment	*Note: printer ONLY depreciation	.004
	5-Year Average Adjustment	((($.026777 * 3) + ($.004 * 2)) / 5)	.017667

PERSONAL COMPUTER MINIMAL SPECIFICATIONS

Description	Minimal specifications
Warranty	Minimum 3 year.
Processor	Pentium II Processor running at 400 MHz w/512 Cache.
Operating System	32-bit operating system with Graphical User Interface.
Hard Drive	3 Gb Hard drive minimum.
Memory	32 MB minimum.
CD ROM	14–32 X, IDE, integrated sound.
Floppy Drive	3.5″ 1.44 MB diskette drive.
Fax Modem	56K v.90 Data/Fax.
Monitor	17″ Color Monitor.
Graphics	MB AGP.

PERSONAL COMPUTER MINIMAL SPECIFICATIONS—Continued

Description	Minimal specifications
Mouse	Wheel mouse.
Keyboard	104 key ergonomic keyboard.
Anti Virus	Anti Virus Software.
Management Software	System management client software/license.
Printer	600 dpi Laser printer with cable.

OASIS ADJUSTMENT: ''ONE-TIME''

[For data reporting]

Type of adjustment	Source	Formula	Cost per visit
Training of Data Entry Staff	BLS Employer Provided Training (Hrs of Training 1995) & an estimated average salary for clerical personnel 1994 & 1995 HCFA Cost Report Data.	(24 hrs * $10)/30,000 avg visits	$.008
Telephone installation	Bell Atlantic Bell Atlantic 1994 & 1995 HCFA Cost Report Data.	($28 processing fee) + ($40 per line connect fee)/30,000 avg visits.	.002266
Total One Time Adjustment			.010266

• First Year of PPS One-Time Adjustment Reflecting Implementation Costs Associated with Revised OASIS Assessment Schedules needed to Classify Patients into Appropriate Case-Mix Categories for Payment.

As set forth in the home health PPS proposed rule published in the **Federal Register** on October 28, 1999, (64 FR 58134) all data necessary to classify a patient to one of the 80 HHRG categories are contained in the OASIS–B supplemented, as applicable, by one additional item regarding projected therapy use in a given 60-day episode. Under PPS, HHAs are required to use the collection and reporting requirements for the OASIS data elements published in the **Federal Register** on January 25, 1999, supplemented by one additional therapy item as applicable. We set forth the proposed changes to the OASIS schedules in the home health PPS proposed rule. We also stated that we expect that the software programs, called grouper software, that use the OASIS–B supplemented by the projected therapy variable and assign patients to the appropriate groups, will be available from many software vendors. The version we use will be available at no cost from our HCFA website on PPS. We proposed the option to build the grouper logic into the HAVEN software, which is currently used for the transmission of OASIS data for purposes of quality via the State system.

As stated in the Interim Payment System Notice published in the **Federal Register** on August 11, 1998, (63 FR 42912) we set forth the methodology for the one-time offset adjustment for the implementation of the home health OASIS. The one-time offset adjustment methodology provided financial relief to HHAs for costs associated with integrating the OASIS collection into their overall approach to comprehensive assessment of patients. The costs recognized in the one-time offset adjustment methodology included three types of costs associated with training staff, increases in assessment time during the initial implementation, and staff to revise assessment forms and integrate OASIS elements.

In response to commenters concern with costs associated with implementing the OASIS-based case-mix methodology, we believe there will be a modified one-time adjustment for HHAs to implement the revised schedules for the start of care and follow up assessments for PPS implementation. We are providing a refined methodology for the one-time adjustment for OASIS scheduling changes required by the case-mix adjustment methodology for the first year of PPS implementation. This is a one-time one year implementation adjustment. This methodology is a refined version of the offset adjustment set forth in the August 11, 1998 Interim Payment System Notice. The total offset adjustment described in the August 11, 1998 notice was applied by—

• First, multiplying the labor portion of the per-visit limitation for skilled nursing, physical therapy, speech language pathology, and occupational therapy by the factor of 1.003513 for training and forms revision;

• Secondly, adding the non-labor portion to the adjusted labor portion; and

• Thirdly, adding one cent for printing costs.

Under PPS, we are applying the same formula to the non-standardized average number and average cost per-visit amounts for episodes containing 5 or more visits for skilled nursing services, physical therapy services, speech-language pathology services, and occupational therapy services. That aggregate non-standardized amount will then be adjusted by an OASIS scheduling adjustment factor.

As part of the formal OMB clearance process (see section VI. of this regulation for OMB approval number), we requested the following modifications to the current Version Start of Care/Resumption of Care Version Form HCFA–R245A approved 6/99, Follow-Up Version Form HCFA–R245B approved 6/99 for purposes of case-mix adjusting patients under home health PPS.

• Modification to the Version Start of Care/Resumption of Care Version Form HCFA–R245A approved 6/99.

(1) New Therapy Threshold Question discussed in the background section of this package.

MO825 Therapy Need: Does the care plan of the Medicare payment period for which this assessment will define a case-mix group indicate a need for therapy (physical, occupational, or speech

therapy) that meets the threshold for a Medicare high-therapy case-mix group?

0—No

1—Yes

NA—not applicable

• Modification to the Follow-Up Version Form HCFA–R245B approved 6/99.

(1) Must add the following already approved OASIS items to the Follow-Up schedule:

MO230 Home Care Diagnosis

M0240 Other Diagnosis

MO390 Vision

(2) Must modify and add the current approved OASIS item MO170 regarding hospital discharge or nursing home care discharge within the past 14 days.

(3) Must add the therapy threshold variable (M0825) to the Follow-Up OASIS Form and Schedule.

We believe there will be a modified one-time adjustment for HHAs to implement the revised schedules for the start of care and follow up assessments as follows:

Visit by discipline	Average number of visits (A)	Average cost per visit (B)	Aggregate total ((A) * (B))
SK Nursing	14.08	$94.96	$1,337.04
PT	3.05	104.05	317.35
SPL	.18	113.26	20.39
OT	.53	104.76	55.52
Total			1730.30

Approach:

(1) Total = $1730.30

(2) Labor Portion = 1730.30 × .77668 = 1343.89, Non-Labor Portion = 1730.30 × .22332 = 386.41

(3) Adjusted Labor Portion = 1343.89 × 1.003513 = 1348.61

(4) Adjusted Labor Portion 1348.61 + Non-Labor Portion 386.41 = 1735.02

(5) .01 for printing + 1735.02 = $1735.03

(6) 1735.03/80 (80 OASIS items) = $21.69

(7) 21.69/4 (4 types of OASIS Schedules) = $5.42

(8) We believe $5.42 reflects the cost for a new item added to a new schedule. Therefore, $5.42 is the figure used to reflect the need to add the new therapy variable to Start of Care/Resumption of Care Assessment Schedules to case-mix adjust the initial episodes as part of the implementation adjustment to the 60-day non-standardized episode amount.

We must then add the cost of adding the new therapy variable to the Follow-Up Assessment Schedule as well as three already approved OASIS items. As set forth in the approach on the previous page, adding the new therapy variable to an assessment schedule is projected to cost $5.42 for the first year of implementation. In addition to the new therapy variable, three of the already approved OASIS items need to be added to the Follow-up OASIS. We estimated that adding a new item to the OASIS schedule would cost $5.42. We are applying an adjustment factor to that amount to account for the three additional already approved OASIS items to the Follow-Up Assessment schedule. We multiply the 5.42 for the new therapy variable by 3/80 (3 of the total 80 OASIS items). (We are applying a scheduling adjustment factor of 3/80 to the $5.42 amount to recognize that the three OASIS items are already approved and are only added to a new assessment schedule.) The Follow-Up Assessment schedule will now include the new therapy variable ($5.42) and the three already approved OASIS items ($5.42 * 3/80). The formula for the costs associated with the one-time first year implementation of the Scheduling Changes to the Follow-Up Assessment is as follows: $5.42 for the new therapy variable plus an additional $0.20 ($ 5.42 × .0375 or (3/80)) = $5.62 per patient per Follow-Up assessment used to case-mix adjust subsequent episodes for continuing home health care.

The non-standardized 60-day episode amount for each Start of Care 60-day episode will be adjusted to offset the one-time implementation cost and burden associated with the OASIS scheduling modifications required to implement the case-mix methodology for the first year of HHA PPS. The non-standardized 60-day episode amount for each follow-up assessment used to case-mix adjust subsequent episodes will also be adjusted. These adjustments will be combined and reflected as proportional adjustments.

Our research upon which we are basing the national PPS rate indicates that about 60 percent of episodes are completed within 60-days. We are using the following approach to reflect the one time transition:

Start of Care Assessments used for initial episodes (.60 × $5.42) + Follow-Up Assessments used for subsequent episodes (.40 × $5.62) = an adjustment of $5.50 for each non-standardized 60-day episode for the first year of PPS.

The nonstandardized average prospective payment amount must be then standardized to eliminate the effects of case-mix and wage levels among HHAs. The standard average prospective payment amount for the 60-day episode equals the nonstandardized average prospective payment amount for a 60-day episode divided by the standardization factor. The standardization factor is discussed in section IV.C.4 of this regulation. Once the payment rate is standardized, that amount is multiplied by the budget-neutrality factor. The budget-neutrality factor is discussed in section IV.C.5 of this regulation. The standardized budget-neutral amount is divided by 1.05 to account for outlier payments capped at 5 percent of total estimated outlays under PPS.

The actual national 60-day episode payment amount that will be paid to HHAs incorporates the standard average prospective payment amount adjusted to account for case-mix and wage index. All of the elements incorporated into the national 60-day episode payment amounts (the standard average prospective payment amount adjusted to account for case-mix and wage index) must be budget neutral to the interim payment system limitation amounts. Table 5 illustrates the home health prospective payment calculation.

TABLE 5.—HOME HEALTH PROSPECTIVE PAYMENT CALCULATION

Home health discipline type	Total costs for all providers in the PPS audit sample (weighted, updated to FY 2001, and visit limit adjusted)	Total visits for all providers in the PPS audit sample (weighted)	Average cost per visit from the PPS audit sample	Average number of visits for episodes with >4 visits from the CY 1998 episode file	Home health prospective payment rate
Home Health Aide Services	5,915,395,602	141,682,907	$41.75	13.4	$559.45
Medical Social Services	458,571,353	2,985,588	153.59	.32	49.15
Occupational Therapy Services	444,691,130	4,244,901	104.76	.53	55.52
Physical Therapy Services	2,456,109,303	23,605,011	104.05	3.05	317.35
Skilled Nursing Services	12,108,884,714	127,515,950	94.96	14.08	1,337.04
Speech Pathology Services	223,173,331	1,970,399	113.26	.18	20.39

Total Non Standardized Prospective Payment Amount Per 60-Day Episode For FY 2001	2,338.90
Average Cost per Episode for Non Routine Medical Supplies included in the home health benefit and reported as costs on the Cost Report	43.54
Average Payment per Episode for Non Routine Medical Supplies possibly unbundled and billed separately to Part B	6.08
Average Payment per Episode for Part B Therapies	17.67
Average Payment per Episode for OASIS One Time Adjustment for form changes	5.50
Average Payment per Episode for Ongoing OASIS Adjustment Costs	4.32
Total Non Standardized Prospective Payment Amount Per 60-Day Episode For FY 2001 Plus Medical Supplies & Ongoing OASIS	2,416.01

Total non standardized prospective payment amount per 60-day episode for FY 2001	Standardization factor for wage index and case-mix [1]	Budget neutrality factor [2]	Outlier adjustment factor [3]	Final standardized and budget neutral prospective payment amount per 60-day episode for FY 2001
$2,416.01	.96184	.88423	1.05	$2115.30

[1] (Based on 100% episode wage indicies with therapy/nontherapy factors based on ABT data).
[2] (Budget neutral to current IPS).
[3] (Adjustment to PPS rate to account for 5% of total payments to outlier episodes).

CALCULATION FOR NON ROUTINE MEDICAL SUPPLIES PER EPISODE AMOUNT INCLUDED IN THE HOME HEALTH BENEFIT

Non routine medical supplies included in the home health benefit and reported as costs on the cost report [1]	Total number of episodes for those providers in the audited cost report sample [2]	Average cost per episode for non routine medical supplies included in the home health benefit and reported as costs on the cost report	Market basket update factor to FY 2001 [3]	Average cost per episode for non routine medical supplies included in the home health benefit and reported as costs on the cost report
$234,547,615	5,733,010	$40.91	1.0643	$43.54

[1] Source: Audited Cost Report Data from the audit sample updated to FY 2001 and weighted to National Totals.
[2] Source: Calendar Year 1998 Episode file.
[3] Cumulative Market Basket Update Factor for years 1999–2001.

CALCULATION FOR NON ROUTINE MEDICAL SUPPLIES POSSIBLY UNBUNDLED AND BILLED UNDER PART B

Non routine medical supplies possibly unbundled and billed separately to part B and reimbursed on the fee schedule [1]	Total number of episodes for all providers in the calendar year 1998 file adjusted for estimated total episodes in FY 2001 [2]	Average payment per episode for non routine medical supplies possibly unbundled and billed separately to part B	DME fee schedule update to FY 2001 [3]	Updated average payment per episode for non routine medical supplies possibly unbundled and billed separately to part B
$37,526,132.26	6,170,887	$6.08	1.0	$6.08

[1] Source: 1998 National Claims History Part B file extract for 178 codes matched to the 60-day episode file by beneficiary and dates of service.
[2] Source: Calendar Year 1998 Episode file.
[3] There exists no update to the DME Fee Schedule affecting Non Routine Medical Supplies for years 1999–2001.

CALCULATION FOR THE PART B THERAPIES

Therapy services billed separately to part B	Total number of episodes for all providers in the calendar year 1998 file adjusted for estimated total episodes in FY 2001 [2]	Average payment per episode for part B therapies	Physician fee schedule updates to FY 2001 [3]	Updated average payment per episode for part B therapies
$94,200,316.08	6,170,887	$15.27	1.157	$17.67

[1] Source: 1998 National Claims History Part B extract file for 57 CPT therapy codes for Physician/Supplier claims and for the physical therapy, occupational therapy, and speech therapy revenue center codes matched to the 60 Day episode file by beneficiary and dates of service.

[2] Source: Calendar Year 1998 Episode file.
[3] Cumulative Update Factor for Part B Therapies based on Physician Fee Schedule Updates for years 1999–2001.

Each component of the methodology is discussed below.

1. Cost Data—60-Day Episode Payment

The audited cost data is discussed above in detail in section IV. of this regulation. The data source used in developing the national mean cost per visit for a 60-day episode is the audited cost report sample database. We calculated the national mean cost per visit for each of the six disciplines (skilled nursing, physical therapy, occupational therapy, speech-language pathology services, medical social services, and home health aide services) used in a 60-day episode. The data source in developing the average cost per episode for nonroutine medical supplies paid on a reasonable-cost basis under a home health plan of care is the audited cost report sample database also discussed in section III. this regulation.

2. Utilization Data—60-Day Episode Payment

As discussed above, developing the national mean number of visits for each of the six disciplines in a 60-day episode resulted from the thorough analysis of the national claims history.

3. Updating the Data

The HHA market basket index reflects changes over time in the prices of an appropriate mix of goods and services included in covered HHA services. The HHA market basket index is used to develop the national 60-day episode payment rates. The data used to develop the HHA PPS rates were adjusted using the latest available market basket increases occurring between the cost reporting periods contained in our database and September 30, 2001. For each of fiscal years 2002 and 2003, section 1895(b)(3)(B)(ii) of the Act requires the standard prospective payment amounts be increased by a factor equal to the home health market basket minus 1.1 percentage points. In addition, for any subsequent fiscal years, the statute further requires the rates to be increased by the applicable home health market basket index change. A complete discussion concerning the design and application of the HHA market basket index and the factors used in developing the 60-day episode payment rates is discussed in section IV.B.2. of the regulation.

4. Standardization Factor

Section 1895(b)(3)(A)(i) of the Act requires that the prospective payment amounts be standardized to eliminate the effects of variation in wage levels and case-mix among HHAs. The objective of standardization is to ensure that the wage-index and case-mix adjustments to the episode payment amount do not alter the aggregate payments that would occur in the absence of these adjustments. All the estimates described in this section are based on episodes with more than four visits since only those episodes will be paid on a per-episode basis.

Several types of information are required for standardization. To account for wage differences, the proportion of labor and nonlabor components of HHA costs must be identified. These proportions are based on the relative importance of the different components of the HHA market basket index. As calculated, the labor-related portion of cost is 77 percent and the nonlabor-related portion is 23 percent. Wage differences are measured using the hospital wage index. In standardizing the episode payment amount, we used the pre-floor and pre-reclassified FY 2000 hospital wage index, which is based on FY 1996 hospital wage data. For application of the wage index, the statute allows us to use the service area or any other area we specify. As noted in the proposed rule, to be consistent with the current interim payment system, the wage index value that will be applied to the labor portion of the episode amount will be the appropriate wage index for the geographic area where the beneficiary received home health services. The best source of data on wage-index variation among 60-day episodes that was available for standardization was the episode data set that we constructed from 1998 Medicare home health claims.

To account for case-mix differences, it is necessary to have information on the distribution of 60-day home health episodes among the 80 groups of the HHRG case-mix system. For this final rule, we were able to examine more data on case-mix variation than was available for the proposed rule. For the proposed rule, the only available data on episodes classified by HHRG was the Abt data set that was used to develop the HHRG case-mix classification system. For the final rule, we had access to an updated (and larger) Abt data set, early data from the OASIS national repository, and the 1998 episode file constructed from Medicare claims to which we were able to assign average therapy and non-therapy HHRG weights.

We first compared the Abt data to the data from the OASIS national repository. We compared the distributions of the responses to the OASIS items used in constructing the HHRGs. In addition, we compared the distributions of the HHRGs for both of these data sets. This comparison had to be made using only 40 of the 80 HHRGs as therapy assignments could not be made from the national OASIS data. (Time lags in the receipt of claims for episodes corresponding to the OASIS from the national repository prevented us from making therapy assignments for the national OASIS data.) Despite this limitation, the comparisons we were able to make showed a high degree of similarity between the two data sources and increased our confidence that the Abt data set is representative of national case-mix variation.

We next compared the Abt data to the 1998 episode data set derived from Medicare claims. In particular, we compared the distributions of estimated cost for the two data sets. Cost was estimated by multiplying the national per-visit costs for each discipline by the number of visits in each discipline and summing the total. Cost distributions were constructed for the Abt data using both samples, with and without applying the population weights described in the proposed rule. We found that the cost distribution of the unweighted Abt data matched the 1998 episode data much more closely than did the weighted Abt data. From this analysis, we concluded that the unweighted Abt data provided a good basis for comparison of standardization factors.

To make full use of the available data, we developed the following strategy for standardizing the episode amount:

- First, we estimated three standardization factors using the Abt data set. The first one accounts only for variation in wage index values; the second accounts for wage index and case-mix variation, using all 80 HHRGs; the third accounts for wage index and case-mix variation, using HHRG weights collapsed to therapy and non-therapy averages. All three Abt standardization factors are very similar: .97510, .97945, and .97888, respectively.
- Then, we estimated two standardization factors using the 1998 national claims episode data: a wage-only factor and a wage and two case-mix groups factor. The wage-only standardization factor was .95808, compared to .97510 for the

corresponding factor using the Abt data. The wage index and two case-mix groups standardization factor was .96183, compared to .97887 for the corresponding factor from the Abt data.

For several reasons, we decided to use the wage index and two case-mix groups factor from the 1998 national claims data as the final standardization factor for this rule.

- First, the national claims data provides the most reliable estimate of the effects of wage index variation;
- Second, there was hardly any difference in the wage and case-mix standardization factors based on the Abt data using either 80 HHRGs or the collapsed two-groups;
- Third, overall there was a high degree of similarity of values obtained from all of the various methods.

Each of the estimates of the standardization factor was calculated in the following manner:

- For each episode (or in the case of the Abt data, the number of episodes represented by each sample episode), the appropriate wage index value was multiplied by the labor-related proportion of cost (.77668) and added to the nonlabor-related proportion (.22332) to obtain a wage-adjustment factor;
- In turn, the wage-adjustment factor was multiplied by the HHRG relative weight;
- The product of the wage and case-mix factors was summed over all episodes in the database, yielding a case-mix and wage-adjusted episode sum;
- Dividing the case-mix and wage-adjusted episode sum by the total number of episodes (the unadjusted episode sum) yields the standardization factor, a ratio that indicates how the combined effects of wage and case-mix variation impact aggregate payments;
- If the standardization factor is greater than one, the unstandardized episode cost must be reduced to account for the aggregate payment effect of the case-mix and wage index payment adjustments;
- If the factor is less than one, then the unstandardized episode cost must be increased to accomplish the same objective. The standardized episode amount is equal to the unstandardized episode cost divided by the standardization factor. Note that all three of our estimates were less than one, which implies that the standardization factor increases the standard episode amount. Our final standardization factor produces an increase of about 4.7 percent.

5. Budget-Neutrality Factor

To determine the budget neutrality adjustment, we use our most current estimate of incurred costs for home health expenditures in FY 2001 under the interim payment system (IPS). Under the President's FY 2001 Budget assumptions, we are projecting this amount to be $11,273 million. This amount includes the medical supplies which were billed separately under IPS but will be bundled under PPS. Our best estimate of what would be spent in FY 2001 on Part B therapies not currently included in the home health benefit but which will be covered by the benefit under PPS is $109 million. We did not include this in the home health spending for the FY 2001 budget because we had not yet determined it needed to be added to the spending target. We are adding $109 million to the $11,273 million to determine the total spending target for home health PPS spending, $11,382 million. We are estimating that there would have been 137,271,000 visits incurred in FY 2001. The following table outlines the variables used to determine the adjustment:

Period (1)	Visits (2)	Visits/per episode (3)	Number of episodes (4)
CY 1997	280,569,000	30.99	9,054,000
CY 1998	163,208,000	26.88	6,072,000
FY 2001	137,271,000		

Column (2) represents the actuaries' best estimate of the number of visits incurred in each of the time periods. These numbers differ from the number of visits in the episode files. The episode files were created to analyze visits per episode and were not meant to be the basis for the actual number of visits incurred in calendar years 1997 and 1998.

Column (3) was determined from the episode files we had created. Column (4) was determined by dividing Column (2) by Column (3) and rounding to the nearest thousand. From these numbers we need to determine the number of visits per episodes we would have if we had an episode file created for 2001. This would then allow us to determine the number of episodes there will be in 2001.

From the table, we can see that the number of visits declined by about 42 percent from CY 1997 to CY 1998. The episode file analysis showed that one-third of this decline was due to a decline in the number of visits per episode. Between CY 1998 and FY 2001, we are projecting a further 16 percent decline in the number of visits. We are assuming that one-third of this decline will be attributable to the decline in the number of visits per episode. This results in number of visits per episode of 25.5. Dividing 137,271,000 visits by 25.5 results in 5,383,000 episodes. This would be the number of expected episodes if episodes were not all starting on October 1, 2001. Because all patients being served at the beginning of the fiscal year will be starting a new episode on October 1, we will be making more episode payments in that first year. We will be paying for an increased number of episodes in FY 2001 compared to what would have been paid if patients entered PPS only after their current period of home health care ended. To account for this first-year anomaly, we increased the number of episodes by 3.66 percent over the 5,383,000 determined above. This results in a projected number of episodes of 5,580,000 incurred in FY 2001. In fiscal years 2002 and later we will be adding $79 to the episode payment since this anomaly will no longer exist in those years.

These 5,580,000 episodes need to be split into full episodes and LUPA episodes since our current number of projected visits includes both. We estimate that 5 percent of episodes will be ones with four or fewer visits. Therefore, 95 percent will receive a full episode payment. The 1998 episode file showed that 16 percent of episodes would have received a LUPA payment. Of this 16 percent, only 26 percent or 4 percent of the total were cases where only 1 to 4 visits were provided in a single 60-day, non-contiguous period. These cases would clearly receive LUPA payments under PPS. Twelve percent of total episodes have less than five visits but were episodes which fell at the end of a series of prior episodes. Under a plan of care established for PPS these ''episode end'' visits may not exist. Because of the nature of how the episode file created LUPA episodes, we

feel that LUPA payments will make up a smaller portion of payments than was shown in the episode file. The determination of this adjustment factor to the episode payment is as follows:

Number of LUPA episodes	Average LUPA payment	Number of full episodes (non-LUPA)	Average full episode (non-LUPA) payment
5,580,000 × .05 = 279,000	$205.20	5,580,000 × .95 = 5,301,000	$2,416.01

	LUPA	Full episode
Projected Payments Before Neutrality	(279,000 × $205.20) + (5,301,000 × $2,416.01)	
	= $57.25 million	= $12,807 million

$$\text{Budget Neutrality Adjustment Factor} = \frac{\text{Projected Incurred Spending in FY 2001: \$11,382 million}}{(11{,}382 - 57.25)/\ 12{,}807 = 0.88423}$$

After applying this adjustment to the full episode payments, we expect to have the following incurred payments in FY 2001: $57.25 million for LUPA payments plus 5,301 × $2,416.01 × .88423 = $11,325 million in full episode payments, totaling $11,382 million.

D. Methodology Used for Low-Utilization Payments

As discussed above, section 1895(b)(1) of the Act requires the development of the definition of the unit of payment or episode to take into consideration the number, type, duration, mix, and cost of visits provided within the unit of payment. As a result of our analysis, we determined the need to also recognize a low-utilization payment under HHA PPS. Low-utilization payment would reduce the 60-day episode payments, PEP adjustment or the SCIC adjustment to those HHAs that provide minimal services to patients during a 60-day episode.

Payments for low-utilization episodes will be made on a per-visit basis using the cost per-visit rates by discipline determined from the audited cost report sample for calculation of the standard episode amount. Included in these per-visit amounts are amounts for (1) nonroutine medical supplies paid under a home health plan of care, (2) nonroutine medical supplies possibly unbundled to Part B, (3) a per-visit ongoing OASIS reporting adjustment as discussed above, and (4) a one-time one year adjustment reflecting costs associated with OASIS assessment schedule refinements needed to implement the case-mix methodology in section IV.G. of this regulation. We did not add a per-visit rate adjustment for therapies possibly unbundled to Part B as we did for the per-episode payments. Based on the analysis of the Part B therapy date, we found that blending the higher and lower therapy per-visit amounts creates an anomalous result. We know the per-visit amounts provided in Table 6 are appropriate. These per-visit ''prices'' would be updated in the same manner as the standard episode amount. However, as discussed in the responses to comment section, we have revised our approach to the calculation of the amount paid for each visit price per discipline. We are retaining the four or fewer visit threshold for the LUPA, but are increasing the proposed amount by using the standardized wage adjusted national average cost per visit by discipline amounts updated by the market basket to FY 2001. See the response to comment in section III. of this rule for further clarification.

For low-utilization payments, they would be adjusted by the wage index in the same manner as the standard episode amount. However, the low-utilization payments are not case-mix adjusted. The standardization factor used to adjust the LUPAs was calculated using national claims data for episodes containing four or fewer visits. This standardization factor includes adjustments only for the wage index. The ''savings'' from the reduced episode payments would be redistributed to all episodes.

Below is Table 6 which presents the home health low-utilization provider adjustment payment calculation.

TABLE 6.—HOME HEALTH LOW-UTILIZATION PROVIDER ADJUSTMENT PAYMENT CALCULATION

Home health discipline type	Average cost per visit from the PPS audit sample	Average cost per visit for non routine medical supplies reported as costs on the cost report	Average cost per visit for non routine medical supplies possibly unbundled and billed separately to part B and reimbursed on the fee schedule	Average cost per visit for ongoing OASIS adjustment costs [3]	Ave cost per visit for one-time OASIS scheduling implementation change	Standardization factor for wage index [1]	Outlier adjustment factor [2]	Final wage standardized per visit payment amounts per 60-day episode for FY 2001
Home Health Aide Services	$41.75	$1.71	$0.23	$0.12	$.21	.96674	1.05	$43.37
Medical Social Services	153.59	1.71	0.23	0.12	.21	.96674	1.05	153.55
Occupational Therapy. Services	104.76	1.71	0.23	0.12	.21	.96674	1.05	105.44

TABLE 6.—HOME HEALTH LOW-UTILIZATION PROVIDER ADJUSTMENT PAYMENT CALCULATION—Continued

Home health discipline type	Average cost per visit from the PPS audit sample	Average cost per visit for non routine medical supplies reported as costs on the cost report	Average cost per visit for non routine medical supplies possibly unbundled and billed separately to part B and reimbursed on the fee schedule	Average cost per visit for ongoing OASIS adjustment costs [3]	Ave cost per visit for one-time OASIS scheduling implementation change	Standardization factor for wage index [1]	Outlier adjustment factor [2]	Final wage standardized per visit payment amounts per 60-day episode for FY 2001
Physical Therapy Services	104.05	1.71	0.23	0.12	.21	.96674	1.05	104.74
Skilled Nursing Services	94.96	1.71	0.23	0.12	.21	.96674	1.05	95.79
Speech Pathology Services	113.26	1.71	0.23	0.12	.21	.96674	1.05	113.81

[1] (Based on 100% episode for episodes with 4 or fewer visits and wage index only standardization factor)
[2] (Adjustment to PPS rate to account for 5% of total payments to outlier episodes)
[3] (See Section II.A.3 for description of calculation of OASIS Adjustment cost)

CALCULATION FOR NON ROUTINE MEDICAL SUPPLIES PER-VISIT AMOUNT INCLUDED IN THE HOME HEALTH BENEFIT

Non routine medical supplies included in the home health benefit and reported as costs on the cost report [1]	Total number of visits for those providers in the audited cost report sample [2]	Average cost per visit for non routine medical supplies included in the home health benefit and reported as costs on the cost report	Market basket update factor to FY 2001 [3]	Updated average cost per visit for non routine medical supplies included in the home health benefit and reported as costs on the cost report
$234,547,615	145,658,396	$1.61	1.0643	$1.71

[1] Source: Audited Cost Report Data from the audit sample updated to FY 2001 and weighted to National Totals.
[2] Source: Calendar Year 1998 Episode file.
[3] Cumulative Market Basked Update Factor for years 1999–2001.

CALCULATION FOR NON ROUTINE MEDICAL SUPPLIES PER-VISIT AMOUNT POSSIBLY UNBUNDLED AND BILLED UNDER PART B

Non routine medical supplies possibly unbundled and billed separately to part B and reimbursed on the fee schedule [1]	Total number of visits for all providers in the calendar year 1998 file [2]	Average payment per visits for non routine medical supplies possibly unbundled and billed separately to part B	DME fee schedule update to FY 2001 [3]	Updated average payment per visits for non routine medical supplies possibly unbundled and billed separately to part B
$37,526,132.26	163,208,000	$0.23	1.0	$0.23

[1] Source: 1998 National Claims History Part B file extract for 178 codes matched to the 60-day episode file by beneficiary and dates of service.
[2] Source: Calendar Year 1998 Episode file.
[3] There exists no update to the DME Fee Schedule affecting Non Routine Medical Supplies for years 1999–2001.

CALCULATION FOR ONE-TIME OASIS SCHEDULING IMPLEMENTATION FOR FORM CHANGES

Total cost for OASIS scheduling implementation change [1]	Total number of visits for all providers in the calendar year 1998 file [2]	Average payment per visits for part B therapies possibly unbundled and billed separately to part B physician/supplier
$33,939,878 .50	163,208,000	$0.21

[1] Episode Rate for OASIS Scheduling Implementation Change ($5.50) / the total number of episodes in 1998 (6,170,887).
[2] Calendar year 1998 Episode File.

E. Methodology Used for Outlier Payments

As discussed above, while we are not statutorily required to make provisions for outlier payments, we are establishing outlier payments. Outlier payments are payments made in addition to regular 60-day case-mix-adjusted episode payments for episodes that incur unusually large costs due to patient home health care needs. Outlier payments are made for episodes whose estimated cost exceeds a threshold amount for each HHRG. The outlier threshold for each HHRG is defined as the 60-day episode payment for the HHRG plus a fixed dollar loss amount that is the same for all case-mix groups. Outlier payments are made for 60-day episode payments that reflect a PEP adjustment or SCIC adjustment. The PEP adjustment results in a truncated episode period and a SCIC adjustment results in a total of the proportional payments over a 60-day episode, but these periods could still incur unusually large costs. The outlier threshold for the PEP adjustment is the PEP adjustment plus the fixed dollar loss. The outlier threshold for the SCIC adjustment

equals the total SCIC payment plus a fixed dollar loss. The wage adjusted component discussed below will be applied consistently for the 60-day episode payment, the PEP adjustment, and the total SCIC adjustment. The outlier payment is defined to be a proportion of the wage adjusted estimated costs beyond the wage adjusted threshold. The threshold amount is the sum of the wage and case-mix adjusted PPS episode amount and the wage-adjusted fixed dollar loss amount. The proportion of additional costs paid as outlier payments is referred to as the loss-sharing ratio.

The fixed dollar loss amount and the loss-sharing ratio are chosen so that estimated total outlier payments are 5 percent of total episode payments. The 5 percent constraint on total outlier payments creates a tradeoff between the values selected for the fixed dollar loss amount and the loss-sharing ratio. For a given level of outlier payments, a higher fixed dollar loss amount reduces the number of cases that receive outlier payments, but makes it possible to select a higher loss-sharing ratio and, therefore, increase outlier payments per episode. Alternatively, a lower fixed dollar loss amount means that more episodes qualify for outlier payments, but outlier payments per episode must be lower. Therefore, setting these two parameters involves policy choices about the number of outlier cases and their rate of payment.

We initially proposed a loss sharing ratio of .60 and a fixed dollar loss of 1.07 times the national standard episode payment amount. For the proposed rule, we estimated that with these variables, 7.5 percent of total episodes would have qualified for an outlier payment while holding total outlier outlays at 5 percent of outlays in a given fiscal year. In response to comments, we are increasing the loss sharing ratio from 0.60 to 0.80 to provide greater compensation for the episodes that qualify for outlier payments. We believe that this change is appropriate and will continue to monitor the impacts of the outlier policy under PPS implementation.

The simulations conducted for the proposed rule found that a loss sharing ratio of 0.80 would require a fixed dollar loss ratio of 1.35. We have rerun these simulations using the expanded and updated Abt data and are making some refinements in our simulation methods.

The new simulations also reflect the refinements for wound cases that have been incorporated into the case-mix system. The results of the new simulations indicate that a fixed dollar loss ratio of 1.13 is consistent with a loss sharing ratio of 0.80. With these parameters, we estimate that about 6.8 percent of episodes would qualify for outlier payments with total outlier outlays equal to the required 5 percent.

In estimating the final outlier policy parameters, we examined OASIS data from the national repository, an episode data set created from 1998 Medicare home health claims, and an updated and expanded data set from the Abt case-mix study. As noted in our discussion of standardization, we compared the OASIS and the Abt data in terms of the responses to the 18 OASIS items used for case-mix classification and in terms of the distribution of episodes across the HHRGs. We also compared the Abt and the 1998 episode data and found that the estimated cost distribution based on the pattern of visits within episodes was very similar in both sets of data. These comparisons increased our confidence in using the Abt data to simulate the outlier policy parameters. In addition, the Abt data is the most complete data currently available for estimating outlier policy variables. It contains information on all 80 HHRGs and a measure of resource cost for each episode. The Abt data set used for the final outlier policy is about 15 percent larger than the data set that was used for the estimates in the proposed rule.

The fixed dollar loss estimate was based on simulations that calculated PPS payments and costs for each episode in the data set. Payments were calculated twice, once for a PPS without outlier payments and again for a PPS with outlier payments. For the payment system with outlier payments, the LUPA and episode payment amounts were deflated by 1.05. Using a loss sharing ratio of 0.80, the simulation was repeated until a fixed dollar loss ratio was found that resulted in (1) equal total payments for the PPS with and without outlier payments, and (2) total outlier payments equal to 5 percent of total payments, including outlier payments. In addition, payment amounts were set to equate total payments and total costs. Because the Abt data does not represent all wage areas of the country, the simulations did not apply the wage index adjustments that will be applied to actual outlier payments. It was not possible to account for PEP or SCIC adjustments in the simulations.

Simulations were performed to obtain the most reasonable estimates possible of the fixed dollar loss ratio consistent with the 5 percent outlier payment target. Based on the experience of the Phase II per-episode prospective payment demonstration and the interim payment system, we were concerned that agencies may reduce utilization for high-cost episodes in response to the budget neutral episode payment rate. If our simulations failed to account for such reductions, the simulations might overestimate agencies' losses and lead us to set the fixed dollar loss amount higher than necessary to meet the 5 percent target. We incorporated estimates of cost reduction into our simulations that resulted in a lower fixed dollar loss ratio lower than would have been chosen otherwise. In general, we assumed that any reduction in payment rates below the level of the mean cost would be matched by a cost reduction of equal percentage.

Simulations were also performed to test the sensitivity of the fixed dollar loss to alternative proportions of LUPA episodes. LUPAs can affect the fixed dollar loss ratio consistent with a 0.8 loss sharing ratio. Because they are paid much less than regular episodes, substantial differences in their frequency can affect estimated total payments. Due to the asymmetric impacts on outlier and total payments, variations in the frequency of LUPAs could potentially lead to either overestimation or underestimation of the 5 percent outlier target.

LUPAs comprise 11.6 percent of the episodes in the Abt data used for the outlier simulations. Given the incentives under the PPS to obtain the 60-day episode payment rather than the LUPA payment, we believe that 11.6 percent overestimates the frequency of LUPAs that are likely to occur under PPS. As a result, we simulated the outlier policy under alternative percentage of LUPA episodes.

It is also worth noting that the case-mix refinements for wound cases improved regular episode payments and reduced the need for outlier payments for these cases.

The following is a case for illustrative purposes only. An HHA serves a Medicare beneficiary in State College PA. The HHA determines the patient is in HHRG C2F2S2. The patient had physician orders for and received 55 skilled nursing visits and 40 home health aide visits during the 60-day episode.

1. Calculation of the Wage-Adjusted Outlier Threshold

The Wage-Adjusted Outlier Threshold Amount is the sum of the Wage and Case-Mix Adjusted 60-Day Episode Amount and the Wage-Adjusted Fixed Dollar Loss Amount.

a. Calculate Case-Mix and Wage-Adjusted Episode = $3,855.31
Case-Mix Weight = 1.9532

Standard 60-Day Prospective Episode Payment Amount = $2,115.30

Calculate the Case-Mix Adjusted Episode Payment

Multiply the Standard 60-Day Prospective Episode Payment Amount by the Applicable Case-Mix Weight = (1.9532 * $2,115.30) = $4,131.60

Divide the Case-Mix Adjusted Episode Payment into the Labor and Non-Labor Portions

Labor Portion = (.77668 * $4131.60) = $3,208.93

Wage-Adjust the Labor Portion by Multiplying the Labor Portion by the Wage Index Factor (.9139 * $3,208.93) = $2,932.64

Calculate Non-Labor Portion = (.22332 * $4,131.60) = $922.67

Add Wage-Adjusted Labor Portion to Non-Labor Portion to Calculate the Total Case-Mix and Wage-Adjusted Episode Payment = (2,932.64 + $922.67) = $3,855.31

b. Calculate Wage-Adjusted Fixed Dollar Loss Amount = $2,230.45

Fixed Dollar Loss Amount = Standard 60-Day Episode Payment Multiplied by 1.13 ($2115.30 * 1.13) = $2,390.29

Divide Fixed Dollar Loss Amount into Labor and Non Labor Portions:

Calculate Labor Portion of Fixed Dollar Loss Amount = (.77668 * $2,390.29) = $1,856.49

Wage Adjust the Labor Portion by Multiplying the Labor Portion of the Fixed Dollar Loss by Multiplying the Labor Portion of the Fixed Dollar Loss Amount by the Wage Index (.9139 * $1,856.49) = $1,696.65

Calculate Non-Labor Portion of Fixed Dollar Loss Amount = (.22332 * $2,390.29) = $533.80

Calculate Total Wage Adjusted Fixed Dollar Loss Amount by adding the wage adjusted portion of the fixed dollar loss amount to the non labor portion of the fixed dollar loss amount ($1,696.65 + $533.80) = $2,230.45

Wage-Adjusted Outlier Threshold = Case-Mix and Wage-Adjusted Episode Amount + Wage Adjusted Fixed Dollar Loss Amount = ($3,855.31 + $2,230.45) = $6,085.76

2. Calculate the Wage-Adjusted Imputed Cost of the Episode

Multiply the total number of visits by the national average per-visit amounts listed in Table 6.

55 skilled nursing visits * $95.79 (national average per skilled nursing visit cost) = $5,268.45

40 home health aide visits * $43.37 (national average per home health aide visit cost) = $1,734.80

Calculate the wage-adjusted labor and non-labor portions for the imputed skilled nursing visit costs

Labor Portion = ($5,268.45* .77668) = $4,091.90

Adjust the labor portion by the wage index

Wage Adjusted Skilled Nursing Labor Portion = ($4,091.90 * .9139) = $3,739.59

Wage Adjusted Skilled Nursing Labor Portion = $3,739.59

Calculate the Skilled Nursing Non-Labor Portion

Non-Labor Portion = ($5,268.45 * .22332) = $1,176.55

Non-Labor Skilled Nursing Portion = $1,176.55

Total Wage Adjusted Imputed Costs for Skilled Nursing Visits = $4,916.14

(Wage Adjusted Skilled Nursing Labor Portion of $3,739.59 + Non-Labor Skilled Nursing Portion of $1,176.55) = $ 4,916.14

Calculate the wage adjusted labor and non-labor portions for the imputed home health aide visit costs

Labor Portion = ($1,734.80 * .77668) = $1,347.38

Adjust the labor portion by the wage index

Wage Adjusted Home Health Aide Labor Portion = ($1,347.38 * .9139) = $1,231.37

Wage Adjusted Home Health Aide Labor Portion = $1,231.37

Calculate the Home Health Aide Non-Labor Portion

Non-Labor Portion = ($1,734.80 * .22332) = $387.42

Non-Labor Home Health Aide Portion = $387.42

Total Wage Adjusted Imputed Costs for Home Health Aide Visits = $1,618.79

(Wage Adjusted Home Health Aide Labor Portion of $1,231.37 + Non-Labor Home Health Aide Portion of $387.42) = $ 1,618.79

Total Wage Adjusted Imputed Costs for Skilled Nursing and Home Health Visits During the 60 Day Episode = ($4,916.14 + $1,618.79) = $ 6,534.93

3. Calculate the Amount Absorbed by the HHA in Excess of the Outlier Threshold Subtract the Outlier Threshold from the Total Wage Adjusted Imputed Per-Visit Costs for the Episode

$6534.93 (Total Imputed Wage Adjusted Per-Visit Costs)—$6,085.76 (Outlier Threshold) = $449.17

Imputed Amount in Excess of the Outlier Threshold = $449.17

4. Calculate Outlier Payment by Multiplying the Imputed Amount in Excess of the Outlier Threshold Absorbed by the HHA By the Loss Sharing Ratio (80%)

($449.17 (Imputed Amount in Excess of the Outlier Threshold Absorbed by the HHA * .80 (Risk Sharing Ratio) = $359.34

Outlier Payment = $359.34

The HHA in this illustrative example would receive the total case-mix and wage adjusted 60-day episode payment of *$3,855.31* plus the additional outlier payment of *$359.34*

Total Payment (Episode & Outlier Payment) = ($3,855.31 + 359.34) = $4,214.65

F. Examples of National Standardized 60-Day Episode Payment Amounts and Low-Utilization Payment Adjustments

For any HHRG group, to compute a case-mix and wage-adjusted 60-day episode prospective payment amount, the standardized prospective payment rate for FY 2001 (see Table 5 of this regulation) is multiplied by the case-mix index from Table 9 for that HHRG group. To compute a wage-adjusted national 60-day episode payment, the labor-related portion of the 60-day national prospective payment rate for FY 2001 is multiplied by the HHA's appropriate wage index factor listed in Table 4A or 4B. The product of that calculation is added to the corresponding nonlabor-related component. The resulting amount is the national case-mix and wage-adjusted 60-day episode prospective payment rate for FY 2001.

Example 1. An HHA is providing services to a Medicare beneficiary in State College, PA. The HHA determines the beneficiary is in HHRG C2F2S2.

COMPUTATION OF CASE-MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT

Case-mix index from Table 9 for case-mix group	1.9532
Standardized Prospective Payment Rate for FY 2001	$2,115.30

COMPUTATION OF CASE-MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT—Continued

Calculate the Case-Mix adjusted Prospective Payment Rate for FY 2001	(1.9532 * $2,115.30)	$4,131.60
Calculate the Labor portion of the Prospective Payment Rate for FY 2001	(.77668 * $4,131.60)	$3,208.93
Apply wage index factor from Table 4B for patient in State College, PA	(0.9139 * $3,208.93)	$2,932.64
Calculate the Non-Labor portion of the Prospective Payment Rate for FY 2001	(.22332 * $4,131.60)	$922.67
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and non labor portion of the case-mix and wage index amounts	($2,932.64 + $922.67)	$3,855.31

Example 2. An HHA serves a beneficiary who resides in Lake Placid, NY. The HHA determines the patient is in HHRG C1F4S3.

COMPUTATION OF CASE-MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT

Case-mix index from Table 9 for case-mix group		2.2360
Standardized Prospective Payment Rate for FY 2001		$2,115.30
Calculate the Case-Mix adjusted Prospective Payment Rate for FY 2001	(2.2360 * $2,115.30)	$4,729.81
Calculate the Labor portion of the Prospective Payment Rate for FY 2001	(.77668 * $4,729.81)	$3,673.55
Apply wage index factor from Table 4A for patient in Lake Placid, NY	(0.8637 * $3,673.55)	$3,172.85
Calculate the Nonlabor portion of the Prospective Payment Rate for FY 2001	(.22332 * $4,729.81)	$1,056.26
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and nonlabor portion of the case-mix and wage index amounts	($3,172.85 + $1,056.26)	$4,229.11

Example 3. HHA serves a beneficiary who resides in Fort Collins, CO. The HHA determines the beneficiary is in HHRG C3F0S0.

COMPUTATION OF CASE-MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT

Case-mix index from Table 9 for case-mix group		1.1973
Standardized Prospective Payment Rate for FY 2001		$2,115.30
Calculate the Case-Mix adjusted Prospective Payment Rate for FY 2001	(1.1973 * $2,115.30)	$2,532.65
Calculate the Labor portion of the Prospective Payment Rate for FY 2001	(.77668 * $2,532.65)	$1,967.06
Apply wage index factor from Table 4B for patient in Fort Collins, CO	(1.0303 * $1,967.06)	$2,026.66
Calculate the Non-Labor portion of the Prospective Payment Rate for FY 2001	(.22332 * $2,532.65)	$565.59
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and non labor portion of the case-mix and wage index amounts	($2,026.66 + $565.59)	$2,592.25

Example 4. HHA serves a beneficiary who resides in Grand Forks, ND. The HHA determines the beneficiary is in HHRG C0F3S1.

COMPUTATION OF CASE-MIX AND WAGE ADJUSTED PROSPECTIVE PAYMENT AMOUNT

Case-mix index from Table 9 for case-mix group		.8438
Standardized Prospective Payment Rate for FY 2001		$2,115.30
Calculate the Case-Mix adjusted Prospective Payment Rate for FY 2001	(.8438 * $2,115.30)	$1,784.89
Calculate the Labor portion of the Prospective Payment Rate for FY 2001	(.77668 * $1,784.89)	$1,386.29
Apply wage index factor from Table 4B for patient in Grand Forks, ND	(0.9098 * $1,386.29)	$1,261.25
Calculate the Non-Labor portion of the Prospective Payment Rate for FY 2001	(.22332 * $1,784.89)	$398.60
Calculate Total Prospective Payment Rate for FY 2001 by adding the labor and non labor portion of the case-mix and wage index amounts	($1,261.25 + $398.60)	$1,659.85

Example 5. An HHA in Baltimore, MD assigns a patient to an HHRG at the start of a 60-day episode. The claim for the patient indicates that only two visits (one skilled nursing and one home health aide) were furnished during the 60-day episode. The HHA would be paid the low-utilization payment adjustment. Any necessary adjustment to the request for advance payment for the episode would be made on subsequent claims for the HHA.

COMPUTATION OF WAGE INDEX ADJUSTED LOW UTILIZATION PAYMENT

Number and visit discipline type	Final wage standardized and budget neutral per-visit payment amounts per 60-day episode for FY 2001 [1]
1 Skilled Nursing Visit	$95.791
2 Home Health Aide Visit	43.371

[1] See Table 6 for the Calculation of Final Wage Standardized and Budget Neutral Per-Visit Payment Amounts Per 60-Day Episode for FY 2001.

Calculate the labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 Skilled Nursing Visit	(.77668 * $95.79)	$74.40
Apply wage index factor from Table 4B for Baltimore, MD	(.9892 * $74.40)	73.60
Calculate the non-labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 Skilled Nursing Visit	(.22332 * $95.79)	21.39
SUBTOTAL—Low Utilization Payment for 1 Wage Adjusted Skilled Nursing Visit rendered in a 60-day episode	($73.60 + $21.39)	94.99
Calculate the labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 home health aide visit	(.77668 * $43.37)	33.69
Apply wage index factor from Table 4B for Baltimore, MD	(.9892*$33.69)	33.33
Calculate the non-labor portion of the Standardized Budget Neutral Per-Visit Payment Amount for 1 home health aide visit	(.22332 * $43.37)	9.69
SUBTOTAL—Low Utilization Payment for 1 wage adjusted home health aide visit rendered in a 60-day episode	($33.33 + $9.69)	43.02
Calculate Total Low Utilization Payment Adjustment for 2 visits provided during the 60-day episode by adding the wage adjusted skilled nursing visit and the wage adjusted home health aide visit	($94.99 + $43.02)	138.01

G. Design and Methodology for Case-Mix Adjustment of 60-Day Episode Payments

1. Revisions to the Case-Mix Classification System

In the proposed rule, we described a home health case-mix system developed under a research contract with Abt Associates, Inc., of Cambridge, Massachusetts. The case-mix system uses selected data elements from the OASIS assessment instrument and an additional data element measuring receipt of at least 10 visits for therapy services. The data elements are organized into three dimensions to capture clinical severity factors, functional severity factors, and services utilization factors influencing case-mix. In the clinical and functional dimensions, each data element is assigned a score value derived from multiple regression analysis of the Abt research data. The score value measures the impact of the data element on total resource use. Scores are also assigned to data elements in the services utilization dimension. To find a patient's case-mix group, the case-mix grouper sums the patient's scores within each of the three dimensions. The resulting sum is used to assign the patient to a severity level on each dimension. There are four clinical severity levels, five functional severity levels, and four services utilization severity levels. Thus, there are 80 possible combinations of severity levels across the three dimensions. Each combination defines one of the 80 groups in the case-mix system. For example, a patient with high clinical severity, moderate functional severity, and low services utilization severity is placed in the same group with all other patients whose summed scores place them in the same set of severity levels for the three dimensions.

The initial Abt Associates sample used to develop the system described in the proposed rule was subsequently augmented for a first round of refinements, as described in the proposed rule. Following publication of the proposed rule, we augmented the Abt Associates sample with the remaining outstanding data from the 90 participating agencies, with the intention of re-estimating the case-mix relative weights based on the latest, most complete data available. We also pursued another round of refinements to the system using the augmented data, in response to public comments we received. The sample for this phase of refinements consisted of 19,204 initial episodes from the 90 agency participants.

The public comments on case-mix are summarized with our responses elsewhere in the rule. Below we describe the process we used to revise the case-mix system and the results. The revised case-mix model and scoring system are summarized in Table 7, ''Home Health Resource Group Case-mix Classification Decision Tree Logic.''

Test of newly added data. Before pursuing statistical modeling in response to comments, we checked the data newly added from the participating agencies for consistency with the previous data base. This involved re-estimating the regression equations that determined the scores, adding observations from the augmented, final sample. The results were consistent with the scores in the proposed rule. Additionally, we retested a short list of variables that were eliminated from the case-mix model at the end of the first round of refinements because of statistical insignificance. Upon retesting, they were still found to be statistically insignificant.

Investigation of wound-related variables. In response to comments from the public, indicating that certain wound care patients had costs higher than predicted by the case-mix model, we returned to the wound-related variables available on the OASIS for re-investigation. We used the learning subsample from the final, augmented sample. We tested three types of changes: Re-defining wound variables, adding more wound-related variables, and adding variables to represent interactions of wound variables with other variables. Interactions capture additional potential sources of severity or cost impact associated with certain types of wound patients. For example, patients who have certain diagnoses may be more susceptible to slow-healing wounds.

The statistical results suggested we could make meaningful score distinctions and create additional levels for the variables measuring the status of stasis ulcers and surgical wounds. In the proposed rule, the clinical dimension distinguished two statuses for the most problematic observable stasis ulcer—not healing (score=24) and all other statuses including no ulcer (score=0). The refined definition defines three statuses—early/partial granulation (score=14), not healing (score=22), and all other statuses including no observable ulcer (score=0). The proposed rule defined two statuses for the most problematic observable surgical wound—early/partial granulation or not healing (score=10) and all other statuses including no observable surgical wound (score=0). The refined definition defines three statuses—early/partial granulation (score=7), not healing (score=15), and all other statuses including no observable surgical wound (score=0).

We also retested the variables measuring pressure ulcers. We found no contribution to the model from adding variables measuring the status of pressure ulcers when the stage of the most problematic observable pressure ulcer was already in the model. We also determined that defining status levels beyond the three included in the proposed rule did not produce meaningful differences in the scores.

Therefore, the final rule model continues to define three levels: stage 1 or 2 (score=15), stage 3 or 4 (score=36), and all other (including no pressure ulcer and no observable pressure ulcer) (score=0). In addition, we tested whether the number of pressure ulcers made an independent contribution to explaining resource use. We found that having more than one pressure ulcer was a significant predictor of resource use when the multiple ulcers were stage 3 or 4. Therefore, the model in the final rule includes a variable adding 17 points if the patient has two or more stage 3 or 4 pressure ulcers.

We tested a general variable that measured the presence of any kind of open wound, decubitus ulcer, stasis ulcer, or surgical wound, based on an affirmative answer to M0445 (does patient have a pressure ulcer?), M0468 (does patient have a stasis ulcer?), M0482 (does patient have a surgical wound), or reporting of wound diagnosis codes in M0230 (primary home care diagnosis). This variable did not contribute statistically significant explanatory power when added to the model containing the other wound variables. However, we also tested separately a variable identifying burn or trauma patients with skin lesions or open wounds, identified from M0230 (primary diagnosis) and M0440 (does this patient have a skin lesion or an open wound?). This variable did contribute significantly and has been added to the model. The score for this variable is 21. The burn and trauma diagnosis code categories are shown in Table 8B.

In addition, we examined the impact of selected diagnoses that may be associated with difficult-to-heal wounds, including diabetes, atherosclerosis, peripheral vascular disease, and heart failure. We tested whether patients with these diagnoses should be assigned a higher score for their wound severity. Most results were not statistically significant. A few results were inconsistent across measures of wound severity. We also tested a variable measuring whether limited mobility results in higher cost impact for severe pressure ulcers, but this variable did not contribute significantly to the model after all other variables were included. The reasons for the weak results and inconsistency are unclear, and we did not make any of these changes to the clinical dimension. We will continue to study these types of issues during further refinement work on larger samples with more detailed diagnostic data.

Differences between the clinical dimension scores in the proposed rule and the final rule are generally small. Differences that do exist are attributable to our use of an augmented sample and the use of new variables related to wounds. In our model-building methodology, the scores in the functional dimension depend on results of the regression for deriving the clinical dimension scores. New scores for the functional dimension are very similar to the proposed-rule functional scores. Differences that do exist are attributable to the above-mentioned changes to the clinical dimension. The changes in functional scoring lead to a slightly different set of severity-score level intervals compared to the functional scoring in the proposed rule. The functional severity-score intervals are now minimal severity: 0–2; low severity: 3–15; moderate severity: 16–23; high severity: 24–29; maximum severity: 30+. The frequency distribution of the sample observations across the functional severity levels is essentially unchanged.

We validated the revised scoring for the clinical and functional dimensions using the validation subsample of the final, augmented sample. The results supported the scoring system developed with the learning subsample.

Re-examination of severity levels in clinical dimension. In response to several comments on wound-care patients, we refined the severity-score intervals in the clinical dimension to better differentiate patients who are clinically most severe from remaining patients. The revised score intervals are as follows: minimal severity: 0–7; low severity: 8–19; moderate severity: 20–40; high severity: 41+. To determine the refined severity-score intervals, we used the same process we followed in developing the case-mix system initially. We examined the array of scores for natural clustering and the impact of alternative sets of intervals on the proportion of variation explained by the model (R-squared). We also considered increases in the imbalance of the population across severity levels. The refined severity score intervals do result in more imbalance. The relative frequencies in the Abt sample for the revised clinical severity levels are 30 percent, 36 percent, 28 percent, 6 percent, for minimal, low, moderate, and high clinical severity, respectively. In contrast, the previous model's corresponding percentages were 30 percent, 30 percent, 23 percent, 17 percent. However, this change has also generally resulted in higher case-mix relative weights for the case-mix groups involving moderate and high clinical severity, where the most severe wound patients are likely to be found. It has also resulted in a wider range of weights for therapy-threshold case-mix groups and non-therapy-threshold case-mix groups.

Comparison with the earlier model. All combined, the refinements made to the case-mix model cause a modest improvement in explanatory power. The proportion of variation explained (R-squared) is now .34, compared to .32 for the model in the proposed rule. The model now provides for more adequate payment for wound care patients. Some of these high-cost patients would have been assigned to a different group under the model we presented in the proposed rule. Their removal from those earlier groups potentially results in a lower average cost, and lower case-mix weight, for those groups. We examined the impact on the array of relative case-mix weights across the case-mix groups. For the most part, we find generally small changes in the individual weights other than the weights for groups involving the moderate and high clinical severity levels.

The case-mix system will continue to be studied and refined in future years. Larger and better data resources, and information accumulated from users like those who commented, will both contribute to the evolution of the system.

2. Diagnosis Coding Changes in the Revised Case-Mix Model

When we published the proposed rule, we listed ICD–9–CM three-digit diagnosis category codes to identify orthopedic, neurologic, and diabetes diagnoses recognized in the clinical dimension. The scores associated with these diagnoses were based on analysis of the OASIS primary diagnosis item (M0230). A commenter pointed out that certain diagnoses within the category codes we listed should never be reported as primary diagnoses, according to ICD–9–CM coding rules and official coding guidelines. These diagnoses must be used with a higher-coded diagnosis that indicates the underlying disease. The affected category codes are 711, 712, 713, 720, 730, 731, 320, 321, 323, 330, 331, 334, 336, 337, 357, 358.

Accordingly, we have revised the diagnosis coding list. The revised list shows the complete code for the affected category codes, and is divided into two sections, one for primary diagnoses and one for secondary diagnoses (see Table 8A). The case-mix system will recognize the appropriate score for a diagnosis that should never be reported as a primary diagnosis, provided that the diagnosis appears as the first OASIS secondary diagnosis

(line b, under OASIS M0240) and that the code shows all digits required by ICD–9–CM coding guidelines. Remaining diagnoses from the affected categories must appear as the primary diagnosis (line a, under OASIS M0230) and the code must show all digits required by ICD–9–CM coding rules. The case-mix system will not recognize remaining diagnoses from the affected categories if they appear as a secondary diagnosis on the OASIS record. Nor will it recognize diagnoses that must never be reported as primary if they are placed on the primary diagnosis line (line a, M0230).

The refined case-mix system recognizes burns and trauma primary diagnoses, if the OASIS item M0440 shows the patient has a skin lesion or open wound. The diagnosis code categories for burns and trauma diagnoses included in the case-mix system are shown in Table 8B.

A lack of specificity in diagnosis code assignment may be a hindrance to case-mix refinement. Agencies that voluntarily code all diagnoses to the complete four- or five-digit level in accordance with ICD–9–CM coding rules would help us in subsequent review and examination of the case-mix methodology.

TABLE 7.—HOME HEALTH RESOURCE GROUP CASE-MIX CLASSIFICATION DECISION TREE LOGIC

Clinical severity domain

OASIS+ Item	Description	Value	Scoring
M0230/M0240	Primary home care diagnosis (or initial secondary diagnosis ONLY for selected ICD-9 manifestation codes).	—credit *only* the single highest value: If Orthopedic diagnostic group (DG)*, add 11 to score If Diabetes DG*, add 17 to score If Neurological DG*, add 20 to score	Min = 0–7 Low = 8–19 Mod = 20–40 High = 41+
M0250	IV/Infusion/Parenteral/Enteral Therapies.	—credit *only* the single highest value: If box 1, add 14 to score If box 2, add 20 to score If box 3, add 24 to score	
M0390	Vision	If box 1 or 2, add 6 to score	
M0420	Pain	If box 2 or 3, add 5 to score	
M0440	Wound/Lesion	If box 1 and M0230 is Burn/Trauma DG*, add 21 to score	
M0450	Multiple pressure ulcers	If 2 or more stage 3 or 4 pressure ulcers, add 17 to score	
M0460	Most problematic pressure ulcer stage.	If box 1 or 2, add 15 to score If box 3 or 4, add 36 to score	
M0476	Stasis ulcer status	If box 2, add 14 to score If box 3, add 22 to score	
M0488	Surgical wound status	If box 2, add 7 to score If box 3, add 15 to score	
M0490	Dyspnea	If box 2, 3 or 4, add 5 to score	
M0530	Urinary incontinence	If box 1 or 2, add 6 to score	
M0540	Bowel incontinence	If box 2–5, add 9 to score	
M0550	Bowel ostomy	If box 1 or 2, add 10 to score	
M0610	Behavioral Problems	If box 1–6, add 3 to score	

*See table for ICD9–CM codes included in each diagnosis group (DG)

Functional status domain

OASIS+ Item	Description	Value	Scoring
M0650 (current) M0660 (current)	Dressing	If M0650 = box 1, 2 or 3 Or M0660 = box 1, 2 or 3 } add 4 to score	Min = 0–2 Low = 3–15 Mod = 16–23 High = 24–29 Max = 30+
M0670 (current)	Bathing	If box 2, 3, 4 or 5 add 8 to score	
M0680 (current)	Toileting	If box 2–4, add 3 to score	
M0690 (current)	Transferring	If box 1, add 3 to score If box 2–5, add 6 to score	
M0700 (current)	Locomotion	If box 1 or 2, add 6 to score	
		If box 3–5, add 9 to score	

Service utilization domain

Variable	Description	Value	Scoring
M0170—line 1	No Hospital discharge past 14 days.	If box 1 IS BLANK, add 1 to score	Min = 0–2
M0170—line 2 or 3	Inpatient rehab/SNF discharge past 14 days.	If box 2 or 3, add 2 to score	Low = 3
Receipt of Therapy	10 or more therapy visits	If yes, add 4 to score	Mod = 4–6 High = 7

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
Primary Diagnoses		
DM	250	DIABETES MELLITUS
NEURO	013	CNS TUBERCULOSIS
NEURO	045	ACUTE POLIOMYELITIS
NEURO	046	CNS SLOW VIRUS INFECTION
NEURO	047	ENTEROVIRAL MENINGITIS
NEURO	048	OTH ENTEROVIRAL CNS DIS
NEURO	049	OTH NONARTHROPOD CNS VIR
NEURO	191	MALIGNANT NEOPLASM BRAIN
NEURO	192	MAL NEO NERVE NEC/NOS
NEURO	225	BENIGN NEO NERVOUS SYST
NEURO	320.0	HEMOPHILUS MENINGITIS
NEURO	320.1	PNEUMOCOCCAL MENINGITIS
NEURO	320.2	STREPTOCOCCAL MENINGITI
NEURO	320.3	STAPHYLOCOCC MENINGITIS
NEURO	320.81	ANAEROBIC MENINGITIS
NEURO	320.82	MNINGTS GRAM-NEG BCT NEC
NEURO	320.89	MENINGITIS OTH SPCF BAC
NEURO	320.9	BACTERIAL MENINGITIS NOS
NEURO	322	MENINGITIS, UNSPECIFIED
NEURO	323.5	POSTIMMUNIZAT ENCEPHALI
NEURO	323.8	ENCEPHALITIS NEC
NEURO	323.9	ENCEPHALITIS NOS
NEURO	324	CNS ABSCESS
NEURO	325	PHLEBITIS INTRCRAN SINU
NEURO	326	LATE EFF CNS ABSCESS
NEURO	330.0	LEUKODYSTROPHY
NEURO	330.1	CEREBRAL LIPIDOSES
NEURO	330.8	CEREB DEGEN IN CHILD NEC
NEURO	330.9	CEREB DEGEN IN CHILD NOS
NEURO	331.0	ALZHEIMER'S DISEASE
NEURO	331.1	PICK'S DISEASE
NEURO	331.2	SENILE DEGENERAT BRAIN
NEURO	331.3	COMMUNICAT HYDROCEPHALU
NEURO	331.4	OBSTRUCTIV HYDROCEPHALU
NEURO	331.81	REYE'S SYNDROME
NEURO	331.89	CEREB DEGENERATION NEC
NEURO	331.9	CEREB DEGENERATION NOS
NEURO	332	PARKINSON'S DISEASE
NEURO	333	EXTRAPYRAMIDAL DIS NEC
NEURO	334.0	FRIEDREICH'S ATAXIA
NEURO	334.1	HERED SPASTIC PARAPLEGI
NEURO	334.2	PRIMARY CEREBELLAR DEGE
NEURO	334.3	CEREBELLAR ATAXIA NEC
NEURO	334.8	SPINOCEREBELLAR DIS NEC
NEURO	334.9	SPINOCEREBELLAR DIS NOS
NEURO	335	ANT HORN CELL DISEASE
NEURO	336.0	SYRINGOMYELIA
NEURO	336.1	VASCULAR MYELOPATHIES
NEURO	336.8	MYELOPATHY NEC
NEURO	336.9	SPINAL CORD DISEASE NOS
NEURO	337.0	IDIOPATH AUTO NEUROPATH
NEURO	337.20	UNSP RFLX SYMPTH DYSTRP
NEURO	337.21	RFLX SYM DYSTRPH UP LIM
NEURO	337.22	RFLX SYM DYSTRPH LWR LM
NEURO	337.29	RFLX SYM DYSTRPH OTH ST
NEURO	337.3	AUTONOMIC DYSREFLEXIA
NEURO	337.9	AUTONOMIC NERVE DIS NEC
NEURO	340	MULTIPLE SCLEROSIS
NEURO	341	OTHER CNS DEMYELINATION
NEURO	342	HEMIPLEGIA
NEURO	343	INFANTILE CEREBRAL PALSY
NEURO	344	OTH PARALYTIC SYNDROMES
NEURO	347	CATAPLEXY AND NARCOLEPS
NEURO	348	OTHER BRAIN CONDITIONS
NEURO	349	CNS DISORDER NEC/NOS
NEURO	352	DISORDER CRAN NERVE NEC
NEURO	356	HERED PERIPH NEUROPATHY
NEURO	357.0	AC INFECT POLYNEURITIS

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION—Continued

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
NEURO	357.5	ALCOHOLIC POLYNEUROPATH
NEURO	357.6	NEUROPATHY DUE TO DRUGS
NEURO	357.7	NEURPTHY TOXIC AGENT NEC
NEURO	357.8	INFLAM/TOX NEUROPTHY NEC
NEURO	357.9	INFLAM/TOX NEUROPTHY NOS
NEURO	358.0	MYASTHENIA GRAVIS
NEURO	358.2	TOXIC MYONEURAL DISORDE
NEURO	358.8	MYONEURAL DISORDERS NEC
NEURO	358.9	MYONEURAL DISORDERS NOS
NEURO	392	RHEUMATIC CHOREA
NEURO	430	SUBARACHNOID HEMORRHAGE
NEURO	431	INTRACEREBRAL HEMORRHAG
NEURO	432	INTRACRANIAL HEM NEC/NOS
NEURO	433	PRECEREBRAL OCCLUSION
NEURO	434	CEREBRAL ARTERY OCCLUS
NEURO	435	TRANSIENT CEREB ISCHEMIA
NEURO	436	CVA
NEURO	437	OTH CEREBROVASC DISEASE
NEURO	741	SPINA BIFIDA
NEURO	742	OTH NERVOUS SYSTEM ANOM
NEURO	851	CEREBRAL LACER/CONTUSION
NEURO	852	MENINGEAL HEM FOLLOW INJ
NEURO	853	OTH TRAUMATIC BRAIN HEM
NEURO	854	OTHER BRAIN INJURY
NEURO	907	LATE EFF NERV SYSTEM INJ
NEURO	950	INJ OPTIC NERV/PATHWAYS
NEURO	951	CRANIAL NERVE INJURY NEC
NEURO	952	SPINAL CORD INJ W/O FX
NEURO	953	INJ NERVE ROOT/SPIN PLEX
NEURO	954	INJURY OTH TRUNK NERVE
NEURO	955	INJ PERIPH NERV SHLD/ARM
NEURO	956	INJ PERIPH NERV PELV/LEG
ORTHO	170	MAL NEO BONE/ARTIC CART
ORTHO	171	MAL NEO SOFT TISSUE
ORTHO	213	BEN NEO BONE/ARTIC CART
ORTHO	274	GOUT
ORTHO	710	DIFF CONNECTIVE TISS DIS
ORTHO	711.00	PYOGEN ARTHRITIS—UNSPEC
ORTHO	711.01	PYOGEN ARTHRITIS—SHLDER
ORTHO	711.02	PYOGEN ARTHRITIS—UP/ARM
ORTHO	711.03	PYOGEN ARTHRITIS—FOREAR
ORTHO	711.04	PYOGEN ARTHRITIS—HAND
ORTHO	711.05	PYOGEN ARTHRITIS—PELVIS
ORTHO	711.06	PYOGEN ARTHRITIS—L/LEG
ORTHO	711.07	PYOGEN ARTHRITIS—ANKLE
ORTHO	711.08	PYOGEN ARTHRITIS NEC
ORTHO	711.09	PYOGEN ARTHRITIS—MULT
ORTHO	711.90	INF ARTHRITIS NOS—UNSPE
ORTHO	711.91	INF ARTHRITIS NOS—SHLDE
ORTHO	711.92	INF ARTHRITIS NOS—UP/AR
ORTHO	711.93	INF ARTHRIT NOS—FOREARM
ORTHO	711.94	INF ARTHRIT NOS—HAND
ORTHO	711.95	INF ARTHRIT NOS—PELVIS
ORTHO	711.96	INF ARTHRIT NOS—L/LEG
ORTHO	711.97	INF ARTHRIT NOS—ANKLE
ORTHO	711.98	INF ARTHRIT NOS—OTH SIT
ORTHO	711.99	INF ARTHRITIS NOS—MULT
ORTHO	712.80	CRYST ARTHROP NEC—UNSPE
ORTHO	712.81	CRYST ARTHROP NEC—SHLDE
ORTHO	712.82	CRYST ARTHROP NEC—UP/AR
ORTHO	712.83	CRYS ARTHROP NEC—FOREAR
ORTHO	712.84	CRYST ARTHROP NEC—HAND
ORTHO	712.85	CRYST ARTHROP NEC—PELVI
ORTHO	712.86	CRYST ARTHROP NEC—L/LEG
ORTHO	712.87	CRYST ARTHROP NEC—ANKLE
ORTHO	712.88	CRY ARTHROP NEC—OTH SIT
ORTHO	712.89	CRYST ARTHROP NEC—MULT
ORTHO	712.90	CRYST ARTHROP NOS—UNSPE
ORTHO	712.91	CRYST ARTHROP NOS—SHLDR
ORTHO	712.92	CRYST ARTHROP NOS—UP/AR

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION—Continued

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
ORTHO	712.93	CRYS ARTHROP NOS—FOREAR
ORTHO	712.94	CRYST ARTHROP NOS—HAND
ORTHO	712.95	CRYST ARTHROP NOS—PELVI
ORTHO	712.96	CRYST ARTHROP NOS—L/LEG
ORTHO	712.97	CRYST ARTHROP NOS—ANKLE
ORTHO	712.98	CRY ARTHROP NOS—OTH SIT
ORTHO	712.99	CRYST ARTHROP NOS—MULT
ORTHO	714	OTH INFLAMM POLYARTHROP
ORTHO	716	ARTHROPATHIES NEC/NOS
ORTHO	717	INTERNAL DERANGEMNT KNEE
ORTHO	718	OTHER JOINT DERANGEMENT
ORTHO	720.0	ANKYLOSING SPONDYLITIS
ORTHO	720.1	SPINAL ENTHESOPATHY
ORTHO	720.2	SACROILIITIS NEC
ORTHO	720.89	INFLAM SPONDYLOPATHY NEC
ORTHO	720.9	INFLAM SPONDYLOPATHY NOS
ORTHO	721	SPONDYLOSIS ET AL
ORTHO	722	INTERVERTEBRAL DISC DIS
ORTHO	723	OTHER CERVICAL SPINE DIS
ORTHO	724	BACK DISORDER NEC & NOS
ORTHO	725	POLYMYALGIA RHEUMATICA
ORTHO	728	DIS OF MUSCLE/LIG/FASCIA
ORTHO	730.00	AC OSTEOMYELITIS—UNSP
ORTHO	730.01	AC OSTEOMYELITIS—SHLDER
ORTHO	730.02	AC OSTEOMYELITIS—UP/ARM
ORTHO	730.03	AC OSTEOMYELITIS—FOREAR
ORTHO	730.04	AC OSTEOMYELITIS—HAND
ORTHO	730.05	AC OSTEOMYELITIS—PELVIS
ORTHO	730.06	AC OSTEOMYELITIS—L/LEG
ORTHO	730.07	AC OSTEOMYELITIS—ANKLE
ORTHO	730.08	AC OSTEOMYELITIS NEC
ORTHO	730.09	AC OSTEOMYELITIS—MULT
ORTHO	730.10	CHR OSTEOMYELITIS—UNSP
ORTHO	730.11	CHR OSTEOMYELIT—SHLDER
ORTHO	730.12	CHR OSTEOMYELIT—UP/ARM
ORTHO	730.13	CHR OSTEOMYELIT—FOREARM
ORTHO	730.14	CHR OSTEOMYELIT—HAND
ORTHO	730.15	CHR OSTEOMYELIT—PELVIS
ORTHO	730.16	CHR OSTEOMYELIT—L/LEG
ORTHO	730.17	CHR OSTEOMYELIT—ANKLE
ORTHO	730.18	CHR OSTEOMYELIT NEC
ORTHO	730.19	CHR OSTEOMYELIT—MULT
ORTHO	730.20	OSTEOMYELITIS NOS—UNSPE
ORTHO	730.21	OSTEOMYELITIS NOS—SHLDE
ORTHO	730.22	OSTEOMYELITIS NOS—UP/AR
ORTHO	730.23	OSTEOMYELIT NOS—FOREARM
ORTHO	730.24	OSTEOMYELITIS NOS—HAND
ORTHO	730.25	OSTEOMYELITIS NOS—PELVI
ORTHO	730.26	OSTEOMYELITIS NOS—L/LEG
ORTHO	730.27	OSTEOMYELITIS NOS—ANKLE
ORTHO	730.28	OSTEOMYELIT NOS—OTH SIT
ORTHO	730.29	OSTEOMYELITIS NOS—MULT
ORTHO	730.30	PERIOSTITIS—UNSPEC
ORTHO	730.31	PERIOSTITIS—SHLDER
ORTHO	730.32	PERIOSTITIS—UP/ARM
ORTHO	730.33	PERIOSTITIS—FOREARM
ORTHO	730.34	PERIOSTITIS—HAND
ORTHO	730.35	PERIOSTITIS—PELVIS
ORTHO	730.36	PERIOSTITIS—L/LEG
ORTHO	730.37	PERIOSTITIS—ANKLE
ORTHO	730.38	PERIOSTITIS NEC
ORTHO	730.39	PERIOSTITIS—MULT
ORTHO	730.90	BONE INFEC NOS—UNSP SIT
ORTHO	730.91	BONE INFECT NOS—SHLDER
ORTHO	730.92	BONE INFECT NOS—UP/ARM
ORTHO	730.93	BONE INFECT NOS—FOREARM
ORTHO	730.94	BONE INFECT NOS—HAND
ORTHO	730.95	BONE INFECT NOS—PELVIS
ORTHO	730.96	BONE INFECT NOS—L/LEG
ORTHO	730.97	BONE INFECT NOS—ANKLE

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION—Continued

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
ORTHO	730.98	BONE INFECT NOS—OTH SIT
ORTHO	730.99	BONE INFECT NOS—MULT
ORTHO	731.0	OSTEITIS DEFORMANS NOS
ORTHO	731.2	HYPERTROPH OSTEOARTHROP
ORTHO	732	OSTEOCHONDROPATHIES
ORTHO	781	NERV/MUSCULSKEL SYS SYMP
ORTHO	800	SKULL VAULT FRACTURE
ORTHO	801	SKULL BASE FRACTURE
ORTHO	802	FRACTURE OF FACE BONES
ORTHO	803	OTHER SKULL FRACTURE
ORTHO	804	MULT FX SKULL W OTH BONE
ORTHO	805	VERTEBRL FX W/O CORD INJ
ORTHO	806	VERTEBRAL FX W CORD INJ
ORTHO	807	FX RIB/STERN/LARYN/TRACH
ORTHO	808	PELVIC FRACTURE
ORTHO	809	FRACTURE OF TRUNK BONES
ORTHO	810	CLAVICLE FRACTURE
ORTHO	811	SCAPULA FRACTURE
ORTHO	812	HUMERUS FRACTURE
ORTHO	813	RADIUS & ULNA FRACTURE
ORTHO	814	CARPAL FRACTURE
ORTHO	815	METACARPAL FRACTURE
ORTHO	816	FRACTURE PHALANGES, HAND
ORTHO	817	MULTIPLE HAND FRACTURES
ORTHO	818	FRACTURE ARM MULT/NOS
ORTHO	819	FX ARMS W RIB/STERNUM
ORTHO	820	FRACTURE NECK OF FEMUR
ORTHO	821	OTHER FEMORAL FRACTURE
ORTHO	822	PATELLA FRACTURE
ORTHO	823	TIBIA & FIBULA FRACTURE
ORTHO	824	ANKLE FRACTURE
ORTHO	825	FX OF TARSAL/METATARSAL
ORTHO	827	LOWER LIMB FRACTURE NEC
ORTHO	828	FX LEGS W ARM/RIB
ORTHO	831	SHOULDER DISLOCATION
ORTHO	832	ELBOW DISLOCATION
ORTHO	833	WRIST DISLOCATION
ORTHO	835	DISLOCATION OF HIP
ORTHO	836	DISLOCATION OF KNEE
ORTHO	837	DISLOCATION OF ANKLE
ORTHO	838	DISLOCATION OF FOOT
ORTHO	846	SPRAIN SACROILIAC REGION
ORTHO	847	SPRAIN OF BACK NEC/NOS
ORTHO	887	TRAUMATIC AMPUT ARM/HAND
ORTHO	896	TRAUMATIC AMPUTAT FOOT
ORTHO	897	TRAUMATIC AMPUTATION LEG
ORTHO	927	CRUSHING INJ UPPER LIMB
ORTHO	928	CRUSHING INJURY OF LEG

Secondary Diagnoses

The following diagnoses should never be used as primary diagnoses, according to ICD–9–CM coding guidelines. The case-mix system will recognize them in the clinical dimension if they appear as the first secondary diagnosis (line b, M0240 on the OASIS record). Diagnoses coded with 4 or 5 digits must be coded as shown to be recognized in the clinical dimension.

NEURO	320.7	MENINGITIS IN OTH BAC
NEURO	321.0	CRYPTOCOCCAL MENINGITIS
NEURO	321.1	MENING IN OTH FUNGAL DI
NEURO	321.2	MENING IN OTH VIRAL DIS
NEURO	321.3	TRYPANOSOMIASIS MENINGI
NEURO	321.4	MENINGIT D/T SARCOIDOSI
NEURO	321.8	MENING IN OTH NONBAC DI
NEURO	323.0	ENCEPHALIT IN VIRAL DIS
NEURO	323.1	RICKETTSIAL ENCEPHALITI
NEURO	323.2	PROTOZOAL ENCEPHALITIS
NEURO	323.4	OTH ENCEPHALIT D/T INFE
NEURO	323.6	POSTINFECT ENCEPHALITIS
NEURO	323.7	TOXIC ENCEPHALITIS
NEURO	330.2	CEREB DEGEN IN LIPIDOSI
NEURO	330.3	CERB DEG CHLD IN OTH DI

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION—Continued

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
NEURO	331.7	CEREB DEGEN IN OTH DIS
NEURO	334.4	CEREBEL ATAX IN OTH DIS
NEURO	336.2	COMB DEG CORD IN OTH DI
NEURO	336.3	MYELOPATHY IN OTH DIS
NEURO	337.1	AUT NEUROPTHY IN OTH DI
NEURO	357.1	NEURPTHY IN COL VASC DI
NEURO	357.2	NEUROPATHY IN DIABETES
NEURO	357.3	NEUROPATHY IN MALIG DIS
NEURO	357.4	NEUROPATHY IN OTHER DIS
NEURO	358.1	MYASTHENIA IN OTH DIS
ORTHO	711.10	REITER ARTHRITIS—UNSPEC
ORTHO	711.11	REITER ARTHRITIS—SHLDER
ORTHO	711.12	REITER ARTHRITIS—UP/ARM
ORTHO	711.13	REITER ARTHRITIS—FOREAR
ORTHO	711.14	REITER ARTHRITIS—HAND
ORTHO	711.15	REITER ARTHRITIS—PELVIS
ORTHO	711.16	REITER ARTHRITIS—L/LEG
ORTHO	711.17	REITER ARTHRITIS—ANKLE
ORTHO	711.18	REITER ARTHRITIS NEC
ORTHO	711.19	REITER ARTHRITIS—MULT
ORTHO	711.20	BEHCET ARTHRITIS—UNSPEC
ORTHO	711.21	BEHCET ARTHRITIS—SHLDER
ORTHO	711.22	BEHCET ARTHRITIS—UP/ARM
ORTHO	711.23	BEHCET ARTHRITIS—FOREAR
ORTHO	711.24	BEHCET ARTHRITIS—HAND
ORTHO	711.25	BEHCET ARTHRITIS—PELVIS
ORTHO	711.26	BEHCET ARTHRITIS—L/LEG
ORTHO	711.27	BEHCET ARTHRITIS—ANKLE
ORTHO	711.28	BEHCET ARTHRITIS NEC
ORTHO	711.29	BEHCET ARTHRITIS—MULT
ORTHO	711.30	DYSENTER ARTHRIT—UNSPEC
ORTHO	711.31	DYSENTER ARTHRIT—SHLDER
ORTHO	711.32	DYSENTER ARTHRIT—UP/ARM
ORTHO	711.33	DYSENTER ARTHRIT—FOREAR
ORTHO	711.34	DYSENTER ARTHRIT—HAND
ORTHO	711.35	DYSENTER ARTHRIT—PELVIS
ORTHO	711.36	DYSENTER ARTHRIT—L/LEG
ORTHO	711.37	DYSENTER ARTHRIT—ANKLE
ORTHO	711.38	DYSENTER ARTHRIT NEC
ORTHO	711.39	DYSENTER ARTHRIT—MULT
ORTHO	711.40	BACT ARTHRITIS—UNSPEC
ORTHO	711.41	BACT ARTHRITIS—SHLDER
ORTHO	711.42	BACT ARTHRITIS—UP/ARM
ORTHO	711.43	BACT ARTHRITIS—FOREARM
ORTHO	711.44	BACT ARTHRITIS—HAND
ORTHO	711.45	BACT ARTHRITIS—PELVIS
ORTHO	711.46	BACT ARTHRITIS—L/LEG
ORTHO	711.47	BACT ARTHRITIS—ANKLE
ORTHO	711.48	BACT ARTHRITIS NEC
ORTHO	711.49	BACT ARTHRITIS—MULT
ORTHO	711.50	VIRAL ARTHRITIS—UNSPEC
ORTHO	711.51	VIRAL ARTHRITIS—SHLDER
ORTHO	711.52	VIRAL ARTHRITIS—UP/ARM
ORTHO	711.53	VIRAL ARTHRITIS—FOREARM
ORTHO	711.54	VIRAL ARTHRITIS—HAND
ORTHO	711.55	VIRAL ARTHRITIS—PELVIS
ORTHO	711.56	VIRAL ARTHRITIS—L/LEG
ORTHO	711.57	VIRAL ARTHRITIS—ANKLE
ORTHO	711.58	VIRAL ARTHRITIS NEC
ORTHO	711.59	VIRAL ARTHRITIS—MULT
ORTHO	711.60	MYCOTIC ARTHRITIS—UNSPE
ORTHO	711.61	MYCOTIC ARTHRITIS—SHLDE
ORTHO	711.62	MYCOTIC ARTHRITIS—UP/AR
ORTHO	711.63	MYCOTIC ARTHRIT—FOREARM
ORTHO	711.64	MYCOTIC ARTHRITIS—HAND
ORTHO	711.65	MYCOTIC ARTHRITIS—PELVI
ORTHO	711.66	MYCOTIC ARTHRITIS—L/LEG
ORTHO	711.67	MYCOTIC ARTHRITIS—ANKLE
ORTHO	711.68	MYCOTIC ARTHRITIS NEC
ORTHO	711.69	MYCOTIC ARTHRITIS—MULT

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION—Continued

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
ORTHO	711.70	HELMINTH ARTHRIT—UNSPEC
ORTHO	711.71	HELMINTH ARTHRIT—SHLDER
ORTHO	711.72	HELMINTH ARTHRIT—UP/ARM
ORTHO	711.73	HELMINTH ARTHRIT—FOREAR
ORTHO	711.74	HELMINTH ARTHRIT—HAND
ORTHO	711.75	HELMINTH ARTHRIT—PELVIS
ORTHO	711.76	HELMINTH ARTHRIT—L/LEG
ORTHO	711.77	HELMINTH ARTHRIT—ANKLE
ORTHO	711.78	HELMINTH ARTHRIT NEC
ORTHO	711.79	HELMINTH ARTHRIT—MULT
ORTHO	711.80	INF ARTHRITIS NEC—UNSPE
ORTHO	711.81	INF ARTHRITIS NEC—SHLDE
ORTHO	711.82	INF ARTHRITIS NEC—UP/AR
ORTHO	711.83	INF ARTHRIT NEC—FOREARM
ORTHO	711.84	INF ARTHRITIS NEC—HAND
ORTHO	711.85	INF ARTHRITIS NEC—PELVI
ORTHO	711.86	INF ARTHRITIS NEC—L/LEG
ORTHO	711.87	INF ARTHRITIS NEC—ANKLE
ORTHO	711.88	INF ARTHRIT NEC—OTH SIT
ORTHO	711.89	INF ARTHRITIS NEC—MULT
ORTHO	712.10	DICALC PHOS CRYST—UNSPE
ORTHO	712.11	DICALC PHOS CRYST—SHLDE
ORTHO	712.12	DICALC PHOS CRYST—UP/AR
ORTHO	712.13	DICALC PHOS CRYS—FOREAR
ORTHO	712.14	DICALC PHOS CRYST—HAND
ORTHO	712.15	DICALC PHOS CRYST—PELVI
ORTHO	712.16	DICALC PHOS CRYST—L/LEG
ORTHO	712.17	DICALC PHOS CRYST—ANKLE
ORTHO	712.18	DICALC PHOS CRY—SITE NE
ORTHO	712.19	DICALC PHOS CRYST—MULT
ORTHO	712.20	PYROPHOSPH CRYST—UNSPEC
ORTHO	712.21	PYROPHOSPH CRYST—SHLDER
ORTHO	712.22	PYROPHOSPH CRYST—UP/ARM
ORTHO	712.23	PYROPHOSPH CRYST—FOREAR
ORTHO	712.24	PYROPHOSPH CRYST—HAND
ORTHO	712.25	PYROPHOSPH CRYST—PELVIS
ORTHO	712.26	PYROPHOSPH CRYST—L/LEG
ORTHO	712.27	PYROPHOSPH CRYST—ANKLE
ORTHO	712.28	PYROPHOS CRYST—SITE NEC
ORTHO	712.29	PYROPHOS CRYST—MULT
ORTHO	712.30	CHONDROCALCIN NOS—UNSPE
ORTHO	712.31	CHONDROCALCIN NOS—SHLDE
ORTHO	712.32	CHONDROCALCIN NOS—UP/AR
ORTHO	712.33	CHONDROCALC NOS—FOREARM
ORTHO	712.34	CHONDROCALCIN NOS—HAND
ORTHO	712.35	CHONDROCALCIN NOS—PELVI
ORTHO	712.36	CHONDROCALCIN NOS—L/LEG
ORTHO	712.37	CHONDROCALCIN NOS—ANKLE
ORTHO	712.38	CHONDROCALC NOS—OTH SIT
ORTHO	712.39	CHONDROCALCIN NOS—MULT
ORTHO	713.0	ARTHROP W ENDOCR/MET DI
ORTHO	713.1	ARTHROP W NONINF GI DIS
ORTHO	713.2	ARTHROPATH W HEMATOL DI
ORTHO	713.3	ARTHROPATHY W SKIN DIS
ORTHO	713.4	ARTHROPATHY W RESP DIS
ORTHO	713.5	ARTHROPATHY W NERVE DIS
ORTHO	713.6	ARTHROP W HYPERSEN REAC
ORTHO	713.7	ARTHROP W SYSTEM DIS NE
ORTHO	713.8	ARTHROP W OTH DIS NEC
ORTHO	720.81	SPONDYLOPATHY IN OTH DI
ORTHO	730.70	POLIO OSTEOPATHY—UNSPEC
ORTHO	730.71	POLIO OSTEOPATHY—SHLDER
ORTHO	730.72	POLIO OSTEOPATHY—UP/ARM
ORTHO	730.73	POLIO OSTEOPATHY—FOREAR
ORTHO	730.74	POLIO OSTEOPATHY—HAND
ORTHO	730.75	POLIO OSTEOPATHY—PELVIS
ORTHO	730.76	POLIO OSTEOPATHY—L/LEG
ORTHO	730.77	POLIO OSTEOPATHY—ANKLE
ORTHO	730.78	POLIO OSTEOPATHY NEC
ORTHO	730.79	POLIO OSTEOPATHY—MULT

TABLE 8A.—DIAGNOSIS GROUPS IN THE CLINICAL DIMENSION—Continued

[**Note:** Codes shown at the 3-digit level include all the related 4- and 5-digit codes. Diagnoses coded with 4 or 5 digits must be coded as shown to receive a score in the clinical dimension.]

Diagnosis group	ICD–9–CM Code	Description
ORTHO	730.80	BONE INFECT NEC—UNSPEC
ORTHO	730.81	BONE INFECT NEC—SHLDER
ORTHO	730.82	BONE INFECT NEC—UP/ARM
ORTHO	730.83	BONE INFECT NEC—FOREARM
ORTHO	730.84	BONE INFECT NEC—HAND
ORTHO	730.85	BONE INFECT NEC—PELVIS
ORTHO	730.86	BONE INFECT NEC—L/LEG
ORTHO	730.87	BONE INFECT NEC—ANKLE
ORTHO	730.88	BONE INFECT NEC—OTH SIT
ORTHO	730.89	BONE INFECT NEC—MULT
ORTHO	731.1	OSTEITIS DEF IN OTH DIS
ORTHO	731.8	BONE INVOLV IN OTH DIS

TABLE 8B.—BURNS AND TRAUMA DIAGNOSES

[**Note:** Codes shown at the 3-digit level include all of the related 4- and 5-digit codes. Burns and trauma diagnoses are included in the clinical dimension if the diagnosis is the primary diagnosis and if box 1 of the OASIS item M0440 is checked.]

ICD–9–CM code	Description
870	OCULAR ADNEXA OPEN WOUND
872	OPEN WOUND OF EAR
873	OTHER OPEN WOUND OF HEAD
874	OPEN WOUND OF NECK
875	OPEN WOUND OF CHEST
876	OPEN WOUND OF BACK
877	OPEN WOUND OF BUTTOCK
878	OPEN WOUND GENITAL ORGAN
879	OPEN WOUND SITE NEC
880	OPN WND SHOULDR/UPPR ARM
881	OPEN WOUND OF LOWER ARM
882	OPEN WOUND OF HAND
883	OPEN WOUND OF FINGER
884	OPEN WOUND ARM MULT/NOS
885	TRAUM AMPUTATION THUMB
886	TRAUM AMPUTATION FINGER
890	OPEN WOUND OF HIP/THIGH
891	OPEN WND KNEE/LEG/ANKLE
892	OPEN WOUND OF FOOT
893	OPEN WOUND OF TOE
894	OPEN WOUND OF LEG NEC
895	TRAUMATIC AMPUTATION TOE
941	BURN OF HEAD/FACE/NECK
942	BURN OF TRUNK
943	BURN OF ARM
944	BURN OF HAND & WRIST
945	BURN OF LEG
946	BURN OF MULTIPLE SITE
948	BURN BY % BODY SURFACE
949	BURN UNSPECIFIED

3. Determining the Case-Mix Indices

Calculation of the case-mix relative weights. We derived the relative weights for the case-mix groups from a straightforward multiple regression analysis. The data for the regression came from the Abt sample episodes with more than four visits (the same sample used to develop and validate the case-mix model).

The coefficients that resulted from the regression equation are shown below. The multiple regression coefficients are estimates of the average addition to resource cost due to each severity level above the lowest-severity case-mix group (C0F0S0). For each case-mix group, the average resource cost is calculated from the sum of the appropriate regression coefficients. In the example below, the average resource cost for case-mix group C3F0S3 is the sum of the average resource cost for the base group (C0F0S0) plus the average additional cost due to C3 plus the average additional cost due to S3. We then used the computed case-mix-group average resource costs to find the relative case-mix weights. Specifically, the case-mix group averages (that is, sum of appropriate regression coefficients) are divided by the overall average resource cost. The case-mix weights are shown in Table 9.

The methodology for calculating the case-mix weights is the same one we used to find the case-mix weights in the proposed rule, except that we did not use weighted regression for the final rule. We determined that the distribution of the unweighted Abt Associates data better resembled the 1998 episode file distribution than did the weighted Abt Associates data. Thus, unweighted regression was the appropriate methodology. As stated in the proposed rule, we plan to refine the case-mix weights to adjust for changes in patient population, actual changes in home health care practice patterns, and changes in the coding or classification of patients that do not reflect real changes in case-mix.

Regression Coefficients for Calculating Case-Mix Relative Weights

Intercept*—$1,271.95
C1—$230.98
C2—$652.42
C3—$1,620.75
F1—$229.14
F2—$479.30
F3—$571.20
F4—$976.08
S1—$195.53
S2—$2,315.15
S3—$2,923.22

Example:

Calculate case-mix relative weight for group C3F0S3

Overall average resource cost (scaled to national average episode cost): $2,416.00

Relative weight = average resource cost for group C3F0S3 divided by overall average resource cost = (base group cost +C3 increment +S3 increment)/overall average resource cost = (1271.95 + 1620.75 + 2923.22)/2416.00 = 2.4073

Below we show the average resource cost calculated from the regression coefficients for each case-mix group.

Regression coefficient	Average resource cost
C0F0S0	$1,271.95
C0F0S1	1,467.48
C0F0S2	3,587.10
C0F0S3	4,195.17
C0F1S0	1,501.09
C0F1S1	1,696.62
C0F1S2	3,816.24
C0F1S3	4,424.31
C0F2S0	1,751.25
C0F2S1	1,946.77
C0F2S2	4,066.40
C0F2S3	4,674.46
C0F3S0	1,843.15
C0F3S1	2,038.68
C0F3S2	4,158.30

* Intercept value is the average resource cost for the base group, C0F0S0.

Regression coefficient	Average resource cost
C0F3S3	4,766.37
C0F4S0	2,248.03
C0F4S1	2,443.56
C0F4S2	4,563.18
C0F4S3	5,171.25
C1F0S0	1,502.93
C1F0S1	1,698.46
C1F0S2	3,818.08
C1F0S3	4,426.15
C1F1S0	1,732.07
C1F1S1	1,927.60
C1F1S2	4,047.22
C1F1S3	4,655.29
C1F2S0	1,982.23
C1F2S1	2,177.75
C1F2S2	4,297.38
C1F2S3	4,905.45
C1F3S0	2,074.13
C1F3S1	2,269.66
C1F3S2	4,389.28
C1F3S3	4,997.35
C1F4S0	2,479.01
C1F4S1	2,674.54

Regression coefficient	Average resource cost
C1F4S2	4,794.16
C1F4S3	5,402.23
C2F0S0	1,924.37
C2F0S1	2,119.90
C2F0S2	4,239.52
C2F0S3	4,847.59
C2F1S0	2,153.51
C2F1S1	2,349.04
C2F1S2	4,468.66
C2F1S3	5,076.73
C2F2S0	2,403.67
C2F2S1	2,599.19
C2F2S2	4,718.82
C2F2S3	5,326.89
C2F3S0	2,495.57
C2F3S1	2,691.10
C2F3S2	4,810.72
C2F3S3	5,418.79
C2F4S0	2,900.45
C2F4S1	3,095.98
C2F4S2	5,215.61
C2F4S3	5,823.67
C3F0S0	2,892.70

Regression coefficient	Average resource cost
C3F0S1	3,088.23
C3F0S2	5,207.85
C3F0S3	5,815.92
C3F1S0	3,121.84
C3F1S1	3,317.37
C3F1S2	5,436.99
C3F1S3	6,045.06
C3F2S0	3,372.00
C3F2S1	3,567.52
C3F2S2	5,687.15
C3F2S3	6,295.22
C3F3S0	3,463.91
C3F3S1	3,659.43
C3F3S2	5,779.06
C3F3S3	6,387.12
C3F4S0	3,868.79
C3F4S1	4,064.31
C3F4S2	6,183.94
C3F4S3	6,792.00

Construction of the Relative Weights for the HHRGs

TABLE 9.—RELATIVE CASE-MIX WEIGHTS CORRESPONDING TO HOME HEALTH RESOURCE GROUPS

HHRG group	HHRG description	Case-mix weight
C0F0S0	''Clinical=Min, Functional=Min, Service=Min''	0.5265
C0F0S1	''Clinical=Min, Functional=Min, Service=Low''	0.6074
C0F0S2	''Clinical=Min, Functional=Min, Service=Mod''	1.4847
C0F0S3	''Clinical=Min, Functional=Min, Service=High''	1.7364
C0F1S0	''Clinical=Min, Functional=Low, Service=Min''	0.6213
C0F1S1	''Clinical=Min, Functional=Low, Service=Low''	0.7022
C0F1S2	''Clinical=Min, Functional=Low, Service=Mod''	1.5796
C0F1S3	''Clinical=Min, Functional=Low, Service=High''	1.8313
C0F2S0	''Clinical=Min, Functional=Mod, Service=Min''	0.7249
C0F2S1	''Clinical=Min, Functional=Mod, Service=Low''	0.8058
C0F2S2	''Clinical=Min, Functional=Mod, Service=Mod''	1.6831
C0F2S3	''Clinical=Min, Functional=Mod, Service=High''	1.9348
C0F3S0	''Clinical=Min, Functional=High, Service=Min''	0.7629
C0F3S1	''Clinical=Min, Functional=High, Service=Low''	0.8438
C0F3S2	''Clinical=Min, Functional=High, Service=Mod''	1.7212
C0F3S3	''Clinical=Min, Functional=High, Service=High''	1.9728
C0F4S0	''Clinical=Min, Functional=Max, Service=Min''	0.9305
C0F4S1	''Clinical=Min, Functional=Max, Service=Low''	1.0114
C0F4S2	''Clinical=Min, Functional=Max, Service=Mod''	1.8887
C0F4S3	''Clinical=Min, Functional=Max, Service=High''	2.1404
C1F0S0	''Clinical=Low, Functional=Min, Service=Min''	0.6221
C1F0S1	''Clinical=Low, Functional=Min, Service=Low''	0.7030
C1F0S2	''Clinical=Low, Functional=Min, Service=Mod''	1.5803
C1F0S3	''Clinical=Low, Functional=Min, Service=High''	1.8320
C1F1S0	''Clinical=Low, Functional=Low, Service=Min''	0.7169
C1F1S1	''Clinical=Low, Functional=Low, Service=Low''	0.7978
C1F1S2	''Clinical=Low, Functional=Low, Service=Mod''	1.6752
C1F1S3	''Clinical=Low, Functional=Low, Service=High''	1.9269
C1F2S0	''Clinical=Low, Functional=Mod, Service=Min''	0.8205
C1F2S1	''Clinical=Low, Functional=Mod, Service=Low''	0.9014
C1F2S2	''Clinical=Low, Functional=Mod, Service=Mod''	1.7787
C1F2S3	''Clinical=Low, Functional=Mod, Service=High''	2.0304
C1F3S0	''Clinical=Low, Functional=High, Service=Min''	0.8585
C1F3S1	''Clinical=Low, Functional=High, Service=Low''	0.9394
C1F3S2	''Clinical=Low, Functional=High, Service=Mod''	1.8168
C1F3S3	''Clinical=Low, Functional=High, Service=High''	2.0684
C1F4S0	''Clinical=Low, Functional=Max, Service=Min''	1.0261
C1F4S1	''Clinical=Low, Functional=Max, Service=Low''	1.1070
C1F4S2	''Clinical=Low, Functional=Max, Service=Mod''	1.9843
C1F4S3	''Clinical=Low, Functional=Max, Service=High''	2.2360
C2F0S0	''Clinical=Mod, Functional=Min, Service=Min''	0.7965
C2F0S1	''Clinical=Mod, Functional=Min, Service=Low''	0.8774
C2F0S2	''Clinical=Mod, Functional=Min, Service=Mod''	1.7548
C2F0S3	''Clinical=Mod, Functional=Min, Service=High''	2.0065
C2F1S0	''Clinical=Mod, Functional=Low, Service=Min''	0.8914

TABLE 9.—RELATIVE CASE-MIX WEIGHTS CORRESPONDING TO HOME HEALTH RESOURCE GROUPS—Continued

HHRG group	HHRG description	Case-mix weight
C2F1S1	''Clinical=Mod, Functional=Low, Service=Low''	0.9723
C2F1S2	''Clinical=Mod, Functional=Low, Service=Mod''	1.8496
C2F1S3	''Clinical=Mod, Functional=Low, Service=High''	2.1013
C2F2S0	''Clinical=Mod, Functional=Mod, Service=Min''	0.9949
C2F2S1	''Clinical=Mod, Functional=Mod, Service=Low''	1.0758
C2F2S2	''Clinical=Mod, Functional=Mod, Service=Mod''	1.9532
C2F2S3	''Clinical=Mod, Functional=Mod, Service=High''	2.2048
C2F3S0	''Clinical=Mod, Functional=High, Service=Min''	1.0329
C2F3S1	''Clinical=Mod, Functional=High, Service=Low''	1.1139
C2F3S2	''Clinical=Mod, Functional=High, Service=Mod''	1.9912
C2F3S3	''Clinical=Mod, Functional=High, Service=High''	2.2429
C2F4S0	''Clinical=Mod, Functional=Max, Service=Min''	1.2005
C2F4S1	''Clinical=Mod, Functional=Max, Service=Low''	1.2814
C2F4S2	''Clinical=Mod, Functional=Max, Service=Mod''	2.1588
C2F4S3	''Clinical=Mod, Functional=Max, Service=High''	2.4105
C3F0S0	''Clinical=High, Functional=Min, Service=Min''	1.1973
C3F0S1	''Clinical=High, Functional=Min, Service=Low''	1.2782
C3F0S2	''Clinical=High, Functional=Min, Service=Mod''	2.1556
C3F0S3	''Clinical=High, Functional=Min, Service=High''	2.4073
C3F1S0	''Clinical=High, Functional=Low, Service=Min''	1.2922
C3F1S1	''Clinical=High, Functional=Low, Service=Low''	1.3731
C3F1S2	''Clinical=High, Functional=Low, Service=Mod''	2.2504
C3F1S3	''Clinical=High, Functional=Low, Service=High''	2.5021
C3F2S0	''Clinical=High, Functional=Mod, Service=Min''	1.3957
C3F2S1	''Clinical=High, Functional=Mod, Service=Low''	1.4766
C3F2S2	''Clinical=High, Functional=Mod, Service=Mod''	2.3540
C3F2S3	''Clinical=High, Functional=Mod, Service=High''	2.6056
C3F3S0	''Clinical=High, Functional=High, Service=Min''	1.4337
C3F3S1	''Clinical=High, Functional=High, Service=Low''	1.5147
C3F3S2	''Clinical=High, Functional=High, Service=Mod''	2.3920
C3F3S3	''Clinical=High, Functional=High, Service=High''	2.6437
C3F4S0	''Clinical=High, Functional=Max, Service=Min''	1.6013
C3F4S1	''Clinical=High, Functional=Max, Service=Low''	1.6822
C3F4S2	''Clinical=High, Functional=Max, Service=Mod''	2.5596
C3F4S3	''Clinical=High, Functional=Max, Service=High''	2.8113

H. Consolidated Billing

1. Background

Under the HHA consolidated billing requirement established by sections 4603(c)(2)(B) and (c)(2)(C) of the BBA, the HHA that establishes the home health plan of care has the Medicare billing responsibility for all of the Medicare-covered home health services listed in section 1861(m) of the Act that the patient receives and are ordered by the physician in the plan of care. Section 305 of BBRA of 1999 amended the consolidated billing language governing home health PPS by eliminating DME covered as a home health service from the consolidated billing requirements.

2. HHA Consolidated Billing Legislation

Specific Provisions of the Legislation. Sections 4603(c)(2)(B) and (c)(2)(C) of the BBA amend sections 1842(b)(6) and 1862(a) of the Act, respectively, to require a new consolidated billing and bundling of all home health services while a beneficiary is under the plan of care. The statute now requires payment for all items and services to be made to an agency. As stated above, section 305 of BBRA of 1999 excludes DME covered as a home health service from the consolidated billing requirements.

Specifically, the law requires, ''in the case of home health services (including medical supplies described in section 1861(m)(5), but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who (at the time the item or service is furnished) is under the plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise).''

Moreover, there will be separate payment for DME items and services provided under the home health benefit, which are under the DME fee schedule. As discussed previously, under the HHA PPS, DME covered as a home health service as part of the Medicare home health benefit will continue to be paid under the DME fee schedule and will also be excluded from the consolidated billing requirements. In addition to the prospective payment amount for home health services a separate payment amount will be made for DME currently covered as a home health service under the PPS.

3. Types of Services That Are Subject to the Provision

Under the consolidated billing requirement, we require that the HHA must submit all Medicare claims for all home health services included in section 1861(m) of the Act (including medical supplies described in section 1861(m)(5)) of the Act, but excluding DME to the extent provided for in such section), while the beneficiary is under the home health plan of care established by a physician and eligible for the home health benefit. The home health services included in consolidated billing are:

- Part-time or intermittent skilled nursing care.
- Part-time or intermittent home health aide services.
- Physical therapy.
- Speech-language pathology.
- Occupational therapy, medical social services.

• Routine and nonroutine medical supplies.

• A covered osteoporosis drug (as defined in section 1861(kk) of the Act- (not paid under PPS rate, see 1833(a)(2)(A)), but excluding other drugs and biologicals).

• Medical services provided by an intern or resident- in-training of the hospital, under an approved teaching program of the hospital in the case of an HHA that is affiliated or under common control with a hospital.

• Services at hospitals, SNFs, or rehabilitation centers when they involve equipment too cumbersome to bring to the home.

4. Effects of This Provision

HHAs will no longer be able to ''unbundle'' services to an outside supplier that can then submit a separate bill directly to the Part B carrier. Instead, the HHA itself will have to furnish the home health services (except DME) either directly or under an arrangement with an outside supplier in which the HHA itself, rather than the supplier, bills Medicare. With the exception of DME, the outside supplier must look to the HHA rather than to Medicare Part B for payment. Beneficiaries receiving DME prior to establishment of a home health plan of care, can continue the relationship with that same DME supplier. The consolidated billing requirement eliminates the potential for duplicative billings for the same services to the RHHI by the HHA and to the Part B carrier by an outside supplier. All covered home health services listed in section 1861(m) of the Act, (including medical supplies described in section 1861(m)(5) of the Act, but excluding DME to the extent provided in such section) ordered in the patient's plan of care must be billed by the HHA.

As discussed in the proposed rule published on October 28, 1999, the responsibility for consolidated billing moves to the transfer HHA. The consolidated billing requirement enhances the HHA's capacity to meet its existing responsibility to oversee and coordinate the Medicare- covered home health services that each of its patients receives.

Consistent with SNF PPS consolidated billing, the beneficiary exercises his or her freedom of choice for the entire home health benefit of services listed in section 1861(m) of the Act, including medical supplies described in section 1861(m)(5) of the Act, but excluding DME as a home health service by choosing the HHA. Once a home health patient chooses a particular HHA, he or she has clearly exercised freedom of choice with respect to all items and services included within the scope of the Medicare home health benefit (except DME). The HHA's consolidated billing role supersedes all other billing situations the beneficiary may wish to establish for home health services covered under the scope of the home health benefit during the certified episode.

Current law is silent regarding the specific terms of an HHA's payment to an outside supplier, and does not authorize the Medicare program to impose any requirements in this regard. We remain concerned, however, over the potential for the provision of unnecessary services, and will continue to evaluate approaches addressing this concern. One appropriate way to address any abusive practices would be through more vigorous enforcement of existing statutes and regulations (such as medical review procedures). Furthermore, since under current law, an HHA's relationship with its supplier is essentially a private contractual matter, the terms of the supplier's payment by the HHA must be arrived through direct negotiations between the two parties themselves. Accordingly, we believe that the most effective way for a supplier to address any concerns that it may have about the adequacy or timeliness of the HHA's payment would be for the supplier to ensure that any terms to which it agrees in such negotiations satisfactorily address those concerns. Finally, we note that matters relating to the enforcement of the statutory anti-kickback provisions lie exclusively within the purview of the Office of the Inspector General, and any questions or concerns in this area should be directed to the attention of that agency.

5. Effective Date for Consolidated Billing

The effective date for consolidated billing is October 1, 2000.

V. Provisions of the Final Rule

We are adopting the provisions of the proposed rule with the following revisions:

Section 409.43

We revised paragraph (c) to clarify that the request for anticipated payment for the initial percentage payment is not a Medicare claim under the Act and subject to the requirement that the physician sign the plan of care before the HHA bills for the initial percentage payment. The request for anticipated payment for the initial percentage episode payment may be based on verbal orders that are copied into the plan of care with the plan of care being immediately submitted to the physician. However, the requests for anticipated payments may be modified or withheld in order to protect Medicare program integrity. However, the final percentage payment is a claim subject to the current physician signature requirements. We revised current paragraph (c) governing physician signature of the plan of care. Specifically, paragraph (c)(1) of this section specifies, ''If the physician signed plan of care is not available, the request for anticipated payment of the initial percentage payment must be based on—

• A physician's verbal order that—

++ Is recorded in the plan of care;

++ Includes a description of the patient's condition and the services to be provided by the home health agency;

++ Includes an attestation (relating to the physician's orders and the date received) signed and dated by the registered nurse or qualified therapist (as defined in 42 CFR 484.4) responsible for furnishing or supervising the ordered service in the plan of care; and

++ Is copied into the plan of care and the plan of care is immediately submitted to the physician; or

• A referral prescribing detailed orders for the services to be provided that is signed and dated by a physician.''

In paragraph (c)(2) of this section, we specify that ''HCFA has the authority to reduce or disapprove requests for anticipated payments in situations when protecting Medicare program integrity warrants this action. Since the request for anticipated payment is based on verbal orders as specified in paragraphs (c)(1)(i) and/or a prescribing referral as specified in (c)(1)(ii) of this section and is not a Medicare claim for purposes of the Act (although it is a ''claim'' for purposes of Federal, civil, criminal, and administrative law enforcement authorities, including but not limited to the Civil Monetary Penalties Law (as defined in 42 U.S.C. 1320a–7a (i) (2)), the Civil False Claims Act (as defined in 31 U.S.C. 3729(c)), and the Criminal False Claims Act (18 U.S.C. 287)), the request for anticipated payment will be canceled and recovered unless the claim is submitted within the greater of 60 days from the end of the episode or 60 days from the issuance of the request for anticipated payment.''

Paragraph (c)(3) of this section specifies that ''The plan of care must be signed and dated—

• By a physician as described who meets the certification and recertification requirements of § 424.22 of this chapter and;

• Before the claim for each episode for services is submitted for the final percentage payment.''

Paragraph (c)(4) of this section specifies that ''Any changes in the plan must be signed and dated by a physician.''

Section 409.43

We revised the paragraph (e) of this section to clarify that the plan of care must be reviewed by the physician at least every 60 days or more frequently when there is a beneficiary elected transfer, significant change in condition, or discharge and return to the same HHA during the same 60-day episode.

We also made a conforming change in paragraph (f) of this section regarding the termination of the plan of care by replacing ''62-day'' with ''60-day.'' We amended this paragraph to specify that if specific services are not provided to the beneficiary at least once every 60-days, the plan of care is terminated unless the physician documents that the interval without this care is appropriate to the treatment of the beneficiary's condition.

Sections 409.100(a)(2), 410.150(b)(19), and 411.15(q)

We revised the regulations at §§ 409.100(a)(2), 410.150(b)(19), and 411.15(q) to conform to the BBRA revisions that eliminate DME from the consolidated billing requirements.

Section 413.64

We revised § 413.1(h) to clarify that durable medical equipment and the covered osteoporosis drug as defined in section 1861(m) of the Act are not included in the HHA PPS rate.

We deleted § 413.64(h)(2)(iv). This corresponds to our revision in the proposed rule to remove Part A and Part B home health services from § 413.64(h)(1). PIP is eliminated for home health services upon implementation of PPS.

Section 424.22

We are not adopting proposed paragraph (a)(1)(v) that would have required the physician to certify the correct HHRG.

Section 484.1(a)

We amended this section by adding a new paragraph (3) to include the provision under the Act that provides the basis for establishing the new prospective payment system for home health services covered under Medicare.

Section 484.18

We revised the paragraph (b) to clarify that the plan of care must be reviewed by the physician at least every 60 days or more frequently when there is a beneficiary elected transfer, significant change in condition, or discharge and return to the same HHA during the same 60-day episode.

Section 484.55

We revised paragraph (d)(1) to specify that the update to the comprehensive assessment is required the last five days of every 60 days beginning with the start of care date unless there is an applicable payment adjustment. This clarification parallels the current OASIS requirements governing the timeframe of the update.

Section 484.202

We amended this section by removing the term ''clinical model'' from the list of definitions because we did not use the term in this subpart.

Section 484.205

We revised paragraph (a)(1) and (b) to clarify that the PPS payments are based on a predetermined rate for a home health service previously paid on a reasonable cost basis and that the osteoporosis drug covered under the home health benefit is the only home health service listed in section 1861(m) of the Act that continues to be paid on a reasonable cost basis under PPS. The revised language will read, ''The national 60-day episode payment represents payment in full for all costs associated with furnishing a home health service paid on a reasonable cost basis (except the osteoporosis drug listed in section 1861(m) of the Act as defined in section 1861(kk) of the Act) as of August 5, 1997 * * *''

We also clarify in paragraph (b) that all payments under this system must be subject to a medical review adjustment reflecting beneficiary eligibility, medical necessity determinations, and the HHRG assignment.

We added paragraphs (b)(1) and (b)(2) that provides for the requirements governing the final split percentage payment approach. New paragraph (b)(1) governs the split percentage payment approach for initial episodes. The initial percentage payment for initial episodes is paid at 60 percent of the case-mix and wage adjusted 60 day episode rate. The residual final payment for initial episodes is paid at 40 percent of the case-mix and wage adjusted 60 day episode rate. New paragraph (b)(2) governs the split percentage payment approach for subsequent episodes. The initial percentage payment for subsequent episodes is paid at 50 percent of the case-mix and wage adjusted 60 day episode rate. The residual final payment for subsequent episodes is paid at 50 percent of the case-mix and wage adjusted 60 day episode rate.

We revised paragraph (d) of this section to clarify that PEP adjustments do not apply in situations of transfer among HHAs of common ownership as defined in § 424.22. Those situations would be considered services provided under arrangement on behalf of the originating HHA by the receiving HHA with the common ownership interest for the balance of the 60-day episode. The common ownership exception to the transfer PEP adjustment does not apply if the beneficiary moves to a different MSA or Non-MSA during the 60-day episode before the transfer to the receiving HHA. The transferring HHA in situations of transfers among HHAs of common ownership not only serves as a billing agent, but must also exercise professional responsibility over the arranged-for services in order for services provided for under arrangements to be paid.

Section 484.215

We renamed the heading of section 484.215 to clarify that the calculation reflects the initial establishment of the PPS rates. Section 484.215 has been revised to read ''Initial establishment of the calculation of the national 60-day episode payment.'' We revised paragraph (d)(4) to reflect the amounts that are added to the nonstandardized episode amount for the OASIS adjustment for the one time implementation costs associated with assessment scheduling form changes and amounts for Part B therapies that could have been unbundled to Part B prior to PPS implementation.

Section 424.220

We revised § 484.220 to specify that HCFA adjusts the national 60-day episode payment rate to account for geographic differences in wage levels using an appropriate wage index based on the site of the service for the beneficiary.

Section 484.225(c)

We revised paragraph (c) to reflect that for each of FYs 2002 *and* 2003 the rates are updated by the applicable home health market basket minus 1.1 percentage points.

Section 484.230

We revised the language in this section to reflect the higher per-visit amounts that will be used to calculate the LUPA payments. The amounts will be referred to as national per-visit amounts. We also clarified that the wage

index are based on the site of service for the beneficiary.

Section 484.235

We revised paragraph (b) to reflect the use of billable visit dates as the defining points for the PEP adjustment. The following phrase will be added to the end of the sentence, ''* * * based on the first billable visit date through and including the last billable visit date.''

Section 484.237

We revised paragraphs (b)(1) and (b)(2) governing the SCIC adjustment to reflect the use of billable visit dates to define the span of days used to calculate the proportional payments both before and after a patient experiences a significant change in condition. In §§ 484.237(b)(1) and (b)(2) we inserted the phrase ''(the first billable visit date through and including the last billable visit date)'' after the phrase ''span of days.''

Section 484.240

We revised paragraph (d) to reflect the higher per- visit amounts that will be used to calculate the imputed costs for each episode for outlier payment determination. The amounts are referred to as national per-visit amounts.

Section 484.245

We added new § 484.245 that sets forth the processes involving accelerated payment requests by an HHA under PPS if there is a delay by the intermediary in making payment.

VI. 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.

However, the requirements summarized below are currently approved as indicated by the appropriate OMB control number.

Section 409.43 Plan of Care Requirements

Section 409.43(c) states that a plan of care must be signed and dated by a physician and meets the certification and recertification requirements of § 424.22 of this chapter, before the episode claim for services is submitted for the final percentage payment. This provision also states that any changes in the plan must be signed and dated by the physician. The requirements and burden associated with the plan of care are currently approved under OMB control numbers 0938–0357, with a current expiration date of 11/30/2000, 0938–0760 with a current expiration date of 09/30/2000, and 0938–0761 with a current expiration date of 09/30/2000.

Section 409.43(e) states that a plan of care must be reviewed, signed, and dated by the physician who reviews the plan of care (as specified in § 409.42(b))in consultation with agency professional personnel at least every 60 days. The requirements and burden associated with the plan of care are currently approved under OMB control numbers 0938–0357, with a current expiration date of 11/30/2000, 0938–0760 with a current expiration date of 09/30/2000, and 0938–0761 with a current expiration date of 09/30/2000.

Section 424.22 Requirements for Home Health Services

Section 424.22(b) states that a recertification is required at least every 60 days, preferably at the time the plan is reviewed, and must be signed by the physician who reviews the plan of care. The requirements and burden associated with the plan of care are currently approved under OMB control numbers 0938–0357, with a current expiration date of 11/30/2000, 0938–0760 with a current expiration date of 09/30/2000, and 0938–0761 with a current expiration date of 09/30/2000.

Section 484.55 Comprehensive Assessment of Patients

Section 484.55 states that an HHA must update the comprehensive assessment by completing the appropriate OASIS schedule the last five days of every 60 days beginning with the start of care date unless there is a PEP adjustment or SCIC adjustment. The new requirement replaces the current language regarding ''every second calendar month'' with every 60 days.'' The requirements and burden associated with the plan of care are currently approved under OMB control numbers 0938–0357, with a current expiration date of 11/30/2000, 0938–0760 with a current expiration date of 09/30/2000, and 0938–0761 with a current expiration date of 09/30/2000.

Section 484.250 Patient Assessment Data.

Section 484.250 states that an HHA must submit OASIS data to HCFA as described at § 484.55(b)(1) and (d)(1) to administer the payment rate methodologies described in §§ 484.215, 484.230, 484.235, and 484.237. The requirements and burden associated with the plan of care are currently approved under OMB control numbers 0938–0357, with a current expiration date of 11/30/2000, 0938–0760 with a current expiration date of 09/30/2000, and 0938–0761 with a current expiration date of 09/30/2000.

VII. Regulatory Impact Analysis

Section 804(2) of title 5, United States Code (as added by section 251 of Public Law 104–121), specifies that a ''major rule'' is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic and export markets.

We estimate, based on a simulation model, that the redistributional effects on HHAs participating in the Medicare program associated with this final rule would range from a positive $428 million for freestanding not-for-profit agencies to a negative $363 million for freestanding for-profit agencies in FY 2001. Therefore, this rule, is a major rule as defined in Title 5, United States Code, section 804(2).

We have examined the impacts of this final rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, (Public Law 104–4), 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 1895(b)(3)(A)(i) of the Act requires that the total amounts payable under the HHA PPS be equal to the total amount that would have been paid if this system had not been in effect. Section 302 of the BBRA amends section 1895(b)(3)(A)(ii) of the Act and delays the application of a 15 percent reduction in HHA PPS payment amounts until 1 year after its implementation. Section 306 of the BBRA amends section 1895(b)(3)(B)(ii) of the Act to require the standard prospective payment amounts to be increased by a factor equal to the home health market basket minus 1.1 percentage points for each of FYs 2002 and 2003. In addition, for subsequent fiscal years, the law requires the rates to be increased by the applicable home health market basket index change. Thus, subject to these adjustments, the statutory construction of this final rule is budget neutral. However, we are aware that there would be a number of organizational accommodations that must be made by HHAs in order to make the transition from the cost-based/interim payment system environment to a prospective payment environment that would result in costs to these entities. On that basis, we are preparing this RIA.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any given year. We believe that the costs associated with this final rule that apply to these governmental sectors would fall below this threshold. Therefore, the law does not apply and we have not prepared an assessment of anticipated costs and benefits of this final rule.

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 HHAs are considered small entities, either by nonprofit status or by having revenues of $5 million or less annually.

Table 10 illustrates the distribution of HHAs by provider type participating in Medicare as of March 16, 2000.

TABLE 10.—NUMBER OF HHAS BY PROVIDER TYPE

HHA Provider Type	Number of HHAs
Visiting Nurse Association	451
Combination of Government & Voluntary	35
Official Health Agency	910
Rehabilitation Facility Based	0
Hospital Based	2,278
Skilled Nursing Facility Based	161
Other	3,801
Total	7,636

Source: HCFA—On Line Survey Certification and Reporting System Standard Report 10—March 16, 2000.

The following RIA/RFA analysis, together with the rest of this preamble, explains the rationale for and purposes of this final rule.

A. Background

This final rule establishes requirements for the new prospective payment system for home health agencies as required by section 4603 of the Balanced Budget Act of 1997, as amended by section 5101 of OCESAA and sections 302, 305, and 306 of BBRA. The requirements include the implementation of a prospective payment system for home health agencies and a number of other related changes. The prospective payment system described in this rule would replace the retrospective reasonable cost-based system currently used by Medicare for the payment of home health services under Part A and Part B. This final rule sets forth a prospective payment system for all costs of home health services under section 1895 of the Act.

B. Revisions to the Proposed Rule

Below are listed a number of the significant changes to the proposed rule that are reflected in the final rule.

Section 409.100

Section 305 of the BBRA excludes DME covered as a home health service from the consolidated billing requirements. Specifically, the law requires, ''in the case of home health services (including medical supplies described in section 1861(m)(5), but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who (at the time the item or service is furnished) is under the plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise).''

However, under HHA PPS there is a separate payment for DME items and services currently provided as a home health service and paid under the DME fee schedule. As discussed earlier, under the HHA PPS, DME covered as a home health service as part of the Medicare home health benefit will continue to be paid under the DME fee schedule. Further, in accordance with the statue, as amended by section 305 of BBRA, DME is also excluded from the consolidated billing requirements. A separate payment amount in addition to the prospective payment amount for home health services will be made for DME currently covered as a home health service under the PPS.

HHAs will no longer be able to ''unbundle'' home health services (other than DME) to an outside supplier that can then submit a separate bill directly to the Part B carrier or DMERC. Instead, the HHA itself will have to furnish the home health services (except DME) either directly or under an arrangement with an outside supplier in which the HHA itself, rather than the supplier, bills Medicare. The outside supplier must look to the HHA rather than to Medicare Part B for payment, except in the case of DME. Beneficiaries receiving DME prior to establishment of a home health plan of care can continue the relationship with that same DME supplier. The consolidated billing requirement eliminates the potential for duplicative billings for the same services to the RHHI by the HHA and to the Part B carrier by an outside supplier. All covered home health services listed in section 1861(m) (including medical supplies described in section 1861(m)(5), but excluding DME to the extent provided in such section) of the Act under a plan of care must be billed by the HHA.

Section 484.205

- We revised paragraph (a)(1) and (b) to clarify that the osteoporosis drug covered under the home health benefit is the only home health service listed in section 1861(m) of the Act that continues to be paid on a reasonable cost basis under PPS.
- We added paragraphs (b)(1) and (b)(2) that provides for the requirements governing the final split percentage payment approach. New paragraph (b)(1) governs the split percentage payment approach for initial episodes. The initial percentage payment for initial episodes is paid at 60 percent of the case-mix and wage adjusted 60 day episode rate. The residual final payment for initial episodes is paid at 40 percent

of the case-mix and wage adjusted 60 day episode rate. New paragraph (b)(2) governs the split percentage payment approach for subsequent episodes. The initial percentage payment for subsequent episodes is paid at 50 percent of the case-mix and wage adjusted 60 day episode rate. The residual final payment for subsequent episodes is paid at 50 percent of the case-mix and wage adjusted 60 day episode rate.

Section 484.215

We revised paragraph (d)(4) to reflect the amounts that are added to the nonstandardized episode amount for the OASIS adjustment for the one time implementation costs associated with assessment scheduling form changes and amounts for Part B therapies that could have been unbundled to Part B prior to PPS implementation.

Section 484.225

We revised paragraph (c) to reflect that for each of FYs 2002 and 2003 the rates are updated by the applicable home health market basket minus 1.1 percentage points.

Section 484.230

We revised the language in this section to reflect the higher per-visit amounts that will be used to calculate the LUPA payments.

Section 484.235

We revised paragraph (b) to reflect the use of billable visit dates as the defining points for the PEP adjustment.

Section 484.237

We revised paragraphs (b)(1) and (b)(2) governing the SCIC adjustment to reflect the use of billable visit dates to define the span of days used to calculate the proportional payments both before and after a patient experiences a significant change in condition.

Section 484.240

We revised paragraph (d) to reflect the higher per-visit amounts that will be used to calculate the imputed costs for each episode for outlier payment determination.

C. Effects of This Final Rule

Section 1895(b)(3)(A)(i) of the Act requires the computation of a standard prospective payment amount to be initially based on the most recent audited cost-report data available to the Secretary. In accordance with this section of the Act, the primary data source in developing the cost basis for the 60-day episode payments was the audited cost- report sample of HHAs whose cost reporting periods ended in fiscal year 1997 (that is, ending on or after October 1, 1996 through September 30, 1997). We also adopted the most current complete utilization data available from 1998.

Table 11 below illustrates the proportion of HHAs that are likely to be affected. This table reflects how agencies would be paid under PPS versus how they would be paid under IPS. The limits under IPS were determined by updating the per-visit limits in effect for FY 2000 by the market basket minus 1.1 percent and updating each agency's per-beneficiary cap for FY 2000 by this same percentage. For each agency in the audited cost report data set, we updated their costs from FY 1997 to FY 2001 by our best estimate of HHA cost increases during this period. We then compared each agency's FY 2001 costs to the IPS limits to determine their IPS payment in FY 2001. To determine each agency's payment under PPS, we translated the cost report data into 60-day episodes and used the average case-mix for urban/rural and provider type as a proxy. We extrapolated the audited cost report data to reflect the total Medicare HHA distribution. We obtained average case-mix values based on the type of provider and whether the HHA was urban or rural from the Abt data set. We then multiplied the agency's expected number of episodes in FY 2001 by the wage-adjusted and case-mix- adjusted episode payment to obtain the agency's expected PPS payment. The PPS payment was then compared to the IPS payment.

TABLE 11.—IMPACT OF THE HOME HEALTH PROSPECTIVE PAYMENT AMOUNTS ON HOME HEALTH AGENCIES BY TYPE AND LOCATION FOR THE 563 AUDITED COST REPORT SAMPLE AGENCIES

Type of agency	Percentage change from IPS to PPS
All Agencies	0.0
By Urban/Rural and Provider Type:	
Rural:	
Freestanding: For-Profit	−7.50
Governmental	29.98
Non-Profit	13.28
Provider Based	5.31
Urban:	
Freestanding: For-Profit	−14.25
Governmental	20.58
Non-Profit	18.89
Provider Based	−2.50
By Provider Type:	
Freestanding: For-Profit	−12.77
Governmental	26.50
Non-Profit	17.88
Provider Based	−1.03
By Urban/Rural:	
Rural Agencies	5.94
Urban Agencies	−0.08
By Region:	
Midwest States	14.77
Northeast States	15.37
Southern States	−16.75
Western States	17.84

Table 11 represents the projected effects of the HHA PPS and is based on the 563 providers in the audited cost-report sample weighted to the national total of HHAs. This sample has been adjusted by the most recent market basket factors to reflect the expected cost increases occurring between the cost-reporting periods for the data contained in the database and September 30, 2001.

This impact table compares the effect on categories of HHAs in moving from the IPS payment methodology to the PPS payment methodology. These cost limits have already had the effect of reducing many extremes in the cost of the system; therefore, as a result of IPS, a majority of HHA providers are currently held at the median national cost per-beneficiary or below. It should be noted that HHAs will have had 2 or more years experience under this system before PPS implementation. The effect of IPS payment restraint combined with the improvements in this final rule have significantly reduced the degree of variation between providers and regions as well as the overall impact of the rule. Because we believe it was important that the impact tables provide the most accurate representation possible, it was necessary for us to use the data set drawn upon from the audited cost report file. This file of course is nationally representative and these data become decreasingly valid when divided into smaller geographic areas. Thus, the lowest level of analysis we could reasonably provide using this data is the four census regions. Any finer level of analysis would introduce a level of statistical error that we believe would be unacceptable.

Column one of this table divides HHAs by a number of characteristics including provider type, region, and urban versus rural location. For purposes of this impact table four regions have been defined: Northeast, South, Midwest, and West. The Northeast Region consists of Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands. The South Region consists of Alabama, Arkansas, the District of Columbia, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The Midwest Region consists of Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, North Dakota, Nebraska, Ohio, South Dakota, and Wisconsin. The West Region consists of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

Column two shows the percentage change in Medicare payments a particular category of HHAs would experience in moving from the IPS payment methodology to the final PPS payment methodology. Because the statute requires aggregate payments under the HHA PPS and HHA IPS payment methodology to be budget neutral, the effect on agencies in the aggregate is zero.

Rural freestanding for-profit HHAs experience an 7.50 percent decrease in moving from the IPS payment methodology to the PPS payment methodology. Rural freestanding governmental HHAs experience an 29.98 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Rural freestanding nonprofit HHAs experience an 13.28 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Rural provider-based HHAs, in the aggregate, experience an 5.31 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Rural agencies, in the aggregate, experience an 5.94 percent increase in moving from the IPS payment methodology to the PPS payment methodology.

Urban freestanding for-profit HHAs experience an 14.25 percent decrease in moving from the IPS payment methodology to the PPS payment methodology. Urban freestanding governmental HHAs experience an 20.58 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Urban freestanding nonprofit HHAs experience an 18.89 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Urban provider-based HHAs, in the aggregate, experience an 2.50 percent decrease in moving from the IPS payment methodology to the PPS payment methodology. Urban agencies, in the aggregate, experience an 0.08 percent decrease in moving from the IPS payment methodology to the PPS payment methodology.

The current IPS cost limits have been criticized as providing better financial treatment of urban providers relative to rural providers. The HHA PPS system, which is based on patient characteristics, tends to level the playing field; thus, rural providers, in general, fare relatively better than urban providers. The largest impact on urban providers is in the urban freestanding for-profit category where it can be argued that historical costs have been disproportionately high compared to other providers for reasons unrelated to the relative needs of the patients they serve.

Freestanding for-profit HHAs, in the aggregate, experience an 12.77 percent decrease in moving from the IPS payment methodology to the PPS payment methodology. Freestanding governmental HHAs, in the aggregate, experience an 26.50 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Freestanding nonprofit HHAs, in the aggregate, experience an 17.88 percent increase in moving from the IPS payment methodology to the PPS payment methodology. Provider-based HHAs, in the aggregate, experience an 1.03 percent decrease in moving from the IPS payment methodology to the PPS payment methodology.

It should be noted that governmental providers fare relatively better under the HHA PPS system than other types of providers. In part, this is because the HHA PPS system is driven primarily by the needs of patients rather than utilization incentives. Thus, governmental providers are less affected by the IPS payment methodology because their costs have been historically lower and visit utilization per episode is much lower. On average, governmental agencies have reported lower average costs per visit as well as fewer visits per episode. It should be noted that this category of HHAs accounts for only 3.8 percent of total home health expenditures and, therefore, the large increase attributed to them has little impact in the aggregate system costs.

Provider-based agencies historically tended to have, as a group, higher per-visit costs. As could be anticipated, the payment differential reflected in this impact table for provider-based agencies is in a negative direction, but relatively modest, probably due to the cost discipline already in place due to IPS.

HHAs in the Midwest region experience an 14.77 percent increase in moving from the IPS payment methodology to the PPS payment methodology. HHAs in the Northeast region experience an 15.37 percent increase in moving from the IPS payment methodology to the PPS payment methodology. HHAs in the South region experience an 16.75 percent decrease in moving from the IPS payment methodology to the PPS payment methodology. HHAs in the West region experience an 17.84 percent increase in moving from the IPS

payment methodology to the PPS payment methodology.

We would have preferred to provide an impact table with more regions; however, the limitations of our data prevented us from obtaining provider data at a lower level than the four major regions. However, this regional breakdown does reflect what one might expect in moving from our current IPS cost limitations payment methodology to a national PPS payment methodology. Medicare payments have historically varied by region without regard to the relative needs/conditions of patients; therefore, that region that had the highest unexplained costs for home health services is the most impacted area (South region). In contrast, the Midwest, Northeast, and West regions fare relatively well by comparison. It must be noted that in a payment methodology system that is legislatively required to achieve budget neutrality, any effort to increase payments to those regions more affected by a national payment system necessarily results in a reduction of payments to those regions that have historically restrained costs under home health.

It should be noted that to the degree that agencies respond to the incentives of the prospective payment system and apply resources commensurate with the measured characteristics of their patients, the impacts predicted in this model will further be reduced.

D. Rural Hospital Impact Statement

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 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.

We have not prepared a rural impact statement since we have determined, and the Secretary certifies, that this rule would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that this final rule would not have substantial direct effects on the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

A. Amend part 409 as set forth below:

1. Revise the authority citation for part 409 to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Amend § 409.43 as follows:

A. Revise paragraphs (c) and (e).

B. Amend paragraph (f) by removing the phrase ''62-day'' and adding in its place the phrase ''60-day.''

§ 409.43 Plan of care requirements.

* * * * *

(c) *Physician signature.* (1) *Request for Anticipated payment signature requirements.* If the physician signed plan of care is not available at the time the HHA requests an anticipated payment of the initial percentage prospective payment in accordance with § 484.205, the request for the anticipated payment must be based on—

(i) A physician's verbal order that—

(A) Is recorded in the plan of care;

(B) Includes a description of the patient's condition and the services to be provided by the home health agency;

(C) Includes an attestation (relating to the physician's orders and the date received) signed and dated by the registered nurse or qualified therapist (as defined in 42 CFR 484.4) responsible for furnishing or supervising the ordered service in the plan of care; and

(D) Is copied into the plan of care and the plan of care is immediately submitted to the physician; or

(ii) A referral prescribing detailed orders for the services to be rendered that is signed and dated by a physician.

(2) *Reduction or disapproval of anticipated payment requests.* HCFA has the authority to reduce or disapprove requests for anticipated payments in situations when protecting Medicare program integrity warrants this action. Since the request for anticipated payment is based on verbal orders as specified in paragraph (c)(1)(i) and/or a prescribing referral as specified in (c)(1)(ii) of this section and is not a Medicare claim for purposes of the Act (although it is a ''claim'' for purposes of Federal, civil, criminal, and administrative law enforcement authorities, including but not limited to the Civil Monetary Penalties Law (as defined in 42 U.S.C. 1320a–7a (i) (2)), the Civil False Claims Act (as defined in 31 U.S.C. 3729(c)), and the Criminal False Claims Act (18 U.S.C. 287)), the request for anticipated payment will be canceled and recovered unless the claim is submitted within the greater of 60 days from the end of the episode or 60 days from the issuance of the request for anticipated payment.

(3) *Final percentage payment signature requirements.* The plan of care must be signed and dated—

(i) By a physician as described who meets the certification and recertification requirements of § 424.22 of this chapter; and

(ii) Before the claim for each episode for services is submitted for the final percentage prospective payment.

(4) *Changes to the plan of care signature requirements.* Any changes in the plan must be signed and dated by a physician.

* * * * *

(e) *Frequency of review.* (1) The plan of care must be reviewed by the physician (as specified in § 409.42(b)) in consultation with agency professional personnel at least every 60 days or more frequently when there is a—

(i) Beneficiary elected transfer;

(ii) Significant change in condition resulting in a change in the case-mix assignment; or

(iii) Discharge and return to the same HHA during the 60-day episode.

(2) Each review of a beneficiary's plan of care must contain the signature of the

physician who reviewed it and the date of review.

* * * * *

3. In § 409.100, revise paragraph (a) to read as follows:

§ 409.100 To whom payment is made.

(a) *Basic rule.* Except as provided in paragraph (b) of this section—

(1) Medicare pays hospital insurance benefits only to a participating provider.

(2) For home health services (including medical supplies described in section 1861(m)(5) of the Act, but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA, payment is made to the HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

* * * * *

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

B. Amend part 410 as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.150, republish the introductory text to paragraph (b) and add new paragraph (b)(19) to read as follows:

§ 410.150 To whom payment is made.

* * * * *

(b) *Specific rules.* Subject to the conditions set forth in paragraph (a) of this section, Medicare Part B pays as follows:

* * * * *

(19) To a participating HHA, for home health services (including medical supplies described in section 1861(m)(5) of the Act, but excluding durable medical equipment to the extent provided for in such section) furnished to an individual who at the time the item or service is furnished is under a plan of care of an HHA (without regard to whether the item or service is furnished by the HHA directly, under arrangement with the HHA, or under any other contracting or consulting arrangement).

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

C. Amend part 411 as set forth below:

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 411.15, republish the introductory text to the section, and add a new paragraph (q) to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage:

* * * * *

(q) A home health service (including medical supplies described in section 1861(m)(5) of the Act, but excluding durable medical equipment to the extent provided for in such section) as defined in section 1861(m) of the Act furnished to an individual who is under a plan of care of an HHA, unless that HHA has submitted a claim for payment for such services.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

D. Amend part 413 as set forth below:

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a),(i) and (n), 1861(v), 1871, 1881, 1883, and 1866 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a),(i) and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

2. In § 413.1, add a new paragraph (h) to read as follows:

§ 413.1 Introduction.

* * * * *

(h) *Payment for services furnished by HHAs.* The amount paid for home health services as defined in section 1861(m) of the Act (except durable medical equipment and the covered osteoporosis drug as provided for in that section) that are furnished beginning on or after October 1, 2000 to an eligible beneficiary under a home health plan of care is determined according to the prospectively determined payment rates for HHAs set forth in part 484, subpart E of this chapter.

§ 413.64 [Amended]

3. Amend § 413.64 by:

A. Amending paragraph (h)(1) to remove the phrase ''and for both Part A and Part B HHA services'' at the end of the paragraph.

B. Removing paragraph (h)(2)(iv) and redesignating paragraphs (h)(2)(v) and (h)(2)(vi) as paragraphs (h)(2)(iv) and (h)(2)(v) respectively.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

E. Amend part 424 as set forth below:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh).

2. In § 424.22, revise paragraph (b)(1) to read as follows:

§ 424.22 Requirements for home health services.

* * * * *

(b) *Recertification.* (1) *Timing and signature of recertification.* Recertification is required at least every 60 days, preferably at the time the plan is reviewed, and must be signed by the physician who reviews the plan of care. The recertification is required at least every 60 days when there is a—

(i) Beneficiary elected transfer; or

(ii) Discharge and return to the same HHA during the 60-day episode.

* * * * *

PART 484—HOME HEALTH SERVICES

F. Amend part 484 as set forth below:

1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh), unless otherwise indicated.

2. Revise the heading for part 484 to read as set forth above.

3. Add a new paragraph (a)(3) to § 484.1 to read as follows:

§ 484.1 Basis and scope.

(a) *Basis and scope.* * * *

(3) Section 1895 provides for the establishment of a prospective payment system for home health services covered under Medicare.

* * * * *

§ 484.18 [Amended]

4. In § 484.18, in paragraph (b), remove the phrase ''62 days'' and in its place add the phrase ''60 days or more frequently when there is a beneficiary elected transfer; a significant change in condition resulting in a change in the case-mix assignment; or a discharge and return to the same HHA during the 60-day episode.''

5. In § 484.55, revise paragraph (d)(1) to read as follows:

§ 484.55 Condition of participation: Comprehensive assessment of patients.

* * * * *

(d) *Standard: Update of the comprehensive assessment.*

* * * * *

(1) The last five days of every 60 days beginning with the start-of-care date, unless there is a—

(i) Beneficiary elected transfer;

(ii) Significant change in condition resulting in a new case-mix assignment; or

(iii) Discharge and return to the same HHA during the 60-day episode.

* * * * *

6. Add and reserve a new subpart D.

7. Add a new subpart E to read as follows:

Subpart E—Prospective Payment System for Home Health Agencies

Sec.

484.200 Basis and scope.
484.202 Definitions.
484.205 Basis of payment.
484.210 Data used for the calculation of the national prospective 60-day episode payment.
484.215 Initial establishment of the calculation of the national 60-day episode payment.
484.220 Calculation of the national adjusted prospective 60-day episode payment rate for case-mix and area wage levels.
484.225 Annual update of the national adjusted prospective 60-day episode payment rate.
484.230 Methodology used for the calculation of the low-utilization payment adjustment.
484.235 Methodology used for the calculation of the partial episode payment adjustment.
484.237 Methodology used for the calculation of the significant change in condition payment adjustment.
484.240 Methodology used for the calculation of the outlier payment.
484.245 Accelerated payments for home health agencies.
484.250 Patient assessment data.
484.260 Limitation on review.

Subpart E—Prospective Payment System for Home Health Agencies

§ 484.200 Basis and scope.

(a) *Basis.* This subpart implements section 1895 of the Act, which provides for the implementation of a prospective payment system (PPS) for HHAs for portions of cost reporting periods occurring on or after October 1, 2000.

(b) *Scope.* This subpart sets forth the framework for the HHA PPS, including the methodology used for the development of the payment rates, associated adjustments, and related rules.

§ 484.202 Definitions.

As used in this subpart—

Case-mix index means a scale that measures the relative difference in resource intensity among different groups in the clinical model.

Discipline means one of the six home health disciplines covered under the Medicare home health benefit (skilled nursing services, home health aide services, physical therapy services, occupational therapy services, speech-language pathology services, and medical social services).

Home health market basket index means an index that reflects changes over time in the prices of an appropriate mix of goods and services included in home health services.

§ 484.205 Basis of payment.

(a) *Method of payment.* An HHA receives a national prospective 60-day episode payment of a predetermined rate for a home health service previously paid on a reasonable cost basis (except the osteoporosis drug defined in section 1861(kk) of the Act) as of August 5, 1997. The national 60-day episode payment is determined in accordance with § 484.215. The national prospective 60-day episode payment is subject to the following adjustments and additional payments:

(1) A low-utilization payment adjustment (LUPA) of a predetermined per-visit rate as specified in § 484.230.

(2) A partial episode payment (PEP) adjustment due to an intervening event defined as a beneficiary elected transfer or a discharge and return to the same HHA during the 60-day episode, that warrants a new 60-day episode payment during an existing 60-day episode, that initiates the start of a new 60-day episode payment and a new physician certification of the new plan of care. The PEP adjustment is determined in accordance with § 484.235.

(3) A significant change in condition (SCIC) payment adjustment due to the intervening event defined as a significant change in the patient's condition during an existing 60-day episode. The SCIC adjustment occurs when a beneficiary experiences a significant change in condition during a 60-day episode that was not envisioned in the original plan of care. The SCIC adjustment is determined in accordance with § 484.237.

(4) An outlier payment is determined in accordance with § 484.240.

(b) *Episode payment.* The national prospective 60-day episode payment represents payment in full for all costs associated with furnishing home health services previously paid on a reasonable cost basis (except the osteoporosis drug listed in section 1861(m) of the Act as defined in section 1861(kk) of the Act) as of August 5, 1997 unless the national 60-day episode payment is subject to a low-utilization payment adjustment set forth in § 484.230, a partial episode payment adjustment set forth at § 484.235, a significant change in condition payment set forth at § 484.237, or an additional outlier payment set forth in § 484.240. All payments under this system may be subject to a medical review adjustment reflecting beneficiary eligibility, medical necessity determinations, and HHRG assignment. DME provided as a home health service as defined in section 1861(m) of the Act continues to be paid the fee schedule amount.

(1) *Split percentage payment for initial episodes.* The initial percentage payment for initial episodes is paid to an HHA at 60 percent of the case-mix and wage adjusted 60-day episode rate. The residual final payment for initial episodes is paid at 40 percent of the case-mix and wage adjusted 60-day episode rate. Split percentage payments are made in accordance with requirements at § 409.43(c) of this chapter.

(2) *Split percentage payment for subsequent episodes.* The initial percentage payment for subsequent episodes is paid to an HHA at 50 percent of the case-mix and wage adjusted 60-day episode rate. The residual final payment for subsequent episodes is paid at 50 percent of the case-mix and wage adjusted 60-day episode rate. Split percentage payments are made in accordance with requirements at § 409.43(c) of this chapter.

(c) *Low-utilization payment.* An HHA receives a national 60-day episode payment of a predetermined rate for home health services previously paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines at the end of the 60-day episode that the HHA furnished minimal services to a patient during the 60-day episode. A low-utilization payment adjustment is determined in accordance with § 484.230.

(d) *Partial episode payment adjustment.* An HHA receives a national 60-day episode payment of a predetermined rate for home health services previously paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines an intervening event, defined as a beneficiary elected transfer, or discharge and return to the same HHA during a 60-day episode, warrants a new 60-day episode payment. The PEP adjustment would not apply in situations of transfers among HHAs of common ownership as defined in § 424.22 of this chapter. Those situations would be considered services provided under arrangement on behalf

of the originating HHA by the receiving HHA with the common ownership interest for the balance of the 60-day episode. The common ownership exception to the transfer PEP adjustment does not apply if the beneficiary moves to a different MSA or Non-MSA during the 60-day episode before the transfer to the receiving HHA. The transferring HHA in situations of common ownership not only serves as a billing agent, but must also exercise professional responsibility over the arranged-for services in order for services provided under arrangements to be paid. The discharge and return to the same HHA during the 60-day episode is only recognized in those circumstances when a beneficiary reached the goals in the original plan of care. The original plan of care must have been terminated with no anticipated need for additional home health services for the balance of the 60-day episode. If the intervening event warrants a new 60-day episode payment and the new physician certification of a new plan of care, the initial HHA receives a partial episode payment adjustment reflecting the length of time the patient remained under its care. A partial episode payment adjustment is determined in accordance with § 484.235.

(e) *Significant change in condition adjustment.* The HHA receives a national 60-day episode payment of a predetermined rate for home health services paid on a reasonable cost basis as of August 5, 1997, unless HCFA determines an intervening event defined as a beneficiary experiencing a significant change in condition during a 60-day episode that was not envisioned in the original plan of care occurred. In order to receive a new case-mix assignment for purposes of payment during the 60-day episode, the HHA must complete an OASIS assessment and obtain the necessary physician change orders reflecting the significant change in the treatment approach in the patient's plan of care. The total significant change in condition payment adjustment is a proportional payment adjustment reflecting the time both prior and after the patient experienced a significant change in condition during the 60-day episode. A SCIC adjustment is determined in accordance with § 484.237.

(f) *Outlier payment.* An HHA receives a national 60-day episode payment of a predetermined rate for a home health service paid on a reasonable cost basis as of August 5, 1997, unless the imputed cost of the 60-day episode exceeds a threshold amount. The outlier payment is defined to be a proportion of the imputed costs beyond the threshold. An outlier payment is a payment in addition to the national 60-day episode payment. The total of all outlier payments is limited to 5 percent of total outlays under the HHA PPS. An outlier payment is determined in accordance with § 484.240.

§ 484.210 Data used for the calculation of the national prospective 60-day episode payment.

To calculate the national prospective 60-

day episode payment, HCFA uses the following:

(a) Medicare cost data on the most recent audited cost report data available.

(b) Utilization data based on Medicare claims.

(c) An appropriate wage index to adjust for area wage differences.

(d) The most recent projections of increases in costs from the HHA market basket index.

(e) OASIS assessment data and other data that account for the relative resource utilization for different HHA Medicare patient case-mix.

§ 484.215 Initial establishment of the calculation of the national 60-day episode payment.

(a) *Determining an HHA's costs.* In calculating the initial unadjusted national 60-day episode payment applicable for a service furnished by an HHA using data on the most recent available audited cost reports, HCFA determines each HHA's costs by summing its allowable costs for the period. HCFA determines the national mean cost per visit.

(b) *Determining HHA utilization.* In calculating the initial unadjusted national 60-day episode payment, HCFA determines the national mean utilization for each of the six disciplines using home health claims data.

(c) *Use of the market basket index.* HCFA uses the HHA market basket index to adjust the HHA cost data to reflect cost increases occurring between October 1, 1996 through September 30, 2001.

(d) *Calculation of the unadjusted national average prospective payment amount for the 60-day episode.* HCFA calculates the unadjusted national 60-day episode payment in the following manner:

(1) By computing the mean national cost per visit.

(2) By computing the national mean utilization for each discipline.

(3) By multiplying the mean national cost per visit by the national mean utilization summed in the aggregate for the six disciplines.

(4) By adding to the amount derived in paragraph (d)(3) of this section, amounts for nonroutine medical supplies, an OASIS adjustment for estimated ongoing reporting costs, an OASIS adjustment for the one time implementation costs associated with assessment scheduling form changes and amounts for Part B therapies that could have been unbundled to Part B prior to October 1, 2000. The resulting amount is the unadjusted national 60-day episode rate.

(e) *Standardization of the data for variation in area wage levels and case-mix.* HCFA standardizes—

(1) The cost data described in paragraph (a) of this section to remove the effects of geographic variation in wage levels and variation in case-mix;

(2) The cost data for geographic variation in wage levels using the hospital wage index; and

(3) The cost data for HHA variation in case-mix using the case-mix indices and other data that indicate HHA case- mix.

§ 484.220 Calculation of the adjusted national prospective 60-day episode payment rate for case-mix and area wage levels.

HCFA adjusts the national prospective 60-day episode payment rate to account for—

(a) HHA case-mix using a case-mix index to explain the relative resource utilization of different patients; and

(b) Geographic differences in wage levels using an appropriate wage index based on the site of service of the beneficiary.

§ 484.225 Annual update of the unadjusted national prospective 60-day episode payment rate.

(a) HCFA updates the unadjusted national 60-day episode payment rate on a fiscal year basis.

(b) For fiscal year 2001, the unadjusted national 60-day episode payment rate is adjusted using the latest available home health market basket index factors.

(c) For fiscal years 2002 and 2003, the unadjusted national prospective 60-day episode payment rate is updated by a factor equal to the applicable home health market basket minus 1.1 percentage points.

(d) For subsequent fiscal years, the unadjusted national rate is equal to the rate for the previous fiscal year increased by the applicable home health market basket index amount.

§ 484.230 Methodology used for the calculation of the low-utilization payment adjustment.

An episode with four or fewer visits is paid the national per-visit amount by

discipline updated annually by the applicable market basket for each visit type. The national per-visit amount is determined by using cost data set forth in § 484.210(a) and adjusting by the appropriate wage index based on the site of service for the beneficiary.

§ 484.235 Methodology used for the calculation of the partial episode payment adjustment.

(a) HCFA makes a PEP adjustment to the original 60-day episode payment that is interrupted by an intervening event described in § 484.205(d).

(b) The original 60-day episode payment is adjusted to reflect the length of time the beneficiary remained under the care of the original HHA based on the first billable visit date through and including the last billable visit date.

(c) The partial episode payment is calculated by determining the actual days served by the original HHA as a proportion of 60 multiplied by the initial 60-day episode payment.

§ 484.237 Methodology used for the calculation of the significant change in condition payment adjustment.

(a) HCFA makes a SCIC payment adjustment to the original 60-day episode payment that is interrupted by the intervening event defined in § 484.205(e).

(b) The SCIC payment adjustment is calculated in two parts.

(1) The first part of the SCIC payment adjustment reflects the adjustment to the level of payment prior to the significant change in the patient's condition during the 60-day episode. The first part of the SCIC adjustment is determined by taking the span of days (the first billable visit date through and including the last billable visit date) prior to the patient's significant change in condition as a proportion of 60 multiplied by the original episode amount.

(2) The second part of the SCIC payment adjustment reflects the adjustment to the level of payment after the significant change in the patient's condition occurs during the 60-day episode. The second part of the SCIC adjustment is calculated by using the span of days (the first billable visit date through and including the last billable visit date) through the balance of the 60-day episode.

(c) The initial percentage payment provided at the start of the 60-day episode will be adjusted at the end of the episode to reflect the first and second parts of the total SCIC adjustment determined at the end of the 60-day episode.

§ 484.240 Methodology used for the calculation of the outlier payment.

(a) HCFA makes an outlier payment for an episode whose estimated cost exceeds a threshold amount for each case-mix group.

(b) The outlier threshold for each case-mix group is the episode payment amount for that group, the PEP adjustment amount for the episode or the total significant change in condition adjustment amount for the episode plus a fixed dollar loss amount that is the same for all case-mix groups.

(c) The outlier payment is a proportion of the amount of estimated cost beyond the threshold.

(d) HCFA imputes the cost for each episode by multiplying the national per-visit amount of each discipline by the number of visits in the discipline and computing the total imputed cost for all disciplines.

(e) The fixed dollar loss amount and the loss sharing proportion are chosen so that the estimated total outlier payment is no more than 5 percent of total payment under home health PPS.

§ 484.245 Accelerated payments for home health agencies.

(a) *General rule.* Upon request, an accelerated payment may be made to an HHA that is receiving payment under the home health prospective payment system if the HHA is experiencing financial difficulties because there is a delay by the intermediary in making payment to the HHA.

(b) *Approval of payment.* An HHA's request for an accelerated payment must be approved by the intermediary and HCFA.

(c) *Amount of payment.* The amount of the accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services.

(d) *Recovery of payment.* Recovery of the accelerated payment is made by recoupment as HHA bills are processed or by direct payment by the HHA.

§ 484.250 Patient assessment data.

An HHA must submit to HCFA the OASIS data described at § 484.55(b)(1) and (d)(1) in order for HCFA to administer the payment rate methodologies described in §§ 484.215, 484.230, 484.235, and 484.237.

§ 484.260 Limitation on review.

An HHA is not entitled to judicial or administrative review under sections 1869 or 1878 of the Act, or otherwise, with regard to the establishment of the payment unit, including the national 60-day prospective episode payment rate, adjustments and outlier payments. An HHA is not entitled to the review regarding the establishment of the transition period, definition and application of the unit of payments, the computation of initial standard prospective payment amounts, the establishment of the adjustment for outliers, and the establishment of case-mix and area wage adjustment factors.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 19, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 22, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–16432 Filed 6–28–00; 2:00 pm]

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Federal Register

Monday,
July 3, 2000

Part III

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for Kansas; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–OW–6721–3]

RIN 2040–ZA00

Water Quality Standards for Kansas

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing water quality standards for the State of Kansas. If promulgated as final standards, they would supersede aspects of Kansas's water quality standards that EPA disapproved in 1998. In furtherance of EPA's 1998 disapproval action, EPA is proposing: that all discharges to stream segments for which continuous flow is sustained primarily through the discharge of treated effluent shall protect the States' designated uses; 7Q10, 4B3, or other scientifically defensible design flows approved by EPA shall be used to implement the State's chronic aquatic life criteria; 1Q10, 1B3, or other scientifically defensible design flows approved by EPA shall be used to implement the State's acute aquatic life criteria; implementation procedures for use when applying the States' antidegradation policy to determine whether to allow a lowering of surface water quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water; an aquatic life use for one stream segment and a primary contact recreation use for 1,292 stream segments and 164 lakes.

In addition, under its discretionary authority to address State standards that the Administrator determines are inconsistent with the Clean Water Act, EPA is proposing: that water quality standards in Kansas apply to all privately owned surface waters in Kansas that are waters of the U.S.; and numeric human health criteria for alpha- and beta-endosulfan.

DATES: EPA will accept public comments on this proposed rule until September 1, 2000. Comments postmarked after this date may not be considered. On July 27, 2000, EPA is holding two public hearings on today's proposed water quality standards for Kansas.

ADDRESSES: An original plus 2 copies, and if possible an electronic version of comments either in WordPerfect or ASCII format, should be addressed to Ann Jacobs at *jacobs.ann@epa.gov* or at U.S. EPA Region VII, Water Resources Protection Branch, 901 North 5th Street, Kansas City, Kansas 66101.

The public hearings will be held in the Ballroom of the Days Inn at 914 S.E. Madison in Topeka, Kansas. The first is scheduled for 2:30–5:30 p.m. (CDT), and the second for 7–9 p.m. (CDT).

The administrative record for today's proposed rule is available for public inspection at EPA Region VII, Regional Records Center, 901 North 5th Street, Kansas City, Kansas 66101, between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Ann Jacobs at *jacobs.ann@epa.gov* or at U.S. EPA Region VII, Water Resources Protection Branch, 901 North 5th Street, Kansas City, Kansas 66101 (Telephone: 913–551–7930).

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I. Potentially Affected Entities

Citizens concerned with water quality in Kansas may be interested in this proposed rulemaking. Entities discharging pollutants to waters of the United States in Kansas could be indirectly affected by this proposed rulemaking since water quality standards are used in determining water quality-based National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may indirectly be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Kansas.
Municipalities	Publicly-owned treatment works discharging pollutants to surface waters in Kansas.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine today's proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. What Are the Statutory and Regulatory Requirements That Are Relevant to This Action?

Under section 303(c) of the Clean Water Act (CWA), 33 U.S.C. 1313(c), States and Tribes are required to develop water quality standards for waters of the United States within their jurisdiction. Section 303(c) and EPA's implementing regulations at 40 CFR part 131 require State water quality standards to include the designated use or uses to be made of the water, the criteria necessary to protect those uses, and an antidegradation policy. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standards. 33 U.S.C. 1313(c). States are required to submit the results of these triennial reviews to EPA. EPA is to approve or disapprove any new or revised standards. States may include in their standards policies generally affecting the standards' application and implementation. See 40 CFR 131.13. These policies are subject to EPA review and approval. See 40 CFR 131.6(f), 40 CFR 131.13. Section 303(c)(4) of the CWA authorizes EPA to promulgate water quality standards when necessary to supersede disapproved State water quality standards, or in any case where the Administrator determines that new or revised standards are necessary to meet the requirements of the CWA.

B. What Actions Have Kansas and EPA Taken Leading to Today's Action?

On October 31, 1994, Kansas submitted a complete set of water quality standards to EPA for review and approval. In a February 19, 1998, letter from U. Gale Hutton, Region VII Director of the Water, Wetlands and Pesticides Division, to Gary R. Mitchell, Secretary of the Kansas Department of Health and Environment (KDHE), EPA reviewed and approved in part and disapproved in part all of the State's new or revised standards. Specifically, EPA's letter of February 19, 1998, (hereafter EPA's 1998 disapproval letter or EPA's 1998 action) disapproved the following provisions of Kansas' 1994 water quality standards:

- The State's antidegradation policy to the extent that it applied to protections for so-called Tier 3 waters;
- Provisions governing discharges from waste stabilization ponds;
- Disinfection requirements;
- Provisions addressing the adoption of water quality criteria for the protection of the State's domestic water supply use;
- A number of water quality criteria;
- The State's water quality standards implementation procedures;
- The State's antidegradation implementation procedures;
- Use designations for 1,485 waters with classified uses;
- The State's water quality standards provisions for assumed stream design flows in applying water quality criteria; and,
- Provisions relating to waters with effluent-created habitat.

In the letter disapproving these provisions, Region VII also stated that it was requesting the EPA Administrator to make a determination under CWA section 303(c)(4)(B) that an existing provision in the State's water quality standards that exempted certain privately owned surface waters from the State's water quality standards is inconsistent with the CWA to the extent it exempts privately owned surface waters that are waters of the United States.

In June 1999, Kansas completed a triennial review of its water quality standards. As part of that review, Kansas adopted revisions to the Kansas Administrative Regulations (K.A.R.), Title 28, Article 16, on June 29, 1999, including the adoption of new or revised water quality standards. These new or revised water quality standards became effective under State law on June 30, 1999. (These revisions are hereafter referred to as the 1999 revisions to the Kansas water quality standards.) Kansas submitted these standards for EPA review and approval on August 10, 1999, as required under Federal regulations at 40 CFR 131.5. In its submission, KDHE corrected several provisions disapproved by EPA in its February 1998 disapproval letter to make them consistent with the CWA. By letter dated January 19, 2000, EPA Region VII approved many of these new or revised portions of the States' water quality standards. EPA's approval of these new or revised standards eliminated the need for a Federal promulgation to correct many of the previously disapproved provisions. These provisions are discussed in section III.

Today's proposal addresses the remaining standards disapproved by EPA in its 1998 action by proposing replacement water quality standards for the State of Kansas. The proposed regulations are discussed in section IV.

III. What Disapproved Provisions Have Been Addressed?

As discussed in section II. B., Kansas completed its most recent triennial review in June 1999 and submitted the resulting new or revised water quality standards to EPA for review and approval on August 10, 1999. By letter dated January 19, 2000, EPA Region VII approved the submission in part and disapproved it in part. Among the provisions approved by EPA were new or revised water quality standards that addressed provisions previously disapproved by EPA in its 1998 action. In the case of the standards changes discussed later in this section, EPA in its January 19, 2000, letter determined that Kansas adopted new or revised standards consistent with the CWA and EPA's implementing regulations. Under CWA section 303(c)(4), this action by Kansas eliminated the need for EPA to promulgate replacement water quality standards addressing these provisions. Therefore, EPA is not proposing water quality standards for the following provisions.

A. Antidegradation Policy To Protect Outstanding Natural Resource Waters

The State of Kansas revised portions of its antidegradation provisions at K.A.R. 28–16–28c(a) as part of its triennial review in 1994. In its 1998 action, EPA disapproved a portion of the State's antidegradation provisions because the provisions failed to include an appropriate level of protection for high quality waters constituting outstanding national resource waters (ONRWs) as required by 40 CFR 131.12(a)(3). This level of protection is commonly referred to as ''Tier 3.'' The

State's 1994 submittal included specific revisions to mixing zone provisions at K.A.R. 28–16–28c(b)(2)(C)(i) that provided for placement of mixing zones in what Kansas identified as its Outstanding Natural Resource Waters, allowing a permanent lowering of water quality in at least a portion of such waters. This modification to the State regulations reduced the level of protection that previously had been provided to the State's Outstanding Natural Resource Waters and was not consistent with Federal regulations requiring that the water quality of ONRWs be maintained and protected.

EPA's interpretation of the Federal requirements for ONRWs emphasizes restriction of new or increased discharges to such waters. Although this interpretation of the regulation is not the only means of assuring that the water quality will be maintained and protected in ONRWs, the new or revised State water quality standards of 1994 deviated significantly from this level of protection and provided no commensurate level of protection. Without providing a level of protection equivalent to that provided under 40 CFR 131.12(a)(3), the State antidegradation policy was not complete because it did not provide for a category of waters where new or increased discharges are prohibited. Regardless of whether there are current or future State waters designated as ONRWs, the State's water quality standards must provide the opportunity for such designation.

As part of its 1999 revisions to the Kansas water quality standards, the State added a fourth level of protection under its antidegradation provisions. The States' standards now include a definition for outstanding national resource waters, which include surface waters or surface water segments of extraordinary recreational or ecological significance, and which are to be afforded the highest level of water quality protection under the antidegradation provisions. Kansas' new or revised water quality standards at K.A.R. 28–16–28c(a)(3) require maintenance and protection of existing uses and existing water quality in these waters with a prohibition against new or expanded discharges. In its review of these new or revised provisions, EPA determined by letter dated January 19, 2000, that the State's 1999 revisions to the water quality standards provide protection to high quality waters constituting an outstanding national resource as required at 40 CFR 131.12(a)(3). EPA's approval of the State's revision eliminated the need for EPA to promulgate Federal replacement water quality standards for Tier 3 protection.

B. Waste Stabilization Ponds

As part of the State's 1994 revision of its water quality standards, Kansas adopted a provision at K.A.R. 28–16–28c(d)(3) that waived NPDES permitting requirements for determining the reasonable potential of certain waste stabilization pond discharges to violate water quality standards for ammonia and fecal coliform bacteria. In its 1998 disapproval letter, EPA stated that this provision circumvented the application of water quality standards and would not ensure that such discharges meet State water quality standards as required by 40 CFR 122.44(d).

In its 1999 revisions to its water quality standards, Kansas removed K.A.R. 28–16–28c(d)(3) from the State's water quality standards regulations. EPA approved this revision to the State's water quality standards on January 19, 2000, eliminating the need for promulgation of Federal standards.

C. Disinfection Requirements

In its February 19, 1998, disapproval letter to KDHE, EPA also disapproved revised regulations at K.A.R. 28–16–28c(d)(4), which allowed dischargers to avoid disinfection requirements regardless of a water body's designation for primary contact recreation. The State's regulations at K.A.R. 28–16–28c(d)(4) required disinfection of wastewater only if the KDHE determined that such a discharge will result in a threat to public health. This provision relied on information indicating whether or not the water body is known or likely to be used for either primary or secondary recreation, or domestic water supply, rather than upon the waterbody's use designation specified in the State's water quality standards.

In its 1998 disapproval of this provision, EPA stated that the need for disinfection of wastewater effluent must be a function of the need to protect designated uses based on a determination that the discharge has a reasonable potential to cause or contribute to an excursion of applicable water quality standards, regardless of any demonstration at the time of permit issuance regarding whether the public actually utilizes that water body for the use or uses designated in the States' standards. Because all waters of the State are designated for secondary contact recreation by default, implementation of this provision could potentially undermine the State's efforts to comply with Federal regulations at 40 CFR 122.44(d) in writing limitations for NPDES permits that derive from and comply with State water quality standards and, specifically, protect designated uses.

As part of Kansas' 1999 revisions to its water quality standards, this provision was revised and moved to K.A.R. 28–16–28e(c)(7)(D). EPA approved this revision on January 19, 2000, because it now requires disinfection of wastewater where there is a reasonable potential for discharges to exceed the applicable criteria supporting the assigned recreational use designation. EPA's approval of the 1999 revision to the State's water quality standards regarding disinfection requirements eliminated the need for promulgation of Federal standards.

D. Domestic Water Supply Criteria

In its 1998 disapproval, EPA disapproved K.A.R. 28–16–28e(c)(3)(C) because it appeared to limit State adoption of water quality criteria for the protection of domestic water supplies to levels equivalent to the Federally adopted maximum contaminant levels (MCLs) under section 1412 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g-1. EPA was concerned that this provision, in appearing to require the adoption of criteria equal to MCLs, restricted the State's authority to adopt criteria necessary to protect domestic water supplies for pollutants for which EPA has not published MCLs, even though EPA has published recommended water quality criteria under section 304(a) of the CWA for this purpose. A State regulation authorizing the State to adopt criteria only for pollutants for which EPA has promulgated MCLs is inconsistent with Federal regulations at 40 CFR 131.11(a), which requires that States adopt water quality criteria necessary to protect the designated uses. Such criteria ''must contain sufficient parameters or constituents to protect the designated use.'' K.A.R. 28–16–28e(c)(3)(C) appeared to restrict the State from meeting this requirement, and for that reason EPA disapproved the provision in 1998.

In response to EPA's 1998 action, KDHE clarified that this provision did not limit the State's authority to go beyond the MCLs when adopting water quality criteria for its domestic water supply. KDHE identified pollutants for which it had adopted numeric water quality criteria applicable to the domestic water supply use based on EPA's recommended section 304(a) criteria for those pollutants, even though EPA had not published MCLs for them under the SDWA. Although there continue to be gaps in domestic water

supply criteria for specific pollutants within the State's standards, EPA believes the State demonstrated that EPA's original interpretation of this provision was in error. As a result of the State's clarification that it has the authority to adopt water quality criteria applicable to its domestic water supply use under K.A.R. 28–16–28e(c)(3)(C) based on EPA's published section 304(a) criteria, EPA determined that this provision of the State's water quality standards is consistent with the CWA and EPA's implementing regulations. Therefore, in its January 19, 2000, letter, EPA withdrew its 1998 disapproval and approved the provision, thereby eliminating the need for a Federal promulgation.

E. EPA Review of Kansas' 1994 and 1999 Water Quality Criteria for Toxic Pollutants

a. 1994 Revisions to Kansas Water Quality Standards

In its 1994 revisions of its water quality standards, Kansas adopted numeric water quality criteria for many pollutants for which it previously had none. Kansas also revised existing single-value criteria to separately address both acute and chronic toxicity. In its 1998 action, EPA approved 89 separate water quality criteria for toxics for the protection of aquatic life and human health adopted by the State as fully consistent with the requirements of the CWA and EPA's implementing regulations. All of the State-adopted water quality criteria approved by EPA in 1998 were equal to or more stringent than those Federal criteria previously promulgated by EPA for Kansas under the NTR in 1992. (*See* Enclosure B, Table B., February 19, 1998, letter from EPA to the Kansas Department of Health and Environment.) With that approval decision, the numeric water quality criteria that EPA had promulgated for Kansas for those pollutants as part of the NTR were no longer necessary. Therefore, EPA withdrew the Federal criteria (65 FR 19659, April 12, 2000).

EPA, in its 1998 action, also disapproved a number of water quality criteria for both aquatic life and human health protection that EPA determined did not protect the State's designated uses. Of the State-adopted criteria disapproved by EPA, a large number of the pollutants were already addressed by Federally-promulgated criteria in the NTR. Because the NTR criteria for these pollutants continue to apply in Kansas, no further action by EPA is necessary at this time. In its 1998 action, EPA also disapproved water quality criteria for pollutants that were not included in the 1992 NTR for Kansas. EPA identified these pollutants as candidates for future promulgation should the State fail to adopt water quality criteria which protect designated uses or to provide adequate scientific justification for not having them.

b. 1999 Revisions to the Kansas Water Quality Standards

On June 29, 1999, the State of Kansas completed another set of revisions to its water quality standards regulations and submitted them for EPA's review and approval on August 10, 1999. In that action, Kansas revised a number of its water quality criteria for both aquatic life and human health protection to address criteria previously disapproved by EPA in 1998. Many of those revised criteria were approved by EPA on January 19, 2000. Where the State adopted water quality criteria that are equal to or more stringent than the applicable Federal criteria promulgated for Kansas under the NTR, EPA withdrew the Federal criteria (65 FR 19659, April 12, 2000). EPA also approved water quality criteria adopted by the State in 1999 that were less stringent than those Federal criteria promulgated for Kansas in the NTR but that were consistent with the Clean Water Act. In a separate, upcoming action, EPA will propose to withdraw Kansas from the NTR for those pollutants.

In its 1999 revisions, Kansas also submitted water quality criteria for pollutants not included in the NTR for Kansas. Those revised criteria were intended to address criteria disapproved by EPA in its 1998 action. EPA approved the 1999 water quality criteria where EPA determined that they were based on scientifically defensible methods and protected designated uses. In its January 19, 2000, approval of Kansas' 1999 submission of revised water quality standards, EPA approved acute and chronic aquatic life quality criteria for nickel and zinc; acute aquatic life criteria for silver; human health criteria (water and organism) for thallium; and human health criteria (organism only) for alpha-and beta-endosulfan. The new or revised water quality criteria adopted by Kansas on June 29, 1999, and approved by EPA on January 19, 2000, address EPA's disapproval in its 1998 action. Therefore, no further action by EPA is necessary for those pollutants.

Several water quality criteria adopted by the State in 1994 and disapproved by EPA in 1998 were not corrected by the State in its 1999 revisions to its water quality standards. For those pollutants that are already subject to Federally promulgated water quality criteria, no further EPA action is necessary in response to the 1998 disapproval action because Kansas remains in the NTR for those pollutants. In many instances, the State withdrew its EPA-disapproved water quality criteria as part of its 1999 revisions and replaced State criteria with a footnote acknowledging there are Federal criteria in place. Because an acknowledgment of existing Federal water quality standards within Kansas regulations does not constitute actual adoption of water quality criteria by the State, EPA is leaving the existing Federal water quality standards in place.

c. EPA Withdrawal of 1998 Disapproval

In its 1998 review of the 1994 Kansas water quality standards revisions, EPA disapproved State water quality criteria for alpha-endosulfan and beta-endosulfan for the State's Domestic Water Supply use as being inconsistent with the requirements of the CWA and EPA's implementing regulations. This disapproval was procedurally in error however, because the State had not adopted any new or revised criteria for the Domestic Water Supply use for those pollutants in 1994 that would have triggered EPA's approval or disapproval authority.

d. Water Quality Criteria for Endrin

In 1994, the State adopted a new criterion for endrin for its Domestic Water Supply use, which EPA disapproved in its 1998 action under section 303(c)(3). In its 1999 revision, the State removed the numeric criterion for endrin altogether. EPA subsequently found that its 1998 disapproval of the numeric criterion for endrin had been in error. The State's 1994 criterion was consistent with the CWA and was based on the drinking water MCL for endrin (and no Kansas NTR value for endrin had been promulgated). Therefore, on January 19, 2000, EPA withdrew its 1998 disapproval of Kansas's 1994 endrin criterion and disapproved the State's 1999 deletion of the endrin criterion. EPA disapproved this deletion because it had the effect of leaving the State with no criterion for endrin in its Domestic Water Supply use. If the State fails to address this deficiency, EPA will propose water quality criteria for endrin, in a separate action, at the same time it addresses the other provisions EPA disapproved on January 19, 2000.

F. Antidegradation and Water Quality Standards Implementation Procedures

As part of the Kansas' 1994 submission, KDHE submitted procedures for the implementation of its

standards through the development of NPDES permit limitations (*Kansas Surface Water Quality Implementation Procedures*; October, 18, 1994). These procedures contain two separate components: procedures for implementing the State's antidegradation policy at K.A.R. 28–16–28c(a), and procedures governing the implementation of water quality standards, *e.g.,* through development of water quality-based effluent limitations for NPDES permits.

In its 1998 action, EPA addressed components of these procedures separately based on their distinctly different treatment under Federal regulations. Federal regulations at 40 CFR 131.12(a) require that States identify methods for implementing the State's antidegradation policy. Development of these implementation procedures is not discretionary. Section 3 of the State's procedures addressed implementation of the State's antidegradation policy. In its 1998 disapproval of Kansas' October 18, 1994, antidegradation implementation procedures, EPA identified three deficiencies with the procedures that would lead to the implementation of Kansas' antidegradation policy in a manner inconsistent with Federal regulations. These deficiencies were: (1) Failure to maintain existing *water quality* for Tier 3 waters; (2) Failure to maintain existing water quality for Tier 2 waters under the State's antidegradation provision; and (3) Failure to identify the means by which the State would implement its antidegradation policy in the context of determining whether to allow a lowering of surface water quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water. The State revised it's antidegradation procedures and submitted them to EPA for review in 1999. These revised procedures addressed the first two disapproved items regarding existing water quality in Tier 3 and Tier 2 waters, but not the third disapproved item. This last item remains disapproved and is addressed in section IV.D.

The 1994 antidegradation procedures required the protection of existing water quality within the State's Outstanding Natural Resource Waters, but did not describe the mechanisms or methods by which that level of protection was to be implemented. Specifically, the Procedures failed to identify how existing water quality in the State's Outstanding Natural Resource Waters would be maintained under the mixing zone provisions at K.A.R. 28–16–28c(b)(2). The use of mixing zones and zones of initial dilution in the State's Outstanding Natural Resource Waters allowed for the permanent lowering of existing water quality in portions of those waters.

The State's 1994 Procedures also did not adequately protect high quality waters as required under Federal regulations at 40 CFR 131.12(a)(2) (referred to as ''Tier 2'') and the State provision at K.A.R. 28–16–28c(a)(2). The Tier 2 level of protection under the Federal antidegradation regulations and the State antidegradation policy requires protection of existing *water quality* unless a lowering of water quality is necessary to accommodate important social or economic development in the area where the lowering of existing water quality occurs. However, the State procedure only addressed the protection of existing and designated *uses* in regulating point sources of pollution rather than existing water quality. This is contrary to the State provision at K.A.R. 28–16–28c(a)(2) and is also inconsistent with 40 CFR 131.12(a)(2).

As part of its June 29, 1999, revisions to its water quality standards, the State revised its antidegradation implementation procedures in a manner consistent with revisions to the State's antidegradation policy (see section III.A.) to maintain existing water quality in Tier 3 waters. Kansas' 1999 revision of its antidegradation implementation procedures also adequately addressed the manner in which the maintenance of existing water quality is ensured for high quality waters (Tier 2). EPA approved these revisions in its January 19, 2000, letter. These corrections to the State's Procedures made further Federal action to address these two disapproved provisions unnecessary.

The remaining provisions of the State's 1994 implementation procedures addressed implementation of water quality standards. Federal regulations at 40 CFR 131.13 address policies generally affecting the application and implementation of standards that States may adopt, at their discretion. If a State adopts such policies, the regulation provides that they are subject to EPA review and approval. In its 1998 action, EPA disapproved the State's implementation procedures for NPDES permits because the procedures did not ensure that permits would derive from and comply with the State's water quality standards. Specifically, EPA identified the following deficiencies. First, the procedures failed to clearly identify how mixing zones were to be limited or sized. Second, the procedures addressing whole effluent toxicity (WET) testing allowed the use of less sensitive organisms than recommended in the testing methodology and did not identify any circumstances when WET limitations would be placed in NPDES permits when there was reasonable potential to violate the State's narrative water quality criteria. Third, the procedures specified a ''lesser level of evaluation'' for minor permits than is specified for major permits. Finally, the procedures did not include provisions addressing site-specific water quality criteria development, the issuance of variances or the manner by which the State would measure and evaluate socio-economic impacts.

In its 1999 revisions to its water quality standards, Kansas significantly revised its implementation procedures (*Kansas Implementation Procedures: Surface Water*, June 1, 1999) and corrected the deficiencies identified in EPA's 1998 disapproval letter. Additionally, the State incorporated its implementation procedures into the State's water quality regulations at K.A.R. 28–16–28b(cc). These revised implementation procedures, to the extent they addressed water quality standards implementation, were reviewed by EPA and approved on January 19, 2000.

IV. What Federal Water Quality Standards Is EPA Proposing in Response to Its 1998 Disapproval?

A. Designated Uses

1. Background

Section 101(a)(2) of the CWA establishes as a national goal ''water quality which provides for the protection and propagation of fish, shellfish, and wildlife and * * * recreation in and on the water,'' wherever attainable. This national goal is commonly referred to as the ''fishable/swimmable'' goal of the CWA. (Hereafter, the fishable/swimmable goals are referred to as CWA section 101(a) goal uses.) Section 303(c)(2)(A) requires State water quality standards to ''protect the public health and welfare, enhance the quality of water, and serve the purposes of this Act.'' EPA's regulations at 40 CFR part 131 interpret and implement these CWA provisions by requiring that water quality standards provide for CWA section 101(a) goal uses unless those uses have been shown to be unattainable, effectively creating a rebuttable presumption of attainability, *i.e.,* a default designation of CWA section 101(a) goal uses should apply. The mechanism in EPA's regulations used to rebut this presumption is a use attainability analysis.

Under 40 CFR 131.10(j), States are required to conduct a use attainability analysis (UAA) whenever the State designates or has designated uses that do not include the CWA section 101(a) goal uses, or when the State wishes to remove CWA section 101(a) goal uses, or when it adopts subcategories of uses that require less stringent criteria. Uses are considered by EPA to be attainable, at a minimum, if the uses can be achieved (1) when effluent limitations under section 301(b)(1)(A) and (B) and section 306 are imposed on point source dischargers, and (2) when cost effective and reasonable best management practices are imposed on nonpoint source dischargers. See 40 CFR 131.10(d). EPA's regulations at 40 CFR 131.10 list grounds upon which to base a finding that attaining the designated use is not feasible, as long as the designated use is not an existing use. A UAA is defined in 40 CFR 131.3(g) as a ''structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors.'' In a UAA, the physical, chemical and biological factors affecting the attainment of a use are evaluated through a water body survey and assessment. Guidance on water body survey and assessment techniques is contained in the Technical Support Manual, Volumes I–III: Water Body Surveys and Assessments for Conducting Use Attainability Analyses. Volume I provides information on water bodies in general, Volume II contains information on estuarine systems and Volume III contains information on lake systems. (Volumes I–II, November 1983; Volume III, November 1984). Additional guidance is provided in the Water Quality Standards Handbook: Second Edition (EPA–823–B–94–005, August 1994). Guidance on economic factors affecting the attainment of a use is contained in the Interim Economic Guidance for Water Quality Standards: Workbook (EPA–823–B–95–002, March 1995).

As discussed earlier, EPA regulations effectively establish a ''rebuttable presumption'' that CWA section 101(a) goal uses are attainable and therefore should apply to a water body unless it is affirmatively demonstrated that such uses are not attainable. EPA adopted this approach in order to help achieve the national goal articulated by Congress that, ''wherever attainable,'' water quality should provide for the ''protection and propagation of fish, shellfish and wildlife'' and for ''recreation in and on the water.'' CWA 101(a). While facilitating achievement of Congress' goals, the ''rebuttable presumption'' approach preserves States' paramount role in establishing water quality standards in weighing any available evidence regarding the attainable uses of a particular water body. The rebuttable presumption approach does not restrict the discretion that States have to determine that CWA section 101(a) goal uses are not, in fact, attainable in a particular case. Rather, if the water quality goals articulated by Congress are not to be met in a particular water body, the regulations simply require that such a determination be based upon a credible, ''structured scientific assessment'' of use attainability. See 40 CFR 131.3(g) (defining use attainability analysis).

EPA believes that the rebuttable presumption policy reflected in these regulations is an essential foundation for effective implementation of the CWA as a whole. The ''use'' of a water body is the most fundamental articulation of its role in the aquatic and human environments, and all of the water quality protections established by the CWA follow from the water's designated use. If a use lower than a CWA section 101(a) goal use is designated based on inadequate information or superficial analysis, water quality-based protections that might have enabled the water to achieve the goals articulated by Congress in section 101(a) may not be put in place. As a result, the true potential of the water body may never be realized, and a resource highly valued by Congress and the public may be forever lost.

EPA seeks, through its oversight under section 303(c) of the Act, to ensure that any State's decision to forgo protection of a water body's potential to support CWA section 101(a) goal uses results from an appropriately ''structured'' analysis of use attainment. Where EPA concludes that the State failed to adequately justify a use designation lower than a CWA section 101(a) goal use designation, EPA disapproves the use designation. In some cases, the State may decide to revise its use classifications to protect CWA section 101(a) goal uses. In other cases, the State may decide to conduct a more thorough analysis of use attainability sufficient to rebut the rebuttable presumption reflected in the regulations. Where, however, a State does neither, federally promulgated CWA section 101(a) goal uses will ensure the water quality goals of the Act are effectively implemented.

2. EPA Review of Kansas' Use Designations

When Kansas submitted its revised standards to EPA on October 31, 1994, it also submitted the *Kansas Surface Water Register,* which contains the listing of all streams, lakes and wetlands classified under the State's water quality standards, individual water body locational data and all designated uses for each stream segment, wetland and lake. The *Register,* adopted by reference at K.A.R. 28–16–28d(c)(2), greatly expanded the number of streams previously designated under the 1985 Kansas standards, dividing each original stream segment into multiple parts, with independent designations for each newly identified segment. Given both the extensive restructuring of the citations for classified stream segments and the creation of the *Register* separate from the K.A.R., EPA treated all of the 1994 use designations as new or revised water quality standards subject to EPA approval under section 303(c)(3) of the CWA. In the 1994 revision to Kansas' water quality standards, the State listed a number of streams and lakes that it determined did not support a primary contact recreation use or aquatic life protection use, or that were simply undesignated because Kansas reported that it had limited or no field information to make a CWA section 101(a) goal use designation. In 1998, of these waters, EPA disapproved nine water body designations because it determined that the use attainability analyses submitted by Kansas were inadequate, and it disapproved one water body designation for which the State failed to submit a use attainability analysis to justify the omission of the CWA section 101(a) goal uses. EPA also disapproved Kansas' failure to designate any uses at all for another 1,475 waters.

Since the early 1980's, EPA has identified the State's lack of justification for waters not designated with section 101(a) goal uses, particularly primary contact recreation, as a significant issue that must be addressed. EPA approved the 1985 revisions to the Kansas water quality standards on June 19, 1986, based on ''completion of the statewide use attainability analyses in accordance with the KDHE schedule submitted to EPA, dated May 2, 1986.'' These analyses were to address all surface waters that the State did not designate for primary contact recreational use. The schedule of planned use attainability analyses submitted by KDHE and accepted by EPA provided for completion of this task by 1991. Kansas has performed a number of use attainability analyses since the adoption

of the 1994 Water Quality Standards. As part of its 1998 approval action, EPA approved over 300 revised use designations as a result of those use attainability analyses that were submitted. However, Kansas did not include supporting use attainability analyses for all the surface waters that the State did not designate for primary contact recreation. EPA therefore disapproved those use designations as being inconsistent with 40 CFR 131.10(g).

3. EPA Proposal To Promulgate Federal Designated Uses for Specific Stream Segments and Lakes

Subsequently, in 1999, Kansas adopted, and submitted to EPA, use designations consistent with the CWA and EPA's implementing regulations for two streams and 14 lakes for which EPA had previously disapproved use designations. On January 19, 2000, EPA approved these revised use designations. Kansas also identified in its 1999 submittal, and EPA approved on January 19, 2000, the deletion of seven water bodies due to errors in their original identification. EPA also identified, in its January 2000 letter, one stream segment in Kansas that is located totally within Indian country, over which Kansas has not demonstrated jurisdiction for CWA purposes. In preparing today's proposed rulemaking, EPA also identified four waterbodies the Agency inadvertently counted twice in its 1998 disapproval action. Accordingly, in today's action, EPA is proposing to promulgate primary contact use designations for 1,456 stream segments and lakes and the State's expected aquatic life use designation for one stream segment.

When proposing replacement Federal water quality standards, EPA must follow the same rebuttable presumption approach that applies under the regulation to State decision-making (40 CFR 131.22). EPA does not believe it would be appropriate to alter the current approach to establishing use designations under 40 CFR part 131 merely because the forum for decision-making has changed from the State to the Federal level. Attaining the goals articulated by Congress is no less important when EPA, as opposed to a State, is making use designation determinations. Moreover, EPA believes that failure to apply the rebuttable presumption in the Federal context could undermine how that presumption currently applies to State decision-making under the Federal regulations. If the presumption did not apply equally in the State and Federal decision-making process, a State could effectively shift the burden of demonstrating attainability simply by failing to adequately justify its use designation and thereby triggering a Federal rulemaking proceeding.

EPA's approach in this proposed rulemaking does not undermine the State's primary role in designating uses for waters in Kansas. If, prior to EPA finalizing this rule, the State undertakes a sound analysis of use attainability for the waters subject to this proposal that takes into account appropriate biological, chemical and physical factors, and concludes that the CWA section 101(a) goal uses are not attainable for these waters, EPA would approve the State's action and would not promulgate CWA section 101(a) goal use designations for those waters. EPA is soliciting public comment and information on the attainability of the proposed Federal uses for the water bodies listed in proposed 40 CFR 131.34 (g) and (h). EPA also encourages the State to continue evaluating the appropriate use designations for these waters. The State of Kansas has performed a number of use attainability analyses (UAAs) since the adoption of the 1994 Water Quality Standards. As part of the 1998 approval action, EPA approved over 300 revised use designations as a result of those UAAs submitted to EPA. As part of the State's commitment to review uses, Kansas is updating and standardizing the protocols for performing UAAs through a public process. Four public forums were held by the State to present the revised UAA protocols to the public. Improvements to the State's methods of performing use attainability analyses also implements recommendations made by the Kansas Special Commission of Water Quality Standards. Kansas expects to complete this process in the Summer of 2000. EPA will review any future UAAs submitted by the State with the same level of rigor as it has reviewed previous UAAs submitted by the State. EPA's proposal of designated uses based on the rebuttable presumption does not affect the substance of EPA's review of State UAAs. If further data indicates that this presumption is not appropriate for particular water bodies, EPA's final rule will be revised accordingly. In particular, if EPA determines, based on the record, that any of Kansas' designations are justified, there will be no need for Federally promulgated use designations for those particular water bodies. EPA believes that this approach is reasonable because it is consistent with the goals in section 101(a)(2) of the CWA and the implementing regulations at 40 CFR part 131.

Kansas' use classification system includes a variety of designated uses for its waters, including ''domestic water supply,'' ''agricultural water supply,'' ''special aquatic life,'' ''expected aquatic life,'' ''restricted aquatic life,'' ''primary contact recreation,'' and ''food procurement.'' Kansas water quality standards identify three subcategories of aquatic life uses for Kansas' surface waters: Special aquatic life use waters, expected aquatic life use waters, and restricted aquatic life use waters. The Kansas water quality standards define ''expected aquatic life use waters'' as ''surface waters containing habitat types and indigenous biota commonly found or expected in the State.'' Further, the Kansas Surface Water Register includes the expected aquatic life use designation for the majority of surface waters in the State. EPA's approach in proposing designated uses for 1,457 of the water bodies is to select uses from Kansas' system that correspond to CWA section 101(a) goal uses. This approach meets the requirements of the CWA while deferring to the State's approach for defining 101(a) goal uses.

a. Expected Aquatic Life

EPA is proposing to promulgate an aquatic life use designation for one stream segment, Whiskey Creek, that the State designated for a restricted aquatic life use in 1994 without a supporting UAA. Subsequently, the State submitted a UAA documenting its designation decision for Whiskey Creek on December 23, 1997. The basis for this designation was the State's determination that poor water quality, associated with the discharge from a wastewater treatment facility, limited the attainment of an expected aquatic life use. The State's determination was not consistent with Federal regulations at 40 CFR 131.10, which require that at least one of six reasons be met to justify uses less than CWA section 101(a) uses or downgrades in designated uses. The reason supplied by Kansas was not one of the six possible bases specified in the regulation. Therefore, EPA disapproved Kansas' use designation for Whiskey Creek in 1998.

Because the State assigns the expected aquatic life use category to a majority of its surface waters, and there is no information to indicate that Whiskey Creek contains other than common habitat types and indigenous biota, EPA believes that an expected aquatic life use designation is appropriate for aquatic life in Whiskey Creek. Therefore, EPA proposes to designate Whiskey Creek for expected aquatic life.

This water is identified in proposed 131.34 (g).

b. Primary Contact Recreation

EPA is proposing to promulgate primary contact recreation use designations for 1,456 waters in Kansas. In its 1998 action, EPA disapproved the absence of a primary contact recreation use designation for 1,484 water bodies. Of these waters, EPA disapproved nine water bodies' use designations because of inadequate use attainability analyses. For the remainder, which under Kansas' water quality standards received default protection for secondary contact recreational use, see K.A.R. 28–16–28d(c)(1), the State provided no documentation regarding the absence of a primary contact recreation use. Therefore, EPA proposes to promulgate primary contact recreation use designations for 1,456 waters in Kansas. These waters are identified in proposed 40 CFR 131.34(h).

The designation of primary contact recreation uses in this proposed rule is not intended to apply to waters within Indian country. The 1999 *Kansas Surface Water Register* includes some stream segments that may be located wholly or partly in Indian country. EPA approval of designated uses for waters in Kansas has never been intended to apply to any waters located within Indian country because EPA has not analyzed or approved the State's authority to adopt water quality standards for waters in Indian country. In its January 19, 2000, letter, EPA recommended that the State clarify this matter by amending the Kansas Surface Water Register to specify that the State's water quality standards do not apply to any portions of waters located in Indian country. EPA is working with Tribes in Region VII to identify those Tribes that may consider seeking authorization to administer the water quality standards program under the CWA. That effort is part of a national effort to ensure there are water quality standards for Indian Country waters.

4. Request for Comment and Data

EPA believes the proposed designated uses in today's rule are appropriate considering the requirements of the CWA and EPA's implementing regulations and the absence of data and information supporting the State's designation of less stringent uses. EPA solicits any additional data and information that may further support or refute the attainability of today's proposed designated uses. The Agency will evaluate any data and information submitted to EPA by the close of the public comment period with regard to designating uses for these 1,457 stream segments and lakes. After full consideration of such information, EPA will make a final decision whether the designated uses in today's proposal are appropriate. To assist commenters, the following paragraphs provide guidance on the type of information EPA considers to be most important.

EPA is seeking information that would assist in determining for each of the waters identified in proposed 40 CFR 131.34(g) and (h) whether the proposed designated uses are currently being attained or have been attained since November 28, 1975; whether natural conditions or features or human-caused conditions prevent the attainment of these uses and whether these conditions can or cannot be remedied or would cause more environmental damage to correct than to leave in place; and whether controls more stringent than those required by sections 301(b) and 306 of the CWA would be needed to attain the uses, and, if imposed, whether they would result in substantial and widespread social and economic impact to the community. A general discussion of the types of data/information requested by the Agency follows.

Ambient Monitoring Information: (1) Any in-stream data for any of the stream segments listed in 40 CFR 131.34 (g) and (h) reflecting either natural conditions (*e.g.,* in-stream flow data or other data relating to stream hydrology) or irretrievable human-caused conditions that cannot be remedied and that prevent the uses or water quality criteria from being attained; (2) any available in-stream biological data; (3) any chemical and biological monitoring data that verify improvements to water quality as a result of treatment plant/facility upgrades and/or expansions; and (4) any in-stream data reflecting nonpoint sources of pollution or best management practices that have been implemented for nonpoint source control.

Current and Historical Effluent Data: (1) Any data and information relating to mass loadings from point source discharges of pollutants such as BOD, NH_3 -N, chlorine, metals (*e.g.,* arsenic, cadmium, chromium, copper, lead, mercury, nickel, silver, zinc), other toxics (*e.g.,* volatile organic chemicals such as benzene or toluene, acid extractables such as pentachlorophenol, base neutrals such as anthracene, fluorine or pyrene, and pesticides such as aldrin, lindane, DDT, dieldrin, endrin and toxaphene); (2) data and information related to facility or treatment plant effluent quality; and (3) any information related to releases of pollutants from other sources such as landfills, transportation facilities, construction sites, agriculture/silviculture, incinerators, and contaminated sediments.

Water Quality Modeling Information: (1) Any data or information on analytical models that can be used to evaluate or predict stream quality, flow, morphology; (2) any physical, biological or chemical characteristics relating to designated uses; and (3) the results of any such models that can be used to evaluate the attainment of designated uses.

Economic Data: any information relating to costs and benefits associated with or incurred as a result of facility or treatment plant expansions or upgrades. This information includes: (1) Qualitative descriptions or quantitative estimates of any costs and benefits associated with facility or treatment plant expansions or upgrades, or associated with facilities or treatment plants meeting limits; (2) any information on costs to households in the community with facility or treatment plant expansions or upgrades, whether through an increase in user fees, an increase in taxes, or a combination of both; (3) descriptions of the geographical area affected; (4) any changes in median household income, employment, and overall net debt as a percent of full market value of taxable property; and (5) any effects of changes in tax revenues if the private-sector entity were to go out of business, including changes in income to the community if workers lose their jobs, and effects on other businesses both directly and indirectly influenced by the continued operation of the private sector entity.

B. Stream Design Flow

1. Background

The 1985 Kansas water quality standards at K.A.R. 28–16–28c(c)(1) specified conditions for the application of numeric water quality criteria to State waters, including stream flows below which numeric criteria did not apply (*i.e.,* the 7Q10 or 1 cubic foot per second (cfs)). The 1985 provisions at K.A.R. 28–16–28c(b), describing the allocation of dilution for discharges to classified streams based on the use of mixing zones, did not specify a stream design flow. Revisions to the 1985 Kansas water quality standards at K.A.R. 28–16–28c(c)(1) in 1994 introduced a stream design flow of an ''assumed 7Q10'' in addition to a ''measured 7Q10,'' defining the stream flow below which numeric criteria do not apply. Under the 1994 revisions, an ''assumed 7Q10'' of either 1 cfs or 0.1 cfs

(depending upon the particular aquatic life use designation of that stream segment) would serve as the low flow cut-off if the ''measured 7Q10'' was below one of those values. Exceptional State waters and special aquatic life use waters are afforded 0.1 cfs for assumed dilution, whereas expected aquatic life use waters and restricted aquatic life use waters are afforded 1 cfs for assumed dilution. In its 1994 revisions to the mixing zone provisions at K.A.R. 28–16–28c(b), the State also explicitly included the concept of either the ''measured 7Q10'' or the ''assumed 7Q10'' flow in its calculation of the mixing zone cross-sectional area and, therefore, the dilution available to meet the applicable criteria. In disapproving these provisions in 1998, EPA pointed out that implementation of this provision could authorize water quality based effluent limits (WQBELs) that would cause exceedences of numeric water quality criteria beyond the mixing zone and would fail to protect the designated uses of the water body.

For example, under K.A.R. 28–16–28e(c)(2)(F), the State applies its acute and chronic numeric water quality criteria for protecting aquatic life outside the zone of initial dilution and beyond the mixing zone, respectively. In this manner, toxicity within the waters of the State is prevented. Under other provisions at K.A.R. 28–16–28e(c)(4) and (7), State standards specify numeric criteria for protecting food procurement and recreational uses, respectively, beyond the mixing zone. K.A.R. 28–16–28c(b) specifies the dimension of the allowed mixing zone based on the designated use of the water body and the ratio of the receiving stream 7Q10 flow to the discharge design flow. In the calculation of the specific mixing zone cross-sectional area or volumetric flow, the State standards regulation provides for the use of either the 7Q10 flow or an assumed flow.

Reliance on an ''assumed flow'' provides for dilution which does not exist and will result in the criteria being exceeded more often than once in three years as specified in the State's numeric criteria for chronic protection. The 1999 State standards at K.A.R. 28–16–28b(lll) implement the acute aquatic life criteria by defining the size or volume of the allowed zone of initial dilution in terms of the allowed mixing zone (i.e., no more than 10% of the mixing zone). Calculating a mixing zone cross-sectional area that allows for an assumed flow is not scientifically defensible because it relies on flow that, at times, does not exist. EPA recommends a 1B3 or 1Q10 design flow for acute aquatic life protection, and harmonic mean flow for human health protection including recreational uses. EPA believes that the State's use of a 7Q10 design flow for implementation of human health is protective of the corresponding designated uses. Therefore, EPA is only proposing to promulgate design flows for the protection of acute and chronic aquatic life.

In August 1999, KDHE submitted water quality standards revisions for EPA review and approval that included revisions to K.A.R. 28–16–28c(b)(2)(D) and (c)(1). These new or revised provisions were relocated to K.A.R. 28–16–28c(b)(7) and (b)(8), subsection (A) through (D) without being substantially revised. The provisions disapproved by EPA in its 1998 action regarding assumed low flow remained. In EPA's January 19, 2000, approval/disapproval letter, EPA informed the State that the revised provisions at K.A.R. 28–16–28c(b)(7) and (b)(8) remain disapproved consistent with EPA's 1998 disapproval decision.

2. EPA Review of Kansas' Assumed Flow Provision

Kansas' water quality criteria are derived from EPA's recommended 304(a) water quality criteria which are designed around specific assumptions regarding magnitude of exposure, duration of exposure and the frequency these parameters may be exceeded and still protect the designated use. These parameters are based on the toxicological studies supporting the criteria. These toxicological assumptions are matched to biologically-based stream design flows to ensure that the probabilities of occurrence for both pollutant concentrations and stream flow are protective of aquatic life. Simply put, the water quality criteria relied upon to protect designated uses are inseparable from the stream design flow assumptions through which they are implemented. EPA guidance in the 1994 Water Quality Standards Handbook and the 1991 Technical Support Document for Water Quality-based Toxics Control identify the stream flows that match the aquatic life criterion continuous concentration (CCC, or chronic criteria) and the criterion maximum concentration (CMC, or acute criteria) as the biologically-based 4B3 and 1B3, respectively. These statistically derived flows match the averaging periods and recurrence frequency specified in the State's water quality criteria. Although EPA recommends the use of biologically-based flows in implementing water quality criteria, there are alternative approaches. Most States routinely rely on hydrologically-based flows derived using the Log Pearson 3 method generated by the U.S. Geological Survey, to implement water quality criteria. EPA guidance evaluated the compatibility of using ''extreme value statistic flows'' (*e.g.,* 7Q10) for the implementation of water quality criteria for the protection of aquatic life (*Technical Guidance Manual for Performing Waste Load Allocations, Book VI, Design Conditions:* Chapter 1—Stream Design Flow for Steady-state Modeling. August 1986). EPA determined that, for most waters and in most instances, the use of 7Q10 and 1Q10 hydrologically-based stream design flows for the implementation of chronic and acute water quality criteria, respectively, provides a level of protection commensurate with EPA's recommended biologically-based flows. That is, 7Q10 equates to the 4B3 and 1Q10 equates to the 1B3. States may select other design flows based on a demonstration that such alternative flows are protective of the specified designated uses. Also, States are encouraged to use dynamic modeling as a scientifically defensible alternative to extreme flow statistics.

Many Kansas streams possess 7Q10 flows of zero, particularly western streams that are already stressed by excessive surface and ground water withdrawals. Small, low flow headwater streams that serve as critical habitat for many threatened and endangered aquatic species may receive toxic loadings of pollutants as a result of the implementation of this provision because discharge limits would be based on flow that is not there. K.A.R. 28–16–28d(b)(1) applied water quality standards to those streams with mean summer base flows exceeding 0.1 cfs and those with less flow but with adequate pooling that serve as refuge for aquatic life during intermittent flow. Base flow is specifically defined in State standards to include sources of flow other than precipitation or ground water (*e.g.,* effluent discharge and irrigation return flow). Many streams classified for designated uses under this provision (*i.e.,* streams with mean summer base flows greater than 0.1 cfs) nevertheless have 7Q10 flows of less than 1 or 0.1 cfs. In such instances, Kansas' standards allow a classified stream to receive discharges that rely on dilution to comply with State standards, even though the dilution does not exist. This will result in ambient pollutant concentration exceeding the criteria value more often than once every three years as specified in the State's numeric aquatic life criteria.

EPA expects that the scientific defensibility of alternate flows would be dependent upon pollutant-specific or site-specific circumstances such as watershed size and characteristic hydrography. EPA believes that Kansas' implementation of these assumed flows is not scientifically defensible or protective of the State's designated aquatic life use, as required by the Clean Water Act and EPA's implementing regulations.

KDHE has not provided any scientific rationale for the use of assumed flows or provided any data suggesting that this provision will sufficiently protect the designated aquatic life uses. EPA's regulations at 40 CFR 131.21(a)(2) require that new or revised standards be accompanied by supporting analyses. KDHE noted in its *''Response to Comments Concerning Proposed K.A.R.''s 28–16–28 b through f''* (June 23, 1994) that default low flows are employed in other States, that they are necessary because of the paucity of flow data in small watersheds, and that some form of this provision has been employed by Kansas for twenty years. Although these are valid points, they are not compelling reasons to approve State provisions that do not ensure the protection of the designated uses of Kansas' surface waters. As EPA's 1994 Water Quality Standards Handbook (EPA–823–B–94–005a) specifically states, ''[The fact that] many streams within a state have no flow at 7Q10 is *not* adequate justification for designating alternative flows.'' Because Kansas failed to adequately justify its alternative stream flow provisions, EPA, in its 1998 action, disapproved the standards provisions under K.A.R. 28–16–28c(b)(2)(D) and (c)(1) that reference assumed flows.

The State, in a February 26, 1999, letter to EPA and in its draft 1999 implementation procedures, noted that the primary purpose of the alternate flow approach is to provide economic relief for ''small communities [that] will face costly upgrades or construction of completely new treatment systems if permit limits are made more stringent.'' KDHE further stated in the letter to EPA that ''[T]he environmental benefit is small compared to the large and widespread costs associated with the removal of the minimum default flows.'' Although these potential impacts are of concern, the CWA and EPA's implementing regulations do not allow considerations of costs and benefits in establishing water quality criteria (design flows are a component of the criteria). Under Federal regulations, economic impacts associated with standards should be taken into account when assessing the attainability of designated uses and granting temporary variances to water quality standards. 40 CFR 131.10(g). It is permissible for the State to grant individual variances or to downgrade a designated use for a specific water body relying on economic data, but relying on dilution that is not available to violate the State's numeric criteria is not scientifically defensible. In section V, EPA discusses its analysis of the potential economic impacts associated with today's proposed standards.

3. EPA Proposal To Promulgate Stream Design Flows

In today's action, EPA is proposing the 7Q10 or 4B3 stream design flows for the implementation of chronic aquatic life criteria in Kansas. Additionally, EPA is proposing the 1Q10 or 1B3 design flow for the implementation of acute aquatic life criteria in Kansas. Kansas may submit to EPA alternate low flows for implementing criteria. Such alternative flows must be scientifically defensible, protective of the designated use, and approved by EPA before they can be used by the State.

4. Request for Comment and Data

EPA solicits any additional data and information that may further support or refute the attainability of the changes being proposed today. The Agency will evaluate any data and information submitted to EPA by the close of the public comment period. EPA will consider all available information and make a final decision on the appropriateness of today's proposed changes.

C. Effluent-Created Habitat

1. Background

Another regulation submitted to EPA by Kansas in 1994, K.A.R. 28–16–28c(c)(3), addressed those streams where designated uses are not attainable because of inadequate stream flow. Under the State's provision, if continuous flow in a stream is sustained primarily through the discharge of treated effluent, and all designated uses are otherwise unattainable due to low or nonexisting flow, then the discharger shall not be required to provide treatment beyond that required by technology-based effluent limitations imposed under Federal law. That exemption would not apply, however, if the resulting effluent would result in violations of the State's narrative water quality criteria or in an impairment of any of the existing or designated uses of a downstream classified surface water segment. In other words, this provision exempts dischargers from having to meet water quality-based effluent limitations derived from numeric water quality criteria adopted to protect the designated uses.

2. EPA Review of Kansas' Effluent-Created Habitat Provision

Implementation of K.A.R. 28–16–28c(c)(3) would result in State NPDES permits that cause or contribute to excursions above State water quality standards (*i.e.,* numeric criteria) prohibited by 40 CFR 122.44(d). Further, this reduced level of protection achieved through the NPDES permit is in effect a lowering of the designated use based on the State's determination that stream flow was inadequate. Not only has the State failed to submit a UAA to justify the implicit use downgrade, but, if Kansas had done so, such an approach would clearly be inconsistent with 40 CFR 131.10(g)(2). EPA's regulation specifically prohibits the removal or down-grading of a designated use based on inadequate flow where ''* * * these conditions may be compensated for by the discharge of sufficient volume of effluent discharges * * *to enable uses to be met.'' 40 CFR 131.10(g)(2).

EPA previously informed the State of the basis for its position in letters dated May 13, 1993, to Dr. Hammerschmidt, Deputy Director, Division of Environment, KDHE, and May 24, 1994, to Mark Bradbury, District Environmental Administrator, KDHE, which were entered into the record at the public hearings held by KDHE during its standards adoption. EPA disapproved this provision in its 1998 action. In its disapproval letter to the State, EPA stated that this deficiency could be remedied by deleting the provision or by revising K.A.R. 28–16–28c(c)(3) to require that, prior to a removal of a designated use, a showing be made as to whether attaining the designated use is not feasible consistent with the provisions at 40 CFR 131.10(g).

In 1999, the State of Kansas adopted subsequent revisions to its water quality standards, including revisions to K.A.R. 28–16–28c(c)(3). Those revisions recognize the need for the State to conduct a use attainability analysis to support any downgrade in use and acknowledge that any new or revised use would need to be adopted as part of the State's water quality standards.

However, in oral communications with EPA staff, KDHE staff informed EPA that the 1999 revisions also authorize NPDES permit limitations to be based on the use attainability analysis even before the corresponding revised use designations are adopted by

the State into their water quality standards. That is inconsistent with the current EPA regulations. In effect, Kansas is removing a designated use upon completion of a UAA but prior to following the public process for water quality standards revisions. 40 CFR 131.20(b). Furthermore, under recently promulgated regulations at 65 FR 24641 (April 27, 2000), revisions to State water quality standards will not be effective for the purposes of the CWA until approved by EPA. Therefore, a use attainability analysis contemplated under the provisions of the 1999 revisions cannot serve as a basis for NPDES permit limitations until the State adopts the corresponding use designation revision, submits it to EPA, and obtains EPA approval. K.A.R. 28–16–28c(c)(3), in effect, would allow permitting authorities to calculate limitations based on the results of a use attainability analysis irrespective of the outlined process. For that reason, the 1999 Kansas revisions are inconsistent with EPA's implementing regulations and do not address the deficiencies identified in EPAs 1998 disapproval letter with respect to the State's earlier version of that section. Therefore, the 1999 Kansas revisions to this provision do not eliminate the need for a Federal promulgation.

3. Ensuring Discharges to Effluent-Created Habitat Waters Protect the Designated Use

EPA is proposing to promulgate a provision requiring that designated uses at K.A.R. 28–16–28d and K.A.R. 28–16–28e for stream segments for which continuous flow is sustained primarily through the discharge of treated effluent must be protected (irrespective of the development of a use attainability analysis that demonstrates that a different use may be appropriate) until EPA approves a revision to the applicable use designation.

4. Request for Comment and Data

EPA solicits any additional data and information that may further support or refute the need for the changes being proposed today. The Agency will evaluate any data and information submitted to EPA by the close of the public comment period. After full consideration of such information, EPA will make a final decision on the appropriateness of the changes in today's proposal.

D. Procedures for Implementing the State's Antidegradation Policy

1. Background

In compliance with Federal regulations at 40 CFR 131.12(a), the State identified its methods for implementing the State's antidegradation policy and submitted these methods to EPA as part of the *Kansas Surface Water Quality Implementation Procedures* (October 18, 1994) on October 31, 1994. The *Kansas Surface Water Quality Implementation Procedures* (the Procedures) contained procedures the State uses to implement its antidegradation policy and develop water quality-based effluent limitations and conditions for NPDES permits. The portion of the Procedures addressing implementation of the State's antidegradation policy only addressed point sources of pollution. The State's Procedures were silent on implementing the antidegradation requirements of K.A.R. 28–16–28c(a)(2), in the context of determining whether to allow a lowering of surface water quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water. On August 10, 1999, the State submitted revised *Kansas Implementation Procedures: Surface Water* (June 1, 1999) to EPA for review and approval. The citation for the State antidegradation regulation changed from K.A.R. 28–16–12c(a)(2) to K.A.R. 28–16–28c(a)(1)(B) in the 1999 revisions.

2. EPA's Review of Kansas' Antidegradation Implementation Procedures

As part of its review of the 1994 submission of new or revised water quality standards from the State, EPA reviewed the portion of *Kansas Surface Water Quality Implementation Procedures* (October 18, 1994) addressing antidegradation, section 3, and found that the procedures did not fully address implementation of Kansas' antidegradation policy consistent with Federal regulations at 40 CFR 131.12(a). As discussed in section III. F., however, the State addressed all but one of the deficiencies in its 1999 submission, and EPA approved them in January 2000. Although revised in 1999, the State's antidegradation implementation procedures still did not identify how Kansas would implement the requirement in K.A.R. 28–16–28c(a)(1)(B) that all cost-effective and reasonable best management practices for nonpoint sources of pollution shall be achieved in instances when the KDHE allows a lowering of water quality by point sources. Accordingly, EPA's February 1998 disapproval remains in effect.

3. EPA Proposal To Promulgate Antidegradation Implementation Provisions for Kansas

Because of this continuing deficiency in Kansas' antidegradation implementation procedures, EPA is proposing to identify implementation procedures for use when applying K.A.R. 28–16–28c(a)(1)(B) to determine whether to allow a lowering of surface waters quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water. The proposed implementation procedures are described next.

Consistent with Federal regulations, Kansas' antidegradation policy at K.A.R. 28–16–28c(a)(1)(B) requires that, before allowing degradation of water quality in high quality waters from a point source, the highest statutory and regulatory requirements for all point sources, and all cost effective and reasonable BMPs for controlling nonpoint sources, are achieved. This requirement ensures that, before additional increments of water quality are used by point sources, nonpoint sources currently introducing the same pollutants into the water body are taking all reasonable steps required by State law to minimize the introduction of those pollutants. The implementation procedures proposed today are intended to facilitate the application of this requirement in Kansas' antidegradation regulation. These proposed procedures are based on guidance issued by EPA in 1994 entitled *Interpretation of Federal Antidegradation Regulatory Requirement,* from Tudor T. Davies, dated February 22, 1994. They consist of three steps to be undertaken when applying K.A.R. 28–16–28c(a)(1)(B) to determine whether to allow a lowering of surface water quality by point sources of pollution where non-pont sources also contribute the pollutant of concern. First, Kansas would need to identify significant sources (or categories) of nonpoint pollution that may impact a high quality water body by releasing the pollutants of concern. Second, Kansas would need to identify reasonable and cost-effective BMPs for each of these significant nonpoint sources or source categories. Third, Kansas would need to determine that significant nonpoint sources in those nonpoint source categories will implement the appropriate BMPs. In addition, EPA recommends conducting these analyses prospectively, on a watershed basis, to

facilitate antidegradation reviews of individual activities.

With respect to the first step, significant nonpoint source contributors can be identified through an analysis of all nonpoint source contributors in the area, or by an analysis of all nonpoint source contributors whose proximity to the water body, water body segment, or tributaries makes them ''significant'' in terms of potential water quality impact. Other factors such as the degree of uncertainty concerning cause-effect relationships can also be considered. Consistent with EPA's interpretation of its regulations, Kansas need only identify nonpoint source contributors for which the State has established requirements to implement control programs, but Kansas may also choose to identify other significant nonpoint source contributors that are not subject to such programs.

With respect to the second step of this implementation procedure, Kansas need only identify those cost-effective and reasonable BMPs or other nonpoint source pollution reduction measures that are part of its nonpoint source programs, including any developed under section 319 of the CWA, and that are required to be implemented under State law. Of course, the State is also free to identify cost-effective and reasonable BMPs that are not required by State law.

With respect to the third step, the State need only determine that the BMPs will be implemented. Such a determination can rely on Kansas regulations, local ordinances, performance bonds, contracts, cost share agreements and memorandums of understanding, as well as voluntary programs under certain circumstances, *e.g.,* an active nonpoint source program covering a watershed or area of concern.

Under this proposed regulation, the implementation procedures would apply to any determination under K.A.R. 28–16–28c(a)(1)(B) to allow a lowering of water quality from a point source where nonpoint sources are also contributing the pollutant of concern to the body of water. The State is also encouraged to apply or adapt the EPA's 1994 guidance to other activities that State law requires to comply with Tier 2 of the State's antidegradation requirements, including new or significantly expanded nonpoint sources.

To comply with the requirements of today's proposal, EPA would expect that permit fact sheets or statements of basis for facilities permitted under the National Pollutant Discharge Elimination System (NPDES) program describe compliance with antidegradation requirements through the application of the proposed implementation procedures. EPA may object to any permit that does not meet the requirements of the Clean Water Act. Where there is no discussion of antidegradation in the NPDES permit fact sheet, EPA may be unable to determine that the permit conditions derive from and comply with the State standards and with the requirements of the CWA.

4. Request for Comment and Data

EPA solicits comment on the antidegradation implementation procedures it is proposing. EPA also requests comments on any other procedures that could be used to implement the Kansas requirements at K.A.R. 28–16–28c(a)(1)(B). EPA also requests comment on whether it is necessary to promulgate a regulation in order to establish these implementation procedures for Kansas. The Agency will evaluate any comments, data and information submitted to EPA by the close of the public comment period. After full consideration of such comments, data, and information, EPA will make a final decision on the appropriateness of today's proposed changes and EPA's antidegradation implementation procedures with respect to the relationship between point and nonpoint sources.

V. What Federal Water Quality Standards Is EPA Proposing Under Section 303(c)(4)(B)?

A. Legal Basis

CWA section 303(c) specifies that adoption of water quality standards is primarily the responsibility of the States. However, section 303(c) also describes a role for EPA overseeing State actions to ensure compliance with CWA requirements. If EPA's review of the State's standards finds flaws or omissions, then the CWA authorizes EPA to promulgate replacement Federal standards to correct the deficiencies if the State or authorized Tribes fail to do so. See section 303(c)(4).

Section 303(c)(4) of the CWA provides two bases for promulgation of Federal water quality standards. The first basis, in 303(c)(4)(A), applies when a State submits new or revised standards that EPA determines are not consistent with the applicable requirements of the CWA and EPA's implementing regulations. If the State does not amend its rules within 90 days of EPA's disapproval to be consistent with the CWA and EPA's implementing regulations, EPA must promptly propose appropriate Federal water quality standards for that State. The second basis for EPA's action is 303(c)(4) (B), which provides that EPA shall promptly initiate promulgation ''* * * in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of this Act.'' The authority to make a finding under section 303(c)(4)(B) of the CWA and to propose and promulgate Federal regulations correcting such State water quality standards rests solely with the Administrator.

B. Water Quality Criteria for Alpha-Endosulfan and Beta-Endosulfan

1. Background

Under section 303(c)(2)(B) of the CWA, States must adopt numeric water quality criteria for toxic pollutants listed under EPA section 307(a)(1) for which EPA has published section 304(a) criteria, if the presence of the toxic pollutant in the State's waters is reasonably expected to interfere with the protection of the waters' designated uses. On December 22, 1992, EPA promulgated the National Toxics Rule (NTR), specifying the chemical-specific, numeric water quality criteria for priority toxic pollutants necessary to bring all States into compliance with the requirements of section 303(c)(2)(B) of the CWA. At that time, Kansas had failed to revise its water quality standards to meet the requirements of section 303(c)(2)(B) of the CWA. Therefore, in the NTR, EPA promulgated numeric water quality criteria for a number of toxic pollutants for the protection of aquatic life and human health in Kansas.

2. Administrator's Findings Regarding Alpha-Endosulfan and Beta-Endosulfan

The Administrator has determined that new or revised water quality standards for alpha- and beta-endosulfan are necessary to protect human health in Kansas. The Administrator bases this determination on the fact that the State has failed to adopt standards required by section 303(c)(2)(B) despite information that alpha- and beta-endosulfan may reasonably be expected to interfere with drinking water designated uses. In enacting section 303(c)(2)(B), Congress indicated the need for prompt adoption and implementation of water quality standards for toxic pollutants if the presence of the toxic pollutants in the State's waters is reasonably expected to interfere with the protection of the waters' designated uses. Therefore, a State's failure to meet this fundamental section 303(c)(2)(B) requirement of adopting appropriate standards

constitutes a failure ''to meet the requirements of the Act.'' Under this proposed rulemaking, the State of Kansas retains the ability to adopt water quality criteria for these pollutants and correct this deficiency.

3. Request for Comment and Data

EPA solicits any additional data and information that may further support or refute the need for numeric water quality criteria for alpha- and beta-endosulfan. The Agency will evaluate any data and information submitted to EPA by the close of the public comment period. After full consideration of such information, EPA will make a final decision whether the changes in today's proposal are appropriate.

C. Administrator's Finding Regarding Privately Owned Surface Waters

1. Background

In its 1998 disapproval letter, EPA identified certain existing water quality standards within the K.A.R. relating to the application of water quality standards to privately owned surface waters that EPA had previously approved, but that appeared to be inconsistent with the CWA and EPA's implementing regulations. The Region therefore indicated that this issue would be forwarded to the Administrator for action consistent with her authority under CWA section 303(c)(4)(B).

At issue is K.A.R. 28–16–28c(f), entitled Application of Standards to Privately-Owned Surface Waters, which states that the application of water quality standards to privately owned water bodies shall be subject to the provisions of K.S.A. 65–171d. The State law cited in the regulation provides in relevant part as follows: If a freshwater reservoir or farm pond is privately owned, and where complete ownership of land bordering the reservoir or pond is under common private ownership, such freshwater reservoir or farm pond shall be exempt from water quality standards in Kansas except as it relates to water discharges or seepage from the reservoir or pond to waters of the State, either surface water or ground water, or as it relates to the public health of persons using the reservoir or pond or waters therefrom. This is inconsistent with the CWA and EPA's implementing regulations to the extent that it would potentially exempt from water quality standards surface water—regardless of its ownership characteristics—that may be a water of the United States. Kansas' exclusion of private waters from protections under the CWA could also be a problem in the State's NPDES program. Kansas' failure to apply the State's water quality standards to all surface waters—including private waters—that are waters of the United States was specifically identified as a program deficiency by EPA in an October 1, 1990, letter from Martha Steincamp, EPA Regional Counsel, to David Traster, General Counsel for KDHE. As a result of discussions between EPA's Regional Office and KDHE, this statutory deficiency was to have been addressed by legislative action in the 1991 legislative session, but no such correction occurred.

The CWA does not recognize distinctions in ownership in the application of water quality standards to waters of the United States. Rather, the CWA requires that water quality standards apply to all waters of the United States, making no distinction between publicly and privately owned waters. The Administrator therefore has determined under section 303(c)(4)(B) that the identified provisions are inconsistent with the CWA and EPA's implementing regulations. In today's **Federal Register** notice, EPA is proposing to narrow the exemption for privately owned surface waters (notably lakes and wetlands) so that the exemption would not apply to waters of the United States. Whether a particular water is a water of the United States is a water body-specific determination. EPA is not aware of any waters of the United States in Kansas that are currently exempted from State water quality standards because of to the State's provision; nonetheless, EPA believes the State's provision creates a potential loophole that may preclude the State from protecting a waterbody from degradation. Every privately owned waterbody that is a water of the United States is entitled to—and indeed requires—protection under the CWA. Should the need ever arise to apply water quality standards to any privately owned water that is a water of the United States, the State's standard for unclassified waters would apply.

2. Request for Comment and Data

EPA solicits any additional data and information that may further support or refute the changes being proposed today. The Agency will evaluate any data and information submitted to EPA by the close of the public comment period. After full consideration of such information, EPA will make a final decision whether the changes in today's proposal are appropriate.

VI. Economic Analysis

This proposed rule would have no direct impact on any entity because the proposed rule, once finalized, will simply establish water quality standards (*e.g.,* ambient water quality criteria) which by themselves do not impose any costs. These standards, however, may serve as a basis for development of NPDES permit limits. In Kansas, the State is the NPDES permitting authority and retains considerable discretion in implementing standards. Thus, until the State implements these water quality standards, there will be no effect on any entity. Nonetheless, EPA prepared a preliminary analysis to evaluate potential costs to NPDES dischargers in Kansas associated with future State implementation of EPA's Federal standards.

Any NPDES-permitted facility that discharges to water bodies affected by the proposed rule or that is subject to effluent limits for pollutants for which EPA is proposing to promulgate criteria could potentially incur costs to comply with the proposed rule's provisions. The types of affected facilities may include industrial facilities and publically owned treatment works (POTWs). EPA did not consider the potential costs for nonpoint sources, such as agricultural and forestry-related nonpoint sources, although EPA recognizes that controls on these sources may be necessary to achieve designated uses. Nonpoint source discharges are technically difficult to model and evaluate for costing purposes because they are intermittent, highly variable, and occur under different hydrologic or climatic conditions than continuous discharges from industrial and municipal facilities, which are evaluated under critical low flow or drought conditions. Thus, the evaluation of nonpoint sources and their effects on the environment is highly site specific and data sensitive. In addition, EPA did not address the potential monetary benefits of this proposed rule for Kansas.

A. Identifying Affected Facilities

EPA used available data to identify the total number of facilities discharging to Kansas surface waters and the number that may be affected by the provisions of today's proposed rule. According to EPA's Permit Compliance System (PCS), there are 1,253 NPDES-permitted facilities in Kansas. Fifty-seven of the facilities are classified as major dischargers, and 1,196 are minor dischargers. The total includes 320 nondischarging animal feedlots and 85 sand and gravel quarries, which are all classified as minor dischargers.

In determining the number of facilities potentially affected by the proposed rule, EPA did not include non-discharging animal feedlots or sand and gravel quarries. Because CWA

section 301(a) prohibits point sources, including concentrated animal feeding operations (CAFOs), from discharging to surface waters without a permit, and because NPDES permits for CAFOs in turn prohibit discharges, EPA was not aware of any CAFO that would be impacted by EPA's proposal to upgrade the water use designation. (The only CAFOs that would be affected would be those discharging in violation of CWA section 301(a) or their permit, and EPA is not aware of such CAFOs in Kansas.) Nonetheless, EPA is aware that there may be facilities that presently are not subject to NPDES permitting requirements but that theoretically could be designated as CAFOs. EPA therefore requests information or data on any animal feeding facilities in Kansas that are discharging to waters for which EPA proposes to upgrade their designated uses and that therefore might be affected by this proposal.

EPA did not consider sand and gravel quarries because they would not discharge pollutants of concern in EPA's proposed rule. Sand and gravel quarries likely have permit limits only for total suspended solids. In addition, some quarries may have no discharge.

Therefore, the universe of dischargers that might be affected by EPA's proposed rule includes 848 permitted facilities (57 majors and 791 minors).

To identify facilities potentially affected by the proposed designated use change, EPA determined which of the 848 permitted facilities are located on water bodies with proposed changed use designations. EPA evaluated 1,485 stream segments and lakes for today's proposed rule. However, EPA could not discern the location of all facilities with respect to these segments. For water bodies where EPA today proposes to upgrade the designated use, EPA solicits any additional data and information (*e.g.,* if there are discharges to such streams; how the discharges are permitted; concentrations of pollutants in such discharges, etc.) that may further support or refute the attainability of EPA's proposed changes.

To identify facilities discharging to waters lacking primary contact recreation uses, EPA matched water body data to facility records in EPA's Permit Compliance System (PCS) and Industrial Facilities Database and a database provided by the State of Kansas. This effort identified 154 facilities (6 majors and 148 minors) that discharge to segments affected by the proposed rule. However, EPA could not discern the discharge location of over 300 facilities, so it is not known whether these facilities would be affected by the proposed rule or not. To estimate costs, EPA assumed these facilities to be located on affected water bodies in the same proportion as identified facilities.

Of the 1,485 stream segments and lakes evaluated, one is also lacking an aquatic life support use (Whiskey Creek). Using the same procedures, EPA identified one facility that discharges to Whiskey Creek.

To identify facilities discharging to waters affected by the proposed assumed flow changes, EPA linked PCS facility data and State-provided facility data with stream segment information from EPA's National Computer Center Gauge File. EPA identified 116 facilities (3 majors and 113 minors) on water bodies with 7Q10 flows less than 1 cfs. Of these 116 facilities, 69 facilities (2 majors and 67 minors) were located on streams with zero flow. Thus, EPA assumed that facilities evaluated for assumed flow changes would also account for those facilities impacted by the effluent created habitat provision of today's proposed rule. As such, EPA did not assess the costs for these two provisions separately. Note, however, that flow data were not available for over half of the facilities. To estimate costs, EPA assumed that the proportion of facilities on water bodies with flow data that had low flows less than 1 cfs would be the same as the proportion of facilities on water bodies without flow data with low flows less than 1 cfs. EPA requests comment on its assumption that the assumed flow analysis accounts for facilities affected by the effluent created habit provision of today's proposal. EPA solicits any additional data and information on facilities discharging to waters affected by the effluent created habitat provision that may further support or refute this approach.

EPA found no facilities in PCS in Kansas with effluent limits for alpha-endosulfan or beta-endosulfan. Although this does not necessarily mean that there would be no impact from proposed water quality criteria for these pollutants (*i.e.,* facilities may have these pollutants in their effluent and may be subject to effluent limits under the proposed criteria), EPA does not have data with which to evaluate effluent concentrations. EPA requests that persons with data or information on the discharge of alpha- or beta-endosulfan to surface waters in Kansas to provide it to the Agency for evaluation.

With respect to EPA's proposal to apply the States' water quality standards to privately owned surface waters that are waters of the United States, EPA was unable to evaluate the economic impact of that proposal for several reasons. EPA was unable to determine whether any such waters received discharges that, as a consequence of the proposal, henceforth could be subject to the CWA's permitting requirements. Similarly, EPA did not evaluate potential costs associated with proposing to promulgate a regulation that would require Kansas to apply the implementation procedures in 40 CFR 131.34(f) when applying the States' antidegradation policy (at K.A.R. 28–16–28c(a)(1)(B)) to determine whether to allow a lowering of surface waters quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water. EPA solicits any additional data and information (*e.g.,* where such waters are located, how discharges are permitted; concentrations of pollutants in such discharges, etc.) that may assist EPA in estimating potential indirect costs to point and nonpoint sources of pollution associated with this proposed provision.

B. Selecting a Sample

Once EPA identified facilities potentially affected by the proposed rule, it selected a sample of facilities for evaluation of potential compliance costs. EPA stratified the potentially affected facilities by major and minor classification and included all major facilities in each sample. EPA then drew a random sample of potentially affected minor facilities for evaluation. In addition, EPA evaluated separately the one facility discharging to the water body lacking an aquatic life use. The number of facilities identified and the number of facilities used for cost estimation are presented in the following table.

NUMBER OF FACILITIES IDENTIFIED AND EVALUATED

Provision	Identified facilities [1]			Evaluated facilities		
	Majors	Minors	Total	Majors	Minors	Total
Designated Uses:						
Primary Contact Recreation [2]	6	148	154	6	9	15
—Aquatic Life [3]	1	0	1	1	0	1
Assumed Flow [4]	3	113	116	3	7	10
Water Quality Criteria	0	0	0	0	0	0

[1] Additional facilities may be affected but could not be identified (*i.e.,* the universe of potentially affected facilities may exceed the estimates shown).
[2] Facilities discharging to water bodies lacking primary contact recreation use.
[3] Facilities discharging to water bodies lacking aquatic life use.
[4] Facilities discharging to streams with a 7Q10 flow of less than one.

C. Methodology for Estimating Potential Compliance Costs

1. Proposed Designated Uses

EPA evaluated the separate samples of facilities for potential costs resulting from EPA's proposal to designate waters for primary contact recreation and aquatic life support. For primary contact recreation, EPA assumed that a sample facility would have a reasonable potential to exceed water quality criteria for fecal coliforms (and require a permit limit) if, for facilities with effluent data for fecal coliforms, the maximum effluent concentration exceeded the most stringent water quality criterion (the monthly average of 200 colonies per 100 ml). EPA also assumed a facility to have reasonable potential to exceed water quality criteria if a limit for fecal coliforms is included in its existing permit or if it discharges treated domestic sewage that has not been disinfected.

EPA assumed that projected effluent limits would be the same as existing water quality criteria for fecal coliforms (a monthly geometric mean of 200 colonies per 100 ml and a weekly geometric mean of 400 colonies per 100 ml) because existing EPA guidance recommends this approach (U.S. EPA, 1977).

EPA assumed that a sample facility would incur costs when its maximum effluent concentration (or existing permit limit, whichever is smaller) exceeded the most stringent water quality criterion for fecal coliforms. EPA also assumed that a facility would incur costs if it discharges domestic sewage without a disinfection system currently in place.

For this analysis, EPA assumed that facilities with disinfection systems in place but whose effluents do not comply with projected effluent limits could be brought into compliance with treatment process optimization. EPA assumed that UV light disinfection would be installed at facilities with effluents containing domestic sewage that do not have a disinfection system in place.

One facility discharges to a stream that is not designated as supporting aquatic life uses. However, because effluent data are not available for this facility, EPA estimated that it does not have reasonable potential to cause exceedences of chronic aquatic criteria. Consequently, EPA anticipates no cost for this provision.

2. Proposal Regarding Assumed Flow

EPA analyzed reasonable potential for all toxic pollutants with effluent data or limits in existing NPDES permits under two scenarios. For a low scenario, EPA calculated a projected effluent quality (PEQ) value for pollutants with effluent data above detection levels. The PEQ is an effluent value statistically adjusted for uncertainty which EPA uses to estimate a maximum value. The methodology to derive a PEQ is based on EPA's *Technical Support Document for Water Quality-based Toxics Control* (TSD) (1991).

EPA then determined that waste load allocations (WLAs) for each sample facility would be equal to the chronic criterion (or chronic continuous concentration, CCC) because there would be no dilution available (*i.e.,* all sample facilities had 7Q10 stream flows equal to zero). WLAs for metals are expressed in dissolved form (*i.e.,* a translator of one was used to convert criteria from dissolved to total). EPA estimated that a facility had reasonable potential to exceed the water quality criterion for a pollutant when its PEQ exceeded the WLA. For the high scenario, EPA assumed that a facility had reasonable potential to exceed water quality criteria for a pollutant if it had a limit in its existing NPDES permit or if it had reasonable potential under the low scenario. EPA calculated projected effluent limits based on the methods recommended in EPA's TSD.

Dischargers may be affected by EPA's proposed action if their current permit limits or PEQs exceed projected effluent limits developed using actual stream flows. Affected dischargers would need to implement measures to either reduce pollutant concentrations in their effluent or seek relief (*e.g.,* through total maximum daily loads (TMDLs), site-specific criteria, or water quality variances). EPA used different approaches to estimate potential cost impacts under its low and high scenarios.

For the low scenario, EPA estimated pollution control costs in situations where the maximum effluent concentration (MEC) exceeded projected effluent limits and used the MEC as the baseline effluent quality value. However, if the MEC exceeded an existing permit limit, EPA used the existing permit limit as a baseline concentration to avoid including costs that are associated with complying with current State regulations. EPA estimated costs based on the incremental pollutant loading reductions required to achieve the projected limits. However, if the annualized cost to remove a pollutant exceeded $200 per toxic pound-equivalent, EPA assumed that the facility would pursue regulatory relief (*e.g.,* a variance) at a cost of $200,000 per pollutant (U.S. EPA, 1995).

For the high scenario, EPA estimated pollution control costs using the existing permit limit as a baseline effluent concentration. Where an existing permit limit was not available, EPA used the MEC as the baseline effluent quality concentration. Again, EPA estimated costs based on the incremental pollutant loading reductions required to achieve the projected limits. However, EPA did not assume that facilities would pursue regulatory relief even if costs exceeded $200 per toxic pound-equivalent.

For both scenarios, EPA followed a decision framework based on the assumption that a facility would pursue lower cost control strategies prior to adding end-of-pipe treatment.

EPA estimated loading reductions as the difference between the baseline

concentration and the projected WQBEL. Note, however, that this convention likely results in an upper bound estimate of loading reductions because facilities typically discharge at levels below the MEC.

EPA converted pollutant loading reductions from pounds (lbs) to toxic pounds-equivalent (lbs-eq) using toxicity weighting factors from the Assessment of Compliance Costs Resulting from Implementation of the Final Great Lakes Water Quality Guidance (U.S. EPA, 1995). EPA uses the toxic weights presented in the Great Lakes analysis to allow comparability of cost-effectiveness among previous water quality regulatory efforts. Toxicity weighting factors are primarily derived from EPA chronic freshwater aquatic criteria and toxicity values, but are also based on human health criteria when a human health criterion has been established. The toxicity weighting factors used for the analysis are standardized to the former copper water quality criterion of 5.6 μg/L.

EPA did not evaluate reasonable potential for non-toxic, conventional pollutants (*e.g.,* dissolved oxygen) for facilities discharging to streams with a 7Q10 flow of less than one cfs. EPA found that most of the sample facilities do not have water quality-based effluent limits for conventional pollutants in existing NPDES permits. EPA solicits effluent data and information on treatment technologies currently in place for conventional pollutants for facilities discharging to streams with a 7Q10 flow of less than one cfs.

D. Results

1. Proposed Designated Uses

EPA estimated the costs associated with its proposal to designate water bodies for primary contact recreation use and aquatic life use separately. For primary contact recreation use, there are 154 potentially affected facilities out of a total of 511 identified facilities. However, EPA could not obtain reach code information or location data to determine if 337 facilities are affected or not. For these facilities, EPA assumed that the same percentage would be affected as for identified facilities (estimating separately for major and minor facilities).

EPA estimated that the total statewide cost associated with designating the affected water bodies for primary contact recreation would be approximately $1.9 million. EPA estimated that costs for major dischargers are negligible because five of the six major dischargers sampled presently have disinfection facilities and NPDES limits that are consistent with primary contact recreation. For minors, however, eight of the nine sampled facilities do not have disinfection facilities, effluent limits, or monitoring data for fecal coliforms.

EPA estimated that the potential cost associated with reinstating aquatic life uses on the affected water bodies is zero. However, this estimate is based on the one affected facility that could be identified.

2. Proposal Regarding Assumed Flow

For the assumed flow provision, there are 116 potentially affected facilities out of a total of 517 identified facilities. However, EPA did not have information to determine if 331 facilities are affected or not. Again, for these facilities, EPA assumed that the same percentage would be affected as for identified facilities (estimating separately for major and minor facilities).

EPA estimated that the total statewide cost may range from $28,000 to $128,000 annually. The costs are minimal because, of the ten sample facilities, EPA anticipates that two major facilities would incur pollutant minimization control costs under the high scenario. Under the low scenario, only one major facility would require some control, and EPA assumed that this facility would pursue regulatory relief. EPA does not anticipate any costs for minor facilities because none of the facilities have limits or data for toxic pollutants.

EPA does not anticipate any resulting pollutant loading reductions under the low scenario. EPA anticipates small reductions in the discharge of chromium VI and copper under the high scenario.

EPA did not evaluate potential costs associated with removing the assumed flow provision for conventional pollutants. EPA recognizes that costs associated with installing new treatment technologies for treating conventional pollutants could be significant. Facility-specific cost analysis can be used to support a variance from the State's standard, or to justify a lower aquatic life use with less stringent criteria; however, such information is not a basis for assuming that dilution exists in situations where the stream flow, at times, is at or near zero. EPA's proposed rule, if finalized, would not affect the State's ability to issue pollutant-specific variances where information shows that one of the factors in 40 CFR 131.10(g) are met, including information that shows such water quality-based controls would result in substantial and widespread economic and social impact. EPA's cost analysis for the final rule will fully address costs associated with applying the 7Q10 to conventional pollutants.

3. Total Statewide Costs

The following table summarizes the total estimated statewide costs of the proposed rule. The bulk of the costs are attributable to the designation of affected water bodies for primary contact recreation use. As described earlier, much of the costs for this provision result from the need for minor dischargers to install disinfection.

TOTAL ESTIMATED STATEWIDE COSTS BY PROVISION

[July 1999 $/yr]

Provision	Estimated annual cost
Designated Use:	
—Primary Contact Recreation	1,900,000
—Aquatic Life	0
Assumed Flow	0–100,000
Total	1,900,000–2,000,000

EPA recognizes that its identification of facilities that may be affected by the proposed rule is based on limited data. EPA could not determine whether over 300 facilities would or would not be affected because of a lack of data on facility locations. While the assumption that the proportion of facilities in this indeterminate category that would be affected would be similar to the proportion of facilities known to be affected by the proposed rule is

reasonable, EPA solicits information that would help resolve the universe of facilities that would be affected. Should the proportion of facilities in the indeterminate category be substantially different from the proportion of facilities in the known category, then statewide costs may also differ from those reported here.

VII. Alternative Regulatory Approaches and Implementation Mechanisms

In developing a final rule, EPA will consider any data or information submitted to the Agency by the close of the comment period. However, it is possible that data and information may become available after completion of this rulemaking that will be material to water quality standards for Kansas. If EPA ultimately promulgates Federal use designations for Kansas, there are several mechanisms available to ensure that the water quality standards and their implementing mechanisms appropriately take into account such new information. These mechanisms are described in VII. A., B., C., and D.

The State should be aware, however, that EPA considers designated use changes, site-specific criteria, and variances developed pursuant to this provision to be modifications to the State's water quality standards. Federal regulations at 40 CFR 122.44(d)(1) require that NPDES permits include limitations necessary to achieve water quality standards adopted under section 303 of the CWA. Therefore, a designated use change, a site-specific criterion, or a variance cannot be the basis for NPDES permit limitations until the State has adopted it as part of its water quality standards, has submitted it to EPA and EPA has approved it. See 40 CFR 131.21(c) & (d). As with any other revision to the State's water quality standards, EPA would then review these revisions to determine whether they are scientifically defensible in accordance with 40 CFR 131.11(b)(1)(iii), or meet the requirements of 40 CFR 131.10(g), as applicable. EPA will also consider whether the appropriate procedural requirements have been met, such as public participation and certification by the appropriate legal authority within the State. Therefore, if EPA promulgates that regulation as proposed, then Kansas would not be able to employ its designated use changes, site-specific criteria, and variances as a basis for NPDES permit limits until Kansas submits and EPA approves them.

A. Designating Uses

States have considerable discretion in designating uses. The State may find that changes in use designations are warranted. As stated, EPA will review any new or revised use designations adopted by the State for any of the water bodies in today's proposal to determine if the standards meet the requirements of the CWA and implementing regulations. If approved, EPA would subsequently initiate withdrawal of any final Federal water quality standards which may result from today's proposal. However, EPA cautions the State that it must conduct a use attainability analyses as described in 40 CFR 131.10(g) when adopting water quality standards that result in uses that are not specified in section 101(a)(2) of the CWA, or that result in subcategories of uses specified in section 101(a)(2) that require less stringent criteria.

B. Site-Specific Criteria

The State may also develop data that indicates that a site-specific water quality criterion for a particular pollutant is appropriate, and then take action to adopt such a criterion into its water quality standards. Site specific criteria are allowed by regulation and are subject to EPA review and approval. 40 CFR 131.11 requires States to adopt criteria that protect designated uses, that are based on sound scientific rationale, and that contain sufficient parameters or constituents to protect the designated use. In adopting water quality criteria, States should establish numerical values based on EPA's recommended 304(a) criteria guidance, 304(a) criteria guidance modified to reflect site specific conditions, or other scientifically defensible methods, or should establish narrative criteria where numerical criteria cannot be determined or where necessary to supplement narrative criteria.

Currently, EPA guidance specifies three procedures for States and Tribes to follow in deriving site-specific criteria. These are the Recalculation Procedure, the Water-Effect Ratio Procedure and the Resident Species Procedure. These procedures can be found in the *Water Quality Standards Handbook* (EPA–823–B940005a, 1994). There is currently draft guidance for the development of site-specific criteria for the protection of human health in the draft *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health*. EPA also recognizes there may be naturally occurring concentrations of pollutants which may exceed the national criteria published under section 304(a) of the CWA, and has issued policy guidance on establishing site specific aquatic life criteria equal to natural background. (Memo from Tudor T. Davies, Director, Office of Science and Technology to the Regional Water Management Division Directors, and State and Tribal Water Quality Management Program Directors, dated 11/5/97.)

C. Variances

Water quality standards variances are an alternative that can provide a facility with a limited period of time to comply with water quality standards. The proposed rule contains a Federal variance procedure for the designated uses being proposed today. However, the procedures described later in this section can also be used by the State to develop variances of State-adopted water quality standards.

EPA believes variances are particularly suitable when the cause of nonattainment is discharger-specific and it appears that the designated use in question will eventually be attainable. EPA has approved the granting of water quality standards variances by States in circumstances that would otherwise justify changing a use designation on grounds of unattainability (*i.e.,* one or more of the six circumstances contained in 40 CFR 131.10(g)). In contrast to a change in standards that removes a use designation for a water body, a water quality standards variance can apply only to the discharger to whom it is granted and only to the pollutant parameter(s) upon which the finding of unattainability was based, and only for a limited period of time; the underlying standard remains in effect for all other purposes.

For example, if a designated aquatic life use is currently precluded because of high levels of metals from past mining activities that cannot be remediated in the short term, but it is expected that water quality will eventually improve, a temporary variance may be granted to a discharger with relaxed criteria for such metals, until remediation progresses and the use becomes attainable. The practical effect of such a variance is to allow a permit to be written using less stringent criteria, while encouraging ultimate attainment of the underlying standard. A water quality standards variance provides a mechanism for assuring compliance with sections 301(b)(1)(C) and 402(a)(1) of the CWA that require NPDES permits to meet applicable water quality standards, while granting temporary relief to point source dischargers.

While 40 CFR 131.13 allows States to adopt variance procedures for State-adopted water quality standards, such State procedures may not be used to grant variances from Federally adopted standards. EPA believes that it is appropriate to provide comparable

Federal procedures where, as proposed here, EPA adopts use designations which rely, at least in part, on a rebuttable presumption that fishable/swimmable uses are attainable or adopts more stringent criteria for the State's use designations. EPA is proposing to authorize the Region VII Regional Administrator to grant water quality standards variances where a permittee submits data indicating that an EPA-designated use is not attainable for any of the reasons in 40 CFR 131.10(g). Therefore today's rule proposes variance procedures that would apply to the designated uses promulgated by EPA for the specific stream segments named in today's proposal at proposed 40 CFR 131.34(g) and (h).

Today's proposed rule spells out the process for applying for and granting such variances. Authorizing the Regional Administrator to grant variances should expedite the processing of variance requests. EPA is proposing to use informal adjudication processes in reviewing and granting variance requests. That process is contained in 131.34(i) of today's proposed rule. Because water quality standards variances, technically speaking, are revised water quality standards, the proposal provides that the Regional Administrator will provide public notice of the proposed variance and provide an opportunity for public comment. EPA understands that variance-related issues can often arise in the context of permit issuance. EPA Region VII will seek to work closely with the State permitting authorities to ensure that variance requests will be considered in tandem with the State NPDES permitting process.

The proposed variance procedures would require an applicant for a water quality standards variance to submit a request to the Regional Administrator (or his delegatee) with supporting information.

Under its proposal, as in the national program, the burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in 40 CFR 131.10(g). A variance may not be granted if the use could be attained, at a minimum, by all dischargers implementing effluent limitations required under sections 301(b) and 306 of the CWA and the applicant implementing reasonable best management practices for nonpoint source control.

Under the proposal, a variance may not exceed three years or the term of the NPDES permit, whichever is less. A variance may be renewed if the permittee demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if EPA finds that the conditions of 40 CFR 131.10(g) are not met.

EPA is soliciting comment on the need for a variance process for EPA-promulgated use designations, the appropriateness of the particular procedures proposed today, and whether the proposed variance procedures are sufficiently detailed.

D. Total Maximum Daily Loads (TMDLs)

State development of TMDLs is an alternative approach for allocating loads of pollutants and ensuring attainment of designated uses in these water bodies. Section 303(d) of the CWA and its implementing regulations establish the TMDL process to provide a mechanism for allocating more stringent water quality-based requirements when technology-based controls and other controls are inadequate to achieve applicable water quality standards. The TMDL process can broaden the opportunity for public participation, expedite water quality-based NPDES permitting, and lead to technically sound and legally defensible decisions for attaining and maintaining water quality standards. In addition, the TMDL process provides a mechanism for integrating the management of both point and nonpoint pollution sources that together may contribute to a water body's impairment. (See: *Guidance for Water Quality-based Decisions: The TMDL Process,* EPA 440–4–91–001, April 1991.)

VIII. Administrative Requirements and Related Government Acts

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

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

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

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a ''significant regulatory action.'' As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. The Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering these economic impacts of today's proposed rule on small entities, the Administrator hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. *See United States Distribution Companies* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. (''[N]o [regulatory flexibility] analysis is necessary when an agency determines

that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule,'' United Distribution* at 1170, *quoting Mid-Tex Elec. Co-op* v. *FERC,* 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).) The Agency is thus certifying that today's proposed rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

Under the CWA water quality standards program, States must adopt water quality standards for their waters and must submit those water quality standards to EPA for approval; if the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA also has the authority to promulgate criteria or standards in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the National Pollutant Discharge Elimination System (NPDES) program, which limits discharges to navigable waters except in compliance with an EPA permit or a permit issued under an approved State program. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable water quality standards.

Thus, under the CWA, EPA's promulgation of water quality standards establishes standards that the State implements through the NPDES permit process. The State has discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. While the State's implementation of Federally promulgated water quality standards *may* result in new or revised discharge limits being placed on small entities, the standards themselves do not apply to any discharger, including small entities.

Today's proposed rule, as explained earlier, does not itself establish any requirements that are applicable to small entities. As a result of this action, the State of Kansas will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in the final rule. In doing so, the State will have a number of discretionary choices associated with permit writing. While Kansas's implementation of the rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

C. The Paperwork Reduction Act

This rule imposes no new or additional information collection requirements. Therefore, this rule is not subject to the Paperwork Reduction Act.

D. The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The proposed rule imposes no enforceable duty on the State or any local or Tribal government or the private sector; rather, this rule proposes designated uses for certain waterbodies in Kansas which, when combined with State adopted water quality criteria, constitute water quality standards for those waterbodies. The State may use these resulting water quality standards in implementing its water quality control programs. Today's proposed rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated, the proposed rule imposes no enforceable requirements on any party, including small governments. Moreover, any water quality standards, including those proposed here, apply broadly to dischargers and are not uniquely applicable to small governments. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) 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 Executive Order 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 section 6 of Executive Order 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 proposed rule does not have federalism implications. It 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 Executive Order 13132. The proposed rule would not affect the nature of the relationship between EPA and States generally, for the rule only applies to waterbodies in Kansas. Further, the proposed rule would not substantially affect the relationship of EPA and the State of Kansas, or the distribution of power or responsibilities between EPA and the various levels of government. The proposed rule would not alter the State's authority to issue NPDES permits or the State's considerable discretion in implementing these water quality standards. Further, this proposed rule would not preclude Kansas from adopting water quality standards that meet the requirements of the CWA. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local government representatives in developing this proposed rule. A summary of the concerns raised during that consultation and EPA's response to those concerns is provided later in this section. In its communications with EPA, KDHE expressed concern that some of the standards disapproved by EPA in 1998 and for which EPA is today proposing Federal replacement regulations, would result in substantial costs to small communities without significant environmental benefits. Chief among these issues was EPA's disapproval of the Kansas assumed low flow provision, that allows discharges to water bodies with a 7Q10 flow of less than 1 cubic foot per second (cfs) to use an assumed 7Q10 of 1 cfs in setting permit limits. EPA disapproved this provision in the State standards because it allows water quality-based NPDES permit limits to be derived based on dilution that does not exist. As explained previously, the economic impact of meeting water quality standards may be taken into consideration by the State in making site-specific determinations during preparation of use attainability analyses and variances, but not in adopting water quality standards for statewide implementation.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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, Executive Order 13084 requires EPA to develop an effective process permitting elected officials 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 proposed rule does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it impose substantial direct compliance costs on them. In this proposed action, EPA expressly excludes waters in Indian country. Therefore, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

G. The Endangered Species Act

Section 7 of the Endangered Species Act (ESA), 16 U.S.C. 1536, requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS), to ensure their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat of such species which have been designated as ''critical.'' Consultation is designed to assist Federal agencies in complying with the requirements of section 7 by supplying a process within which FWS and NMFS provide such agencies with advice and guidance on whether an action complies with the substantive requirements of ESA.

EPA initiated informal consultation with the FWS under section 7 of the ESA in November 1997 regarding EPA's planned action to approve in part, and disapprove in part, water quality standards revisions submitted by Kansas in 1994. By letter dated February 19, 1998, the FWS notified EPA that it concurred with EPA's determination that the partial approval, and partial disapproval of the Kansas water quality standards revisions of 1994 should not adversely impact Federally-listed and endangered species. EPA continued to correspond with the FWS throughout the period during which Kansas revised its water quality standards and submitted them to EPA for approval in August 1999.

EPA continued its consultation with FWS under section 7 of the ESA regarding EPA's planned approval of some of the 1999 revisions to the Kansas water quality standards that corrected standards previously disapproved by EPA in its 1998 action. As a result of this consultation, the FWS issued a biological opinion dated January 6, 2000, regarding the State of Kansas' Water Quality Standards program. The opinion concurred with EPA's determination that EPA's partial approval of the 1999 revisions to the Kansas water quality standards program should have no adverse effect on any Federally listed species or species proposed for listing.

In its January 6, 2000, letter, FWS also indicated that it would continue to coordinate ''with EPA to resolve the disapproval issues in the State action.'' EPA continues to actively consult with FWS regarding this action to establish Federal water quality standards in Kansas and plans to conclude consultation on these proposed Federal standards before taking final action.

H. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) Public Law No.104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. Nevertheless, EPA welcomes comments on this aspect of the proposed rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

I. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

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 Executive Order 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 proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This rule establishes water quality standards o meet the requirements of the CWA and the implementing Federal regulations.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that indicates these water quality standards are not adequate to protect children's health.

J. Executive Order 12886: Plain Language

Executive Order 12886 and the President's memorandum of June 1, 1998 require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

—Have we organized the material to suit your needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that isn't clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—What else could we do to make the rule easier to understand?

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Reporting and recordkeeping requirements, Water pollution control.

Dated: June 16, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.34 is added to read as follows:

§ 131.34 Kansas.

(a) *Do Kansas' water quality standards apply to ''privately owned surface waters'?* The State's water quality standards apply to all waters of the U.S. within the jurisdiction of the State.

(b) *What criteria apply to the Domestic Water Supply Use in Kansas?* In addition to the criteria specified at K.A.R. 28–16–28e(c)(3) and at § 131.36 of this Part for Kansas, the following criteria apply to Kansas surface waters designated for Domestic Water Supply Use:

Pollutant	Criterion
alpha-endosulfan	110 µgliter.
beta-endosulfan	110 µgliter.

(c) *What uses must be protected for stream segments in Kansas for which continuous flow is sustained primarily through the discharge of treated effluent?* Designated uses at K.A.R. 28–16–28d and K.A.R. 28–16–28e for stream segments for which continuous flow is sustained primarily through the discharge of treated effluent must be protected (irrespective of the development of a use attainability analysis that demonstrates that a different use may be appropriate) until EPA approves a revision to the applicable use designation.

(d) *What design flow applies when establishing mixing zones to implement chronic aquatic life criteria in Kansas?* The design flow of 7Q10, 4B3, or other scientifically defensible design flows approved by EPA shall be used in calculating the mixing zone cross-sectional area or volumetric flow in the implementation of chronic aquatic life criteria:

(1) Under K.A.R. 28–16–28c(b)(7)for discharges of all pollutants to any surface waters designated in Kansas as exceptional State waters; and

(2) Under K.A.R. 28–16–28c(b)(8), (A) through (C), for discharges of all pollutants to any surface waters designated in Kansas as general purpose waters, including special aquatic life use waters, expected aquatic life use waters, and restricted aquatic life use waters.

(e) *What design flow applies when establishing mixing zones to implement acute aquatic life criteria in Kansas?* The design flow of 1Q10, 1B3, or other scientifically defensible design flows approved by EPA shall be used in calculating the mixing zone cross-sectional area or volumetric flow in the implementation of acute aquatic life criteria:

(1) Under K.A.R. 28–16–28c(b)(7)for discharges of all pollutants to any surface waters designated in Kansas as exceptional State waters; and

(2) Under K.A.R. 28–16–28c(b)(8), (A) through (C), for discharges of all pollutants to any surface waters designated in Kansas as general purpose waters, including special aquatic life use waters, expected aquatic life use waters, and restricted aquatic life use waters.

(f) *What procedures apply to implement the provisions of Kansas' antidegradation requirements that would allow the lowering of surface water quality by point sources where nonpoint sources also contribute the pollutant of concern to that body of water?* The following implementation procedures are for use when applying K.A.R. 28–16–28c(a)(1)(B) to determine whether to allow a lowering of surface water quality by point sources of pollution where nonpoint sources also contribute the pollutant of concern to that body of water:

(1) Identification of significant sources (or categories) of nonpoint pollution that may impact a high quality water body by releasing the pollutants of concern;

(2) Identification of reasonable and cost-effective best management practices (BMPs) for each of these significant nonpoint sources or source categories; and

(3) Determination that significant nonpoint sources in those nonpoint source categories will implement appropriate BMPs.

(g) In addition to the State-adopted use designations, the following water body in Kansas is designated for expected aquatic life use.

Stream segment name	HUC8	Lattitude/longitude		Segment No.
		Lower	Upper	
Basin; Missouri				
Subbasin; Independence-Sugar				
WHISKEY CREEK	10240011	39.54 95.11	39.53 95.11	235 00.00

(h) In addition to the State adopted use designations, the following water body segments and lakes in Kansas are designated for primary contact recreational use.

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Basin: Cimarron						
Subbasin: Crooked						
Remuda Creek	11040007	37.08	100.28	37.16	100.28	4
Subbasin: Upper Cimarron-Bluff						
Antelope Creek	11040008	37.09	99.91	37.25	99.98	16
Bear Creek	11040008	37.05	99.71	37.3	99.79	18
Big Sandy Creek	11040008	37.04	99.76	37.06	99.81	6
Big Sandy Creek	11040008	37.06	99.81	37.07	99.83	7
Big Sandy Creek	11040008	37.07	99.83	37.21	100.34	9
Bullard Creek	11040008	37.06	99.81	37.11	100.21	10
Day Creek	11040008	37.07	99.61	37.27	99.67	20
Gyp Creek	11040008	37.17	100.07	37.37	100.11	25
Indian Creek	11040008	37.16	100.05	37.35	100.01	14
Kiger Creek	11040008	37.07	99.83	37.35	99.95	8
Kiowa Creek	11040008	37.18	99.47	37.49	99.43	12
Snake Creek	11040008	37.06	99.61	36.99	99.68	21
Stink Creek	11040008	37.04	99.79	37	99.87	17
Trout Creek	11040008	37.05	99.55	37.02	99.59	19
Twomile Creek	11040008	37.13	100.01	37.14	100.16	15
Subbasin: Lower Cimarron-Eagle Chief						
Anderson Creek	11050001	36.99	99.36	37.02	99.33	39
Keno Creek	11050001	36.97	99.29	37	99.29	22
West Creek	11050001	36.98	99.42	37.08	99.35	24
Basin: Kansas/Lower Republican						
Subbasin: Middle Republican						
Advent Creek	10250016	40.01	98.4	39.99	98.4	64
Antelope Creek	10250016	39.9	98.26	39.98	98.31	65
Ash Creek	10250016	39.88	98.44	39.99	98.49	65
Ayres Creek	10250016	40.01	98.29	39.98	98.31	70
Bean Creek	10250016	39.9	97.92	39.94	98.02	76
Burr Oak Creek	10250016	39.87	98.31	39.99	98.45	48
Calumet Creek	10250016	40.01	98.97	39.99	98.98	54
Cedar Creek	10250016	40.02	98.52	40	98.51	63
Cora Creek	10250016	39.9	98.56	39.94	98.72	51
Crow Creek (Crystal Creek)	10250016	40	99.16	39.93	99.24	52
Dry Creek	10250016	39.84	97.83	39.9	97.71	80
Korb Creek	10250016	39.9	98.21	39.97	98.24	72
Lohff Creek	10250016	40.01	98.83	39.98	98.83	56
Long Branch	10250016	39.9	98.24	39.98	98.28	68
Lost Creek	10250016	40	99.02	39.96	99.01	53
Louisa Creek	10250016	40.02	98.58	39.98	98.58	61
Norway Creek	10250016	39.9	98.16	39.97	98.2	73
Oak Creek	10250016	40.02	98.21	39.96	98.21	75
Otter Creek	10250016	39.91	97.84	40.01	97.77	79
Rankin Creek	10250016	40.01	98.35	39.98	98.35	69
Rebecca Creek	10250016	40.01	99.1	39.96	99.15	39
Rock Creek	10250016	40.01	98.77	39.98	98.77	57
Spring Creek	10250016	39.9	98.19	39.85	98.22	71
Spring Creek	10250016	39.94	97.86	39.96	97.99	78
State Creek	10250016	40.07	98.59	40	98.61	62

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Taylor Creek	10250016	39.9	98.16	39.97	98.19	74
Walnut Creek	10250016	40.01	98.69	39.97	98.81	40
Walnut Creek	10250016	39.88	98.29	39.99	98.37	46
White Rock Creek, North Branch	10250016	39.88	98.48	39.98	98.58	60
Wolf Creek	10250016	39.89	98.28	39.94	98.32	67
,						
Subbasin: Lower Republican						
Beaver Creek	10250017	39.71	97.8	39.86	97.92	45
Beaver Creek	10250017	39.56	97.38	39.48	97.43	61
Buffalo Creek	10250017	39.59	97.71	39.62	97.87	29
Buffalo Creek, EAST	10250017	39.67	98.14	39.82	98.14	68
Cheyenne Creek	10250017	39.61	97.86	39.51	97.91	55
Coal Creek	10250017	39.68	97.56	39.79	97.55	47
Cool Creek	10250017	39.59	97.64	39.67	97.67	50
Dry Creek	10250017	39.64	98.13	39.67	98.21	43
East Creek	10250017	39.66	97.56	39.82	97.51	21
Elk Creek, West Fork	10250017	39.63	97.42	39.78	97.45	16
Elm Creek, East Branch	10250017	39.53	97.46	39.41	97.52	62
Elm Creek, West Branch	10250017	39.51	97.53	39.43	97.6	59
Finney Creek	10250017	39.36	97.11	39.46	97.05	64
Gar Creek	10250017	39.56	97.26	39.75	97.34	12
Hay Creek	10250017	39.59	97.67	39.68	97.69	49
Lincoln Creek	10250017	39.33	97.08	39.43	97.01	65
Lost Creek	10250017	39.59	97.66	39.51	97.68	57
Marsh Creek	10250017	39.71	97.94	39.86	97.97	35
Marsh Creek, EAST	10250017	39.74	97.95	39.84	98.09	42
Marsh Creek, WEST	10250017	39.71	97.94	39.81	98.11	36
Millers Creek	10250017	39.46	97.23	39.4	97.52	40
Mud Creek	10250017	39.55	97.34	39.49	97.36	63
Oak Creek	10250017	39.67	97.8	39.7	97.85	48
Oak Creek	10250017	39.58	97.57	39.43	97.65	58
Peel Creek	10250017	39.51	97.23	39.79	97.2	10
Plum Creek	10250017	39.58	97.56	39.5	97.59	60
Riley Creek	10250017	39.73	97.59	39.89	97.65	24
Salt Creek, West	10250017	39.65	97.56	39.9	97.7	25
Spring Creek	10250017	39.65	98.07	39.76	98.11	44
Spring Creek	10250017	39.58	97.19	39.66	97.18	53
Turkey Creek	10250017	39.7	97.54	39.73	97.49	51
Upton Creek	10250017	39.61	97.49	39.7	97.5	52
Whites Creek	10250017	39.59	97.8	39.47	97.87	54
Wolf Creek, West Branch	10250017	39.54	97.73	39.47	97.81	56
Subbasin: Upper Kansas						
Davis Creek	10270101	38.96	96.75	38.85	96.65	18
Dry Creek	10270101	38.99	96.74	38.87	96.6	19
Humbolt Creek	10270101	39.05	96.73	38.89	96.54	10
Kitten Creek	10270101	39.21	96.7	39.27	96.69	14
Little Arkansas Creek	10270101	39.24	96.77	39.29	96.85	13
Little Kitten Creek	10270101	39.18	96.62	39.23	96.64	16
Mulberry Creek	10270101	38.83	96.82	38.75	96.79	20
Ralls Creek	10270101	38.86	96.79	38.8	96.74	21
Sevenmile Creek	10270101	39.13	96.65	39.21	96.82	5
Swede Creek	10270101	39.03	96.6	39.08	96.56	17
Subbasin: Middle Kansas						
Adams Creek	10270102	39.27	96.25	39.42	96.32	53
Bartlett Creek	10270102	39.32	96.06	39.4	96.11	55
*Big Elm Creek	10270102	39.27	95.76	39.35	95.73	90
Blackjack Creek	10270102	39.19	96.42	39.24	96.41	64
Blacksmith Creek	10270102	39.06	95.84	38.98	95.85	102
Bourbonais Creek	10270102	39.12	96.02	39.27	96.08	63
Brush Creek	10270102	39.26	96.34	39.38	96.33	57
Coal Creek	10270102	39.53	96.1	39.64	96.14	46
Coryell Creek	10270102	39.21	95.95	39.25	95.92	94
Cow Creek	10270102	39.51	96.13	39.46	96.1	45
*Crow Creek	10270102	39.32	95.91	39.41	95.85	86
Darnells Creek	10270102	39.4	96.4	39.44	96.32	51
Dog Creek	10270102	39.07	96.11	39.02	96.07	78
Doyle Creek	10270102	39.15	96.05	39.27	96.09	69

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Dry Creek	10270102	39.07	96.02	39	96.03	79
*Dutch Creek	10270102	39.24	95.88	39.31	95.82	92
Elm Creek	10270102	39.16	95.59	39.2	95.66	98
Elm Creek	10270102	39.08	95.53	39.14	95.55	103
Elm Slough	10270102	39.25	96.33	39.21	96.39	58
Emmons Creek	10270102	39.16	96.38	39.09	96.4	66
French Creek	10270102	39.5	96.15	39.64	96.17	19
Gilson Creek	10270102	39.58	96.22	39.62	96.23	47
Hendricks Creek	10270102	39.03	96.27	39.07	96.4	73
Hise Creek	10270102	39.48	96.16	39.52	96.28	43
Indian Creek	10270102	39.33	96.22	39.48	96.3	20
*James Creek	10270102	39.26	95.89	39.33	95.82	87
Jim Creek	10270102	39.39	96.18	39.48	96.27	52
Johnson Creek	10270102	38.96	96.02	39.01	96.06	84
Kuenzli Creek	10270102	39.06	96.2	38.94	96.13	82
Little Cross Creek	10270102	39.28	96.03	39.42	95.98	61
Little Muddy Creek	10270102	39.09	95.6	39.17	95.64	99
Loire Creek	10270102	38.98	96.33	39.06	96.4	80
Lost Creek	10270102	39.19	96.16	39.34	96.16	60
Messhoss Creek	10270102	39.11	95.77	39.19	95.74	96
Mud Creek	10270102	39.55	96.21	39.57	96.26	44
Mud Creek	10270102	39.32	96.47	39.34	96.53	56
Muddy Creek, West Fork	10270102	39.22	95.62	39.3	95.71	93
Mulberry Creek	10270102	39.6	96.2	39.65	96.22	42
Mulberry Creek	10270102	39.07	96.14	39.12	96.25	77
Nehring Creek	10270102	38.95	96.24	38.89	96.11	81
Paw Paw Creek	10270102	39.05	96.23	39.11	96.3	75
Pomeroy Creek	10270102	39.34	96.21	39.35	96.16	59
Post Creek	10270102	39.09	95.91	39.01	95.98	101
Pretty Creek	10270102	39.05	96.25	39.08	96.32	74
Rock Creek	10270102	39.21	96.23	39.24	96.25	15
Rock Creek	10270102	39.24	96.25	39.27	96.4	21
Rock Creek	10270102	39.27	96.4	39.4	96.51	23
Rock Creek, East Fork	10270102	39.27	96.4	39.49	96.32	22
Ross Creek	10270102	38.99	95.94	38.98	95.98	35
Salt Creek	10270102	39.24	95.97	39.3	95.95	88
Sand Creek	10270102	39.19	96.46	39.23	96.45	65
Shunganunga Creek, South Branch	10270102	39.02	95.71	38.94	95.7	106
Snake Creek	10270102	39.16	95.96	39.21	96.01	95
Snokomo Creek	10270102	39.06	96.15	38.95	96.12	85
Spring Creek	10270102	39.52	96.11	39.46	96.07	48
Spring Creek	10270102	39.41	96.17	39.36	96.14	54
Spring Creek	10270102	39.06	96.19	39.1	96.23	76
Spring Creek	10270102	39.06	95.46	39.02	95.5	105
Sullivan Creek	10270102	39.25	95.99	39.34	95.96	89
Tecumseh Creek	10270102	39.05	95.57	38.96	95.56	107
Turkey Creek	10270102	39.12	96.04	39.12	96.16	71
Unnamed Stream	10270102	39.18	95.8	39.24	95.8	8
Vassar Creek	10270102	39.08	95.91	39	95.96	100
*Walnut Creek	10270102	39.16	95.86	39.28	95.81	91
Wells Creek	10270102	39.19	96.17	39.13	96.27	68
Whetstone Creek	10270102	39.06	95.53	38.99	95.55	104
Wilson Creek	10270102	39.34	96.43	39.47	96.45	50
Wolf Creek	10270102	39.55	96.04	39.6	96	49
Subbasin: Delaware						
Banner Creek	10270103	39.47	95.72	39.44	95.87	45
Barnes Creek	10270103	39.69	95.86	39.69	95.94	39
*Bills Creek	10270103	39.47	95.65	39.41	95.79	47
Brush Creek	10270103	39.64	95.43	39.63	95.4	44
Brush Creek	10270103	39.34	95.45	39.35	95.36	54
Burr Oak Branch	10270103	39.22	95.34	39.19	95.31	8
Catamount Creek	10270103	39.42	95.52	39.39	95.57	49
Cedar Creek, North	10270103	39.34	95.56	39.39	95.7	46
Claywell Creek	10270103	39.18	95.53	39.23	95.53	56
Clear Creek	10270103	39.62	95.52	39.66	95.38	19
Coal Creek	10270103	39.38	95.49	39.5	95.43	50
Grasshopper Creek	10270103	39.56	95.53	39.62	95.52	18
Grasshopper Creek	10270103	39.62	95.52	39.76	95.63	20
*Gregg Creek	10270103	39.68	95.66	39.88	95.86	24
Honey Creek	10270103	39.24	95.31	39.3	95.28	55

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Little Grasshopper Creek	10270103	39.54	95.52	39.64	95.33	16
Little Wild Horse Creek	10270103	39.08	95.4	39.17	95.34	57
Mission Creek	10270103	39.65	95.52	39.71	95.53	40
Mosquito Creek	10270103	39.55	95.7	39.67	95.96	42
Nebo Creek	10270103	39.45	95.54	39.43	95.65	48
Negro Creek	10270103	39.54	95.53	39.59	95.64	43
Otter Creek	10270103	39.63	95.52	39.71	95.44	41
*Plum Creek	10270103	39.69	95.69	39.81	95.77	36
Rock Creek	10270103	39.17	95.52	39.29	95.61	34
Rock Creek	10270103	39.32	95.44	39.33	95.34	53
*Squaw Creek	10270103	39.71	95.67	39.79	95.69	38
Straight Creek	10270103	39.48	95.55	39.57	95.86	28
Tick Creek	10270103	39.2	95.55	39.27	95.55	52
Unnamed Stream	10270103	39.48	95.76	39.47	95.82	31
Walnut Creek	10270103	39.35	95.46	39.4	95.34	51
Wolfley Creek	10270103	39.64	95.76	39.76	95.91	27
Subbasin: Lower Kansas						
Baldwin Creek	10270104	39.01	95.27	38.97	95.36	69
Brush Creek	10270104	39.25	95.08	39.29	95.06	49
Brush Creek, WEST	10270104	39.31	95.11	39.33	95.19	46
Buttermilk Creek	10270104	39.36	95.11	39.38	95.19	44
Camp Creek	10270104	39.48	95.23	39.57	95.29	41
Camp Creek	10270104	38.96	94.92	38.88	94.92	74
Captain Creek	10270104	38.97	95.04	38.76	95.13	72
Chicken Creek	10270104	38.87	95.34	38.81	95.33	79
Clear Creek	10270104	39.02	94.82	38.97	94.89	383
Cow Creek	10270104	39.03	95.1	39.08	95.1	58
Crooked Creek	10270104	39.46	95.19	39.43	95.24	10
Crooked Creek	10270104	39.43	95.24	39.3	95.3	12
Dawson Creek	10270104	39.33	95.11	39.35	95.21	45
Elk Creek	10270104	38.89	95.48	38.78	95.54	68
Fall Creek	10270104	39.23	95.07	39.23	95.13	52
Hanson Creek	10270104	38.96	94.97	38.96	94.98	436
Hanson Creek	10270104	38.96	94.98	38.94	95.01	437
Hog Creek	10270104	39.13	95.01	39.09	94.96	54
Howard Creek	10270104	39.41	95.24	39.36	95.22	43
Hulls Branch	10270104	39.4	95.26	39.34	95.24	42
Indian Creek	10270104	39.29	95.2	39.35	95.22	48
Jarbalo Creek	10270104	39.19	95.05	39.19	95.14	51
Kent Creek	10270104	38.97	95.12	39.02	95.15	73
Kill Creek	10270104	38.98	94.96	38.82	94.97	37
Little Cedar Creek	10270104	38.92	94.89	38.85	94.83	76
Little Mill Creek	10270104	39.01	94.82	38.95	94.75	78
Little Turkey Creek	10270104	39.06	94.77	39.12	94.84	62
Little Wakarusa Creek	10270104	38.93	95.14	38.82	95.12	71
Mission Creek, East	10270104	39.06	94.83	39.12	94.85	61
Ninemile Creek	10270104	39.01	95.03	39.1	95.16	15
Ninemile Creek	10270104	39.1	95.16	39.2	95.22	17
Oakley Creek	10270104	39.04	95.36	38.99	95.36	56
Plum Creek	10270104	39.1	95.26	39.16	95.25	50
Prairie Creek	10270104	39.25	95.2	39.21	95.22	47
Rock Creek	10270104	38.87	95.43	38.77	95.53	35
Scatter Creek	10270104	39.28	95.17	39.25	95.25	13
Spoon Creek	10270104	38.92	94.98	38.81	95.01	75
Stone Horse Creek	10270104	39.03	95.33	39.15	95.32	57
Stranger Creek	10270104	39.1	95.02	39.23	95.07	7
Stranger Creek	10270104	39.28	95.11	39.46	95.19	8
Stranger Creek	10270104	39.46	95.19	39.57	95.38	9
Tonganoxie Creek	10270104	39.1	95.02	39.2	95.19	14
Tooley Creek	10270104	39.05	94.78	39.04	94.78	379
Turkey Creek	10270104	39.08	94.62	38.97	94.72	77
Unnamed Stream	10270104	39.43	95.24	39.43	95.31	11
Unnamed Stream	10270104	39.1	95.16	39.15	95.14	16
Wakarusa River, Middle Branch	10270104	38.9	95.85	38.93	95.92	64
Wakarusa River, South Branch	10270104	38.89	95.82	38.89	96.03	63
Washington Creek	10270104	38.92	95.29	38.8	95.41	36
Yankee Tank Creek	10270104	38.92	95.27	38.97	95.35	70
Subbasin: Lower Big Blue						
Ackerman Creek	10270205	39.7	96.36	39.82	96.35	49

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Black Vermillion River, Clear Fork	10270205	39.65	96.48	39.52	96.31	9
Black Vermillion River, North Fork	10270205	39.72	96.33	39.93	96.34	15
Black Vermillion River, South Fork	10270205	39.7	96.38	39.55	96.31	12
Bluff Creek	10270205	39.54	96.55	39.49	96.44	K37
Bommer Creek	10270205	39.93	96.62	39.93	96.56	40
Busksnort Creek	10270205	39.48	96.49	39.49	96.53	K33
Carter Creek	10270205	39.55	97.02	39.62	97	59
Cedar Creek	10270205	39.67	96.45	39.64	96.37	56
Corndodger Creek	10270205	39.62	96.53	39.72	96.55	52
De Shazer Creek	10270205	39.65	96.49	39.57	96.46	55
Deadman Creek	10270205	39.5	96.99	39.61	96.98	60
Deer Creek	10270205	39.9	96.65	40	96.67	36
Dog Walk Creek	10270205	39.75	96.46	39.74	96.53	53
Dutch Creek	10270205	39.78	96.68	39.81	96.74	44
Elm Creek	10270205	39.68	96.63	39.78	96.57	46
Elm Creek, North	10270205	39.97	96.6	39.95	96.46	41
Fancy Creek, North Fork	10270205	39.49	96.88	39.62	96.93	61
Fancy Creek, West	10270205	39.47	96.76	39.63	97.06	29
Game Fork	10270205	39.62	96.58	39.59	96.7	54
Hop Creek	10270205	39.8	96.68	39.87	96.78	43
Indian Creek	10270205	39.93	96.72	40.01	96.7	37
Jim Creek	10270205	39.62	96.44	39.61	96.36	57
Johnson Fork	10270205	39.66	96.47	39.73	96.54	51
Kearney Branch	10270205	39.64	96.32	39.65	96.25	58
Lily Creek	10270205	39.82	96.6	39.87	96.58	39
Little Indian Creek	10270205	39.95	96.77	40.02	96.75	35
Little Timber Creek	10270205	39.7	96.41	39.82	96.36	48
Meadow Creek	10270205	39.94	96.75	40	96.74	34
Mission Creek	10270205	40	96.6	40	96.46	22
Murdock Creek	10270205	40	96.46	39.97	96.4	42
Otter Creek	10270205	39.47	96.83	39.39	96.93	67
Otter Creek, North	10270205	39.47	96.77	39.58	96.82	62
Perkins Creek	10270205	39.76	96.46	39.76	96.56	47
Phiel Creek	10270205	39.25	96.59	39.24	96.65	68
Raemer Creek	10270205	39.9	96.7	39.88	96.78	33
Robidoux Creek	10270205	39.69	96.44	39.99	96.36	16
Schell Creek	10270205	39.82	96.62	39.78	96.59	45
School Branch	10270205	39.47	96.82	39.57	96.85	63
Scotch Creek	10270205	39.9	96.63	39.91	96.57	38
Spring Creek	10270205	39.83	96.66	39.93	96.47	19
Spring Creek	10270205	39.55	96.59	39.43	96.53	65
Timber Creek	10270205	39.54	96.62	39.59	96.67	64
Weyer Creek	10270205	39.77	96.24	39.74	96.11	50
Subbasin: Upper Little Blue						
Dry Creek	10270206	40.01	97.68	39.97	97.71	41
Subbasin: Lower Little Blue						
Ash Creek	10270207	39.81	97.04	39.75	97.14	36
Beaver Creek	10270207	39.79	96.88	39.72	96.96	38
Bolling Creek	10270207	39.74	96.82	39.81	96.83	42
Bowman Creek	10270207	39.87	97.24	40	97.32	21
Buffalo Creek	10270207	39.84	97.14	39.78	97.19	32
Camp Creek	10270207	39.81	97.06	39.76	97.15	35
Camp Creek	10270207	39.66	96.81	39.71	96.95	44
Cedar Creek	10270207	39.86	96.89	39.86	96.82	40
Cherry Creek	10270207	39.85	97.35	39.94	97.44	25
Coon Creek	10270207	39.7	96.76	39.7	97.07	23
Fawn Creek	10270207	39.69	96.7	39.61	96.74	45
Gray Branch	10270207	39.86	97.23	39.99	97.25	27
Humphrey Branch	10270207	40.01	97.44	39.98	97.41	24
Iowa Creek	10270207	39.86	97.2	39.8	97.26	34
Joy Creek	10270207	39.94	96.97	40.01	97.12	13
Jones Creek	10270207	39.87	97.22	39.95	97.23	29
Lane Branch	10270207	39.81	96.89	39.84	96.97	39
Malone Creek	10270207	39.78	96.87	39.73	96.92	37
Melvin Creek	10270207	39.85	97.16	39.79	97.2	33
Mercer Creek	10270207	39.75	96.83	39.72	96.89	43
Mill Creek, South Fork	10270207	39.85	97.33	39.85	97.52	31
Myer Creek	10270207	39.86	97.29	39.99	97.35	26

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Riddle Creek	10270207	39.84	97.13	40	97.2	17
Rose Creek	10270207	40	97.51	39.97	97.71	12
Salt Creek	10270207	39.85	97.18	39.99	97.21	19
School Creek	10270207	40	97.01	40	97.03	49
Silver Creek	10270207	40.02	97.23	39.99	97.23	28
Spring Creek	10270207	39.89	97.01	40	97.13	15
Spring Creek	10270207	39.91	97.1	39.96	97.11	30
Walnut Creek	10270207	39.72	96.77	39.86	96.79	41
Basin: Lower Arkansas						
Subbasin: Rattlesnake						
Bear Creek	11030009	38.05	98.82	37.98	98.9	8
Little Wild Horse Creek	11030009	38.04	98.84	37.95	98.97	6
Spring Creek	11030009	37.97	98.81	37.92	98.91	7
Wildhorse Creek	11030009	38.06	98.74	37.95	99.05	2
Subbasin: Gar-Peace						
Gar Creek	11030010	37.9	97.69	37.86	97.83	8
Subbasin: Cow						
Blood Creek	11030011	38.48	98.7	38.59	99.04	15
Calf Creek	11030011	38.44	98.43	38.59	98.48	16
Deception Creek	11030011	38.48	98.68	38.65	98.79	13
Dry Creek	11030011	38.24	98.09	38.37	98.08	22
Jarvis Creek	11030011	38.27	98.12	38.4	98.12	19
Little Cheyenne Creek	11030011	38.45	98.48	38.44	98.63	7
Little Cow Creek	11030011	38.31	98.19	38.55	98.24	2
Lost Creek	11030011	38.42	98.33	38.61	98.3	17
Owl Creek	11030011	38.31	98.18	38.43	98.16	18
Plum Creek	11030011	38.44	98.36	38.62	98.51	4
Salt Creek	11030011	38.31	98.21	38.39	98.18	21
Spring Creek	11030011	38.35	98.29	38.32	98.42	20
Subbasin: Little Arkansas						
Beaver Creek	11030012	38.11	97.32	38.14	97.24	26
Bull Creek	11030012	38.35	97.65	38.43	97.67	24
Dry Creek	11030012	38.34	97.97	38.35	98.05	22
Emma Creek	11030012	37.94	97.44	38	97.45	6
Emma Creek	11030012	38	97.45	38.27	97.36	7
Emma Creek, West	11030012	38	97.45	38.37	97.4	8
Gooseberry Creek	11030012	37.91	97.35	37.95	97.3	17
Horse Creek	11030012	38.42	98.02	38.52	98.08	19
Jester Creek	11030012	37.85	97.4	38.06	97.28	2
Jester Creek, East Fork	11030012	37.97	97.32	38.05	97.28	18
Kisiwa Creek	11030012	37.96	97.47	38.02	97.79	15
Lone Tree Creek	11030012	38.27	97.92	38.41	97.91	20
Mud Creek	11030012	37.98	97.39	38.08	97.36	16
Running Turkey Creek	11030012	38.27	97.62	38.42	97.47	25
Salt Creek	11030012	38.35	97.97	38.43	97.96	21
Sun Creek	11030012	38.12	97.6	38.25	97.65	11
Sun Creek	11030012	38.25	97.65	38.45	97.58	13
Turkey Creek	11030012	38.25	97.65	38.45	97.55	12
Subbasin: Middle Arkansas-Slate						
Antelope Creek	11030013	37.21	97.27	37.3	97.32	25
Badger Creek	11030013	37.18	97.23	37.13	97.28	31
Beaver Creek	11030013	37.23	97.38	37.32	97.34	29
Beaver Creek	11030013	37.16	97.1	37.25	97.07	33
Big Slough	11030013	37.6	97.39	37.78	97.73	11
Big Slough, South Fork	11030013	37.83	97.6	37.77	97.72	35
Bitter Creek	11030013	37.41	97.2	37.48	97.16	28
Dry Creek	11030013	37.72	97.49	37.7	97.55	15
Dry Creek	11030013	37.61	97.41	37.66	97.55	16
Gypsum Creek	11030013	37.64	97.31	37.75	97.23	5
Hargis Creek	11030013	37.23	97.39	37.34	97.35	24
Lost Creek	11030013	37.26	97.16	37.27	97.18	23
Negro Creek	11030013	37.08	97.09	37.04	97.14	20
Oak Creek	11030013	37.28	97.43	37.36	97.41	26

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Salt Creek	11030013	37.11	97.13	37.09	97.24	22
Spring Creek	11030013	37.08	97.09	37.07	97.17	19
Spring Creek	11030013	37.1	97.1	37.13	97.05	21
Spring Creek	11030013	37.3	97.46	37.4	97.5	27
Spring Creek	11030013	37.21	97.15	37.36	97.1	34
Spring Creek	11030013	37.51	97.27	37.61	97.18	37
Winser Creek	11030013	37.19	97.23	37.29	97.27	32
Subbasin: North Fork Ninnescah						
Crow Creek	11030014	37.85	97.92	37.92	97.93	11
Dooleyville Creek	11030014	37.91	98.52	37.96	98.64	8
Goose Creek	11030014	37.83	98.18	37.71	98.35	10
Ninnescah River, North Fork	11030014	37.57	97.71	37.73	97.79	1
Ninnescah River, North Fork	11030014	37.82	97.9	37.84	98.15	5
Ninnescah River, North Fork	11030014	37.84	98.15	37.84	98.75	6
Red Rock Creek	11030014	37.87	97.99	37.97	98.1	12
Rock Creek	11030014	37.7	97.78	37.78	97.74	13
Silver Creek	11030014	37.84	98.15	37.76	98.59	7
Spring Creek	11030014	37.62	97.74	37.76	97.71	14
Wolf Creek	11030014	37.83	98.32	37.83	98.41	9
Subbasin: South Fork Ninnescah						
Coon Creek	11030015	37.66	98.53	37.61	98.58	9
Coon Creek	11030015	37.55	97.9	37.53	98	17
Hunter Creek	11030015	37.64	98.08	37.55	98.2	14
Mead Creek	11030015	37.63	98.33	37.56	98.37	10
Mod Creek	11030015	37.57	97.72	37.54	97.8	19
Natrona Creek	11030015	37.66	98.63	37.72	98.69	K38
Negro Creek	11030015	37.63	98.05	37.57	98.08	13
Nester Creek	11030015	37.6	97.81	37.7	97.87	15
Ninnescah River, West Branch South Fork	11030015	37.64	98.77	37.62	98.95	5
Painter Creek	11030015	37.64	98.34	37.57	98.65	7
Pat Creek	11030015	37.63	98.31	37.56	98.33	11
Petyt Creek	11030015	37.63	98.23	37.56	98.29	12
Sand Creek	11030015	37.59	97.95	37.55	98.1	18
Spring Creek	11030015	37.7	97.98	37.78	98	8
Wild Run Creek	11030015	37.62	98.2	37.54	98.22	16
Subbasin: Ninnescah						
Afton Creek	11030016	37.6	97.64	37.61	97.63	5
Clearwater Creek	11030016	37.55	97.63	37.6	97.64	4
Clearwater Creek	11030016	37.6	97.64	37.72	97.66	7
Dry Creek	11030016	37.51	97.42	37.59	97.46	16
Elm Creek	11030016	37.43	97.38	37.41	97.47	10
Garvey Creek	11030016	37.47	97.43	37.42	97.46	11
Sand Creek	11030016	37.54	97.69	37.5	97.93	14
Silver Creek	11030016	37.47	97.47	37.42	97.53	12
Spring Creek	11030016	37.46	97.38	37.58	97.53	2
Spring Creek	11030016	37.51	97.56	37.62	97.58	15
Turtle Creek	11030016	37.48	97.49	37.43	97.53	13
Subbasin: Kaw Lake						
Blue Branch	11060001	37.3	96.69	37.34	96.72	30
Bullington Creek	11060001	37.23	96.71	37.26	96.61	28
Cedar Creek	11060001	37.31	96.68	37.4	96.53	32
Chilocco Creek	11060001	36.98	97.06	37.05	97.16	19
Crabb Creek	11060001	37.13	96.78	37.19	96.61	29
Ferguson Creek	11060001	37.46	96.57	37.45	96.52	38
Franklin Creek	11060001	37.45	96.58	37.5	96.61	35
Gardners Branch	11060001	37.39	96.63	37.39	96.56	39
Goose Creek	11060001	37.39	96.64	37.46	96.64	34
Myers Creek	11060001	36.97	96.81	37.03	96.74	24
Otter Creek	11060001	37.02	96.9	37.05	96.83	20
Pebble Creek	11060001	37.18	96.85	37.23	96.77	26
Plum Creek	11060001	37.28	96.78	37.32	96.73	33
Riley Creek	11060001	37.46	96.57	37.47	96.51	37
School Creek	11060001	37.26	96.69	37.29	96.63	31
Shellrock Creek	11060001	37.01	96.81	37.07	96.75	22
Silver Creek	11060001	37.06	96.87	37.34	96.76	17

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Snake Creek	11060001	37.22	96.83	37.31	96.82	25
Spring Creek	11060001	36.97	96.7	37.08	96.72	21
Turkey Creek	11060001	37.2	96.71	37.26	96.75	27
Wagoner Creek	11060001	37.47	96.56	37.52	96.5	36
Subbasin: Upper Salt Fork Arkansas						
Ash Creek	11060002	37.15	98.99	37.2	98.93	20
Big Sandy Creek	11060002	37.03	98.86	37.24	98.88	5
Cave Creek	11060002	37.07	98.97	37.02	99.05	28
Deadman Creek	11060002	37.13	98.85	37.24	98.9	22
Dog Creek	11060002	37.12	99.08	37.17	99.11	29
Hackberry Creek	11060002	36.98	98.81	37.16	98.8	23
Indian Creek	11060002	37.12	99.04	37.28	99.16	9
Inman Creek	11060002	37.19	99	37.27	98.94	21
Mustang Creek	11060002	37.09	99.14	36.97	99.19	31
Nescatunga Creek, East Branch	11060002	37.18	99.21	37.3	99.21	27
Red Creek	11060002	37.11	99.05	36.98	99.11	16
Spring Creek	11060002	37.32	99.12	37.39	99.16	24
Wildcat Creek	11060002	37.12	99.09	37.22	99.13	12
Yellowstone Creek	11060002	36.99	98.84	36.98	98.86	17
Subbasin: Medicine Lodge						
Amber Creek	11060003	37.38	98.59	37.49	98.64	12
Antelope Creek	11060003	37.24	98.56	37.31	98.51	22
Bear Creek	11060003	37.36	98.88	37.3	98.99	13
Bitter Creek	11060003	37.31	98.73	37.24	98.79	18
Cedar Creek	11060003	37.28	98.63	37.2	98.8	20
Cottonwood Creek	11060003	37.36	98.85	37.43	98.85	16
Crooked Creek	11060003	37.41	98.65	37.5	98.67	11
Litle Mule Creek	11060003	36.93	98.52	37.19	98.77	9
Dry Creek	11060003	37.14	98.66	37.19	98.74	21
Elm Creek, East Branch South	11060003	37.43	98.77	37.54	98.83	10
Elm Creek, North Branch	11060003	37.43	98.68	37.56	98.78	4
Elm Creek, South Branch	11060003	37.43	98.68	37.56	98.89	5
Little Bear Creek	11060003	37.31	98.76	37.22	98.81	19
Medicine Lodge River, North Branch	11060003	37.45	99.2	37.53	99.28	24
Mulberry Creek	11060003	37.37	98.89	37.5	98.89	14
Otter Creek	11060003	37.43	99.12	37.39	99.16	25
Puckett Creek	11060003	37.35	98.84	37.31	98.87	15
Sand Creek	11060003	37.33	98.76	37.4	98.75	17
Soldier Creek	11060003	37.44	99.04	37.61	99.04	27
Stink Creek	11060003	36.94	98.43	37.05	98.53	28
Turkey Creek	11060003	37.37	98.92	37.6	98.99	7
Wilson Slough	11060003	37.17	98.54	37.23	98.52	23
Subbasin: Lower Salt Fork Arkansas						
Camp Creek	11060004	37.13	98.24	37.27	98.25	68
Cooper Creek	11060004	36.97	98.06	37.07	98.06	71
Crooked Creek	11060004	36.97	97.93	37.04	97.92	24
Little Sandy Creek	11060004	36.96	98.27	37.37	98.49	39
Little Sandy Creek, East Branch	11060004	37.24	98.41	37.37	98.5	65
Osage Creek	11060004	36.9	97.79	37	97.8	17
Plum Creek	11060004	37.06	98.22	37.14	98.18	70
Pond Creek	11060004	36.98	97.87	37.04	97.89	18
Rush Creek	11060004	36.98	98.19	37.01	98.12	69
Salty Creek	11060004	36.99	98.3	37.18	98.45	40
Sandy Creek	11060004	36.98	98.21	37.36	98.33	37
Sandy Creek, West	11060004	37.2	98.32	37.36	98.38	56
Spring Creek	11060004	37.16	98.35	37.31	98.38	66
Unnamed Stream	11060004	36.97	97.96	37.03	97.99	25
Subbasin: Chikaskia						
Allen Creek	11060005	37.47	98.28	37.55	98.36	40
Baehr Creek	11060005	37.08	97.86	37.22	97.9	22
Beaver Creek	11060005	37.2	97.63	37.35	97.62	28
Beaver Creek	11060005	37.12	98.06	37.17	98.17	46
Big Spring Creek	11060005	37.42	97.95	37.52	97.98	34
Bitter Creek	11060005	36.95	97.26	37.13	97.28	4
Bitter Creek, East	11060005	36.99	97.23	37.07	97.19	16

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Blue Stem Creek	11060005	37.45	98.01	37.53	98.04	48
Chicken Creek	11060005	37.4	98.5	37.48	98.54	36
Copper Creek	11060005	37.44	98.03	37.5	98.06	42
Dry Creek	11060005	36.95	97.34	37.01	97.3	17
Duck Creek	11060005	37.43	97.97	37.53	98.02	32
Fall Creek	11060005	37	97.56	37.2	97.82	14
Fall Creek, East Branch	11060005	37.09	97.69	37.18	97.7	27
Goose Creek	11060005	37.41	98.3	37.44	98.35	38
Kemp Creek	11060005	37.46	98.26	37.51	98.27	49
Long Creek	11060005	37.18	97.56	37.26	97.54	529
Meridian Creek	11060005	37	97.38	37.16	97.34	20
Prairie Creek	11060005	37.13	97.59	37.15	97.75	512
Prairie Creek, East	11060005	37.15	97.57	37.28	97.53	516
Prairie Creek, West	11060005	37.15	97.57	37.31	97.56	527
Red Creek	11060005	37.44	98.07	37.54	98.18	43
Rock Creek	11060005	37.11	97.97	37.24	97.99	23
Rodgers Branch	11060005	37.08	97.55	37.17	97.52	26
Rose Bud Creek	11060005	37.45	98.08	37.54	98.09	44
Rush Creek	11060005	37.17	98.1	37.37	98.13	45
Sand Creek	11060005	37.44	98.2	37.58	98.79	11
Sand Creek, East	11060005	37.25	97.78	37.38	98.16	12
Sandy Creek	11060005	37.34	97.86	37.45	97.85	30
Shoo Fly Creek, East	11060005	37.09	97.44	37.17	97.4	19
Shore Creek	11060005	37.24	97.68	37.37	97.67	35
Silver Creek	11060005	37.25	97.69	37.37	97.7	29
Skunk Creek	11060005	37.39	98.37	37.45	98.44	39
Spring Branch	11060005	37.07	97.83	37.2	97.85	21
Wild Horse Creek	11060005	37.44	98.16	37.55	98.2	4
Wildcat Creek	11060005	37.1	97.95	37.03	98.02	24
Basin: Marais Des Cygnes Subbasin: Upper Marais Des Cygnes						
Appanoose Creek	10290101	38.62	95.33	38.77	95.49	16
Appanoose Creek, East	10290101	38.68	95.43	38.75	95.44	89
Batch Creek	10290101	38.8	95.97	38.87	96.04	86
Blue Creek	10290101	38.6	95.35	38.63	95.4	81
Bradshaw Creek	10290101	38.21	95.25	38.15	95.28	75
Cedar Creek	10290101	38.33	95.26	38.16	95.47	66
Cherry Creek	10290101	38.24	95.47	38.22	95.53	74
Chicken Creek	10290101	38.69	96.05	38.81	96.09	70
Chicken Creek	10290101	38.52	95.67	38.57	95.68	93
Coal Creek	10290101	38.59	95.4	38.49	95.44	48
Dry Creek	10290101	38.36	95.2	38.42	95.21	57
Dry Creek	10290101	38.56	95.52	38.58	95.63	95
Duck Creek	10290101	38.54	95.95	38.64	96.16	41
Eightmile Creek	10290101	38.62	95.29	38.69	95.34	13
Frog Creek	10290101	38.52	95.61	38.36	95.81	42
Hard Fish Creek	10290101	38.59	95.47	38.52	95.47	47
Hickory Creek	10290101	38.58	95.11	38.68	95.03	8
Hill Creek	10290101	38.6	96.05	38.69	96.2	71
Iantha Creek	10290101	38.34	95.34	38.42	95.51	62
Jersey Creek	10290101	38.6	95.74	38.65	95.79	76
Kenoma Creek	10290101	38.32	95.38	38.41	95.52	64
Little Rock Creek	10290101	38.45	95.59	38.4	95.55	73
Long Creek	10290101	38.52	95.61	38.46	95.69	K36
Locust Creek	10290101	38.77	96.12	38.79	96.2	69
Middle Creek	10290101	38.57	95.13	38.48	95.44	50
Mosquito Creek	10290101	38.45	95.07	38.48	95.14	52
Mud Creek	10290101	38.57	95.33	38.54	95.39	49
Mud Creek	10290101	38.7	95.78	38.65	95.83	78
Mud Creek	10290101	38.51	95.92	38.49	96	91
Mute Creek	10290101	38.6	95.8	38.59	95.91	92
Ottawa Creek	10290101	38.59	95.16	38.63	95.19	K25
Plum Creek	10290101	38.5	94.95	38.59	94.99	2
Plum Creek	10290101	38.72	95.86	38.7	95.94	79
Popcorn Creek	10290101	38.69	95.73	38.77	95.73	87
Pottawatomie Creek, North Fork	10290101	38.32	95.38	38.35	95.58	65
Pottawatomie Creek, South Fork	10290101	38.38	95.14	38.13	95.15	67
Rock Creek	10290101	38.53	95.58	38.35	95.57	43
Rock Creek	10290101	38.6	95.23	38.53	95.34	97
Sac Branch, South Fork	10290101	38.43	95.11	38.44	95.2	54

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Sac Creek	10290101	38.34	95.3	38.47	95.44	60
Salt Creek	10290101	38.59	95.51	38.73	95.99	29
Sand Creek	10290101	38.65	95.3	38.69	95.29	82
Smith Creek	10290101	38.71	95.81	38.69	95.92	77
Spring Creek	10290101	38.69	95.34	38.71	95.39	84
Switzler Creek	10290101	38.71	95.79	38.84	95.92	80
Tauy Creek	10290101	38.59	95.16	38.83	95.27	11
Tauy Creek, West Fork	10290101	38.63	95.19	38.71	95.27	K26
Tequa Creek	10290101	38.54	95.54	38.49	95.52	44
Tequa Creek, East Branch	10290101	38.49	95.52	38.48	95.45	46
Tequa Creek, South Branch	10290101	38.49	95.52	38.42	95.51	45
Thomas Creek	10290101	38.27	95.4	38.18	95.51	72
Turkey Creek	10290101	38.58	95.09	38.59	95.08	4
Turkey Creek	10290101	38.59	95.08	38.6	95.01	6
Unnamed Stream	10290101	38.59	95.08	38.59	95.02	5
Walnut Creek	10290101	38.63	95.19	38.76	95.14	90
West Fork Eight Mile Creek	10290101	38.71	95.35	38.79	95.4	88
Willow Creek	10290101	38.51	95.59	38.43	95.63	94
Wilson Creek	10290101	38.62	95.28	38.69	95.27	83
Wolf Creek	10290101	38.52	95.62	38.58	95.65	96
Subbasin: Lower Marais Des Cygnes						
Buck Creek	10290102	38.14	94.89	38.09	94.93	44
Bull Creek	10290102	38.73	94.96	38.82	94.98	99
Davis Creek	10290102	38.25	94.88	38.32	94.95	38
Dorsey Creek	10290102	38.56	94.85	38.63	94.82	22
Elm Branch	10290102	38.71	94.8	38.69	94.74	48
Elm Branch	10290102	38.47	94.81	38.54	94.77	53
Elm Creek	10290102	38.36	94.83	38.34	94.96	40
Hushpuckney Creek	10290102	38.4	94.87	38.44	94.93	37
Jake Branch	10290102	38.5	94.71	38.55	94.71	54
Jordan Branch	10290102	38.48	94.91	38.45	94.92	36
Little Bull Creek	10290102	38.72	94.87	38.83	94.89	51
Little Sugar Creek	10290102	38.24	94.74	38.11	95.01	33
Little Sugar Creek, North Fork	10290102	38.14	94.91	38.08	94.96	43
Martin Creek	10290102	38.76	94.81	38.77	95.06	26
Middle Creek	10290102	38.49	94.75	38.52	94.63	13
Middle Creek	10290102	38.37	94.81	38.34	95.09	30
Mound Creek	10290102	38.39	94.96	38.39	95.05	35
Richland Creek	10290102	38.25	94.81	38.31	94.87	41
Rock Creek	10290102	38.7	94.99	38.78	95.07	27
Smith Branch	10290102	38.7	94.94	38.73	94.92	47
Spring Creek	10290102	38.73	94.87	38.78	94.82	50
Sugar Creek	10290102	38.2	95	38.24	95.17	42
Turkey Creek	10290102	38.24	94.85	38.19	94.91	45
Walnut Creek	10290102	38.49	94.75	38.54	94.74	14
Walnut Creek	10290102	38.12	94.6	38.11	94.67	34
Walnut Creek	10290102	38.58	94.89	38.62	94.99	52
WEA Creek, North	10290102	38.6	94.78	38.74	94.68	21
WEA Creek, South	10290102	38.55	94.86	38.56	94.85	18
WEA Creek, South	10290102	38.56	94.85	38.6	94.79	19
WEA Creek, South	10290102	38.6	94.78	38.59	94.63	20
Subbasin: Little Osage						
Clever Creek	10290103	38.02	94.76	37.95	94.79	7
Elk Creek	10290103	38.02	94.77	38.1	94.86	11
Fish Creek	10290103	38.01	94.7	37.95	94.77	8
Indian Creek	10290103	38	94.64	38.11	94.68	12
Irish Creek	10290103	38.02	94.99	38.08	94.98	9
Laberdie Creek, East	10290103	38.02	94.72	38.1	94.71	13
Limestone Creek	10290103	37.99	94.96	37.93	95.1	5
Lost Creek	10290103	38.02	94.8	38.07	94.94	10
Reagan Branch	10290103	37.98	94.94	37.94	94.95	6
Subbasin: Marmaton						
Buck Run	10290104	37.7	94.6	37.74	94.72	46
Bunion Creek	10290104	37.79	94.9	37.72	94.88	39
Cedar Creek	10290104	37.82	94.79	37.87	94.84	41
Drywood Creek, Moores Branch	10290104	37.77	94.53	37.79	94.7	17
Drywood Creek, West Fork	10290104	37.7	94.6	37.6	94.8	19

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Elm Creek	10290104	37.79	94.82	37.73	94.87	15
Hinton Creek	10290104	37.77	94.96	37.74	95.06	38
Lath Branch	10290104	37.85	94.66	37.82	94.68	42
Little Mill Creek	10290104	37.91	94.81	37.96	94.82	34
Mill Creek	10290104	37.85	94.7	37.93	94.92	6
Owl Creek	10290104	37.75	94.95	37.69	94.92	45
Paint Creek	10290104	37.8	94.82	37.79	94.82	13
Paint Creek	10290104	37.79	94.82	37.7	94.97	14
Prong Creek	10290104	37.73	94.97	37.72	94.99	44
Robinson Branch	10290104	37.83	94.87	37.87	94.87	40
Shiloh Creek	10290104	37.86	94.59	37.95	94.67	36
Sweet Branch	10290104	37.87	95.11	37.92	95.11	30
Tennyson Creek	10290104	37.83	95	37.88	95.03	31
Turkey Creek	10290104	37.85	94.95	37.92	95	33
Walnut Creek	10290104	37.84	94.9	37.9	94.91	32
Walnut Creek	10290104	37.68	94.7	37.72	94.74	47
Wolfpen Creek	10290104	37.8	95.06	37.74	95.08	37
Wolverine Creek	10290104	37.87	94.68	37.93	94.72	35
Subbasin: South Grand						
Harless Creek	10290108	38.59	94.57	38.59	94.62	67
Poney Creek	10290108	38.64	94.61	38.68	94.64	48
Basin: Missouri **Subbasin: Tarkio-Wolf**						
Cold Ryan Branch	10240005	39.79	95.22	39.74	95.19	70
Coon Creek	10240005	39.84	95.17	39.78	95.12	71
Halling Creek	10240005	39.78	95.29	39.7	95.32	68
Mill Creek	10240005	39.95	95.25	39.86	95.29	52
Rittenhouse Branch	10240005	39.8	95.21	39.83	95.27	69
Spring Creek	10240005	39.91	95.3	39.92	95.34	65
Striker Branch	10240005	39.86	95.18	39.84	95.24	72
Wolf River, Middle Fork	10240005	39.81	95.44	39.74	95.55	67
Wolf River, North Fork	10240005	39.81	95.48	39.84	95.56	66
Wolf River, South Fork	10240005	39.81	95.38	39.65	95.34	57
Unnamed Stream	10240005	39.81	95.38	39.84	95.35	55
Subbasin: South Fork Big Nemaha						
Burger Creek	10240007	39.94	96.08	39.99	96.11	24
Deer Creek	10240007	39.92	96.03	39.93	95.85	18
Fisher Creek	10240007	39.82	96.06	39.79	96.12	28
Illinois Creek	10240007	39.78	96.05	39.68	96.05	30
Rattlesnake Creek	10240007	40.05	95.86	39.98	95.87	27
Rock Creek	10240007	40.06	95.72	39.94	95.86	20
Tennessee Creek	10240007	39.81	96.06	39.73	95.94	29
Turkey Creek	10240007	39.95	96.04	39.98	96.15	4
Turkey Creek	10240007	39.98	96.15	40.02	96.14	5
Wildcat Creek	10240007	39.88	96.04	39.83	96.16	23
Wildcat Creek	10240007	40	96.24	40	96.22	22
Wolf Pen Creek	10240007	39.92	95.99	39.96	95.91	25
Subbasin: Big Nemaha						
*Noharts Creek	10240008	40.01	95.45	39.92	95.47	42
Pedee Creek	10240008	39.98	95.68	40	95.73	41
Pony Creek	10240008	40	95.62	39.91	95.8	38
*Roys Creek	10240008	40.02	95.39	39.9	95.49	40
Subbasin: Independence-Sugar						
Brush Creek	10240011	39.67	95.03	39.75	95.07	26
Deer Creek	10240011	39.62	95.1	39.57	95.25	32
Fivemile Creek	10240011	39.3	94.9	39.3	94.97	35
Independence Creek, North Branch	10240011	39.67	95.2	39.69	95.29	29
Jordan Creek	10240011	39.66	95.19	39.74	95.15	30
Owl Creek	10240011	39.47	95.05	39.43	95.09	33
Rock Creek	10240011	39.64	95.11	39.76	95.12	21
Salt Creek	10240011	39.39	94.94	39.3	95.03	34
Smith Creek	10240011	39.85	94.94	39.84	94.97	28
Threemile Creek	10240011	39.32	94.91	39.32	94.97	36

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Walnut Creek	10240011	39.5	95.05	39.52	95.18	23
Walnut Creek	10240011	39.73	94.97	39.76	95.05	25
White Clay Creek	10240011	39.56	95.11	39.56	95.12	31
White Clay Creek	10240011	39.56	95.12	39.56	95.13	31
White Clay Creek	10240011	39.56	95.13	39.53	95.2	31
Whiskey Creek	10240011	39.54	95.11	39.53	95.11	235 00.00
Whiskey Creek	10240011	39.53	95.11	39.52	95.14	235 00.32
Subbasin: Lower Missouri-Crooked						
Brush Creek	10300101	39.02	94.62	39	94.62	54
Camp Branch	10300101	38.83	94.63	38.74	94.66	56
Coffee Creek	10300101	38.81	94.68	38.82	94.78	57
Dyke Branch	10300101	38.97	94.61	38.98	94.63	55
Indian Creek	10300101	38.94	94.61	38.9	94.76	32
Negro Creek	10300101	38.86	94.61	38.85	94.69	58
Tomahawk Creek	10300101	38.93	94.62	38.87	94.76	53
Basin: Neosho **Subbasin: Neosho Headwaters**						
Allen Creek	11070201	38.44	96.19	38.69	96.23	5
Badger Creek	11070201	38.39	96.06	38.52	96.09	45
Big John Creek	11070201	38.62	96.44	38.74	96.4	37
Bluff Creek	11070201	38.63	96.37	38.74	96.21	8
Crooked Creek	11070201	38.75	96.64	38.68	96.67	35
Dows Creek	11070201	38.43	96.16	38.44	96.19	3
Dows Creek	11070201	38.44	96.19	38.65	96.19	4
Eagle Creek	11070201	38.28	95.88	38.26	96.21	25
Eagle Creek, South	11070201	38.27	96.04	38.22	96.14	47
East Creek	11070201	38.62	96.46	38.54	96.63	39
Elm Creek	11070201	38.65	96.48	38.65	96.66	36
Fourmile Creek	11070201	38.65	96.66	38.66	96.67	24
Fourmile Creek	11070201	38.27	95.95	38.18	96.02	48
Haun Creek	11070201	38.75	96.65	38.64	96.72	29
Horse Creek	11070201	38.75	96.31	38.82	96.32	33
Kahola Creek	11070201	38.54	96.33	38.52	96.47	43
Lairds Creek	11070201	38.73	96.58	38.86	96.59	30
Lanos Creek	11070201	38.72	96.54	38.86	96.56	21
Lebo Creek	11070201	38.3	95.91	38.41	95.84	51
Munkers Creek, East Branch	11070201	38.79	96.41	38.83	96.33	31
Munkers Creek, Middle Branch	11070201	38.77	96.45	38.81	96.39	32
Neosho River, East Fork	11070201	38.73	96.5	38.83	96.35	18
Neosho River, West Fork	11070201	38.76	96.71	38.67	96.79	28
Parkers Creek	11070201	38.76	96.67	38.83	96.68	27
Plum Creek	11070201	38.34	95.98	38.43	95.96	50
Plumb Creek	11070201	38.43	96.12	38.51	96.1	49
Rock Creek	11070201	38.62	96.37	38.63	96.37	7
Rock Creek	11070201	38.63	96.37	38.81	96.2	9
Rock Creek, East Branch	11070201	38.75	96.3	38.82	96.23	34
Spring Creek	11070201	38.6	96.51	38.54	96.53	40
Stillman Creek	11070201	38.47	96.17	38.55	96.18	44
Taylor Creek	11070201	38.44	96.16	38.52	96.1	46
Walker Branch	11070201	38.59	96.4	38.57	96.46	42
Wolf Creek	11070201	38.6	96.49	38.54	96.5	41
Wrights Creek	11070201	38.55	96.35	38.64	96.28	38
Subbasin: Upper Cottonwood						
Antelope Creek	11070202	38.32	97.15	38.22	97.26	19
Bills Creek	11070202	38.15	96.8	38.08	96.87	30
Bruno Creek	11070202	38.26	96.83	38.37	96.89	27
Catlin Creek	11070202	38.27	96.97	38.24	97.15	20
Clear Creek	11070202	38.36	97.02	38.6	96.92	5
Clear Creek, East Branch	11070202	38.44	96.96	38.53	96.9	24
Coon Creek	11070202	38.24	96.81	38.22	96.69	32
Cottonwood River, South	11070202	38.36	97.07	38.32	97.15	17
Cottonwood River, South	11070202	38.32	97.15	38.41	97.34	18
Doyle Creek	11070202	38.24	96.91	38.21	97.26	21
French Creek	11070202	38.39	97.17	38.43	97.33	6
Mud Creek	11070202	38.36	97.02	38.57	97.17	6
Perry Creek	11070202	38.51	97.3	38.43	97.33	23
Spring Branch	11070202	38.31	97.02	38.25	97.16	26

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Spring Creek	11070202	38.16	97.11	38.22	97.21	28
Spring Creek	11070202	38.23	96.93	38.12	96.92	29
Stony Brook	11070202	38.31	97.26	38.24	97.31	25
Turkey Creek	11070202	38.19	96.82	38.09	96.87	31
Subbasin: Lower Cottonwood						
Beaver Creek	11070203	38.41	96.33	38.47	96.35	29
Bloody Creek	11070203	38.37	96.45	38.24	96.4	40
Buck Creek	11070203	38.37	96.53	38.32	96.61	39
Buckeye Creek	11070203	38.4	96.37	38.5	96.47	44
Bull Creek	11070203	38.39	96.38	38.46	96.45	26
Camp Creek	11070203	38.58	96.81	38.58	96.9	14
Coal Creek	11070203	38.36	96.08	38.28	96.24	43
Collett Creek	11070203	38.4	96.71	38.47	96.75	21
Corn Creek	11070203	38.17	96.55	38.16	96.5	47
Coyne Branch	11070203	38.29	96.74	38.23	96.69	33
Crocker Creek	11070203	38.18	96.56	38.15	96.64	46
Dodds Creek	11070203	38.55	96.74	38.63	96.71	15
Fox Creek	11070203	38.39	96.55	38.52	96.63	19
French Creek	11070203	38.27	96.77	38.36	96.83	32
Gannon Creek	11070203	38.42	96.65	38.48	96.59	24
Gould Creek	11070203	38.35	96.67	38.37	96.71	36
Holmes Creek	11070203	38.32	96.69	38.28	96.68	35
Jacob Creek	11070203	38.4	96.36	38.28	96.35	28
Kirk Creek	11070203	38.21	96.56	38.2	96.62	48
Little Cedar Creek	11070203	38.1	96.54	38.06	96.43	11
Little Cedar Creek	11070203	38.15	96.55	38.13	96.42	45
Middle Creek	11070203	38.38	96.63	38.55	96.89	5
Mile-and-A-Half Creek	11070203	38.56	96.77	38.66	96.8	13
Moon Creek	11070203	38.4	96.27	38.47	96.3	31
Mulvane Creek	11070203	38.44	96.66	38.5	96.64	22
Peyton Creek	11070203	38.38	96.42	38.5	96.51	25
Phenis Creek	11070203	38.39	96.26	38.28	96.3	30
Pickett Creek	11070203	38.5	96.71	38.49	96.77	18
Prather Creek	11070203	38.39	96.55	38.33	96.61	23
Rock Creek	11070203	38.26	96.54	38.18	96.65	37
Schaffer Creek	11070203	38.48	96.69	38.55	96.65	17
School Creek	11070203	38.51	96.71	38.57	96.68	16
Sharpes Creek	11070203	38.27	96.52	38.15	96.44	38
Silver Creek	11070203	38.31	96.72	38.37	96.79	34
Spring Creek	11070203	38.37	96.43	38.32	96.4	41
Stout Run	11070203	38.37	96.48	38.44	96.52	27
Stribby Creek	11070203	38.41	96.78	38.51	96.79	20
Subbasin: Upper Neosho						
Badger Creek	11070204	38.15	95.65	38.2	95.6	42
Big Creek, North	11070204	38.09	95.73	38.16	96	16
Big Creek, South	11070204	38.09	95.73	38.13	95.97	17
Bloody Run	11070204	37.81	95.49	37.88	95.52	25
Carlyle Creek	11070204	37.98	95.39	38.07	95.37	47
Charles Branch	11070204	37.82	95.39	37.87	95.4	27
Cherry Creek	11070204	37.85	95.58	38	95.71	20
Coal Creek	11070204	37.77	95.45	37.86	95.26	4
Cottonwood Creek	11070204	37.97	95.41	38.02	95.42	48
Crooked Creek	11070204	38.06	95.63	38.26	95.57	44
Draw Creek	11070204	37.65	95.34	37.72	95.36	34
Goose Creek	11070204	37.74	95.28	37.82	95.27	29
Long Creek	11070204	38.11	95.67	38.37	95.61	12
Martin Creek	11070204	37.98	95.48	38.09	95.38	49
Mud Creek	11070204	37.78	95.45	37.78	95.52	26
Mud Creek	11070204	37.79	95.22	37.86	95.24	31
Onion Creek	11070204	37.85	95.47	37.92	95.51	24
Owl Creek	11070204	37.79	95.45	37.85	95.58	19
Owl Creek	11070204	37.85	95.58	37.93	95.88	21
Plum Creek	11070204	37.87	95.59	37.94	95.6	22
Rock Creek	11070204	37.9	95.42	37.97	95.21	7
Rock Creek	11070204	37.98	95.52	37.95	95.6	23
Rock Creek	11070204	38.18	95.73	38.18	95.8	15
Rock Creek	11070204	38.18	95.8	38.17	95.82	32
School Creek	11070204	38.3	95.64	38.35	95.64	38

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Scott Creek	11070204	38.18	95.64	38.28	95.58	40
Slack Creek	11070204	37.8	95.4	37.8	95.31	30
Spring Creek	11070204	38.01	95.55	38.12	95.52	46
Sutton Creek	11070204	37.71	95.41	37.74	95.37	35
Turkey Branch	11070204	37.71	95.31	37.77	95.34	28
Turkey Creek	11070204	38.07	95.67	37.92	95.89	18
Turkey Creek	11070204	37.64	95.41	37.61	95.53	32
Twiss Creek	11070204	38.03	95.58	38.12	95.52	45
Varvel Creek	11070204	38.07	95.83	38.12	95.9	43
Village Creek	11070204	37.71	95.42	37.63	95.6	33
Wolf Creek	11070204	38.15	95.71	38.33	95.67	37
Subbasin: Middle Neosho						
Bachelor Creek	11070205	37.5	95.21	37.45	95.23	40
Canville Creek	11070205	37.56	95.3	37.74	95.1	16
Center Creek	11070205	37.1	95.04	37.15	94.93	25
Cherry Creek	11070205	37.08	95.07	37.32	94.83	4
Deer Creek	11070205	37.1	95.19	37.23	95.3	27
Denny Branch	11070205	37.18	94.97	37.18	94.88	31
Elk Creek	11070205	37.6	95.33	37.5	95.46	19
Elm Creek	11070205	37.47	94.92	37.54	94.95	43
Flat Rock Creek	11070205	37.5	95.16	37.56	95.13	12
Flat Rock Creek	11070205	37.56	95.13	37.71	95.02	14
Fourmile Creek	11070205	37.53	95.21	37.66	95.16	49
Grindstone Creek	11070205	37.42	94.94	37.48	94.98	42
Hickory Creek	11070205	37.34	95.1	37.54	94.98	10
Lake Creek	11070205	37.1	95.16	37	95.29	24
Lightning Creek	11070205	37.18	95.07	37.35	94.96	6
Lightning Creek	11070205	37.35	94.96	37.63	94.9	8
Limestone Creek	11070205	37.35	94.96	37.43	94.82	7
Little Cherry Creek	11070205	37.22	94.94	37.31	94.8	32
Little Elk Creek	11070205	37.57	95.41	37.51	95.42	47
Little Fly Creek	11070205	37.03	95.02	37.05	94.95	26
Little Labette Creek	11070205	37.31	95.24	37.45	95.44	23
Little Walnut Creek	11070205	37.57	95.09	37.69	95.03	46
Litup Creek	11070205	37.28	95.1	37.36	95.03	36
Mulberry Creek	11070205	37.33	94.97	37.44	94.99	35
Murphy Creek	11070205	37.47	95.13	37.52	95.05	41
Ogeese Creek	11070205	37.51	95.23	37.49	95.36	38
Pecan Creek	11070205	37.6	95.29	37.66	95.27	45
Plum Creek	11070205	37.31	95	37.31	94.92	34
Rock Creek	11070205	37.57	95.31	37.52	95.37	48
Spring Creek	11070205	37.21	95.2	37.23	95.29	30
Stink Branch	11070205	37.26	95.04	37.28	94.97	37
Thunderbolt Creek	11070205	37.41	94.93	37.52	94.85	44
Tolen Creek	11070205	37.35	95.25	37.41	95.22	39
Town Creek	11070205	37.02	95.06	37.04	95.16	28
Turkey Creek	11070205	37.08	95.13	37	95.22	29
Walnut Creek	11070205	37.56	95.13	37.66	94.97	13
Wolf Creek	11070205	37.36	94.91	37.36	94.83	33
Subbasin: Lake O'The Cherokees						
Fourmile Creek	11070206	36.99	94.94	37.07	94.88	18
Tar Creek	11070206	36.96	94.84	37.07	94.84	19
Subbasin: Spring						
Little Shawnee Creek	11070207	37.18	94.7	37.29	94.79	22
Long Branch	11070207	37.24	94.67	37.29	94.73	21
Shawnee Creek	11070207	37.09	94.69	37.25	94.8	17
Taylor Branch	11070207	37.29	94.67	37.38	94.61	25
Willow Creek	11070207	37.04	94.73	37.08	94.85	20
Basin: Smoky Hill/Saline **Subbasin: Middle Smoky Hill**						
Ash Creek	10260006	38.65	98.07	38.53	98.19	37
Big Timber Creek	10260006	38.71	99.27	38.64	99.32	24
Big Timber Creek	10260006	38.64	99.32	38.6	99.48	25
Big Timber Creek	10260006	38.6	99.48	38.67	99.74	27
Blood Creek	10260006	38.78	98.42	38.63	98.52	35

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Buck Creek	10260006	38.71	99.08	38.6	99.18	29
Buffalo Creek	10260006	38.74	98.3	38.89	98.32	6
Clear Creek	10260006	38.68	98.08	38.8	98.14	42
Coal Creek	10260006	38.79	98.49	38.63	98.58	34
Cow Creek	10260006	38.76	98.37	38.89	98.33	38
Eagle Creek	10260006	38.72	99.07	38.56	99.06	30
Fossil Creek	10260006	38.79	98.8	38.89	98.96	13
Goose Creek	10260006	38.79	98.7	38.63	98.76	39
Landon Creek	10260006	38.78	98.85	38.61	98.9	31
Loss Creek	10260006	38.74	98.32	38.65	98.38	44
Mud Creek	10260006	38.67	98.17	38.64	98.22	47
Oxide Creek	10260006	38.71	98.21	38.6	98.29	45
Sellens Creek	10260006	38.79	98.77	38.61	98.87	32
Shelter Creek	10260006	38.7	99.21	38.59	99.21	43
Skunk Creek	10260006	38.68	98.14	38.6	98.15	48
Spring Creek	10260006	38.78	98.43	38.74	98.48	41
Timber Creek	10260006	38.6	99.48	38.72	99.67	26
Turkey Creek	10260006	38.73	98.26	38.62	98.32	46
Unnamed Stream	10260006	38.72	99.34	38.87	99.47	20
Unnamed Stream	10260006	38.72	99.41	38.71	99.56	23
Unnamed Stream	10260006	38.64	99.32	38.59	99.32	28
Wilson Creek	10260006	38.79	98.45	38.86	98.49	40
Wolf Creek	10260006	38.75	98.35	38.65	98.48	36
Subbasin: Lower Smoky Hill						
Basket Creek	10260008	39.16	97.2	39.13	97.29	40
Battle Creek	10260008	38.54	97.45	38.42	97.48	23
Carry Creek	10260008	38.75	97.09	38.72	97.13	32
Carry Creek	10260008	38.87	96.92	38.71	97.11	35
Chapman Creek, West	10260008	39.21	97.3	39.27	97.49	5
Dry Creek	10260008	38.74	97.58	38.6	97.8	36
Dry Creek, East	10260008	38.85	97.53	38.76	97.53	43
Hobbs Creek	10260008	38.69	97.42	38.6	97.35	48
Holland Creek	10260008	38.88	97.25	38.74	97.29	25
Holland Creek, East	10260008	38.74	97.29	38.59	97.27	27
Holland Creek, West	10260008	38.74	97.29	38.59	97.31	26
Kentucky Creek	10260008	38.62	97.62	38.46	97.56	17
Kentucky Creek, West	10260008	38.52	97.61	38.47	97.62	54
Lone Tree Creek	10260008	38.95	97.08	39	97.12	41
Lyon Creek, West Branch	10260008	38.87	96.92	38.64	97.09	34
McAllister Creek	10260008	38.73	97.42	38.7	97.35	49
Middle Branch	10260008	38.61	97.2	38.55	97.2	58
Mud Creek	10260008	38.89	97.21	39.13	97.33	8
Otter Creek	10260008	38.95	96.85	38.9	96.82	42
Paint Creek	10260008	38.52	97.71	38.44	97.72	52
Pewee Creek	10260008	38.63	97.59	38.58	97.55	56
Sand Creek	10260008	38.6	97.93	38.7	97.98	46
Sharps Creek	10260008	38.53	97.76	38.5	97.94	16
Spring Creek	10260008	38.78	97.43	38.63	97.52	45
Stag Creek	10260008	38.68	97.42	38.6	97.53	19
Turkey Creek	10260008	38.88	97.19	38.8	97.18	28
Turkey Creek	10260008	38.8	97.18	38.58	97.25	30
Turkey Creek, East	10260008	38.69	97.16	38.57	97.09	50
Turkey Creek, West Branch	10260008	38.8	97.18	38.63	97.25	29
Unnamed Stream	10260008	38.72	96.95	38.72	96.94	K3
Unnamed Stream	10260008	38.71	97.06	38.71	97.07	K4
Unnamed Stream	10260008	38.73	96.97	38.74	96.99	K24
Wiley Creek	10260008	38.61	97.93	38.68	97.94	47
Subbasin: Upper Saline						
Cedar Creek	10260009	38.96	98.68	38.86	98.79	30
Chalk Creek	10260009	39.11	99.82	39.21	99.86	26
Coyote Creek	10260009	39.11	100.09	39.03	100.13	23
Eagle Creek	10260009	39.11	98.91	39.27	99.08	6
Happy Creek	10260009	39.12	99.84	39.24	99.98	25
Paradise Creek	10260009	38.98	98.79	39.11	98.91	5
Salt Creek	10260009	38.96	98.88	38.97	99.07	20
Spring Creek, East	10260009	39.09	99.35	39.23	99.45	10
Sweetwater Creek	10260009	39.06	99.1	39.02	99.19	29
Trego Creek	10260009	39.08	99.49	39.04	99.67	19

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Unnamed Stream	10260009	39.11	99.7	39.23	99.87	13
Wild Horse Creek	10260009	39.11	99.54	39.25	99.58	27
Subbasin: Lower Saline						
Bacon Creek	10260010	39.11	98.34	39.29	98.4	7
Blue Stem Creek	10260010	39.03	98.48	39	98.6	33
Coon Creek	10260010	39.11	98.68	39.22	98.73	31
Dry Creek	10260010	38.87	97.61	38.74	97.62	29
Eff Creek	10260010	38.88	97.79	38.82	97.9	23
Elkhorn Creek	10260010	39.01	98.09	38.84	98.18	17
Elkhorn Creek, West	10260010	38.96	98.1	38.84	98.2	38
Fourmile Creek	10260010	39.09	98.63	39.22	98.64	30
Lost Creek	10260010	39.04	98.16	39.12	98.17	34
Owl Creek	10260010	38.97	97.83	38.89	98	18
Owl Creek	10260010	38.99	97.96	38.88	98.02	39
Ralston Creek	10260010	38.76	97.8	38.63	97.84	28
Shaw Creek	10260010	38.96	97.77	38.92	97.8	41
Spillman Creek	10260010	39.03	98.21	39.11	98.34	6
Spillman Creek, North Branch	10260010	39.11	98.34	39.24	98.5	8
Spring Creek	10260010	38.99	98.21	38.85	98.21	16
Spring Creek	10260010	38.89	97.6	38.86	97.63	19
Spring Creek	10260010	38.86	97.63	38.84	97.7	20
Spring Creek	10260010	39.84	97.7	38.77	97.8	24
Spring Creek	10260010	38.77	97.8	38.76	97.8	26
Spring Creek	10260010	38.76	97.8	38.63	97.86	27
Table Rock Creek	10260010	38.86	97.95	38.81	98.03	40
Trail Creek	10260010	39.08	98.27	39.2	98.31	32
Twelvemile Creek	10260010	39.01	98.01	39.08	98.06	36
Twin Creek, West	10260010	38.99	98.38	38.9	98.42	37
West Spring Creek	10260010	38.77	97.8	38.75	98.01	25
Wolf Creek	10260010	39	98.43	39.05	98.51	10
Wolf Creek, East Fork	10260010	39.05	98.51	39.24	98.62	11
Wolf Creek, West Fork	10260010	39.05	98.51	39.18	98.83	12
Yauger Creek	10260010	39.03	98.15	39.11	98.15	35
Basin: Solomon **Subbasin: Upper North Fork Solomon**						
Ash Creek	10260011	39.66	99.4	39.78	99.49	24
Beaver Creek	10260011	39.67	99.56	39.81	99.6	23
Big Timber Creek	10260011	39.64	99.73	39.78	99.79	8
Bow Creek	10260011	39.56	99.28	39.45	100.23	15
Cactus Creek	10260011	39.66	99.58	39.8	99.7	28
Crooked Creek	10260011	39.66	99.55	39.82	99.68	6
Elk Creek	10260011	39.61	100	39.66	100.23	12
Elk Creek, East	10260011	39.62	99.92	39.73	100	25
Game Creek	10260011	39.62	99.8	39.76	99.84	10
Game Creek	10260011	39.66	99.83	39.75	99.83	27
Lost Creek	10260011	39.61	99.98	39.53	100.02	20
Sand Creek	10260011	39.64	99.75	39.73	99.82	26
Scull Creek	10260011	39.65	99.66	39.78	99.74	21
Spring Creek	10260011	39.58	100.16	39.52	100.13	19
Wolf Creek	10260011	39.67	99.47	39.79	99.55	22
Subbasin: Lower North Fork Solomon						
Beaver Creek	10260012	39.65	98.86	39.75	98.84	10
Beaver Creek, East Branch	10260012	39.75	98.84	39.95	98.81	11
Beaver Creek, Middle	10260012	39.75	98.84	39.75	98.85	12
Beaver Creek, Middle	10260012	39.75	98.85	39.97	98.97	13
Beaver Creek, West	10260012	39.75	98.85	39.96	99	14
Big Creek	10260012	39.72	99.19	39.92	99.27	26
Boughton Creek	10260012	39.77	99.41	39.9	99.45	34
Buck Creek	10260012	39.64	98.52	39.66	98.6	43
Cedar Creek	10260012	39.65	98.91	39.68	98.95	16
Cedar Creek	10260012	39.68	98.95	39.7	99	18
Cedar Creek, East	10260012	39.68	98.95	39.93	99.01	17
Cedar Creek, East Middle	10260012	39.88	99.06	39.97	99.06	37
Cedar Creek, Middle	10260012	39.7	99	39.95	99.13	19
Deer Creek	10260012	39.66	99.1	39.7	99.14	23
Deer Creek	10260012	39.7	99.14	39.72	99.19	25
Deer Creek	10260012	39.72	99.19	39.73	99.25	27

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Deer Creek	10260012	39.73	99.25	39.73	99.33	29
Deer Creek	10260012	39.73	99.33	39.85	99.64	31
Dry Creek	10260012	39.6	98.8	39.76	98.71	42
Glen Rock Creek	10260012	39.64	98.94	39.56	98.96	41
Lawrence Creek	10260012	39.57	98.74	39.54	98.88	44
Lindley Creek	10260012	39.56	98.7	39.65	98.7	45
Little Oak Creek	10260012	39.54	98.48	39.74	98.49	3
Medicine Creek	10260012	39.65	99.02	39.55	99.13	33
Oak Creek	10260012	39.5	98.46	39.54	98.48	2
Oak Creek	10260012	39.54	98.48	39.88	98.69	4
Oak Creek, East	10260012	39.68	98.55	39.84	98.55	40
Oak Creek, West	10260012	39.72	98.59	39.86	98.69	39
Plotner Creek	10260012	39.73	99.33	39.91	99.38	30
Plum Creek	10260012	39.7	99	39.94	99.19	20
Spring Creek	10260012	39.6	98.82	39.9	98.72	8
Spring Creek	10260012	39.73	99.25	39.92	99.33	28
Starvation Creek	10260012	39.67	99.1	39.9	99.49	38
Turner Creek	10260012	39.7	99.14	39.92	99.25	24
Subbasin: Upper South Fork Solomon						
Spring Creek	10260013	39.38	99.61	39.49	99.85	5
Subbasin: Lower South Fork Solomon						
Ash Creek	10260014	39.41	99.36	39.52	99.44	22
Boxelder Creek	10260014	39.42	99.31	39.25	99.31	14
Carr Creek	10260014	39.45	98.46	39.24	98.61	21
Covert Creek	10260014	39.43	98.71	39.25	98.9	19
Crooked Creek	10260014	39.46	98.94	39.54	99.03	27
Dibble Creek	10260014	39.43	99.32	39.51	99.36	23
Elm Creek	10260014	39.44	99.23	39.25	99.26	15
Jim Creek	10260014	39.43	99.18	39.53	99.22	25
Kill Creek	10260014	39.43	98.78	39.27	99	18
Kill Creek, East	10260014	39.4	98.8	39.29	98.89	28
Lost Creek	10260014	39.4	99.39	39.25	99.53	13
Lucky Creek	10260014	39.44	99.01	39.33	99.07	26
Medicine Creek	10260014	39.43	99.14	39.27	99.18	16
Medicine Creek	10260014	39.45	98.83	39.29	99.07	17
Robbers Roost Creek	10260014	39.42	99.28	39.29	99.3	24
Twin Creek	10260014	39.43	98.54	39.24	98.76	20
Twin Creek, East	10260014	39.41	98.55	39.32	98.58	29
Subbasin: Solomon River						
Antelope Creek	10260015	39.33	98.25	39.38	98.31	43
Antelope Creek	10260015	39.03	97.62	39.01	97.7	58
Battle Creek	10260015	39.2	98.08	39.12	98.22	33
Battle Creek	10260015	39.06	97.67	39.04	97.74	57
Brown Creek	10260015	39.47	98.17	39.72	98.24	15
Coal Creek	10260015	38.98	97.49	39.05	97.47	2
Cow Creek	10260015	39.15	97.9	39.28	97.92	28
Cow Creek	10260015	39.18	97.91	39.26	97.88	55
Cris Creek	10260015	39.34	97.84	39.46	97.79	48
Disappointment Creek	10260015	39.55	98.32	39.63	98.29	35
Dry Creek	10260015	39.45	98.06	39.53	98.01	37
Dry Creek	10260015	39.25	97.76	39.3	97.66	52
Elm Creek	10260015	39.66	98.34	39.81	98.26	59
Elkhorn Creek, West	10260015	39.16	97.99	39.09	98.07	47
Fifth Creek	10260015	39.24	98.08	39.34	98.11	45
Fourth Creek	10260015	39.39	97.99	39.31	98	46
Frog Creek	10260015	39.48	98.28	39.55	98.27	34
Granite Creek	10260015	39.53	98.38	39.62	98.42	24
Indian Creek	10260015	39.45	98.15	39.39	98.21	40
Leban Creek	10260015	39.43	98.11	39.38	98.23	41
Limestone Creek, Middle	10260015	39.63	98.36	39.83	98.39	21
Limestone Creek, West	10260015	39.61	98.34	39.63	98.36	20
Limestone Creek, West	10260015	39.63	98.36	39.84	98.45	22
Lindsey Creek	10260015	39.1	97.69	39.26	97.5	7
Little Creek	10260015	39.28	98.2	39.3	98.32	44
Lost Creek	10260015	39.12	97.76	39.25	97.87	56
Marshall Creek	10260015	39.4	98.03	39.34	98.08	42
Mill Creek	10260015	39.45	98.41	39.36	98.4	38

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Mortimer Creek	10260015	39.29	97.8	39.44	97.76	49
Mulberry Creek	10260015	39.46	98.13	39.59	98.17	36
Pipe Creek	10260015	39.12	97.71	39.22	97.63	9
Pipe Creek	10260015	39.22	97.63	39.43	97.6	10
Pipe Creek, West	10260015	39.22	97.63	39.42	97.61	11
Plum Creek	10260015	39.43	98.07	39.61	98.16	13
Rattlesnake Creek	10260015	39.19	98.04	39.2	98.08	31
Rattlesnake Creek	10260015	39.2	98.08	39.2	98.29	32
Sand Creek	10260015	39.02	97.6	39.18	97.52	4
Second Creek	10260015	39.36	97.89	39.28	97.97	51
Second Creek	10260015	39.15	97.94	39.27	97.98	54
Spring Creek	10260015	39.15	97.92	39.04	98.02	53
Turkey Creek	10260015	39.46	98.21	39.39	98.27	39
Walnut Creek	10260015	39.45	98.35	39.34	98.41	26
Yockey Creek	10260015	39.28	97.79	39.41	97.72	50
Basin: Upper Arkansas **Subbasin: Middle Arkansas-Lake McKinney**						
Great Eastern Ditch	11030001	37.98	101.19	38.06	100.99	2
Subbasin: Buckner						
Buckner Creek, South Fork	11030006	37.95	100.2	37.84	100.28	6
Duck Creek	11030006	37.9	99.94	37.8	100.1	8
Elm Creek	11030006	37.9	99.88	37.75	99.93	5
Rock Creek	11030006	38.09	99.79	38	99.89	9
Saw Log Creek	11030006	38.13	99.69	37.9	99.88	3
Saw Log Creek	11030006	37.9	99.88	37.82	100.21	4
Subbasin: Lower Walnut Creek						
Alexander Dry Creek	11030008	38.47	99.58	38.65	99.8	7
Bazine Creek	11030008	38.44	99.69	38.62	99.95	9
Boot Creek	11030008	38.45	98.96	38.55	99.05	15
Dry Creek	11030008	38.46	99.02	38.4	99.17	14
Dry Walnut Creek	11030008	38.38	98.73	38.37	99.24	13
Otter Creek	11030008	38.45	99.29	38.38	99.4	12
Sand Creek	11030008	38.48	99.14	38.57	99.41	3
Sandy Creek	11030008	38.47	99.39	38.35	99.44	11
Walnut Creek	11030008	38.36	98.67	38.38	98.73	1
Walnut Creek	11030008	38.38	98.73	38.48	99.14	2
Walnut Creek	11030008	38.48	99.14	38.45	99.29	4
Walnut Creek	11030008	38.45	99.29	38.47	99.39	5
Walnut Creek	11030008	38.47	99.39	38.47	99.58	6
Walnut Creek	11030008	38.47	99.58	38.44	99.69	8
Walnut Creek	11030008	38.44	99.69	38.41	99.88	10
Basin: Upper Republican **Subbasin: South Fork Republican**						
Battle Creek	10250003	39.65	101.95	39.59	102.05	71
Big Timber Creek	10250003	40.02	101.53	39.78	101.58	61
Drury Creek	10250003	39.75	101.84	39.66	101.86	60
Subbasin: Beaver						
Beaver Creek	10250014	40.01	100.53	39.82	101.03	2
Basin: Verdigris **Subbasin: Upper Verdigris**						
Bachelor Creek	11070101	37.84	96.1	37.97	96.33	21
Bernard Creek	11070101	37.91	96.17	37.97	96.22	24
Big Cedar Creek	11070101	37.51	95.67	37.62	95.53	39
Brazil Creek	11070101	37.84	95.96	37.91	95.9	31
Buffalo Creek	11070101	37.64	95.75	37.79	95.59	2
Buffalo Creek, West	11070101	37.68	95.73	37.8	95.76	34
Cedar Creek	11070101	37.87	95.94	37.91	95.88	32
Chetopa Creek	11070101	37.44	95.67	37.59	95.51	22
Crooked Creek	11070101	37.59	95.71	37.62	95.62	38
Dry Creek	11070101	37.86	95.98	37.99	95.92	27
Elder Branch	11070101	37.64	95.75	37.68	95.6	37

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Fancy Creek	11070101	37.8	96.04	37.76	96.07	28
Greenhall Creek	11070101	37.99	96.02	38.04	95.96	26
Holderman Creek	11070101	38.12	96.1	38.11	96.2	47
Homer Creek	11070101	37.84	96.1	37.99	96.28	20
Kelly Branch	11070101	38.15	96.16	38.22	96.17	42
Kuntz Branch	11070101	37.82	96.07	37.76	96.08	29
Little Sandy Creek	11070101	37.68	95.83	37.76	95.8	33
Long Creek	11070101	38.06	96.05	38.14	95.98	45
Miller Creek	11070101	37.81	95.96	37.84	95.87	30
Moon Branch	11070101	38.17	96.19	38.25	96.26	43
Onion Creek	11070101	38	96.14	38.06	96.21	23
Rock Creek	11070101	38.16	96.21	38.29	96.33	14
Ross Branch	11070101	37.69	95.88	37.7	96.01	35
Sandy Creek	11070101	37.68	95.84	37.9	95.84	4
Shaw Creek	11070101	38.18	96.28	38.26	96.37	40
Slate Creek	11070101	37.97	96.11	38.06	96.31	25
Snake Creek	11070101	37.62	95.76	37.61	95.87	36
Tate Branch Creek	11070101	38.15	96.13	38.21	96.12	44
Van Horn Creek	11070101	38.06	96.05	38.06	96.13	46
Verdigris River, Bernard Branch	11070101	38.15	96.17	38.09	96.35	16
Verdigris River, North Branch	11070101	38.15	96.17	38.16	96.21	13
Verdigris River, North Branch	11070101	38.16	96.21	38.09	96.36	15
Walnut Creek	11070101	37.79	95.99	37.84	96.1	19
West Creek	11070101	37.89	96.01	38.1	96.28	17
Wolf Creek	11070101	38.19	96.31	38.23	96.4	41
Subbasin: Fall						
Battle Creek	11070102	37.99	96.51	38.02	96.54	18
Burnt Creek	11070102	37.79	96.41	37.86	96.47	24
Clear Creek	11070102	37.5	95.83	37.52	95.74	37
Coon Creek	11070102	37.87	96.4	37.85	96.46	25
Coon Creek	11070102	37.56	95.94	37.51	96	36
Crain Creek	11070102	37.63	96.05	37.7	96.03	32
Honey Creek	11070102	37.72	96.2	37.75	96.33	26
Indian Creek	11070102	37.58	95.96	37.58	96.17	15
Ivanpah Creek	11070102	37.9	96.45	37.88	96.58	19
Kitty Creek	11070102	37.78	96.34	37.75	96.4	27
Little Indian Creek	11070102	37.54	96.07	37.49	96.1	34
Little Salt Creek	11070102	37.62	96.06	37.59	96.12	35
Oleson Creek	11070102	37.95	96.39	38.02	96.44	21
Otis Creek	11070102	37.92	96.46	38.03	96.46	20
Plum Creek	11070102	37.61	96.2	37.66	96.27	30
Rainbow Creek, East	11070102	37.51	95.86	37.46	95.98	17
Salt Creek	11070102	37.61	96.04	37.65	96.27	14
Salt Creek	11070102	37.51	95.84	37.6	95.87	38
Silver Creek	11070102	37.59	95.96	37.64	95.96	33
Snake Creek	11070102	37.71	96.22	37.67	96.24	31
Spring Creek	11070102	37.81	96.29	37.7	96.51	12
Swing Creek	11070102	38.01	96.32	38.02	96.31	989
Tadpole Creek	11070102	37.7	96.27	37.74	96.38	29
Watson Branch	11070102	37.69	96.38	37.76	96.4	23
Subbasin: Middle Verdigris						
Big Creek	11070103	36.98	95.35	37.03	95.31	21
Biscuit Creek	11070103	37.05	95.71	37.1	95.69	53
Bluff Run	11070103	37.07	95.74	37.11	95.72	54
Choteau Creek	11070103	37.29	95.66	37.36	95.6	63
Claymore Creek	11070103	37.06	95.59	37.15	95.5	50
Deadman Creek	11070103	37.06	95.72	37	95.78	57
Deer Creek	11070103	37.07	95.51	37.05	95.36	51
Drum Creek	11070103	37.2	95.63	37.44	95.5	34
Dry Creek	11070103	37.39	95.66	37.45	95.51	37
Fawn Creek	11070103	37.08	95.75	37	95.8	56
Mud Creek	11070103	37.17	95.45	37.23	95.44	59
Onion Creek	11070103	36.99	95.59	37.18	95.9	39
Potato Creek	11070103	37.11	95.59	37.2	95.51	31
Prior Creek	11070103	37.34	95.68	37.36	95.62	62
Pumpkin Creek	11070103	37.04	95.58	37.29	95.39	28
Richland Creek	11070103	37.12	95.46	37.15	95.33	49
Rock Creek	11070103	37.21	95.67	37.16	95.74	58

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Rock Creek	11070103	37.38	95.52	37.38	95.47	61
Snow Creek	11070103	36.96	95.53	37.03	95.34	25
Spring Creek	11070103	37.1	95.76	37.06	95.82	55
Sycamore Creek	11070103	37.03	95.65	37.1	95.68	52
Wildcat Creek	11070103	37.27	95.44	37.3	95.42	60
Subbasin: Elk						
Bachelor Creek	11070104	37.31	95.97	37.39	95.94	25
Bloody Run	11070104	37.34	96.01	37.34	96.07	26
Bull Creek	11070104	37.47	96.34	37.44	96.41	33
Card Creek	11070104	37.25	95.85	37.21	95.94	19
Chetopa Creek	11070104	37.23	95.81	37.21	95.85	18
Clear Creek	11070104	37.36	96.15	37.31	96.21	30
Clear Creek	11070104	37.49	96.36	37.49	96.47	32
Coffey Branch	11070104	37.27	96.01	37.24	96.07	20
Duck Creek	11070104	37.3	95.92	37.46	95.95	3
Elk River, Mound Branch	11070104	37.42	96.22	37.43	96.41	15
Elk River, South Branch	11070104	37.51	96.4	37.54	96.5	38
Elk River, Rowe Branch	11070104	37.55	96.44	37.58	96.41	39
Elm Branch	11070104	37.37	95.87	37.42	95.83	23
Hickory Creek	11070104	37.35	96.02	37.44	95.98	28
Hitchen Creek	11070104	37.38	96.06	37.52	96.15	7
Hitchen Creek, East	11070104	37.45	96.15	37.5	96.11	35
Little Duck Creek	11070104	37.32	95.89	37.37	95.93	24
Little Hitchen Creek	11070104	37.42	96.15	37.46	96.11	37
Painterhood Creek	11070104	37.38	96.04	37.52	96.04	5
Painterhood Creek, East	11070104	37.43	96.05	37.5	95.98	36
Pan Creek	11070104	37.3	96.08	37.34	96.1	27
Pawpaw Creek	11070104	37.45	96.23	37.61	96.31	11
Racket Creek	11070104	37.28	95.78	37.35	95.78	21
Rock Creek	11070104	37.45	96.27	37.6	96.34	13
Salt Creek	11070104	37.27	95.92	37.31	96.19	17
Salt Creek, South	11070104	37.3	96.09	37.31	96.17	29
Skull Creek	11070104	37.42	96.36	37.4	96.38	31
Snake Creek	11070104	37.47	96.25	37.56	96.25	34
Sycamore Creek	11070104	37.28	95.74	37.42	95.8	22
Wildcat Creek	11070104	37.37	96.17	37.38	96.38	16
Subbasin: Caney						
Bachelor Creek	11070106	37.2	96.15	37.27	96.11	47
Bee Creek	11070106	37.05	95.97	37.23	96	9
California Creek	11070106	37.17	95.99	37.22	96.04	48
Caney Creek	11070106	37.11	96.05	37.33	96.37	12
Caney River, East Fork	11070106	37.36	96.47	37.45	96.42	52
Caney Creek, North	11070106	37.11	96.05	37.32	96.26	11
Cedar Creek	11070106	37.08	96.47	37.15	96.61	30
Cedar Creek	11070106	36.99	96.24	37.12	96.29	32
Cheyenne Creek	11070106	37.02	95.95	37.13	95.87	40
Coon Creek	11070106	36.99	96.23	37.04	96.19	36
Corum Creek	11070106	37.34	96.45	37.41	96.41	51
Cotton Creek	11070106	37.07	95.95	37.12	95.89	38
Cotton Creek, North Fork	11070106	36.98	95.88	37.01	95.87	37
Dry Creek	11070106	37.05	96.44	37.11	96.44	29
Fly Creek	11070106	37.15	96.11	37.23	96.06	46
Illinois Creek	11070106	37.11	95.95	37.2	95.93	39
Jim Creek	11070106	37.21	96.56	37.24	96.61	49
Lake Creek	11070106	37.03	95.96	37.03	96.05	34
Otter Creek	11070106	37.09	96.11	37.06	96.17	33
Pool Creek	11070106	37.15	96.27	37.18	96.36	43
Possum Trot Creek	11070106	37.03	96.41	36.99	96.46	74
Rock Creek	11070106	37.04	96.43	37.05	96.66	28
Spring Creek	11070106	37.17	96.27	37.3	96.28	44
Spring Creek	11070106	37.27	96.46	37.35	96.53	53
Squaw Creek	11070106	37.24	96.46	37.27	96.42	42
Sycamore Creek	11070106	37.02	96.35	37.14	96.34	31
Turkey Creek	11070106	37.21	96.18	37.23	96.24	45
Union Creek	11070106	37.2	96.49	37.29	96.53	41
Wolf Creek	11070106	37.11	96.15	37.18	96.18	35
Wolf Creek	11070106	37.26	96.46	37.37	96.38	50

Stream segment name	HUC8	Latitude/longitude				Segment No.
		Lower	Lower	Upper	Upper	
Basin: Walnut						
Subbasin: Upper Walnut River						
Badger Creek	11030017	37.74	97.01	37.77	97.08	36
Bemis Creek	11030017	37.85	96.73	37.89	96.59	8
Coke Creek	11030017	37.94	96.79	38.08	96.75	15
Constant Creek	11030017	37.8	96.86	37.84	96.92	41
Dry Creek	11030017	37.67	97	37.77	97.22	27
Dry Creek	11030017	37.93	97.04	38.04	97.13	32
Durechen Creek	11030017	37.92	96.75	38.01	96.56	12
Elm Creek	11030017	37.68	96.99	37.79	96.95	43
Fourmile Creek	11030017	37.89	97.05	37.99	96.91	20
Gilmore Branch	11030017	37.95	96.79	37.98	96.82	39
Gypsum Creek	11030017	37.93	97.15	38.01	97.25	30
Henry Creek	11030017	37.99	97.03	38.11	97.11	33
Lower Branch	11030017	37.85	96.72	37.83	96.57	42
Prairie Creek	11030017	37.84	97.11	37.86	97.24	35
Rock Creek	11030017	37.85	97.04	37.93	96.94	37
Sand Creek	11030017	37.9	97.19	37.91	97.25	29
Satchel Creek	11030017	37.88	96.75	37.91	96.58	10
School Branch	11030017	38.01	96.72	38.08	96.71	45
Sutton Creek	11030017	37.75	96.88	37.82	96.93	40
Walnut Creek	11030017	38.03	97.2	38.06	97.26	44
Whitewater Creek	11030017	37.83	97.1	37.81	97.23	34
Whitewater Creek, East Branch	11030017	37.97	97.16	38.1	97.19	31
Whitewater River, East Branch	11030017	37.98	97.02	38.1	96.9	22
Whitewater River, West Branch	11030017	37.81	97.02	37.85	97.12	24
Whitewater River, West Branch	11030017	37.85	97.12	38.12	97.24	25
Wildcat Creek	11030017	37.85	97.12	38	97.26	26
Wildcat Creek, West	11030017	37.93	97.22	37.98	97.26	28
Subbasin: Lower Walnut River						
Black Crook Creek	11030018	37.22	96.98	37.27	96.93	18
Cedar Creek	11030018	37.3	96.96	37.33	96.81	19
Chigger Creek	11030018	37.48	96.9	37.54	96.83	21
Crooked Creek	11030018	37.31	97.04	37.37	97.09	31
Durham Creek	11030018	37.47	96.94	37.45	96.88	23
Dutch Creek	11030018	37.24	97	37.34	96.94	2
Dutch Creek	11030018	37.34	96.94	37.47	96.73	4
Eightmile Creek	11030018	37.45	97.04	37.63	97.16	30
Foos Creek	11030018	37.31	97.03	37.36	96.97	26
Hickory Creek	11030018	37.61	96.91	37.66	96.52	12
Honey Creek	11030018	37.62	96.69	37.67	96.62	33
Little Dutch Creek	11030018	37.35	97.04	37.4	96.95	27
Lower Dutch Creek	11030018	37.45	96.81	37.46	96.72	20
Plum Creek	11030018	37.62	96.73	37.59	96.64	36
Polecat Creek	11030018	37.43	97.04	37.57	97.19	17
Posey Creek	11030018	37.16	96.95	37.21	97.03	37
Richland Creek	11030018	37.39	96.89	37.43	96.77	25
Rock Creek, North Branch	11030018	37.51	96.79	37.56	96.61	35
Sanford Creek	11030018	37.4	97.01	37.41	96.96	29
Spring Branch	11030018	37.66	97.15	37.7	97.21	32
Stalter Branch	11030018	37.44	96.98	37.43	96.92	24
Stewart Creek	11030018	37.37	97.05	37.43	97.12	28
Swisher Branch	11030018	37.49	96.92	37.55	96.87	22
Total = 1292						

Lake name	County	Waterbody No.
Basin: Cimarron		
Subbasin: Upper Cimarron (HUC 11040002)		
Moss Lake East	Morton	L1
Moss Lake West	Morton	L3
Subbasin: North Fork Cimarron (HUC 11040003)		
Frazier Lake	Grant	L4

Lake name	County	Waterbody No.
Subbasin: North Fork Cimarron (HUC 11040003)		
Russell Lake	Stevens	L5
Subbasin: Upper Cimarron-Bluff (HUC 11040008)		
Clark State Fishing Lake	Clark	L8
Saint Jacob's Well	Clark	L7
Basin: Kansas/Lower Republican **Subbasin: Middle Republican (HUC 10250016)**		
Lake Jewell	Jewell	L14
Subbasin: Lower Republican (HUC 10250017)		
Belleville City Lake	Republic	L16
Wakefield Lake	Clay	L19
Subbasin: Upper Kansas (HUC 10270101)		
Ogden City Lake	Riley	L20
Rocky Ford Fishing Lake	Riley	L21
Subbasin: Middle Kansas (HUC 10270102)		
Alma City Reservoir	Wabaunsee	L23
Cedar Crest Pond	Shawnee	L24
Central Park Lake	Shawnee	L25
Gage Park Lake	Shawnee	L28
Jeffrey Energy Center Lakes	Pottawatomie	L29
Wamego City Lake	Pottawatomie	L40
Pillsbury Crossing Fishing Lake	Riley	L33
Pottawatomie State Fishing Lake #1	Pottawatomie	L34
Pottawatomie State Fishing Lake #2	Pottawatomie	L35
Shawnee County State Fishing Lake	Shawnee	L36
Subbasin: Delaware (HUC 10270103)		
Atchison County Park Lake	Atchison	L41
Elk Horn Lake	Jackson	L42
Little Lake	Brown	L43
Nebo Watershed Lake	Jackson	L46
Subbasin: Lower Kansas (HUC 10270104)		
Carbondale West Lake	Osage	L48
Douglas County State Lake	Douglas	L50
Leavenworth County State Fishing Lake	Leavenworth	L53
Lenexa Lake	Johnson	L54
Mahaffie Farmstead Pond	Johnson	L56
North Park Lake	Wyandotte	L58
Pierson Park Lake	Wyandotte	L61
Potter's Lake	Douglas	L62
Strowbridge Reservoir	Osage	L63
Sunflower Park Lake	Johnson	L64
Waterworks Lakes	Johnson	L65
Subbasin: Lower Big Blue (HUC 10270205)		
Lake Idlewild	Marshall	L67
Subbasin: Lower Little Blue (HUC 10270207)		
Washington County State Fishing Lake	Washington	L68
Basin: Lower Arkansas **Subbasin: Rattlesnake (HUC 11030009)**		
Kiowa County State Fishing Lake	Kiowa	L71
Subbasin: Cow (HUC 11030011)		
Dillon Park Lakes #1	Reno	L76
Dillon Park Lake #2	Reno	L77

Lake name	County	Waterbody No.
Sterling City Lake	Rice	L78
Subbasin: Little Arkansas (HUC 11030012)		
Mingenback Lake	McPherson	L82
Newton City Park Lake	Harvey	L83
Subbasin: Middle Arkansas-Slate (HUC 11030013)		
Belaire Lake	Sedgwick	L84
Buffalo Park Lake	Sedgwick	L86
Emery Park	Sedgwick	L90
Harrison Park Lake	Sedgwick	L91
Horseshoe Lake	Sedgwick	L92
Kid's Pond	Sedgwick	L93
Moss Lake	Sedgwick	L94
Riggs Park Lake	Sedgwick	L95
Vic's Lake	Sedgwick	L96
Windmill Lake	SedgwicK	L98
Subbasin: South Fork Ninnescah (HUC 11030015)		
Kingman County State Fishing Lake	Kingman	L101
Lemon Park Lake	Pratt	L103
Subbasin: Kaw Lake (HUC 11060001)		
Cowley County State Fishing Lake	Cowley	L107
Subbasin: Medicine Lodge (HUC 11060003)		
Barber County State Fishing Lake	Barber	L108
Subbasin: Lower Salt Fork Arkansas (HUC 11060004)		
Hargis Lake	Barber	L109
Basin: Marais Des Cygnes **Subbasin: Upper Marais Des Cygnes (HUC 10290101)**		
Allen/Admire City Lake	Lyon	L115
Cedar Creek Lake	Anderson	L116
Crystal Lake	Anderson	L117
Lebo City Lake	Coffey	L121
Lebo City Park Lake	Coffey	L121
Lyon County State Fishing Lake	Lyon	L124
Osage City Reservoir	Osage	L126
Osage County State Fishing Lake	Osage	L127
Waterworks Impoundment	Anderson	L132
Subbasin: Lower Marais Des Cygnes (HUC 10290102)		
Edgerton City Lake	Johnson	L133
Edgerton South Lake	Johnson	L134
Lake Lacygne	Linn	L136
Louisburg State Fishing Lake	Miami	L139
Miami County State Fishing Lake	Miami	L141
Paola City Lake	Miami	L144
Pleasanton Lake #1	Linn	L146
Pleasanton Lake #2	Linn	L147
Spring Hill City Lake	Johnson	L149
Subbasin: Little Osage (HUC 10290103)		
Blue Mound City Lake	Linn	L150
Subbasin: Marmaton (HUC 10290104)		
Bourbon County State Fishing Lake	Bourbon	L152
Bronson City Lake	Bourbon	L153
Gunn Park Lake, East	Bourbon	L155
Gunn Park Lake, West	Bourbon	L156
Mulberry City Park	Crawford	L159
Rock Creek Lake	Bourbon	L160

Lake name	County	Waterbody No.
Basin: Missouri **Subbasin: Tarkio-Wolf (HUC 10240005)**		
Brown County State Fishing Lake	Brown	L161
Hiawatha City Lake	Brown	L162
Subbasin: South Fork Big Nemaha (HUC 10240007)		
Pony Creek Lake	Nemaha	L163
Sabetha City Lake	Nemaha	L164
Subbasin: Independence-Sugar (HUC 10240011)		
Atchison City Lakes	Atchison	L165
Atchison County State Fishing Lake	Atchison	L166
Big Eleven Lake	Wyandotte	L167
Doniphan Fair Association Lake	Doniphan	L168
Jerrys Lake	Leavenworth	L169
Lansing City Lake	Leavenworth	L170
South Park Lake	Leavenworth	L171
Subbasin: Lower Missouri-Crooked (HUC 10300101)		
Prairie View Park	Johnson	L175
South Park Lake	Johnson	L176
Stanley Rural Water District Lake #2	Johnson	L177
Stohl Park Lake	Johnson	L70
Basin: Neosho **Subbasin: Upper Cottonwood (HUC 11070202)**		
Hillsboro City Pond	Marion	L184
Subbasin: Lower Cottonwood (HUC 11070203)		
Peter Pan Pond	Lyon	L192
Subbasin: Upper Neosho (HUC 11070204)		
Chanute City (Santa Fe) Lake	Neosho	L193
Circle Lake	Woodson	L45
Leonard's Lake	Woodson	L72
Neosho Falls City Lake	Woodson	L208
New Strawn Park	Coffey	L197
Subbasin: Middle Neosho (HUC 11070205)		
Altamont City Lake #1	Labette	L201
Bartlett City Lake	Labette	L204
Harmon Wildlife Area Lakes	Labette	L205
Mined Land Wildlife Area Lakes	Cherokee	L206
Neosho County State Fishing Lake	Neosho	L207
Timber Lake	Neosho	L211
Subbasin: Spring (HUC 11070207)		
Empire Lake	Cherokee	L212
Frontenac City Park	Crawford	L213
Mined Land Wildlife Area Lakes	Crawford	L214
Pittsburg College Lake	Crawford	L215
Playters Lake	Crawford	L216
Basin: Smoky Hill/Saline **Subbasin: North Fork Smoky Hill (HUC 10260002)**		
Smoky Hill Garden Lake	Sherman	L217
Subbasin: Upper Smoky Hill (HUC 10260003)		
Logan County State Fishing Lake	Logan	L22
Subbasin: Middle Smoky Hill (HUC 10260006)		
Fossil Lake	Russell	L222

Lake name	County	Waterbody No.
Subbasin: Big (HUC 10260007)		
Big Creek Oxbow	Ellis	L224
Ellis City Lake	Ellis	L225
Subbasin: Lower Smoky Hill (HUC 10260008)		
Geary County State Fishing Lake	Geary	L226
Herington City Park Lake	Dickinson	L228
Herington Reservoir	Dickinson	L229
Lakewood Park Lake	Saline	L230
McPherson County State Fishing Lake	McPherson	L231
Rimrock Lake	Geary	L218
Subbasin: Upper Saline (HUC 10260009)		
Plainville Township Lake	Rooks	L233
Subbasin: Lower Saline (HUC 10260010)		
Lucus City Lake	Russell	L235
Saline County State Fishing Lake	Saline	L236
Basin: Solomon		
Subbasin: Lower North Fork Solomon (HUC 10260012)		
.		
Francis Wachs Wildlife Area Lakes	Smith	L241
Subbasin: Upper South Fork Solomon (HUC 10260013)		
Antelope Lake	Graham	L242
Sheridan County State Fishing Lake	Sheridan	L243
Subbasin: Lower South Fork Solomon (HUC 10260014)		
Rooks County State Fishing Lake	Rooks	L246
Subbasin: Solomon River (HUC 10260015)		
Jewell County State Fishing Lake	Jewell	L237
Ottawa County State Fishing Lake	Ottawa	L248
Basin: Upper Arkansas		
Subbasin: Middle Arkansas-Lake McKinney (HUC 11030001)		
Lake McKinney	Kearny	L251
Subbasin: Arkansas-Dodge City (HUC 11030003)		
Lake Charles	Ford	L252
Subbasin: Pawnee (HUC 11030005)		
Concannon State Fishing Lake	Finney	L253
Finney County Game Refuge Lakes	Finney	L254
Subbasin: Buckner (HUC 11030006)		
Ford County Lake	Ford	L256
Hain State Fishing Lake	Ford	L257
Subbasin: Upper Walnut Creek (HUC 11030007)		
Goodman State Fishing Lake	Ness	L259
Subbasin: Lower Walnut Creek (HUC 11030008)		
Barton Lake	Barton	L260
Memorial Park Lake	Barton	L261
Stone Lake	Barton	L262
Basin: Upper Republican		
Subbasin: South Fork Republican (HUC 10250003)		
Saint Francis Wildlife Area Lakes	Cheyenne	L263
Subbasin: South Fork Beaver (HUC 10250012)		
Atwood Township Lake	Rawlins	L264

Lake name	County	Waterbody No.
Subbasin: Prairie Dog (HUC 10250015)		
Colby City Pond	Thomas	L265
Basin: Verdigris **Subbasin: Upper Verdigris (HUC 11070101)**		
New Yates Center Reservoir	Woodson	L269
Quarry Lake	Wilson	L270
Thayer New City Lake	Neosho	L271
Wilson County State Fishing Lake	Wilson	L274
Woodson County State Fishing Lake	Woodson	L275
Subbasin: Middle Verdigris (HUC 11070103)		
La Claire Lake	Montgomery	L281
Montgomery County State Fishing Lake	Montgomery	L282
Pfister Park Lakes	Montgomery	L283
Subbasin: Elk (HUC 11070104)		
Moline City Lake #2	Elk	L285
Polk Daniels (Elk) State Fishing Lake	Elk	L288
Subbasin: Caney (HUC 11070106)		
Caney City Lake	Chautauqua	L289
Sedan City Lake, North	Chautauqua	L290
Basin: Walnut **Subbasin: Lower Walnut River (HUC 11030018)**		
Butler County State Fishing Lake	Butler	L297
Winfield Park Lagoon	Cowley	L299
Total = 164		

(i) Water quality standard variances. (1) The Regional Administrator, EPA Region 7, is authorized to grant variances from the water quality standards in paragraphs (f) and (g) of this section where the requirements of this paragraph (h) are met. A water quality standard variance applies only to the permittee requesting the variance and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(2) A water quality standard variance shall not be granted if:

(i) Standards will be attained by implementing effluent limitations required under sections 301(b) and 306 of the CWA and by the permittee implementing reasonable best management practices for nonpoint source control; or

(ii) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat.

(3) Subject to paragraph (b)(2) of this section, a water quality standards variance may be granted if the applicant demonstrates to EPA that attaining the water quality standard is not feasible because:

(i) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(iii) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use; or

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) Procedures. An applicant for a water quality standards variance shall submit a request to the Regional Administrator of EPA Region 7. The application shall include all relevant information showing that the requirements for a variance have been satisfied. The burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in paragraph (i)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he shall provide public notice of the proposed variance and provide an opportunity for public comment. Any activities required as a condition of the Regional Administrator's granting of a variance shall be included as conditions of the NPDES permit for the applicant. These terms and conditions shall be incorporated into the applicant's NPDES permit through the permit reissuance process or through a modification of the permit pursuant to the applicable

permit modification provisions of Kansas' NPDES program.

(5) A variance may not exceed 3 years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

[FR Doc. 00–15914 Filed 6–30–00; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
July 3, 2000

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 8, 15, 44, and 52

Federal Acquisition Regulation; JWOD Subcontract Preference Under Service Contracts; Truth in Negotiations Act Threshold; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 44, and 52

[FAR Case 1999–017]

RIN 9000–AI82

Federal Acquisition Regulation; JWOD Subcontract Preference Under Service Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes relating to preferences for award of subcontracts under service contracts to nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day (JWOD) (41 U.S.C. 48)).

DATES: Interested parties should submit comments in writing on or before September 1, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999–017@gsa.gov.

Please submit comments only and cite FAR case 1999–017 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mrs. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 1999–017.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule amends—

- FAR Part 8 to extend the priority for award of service contracts that will satisfy agency requirements that are available from the Committee for Purchase From People Who Are Blind or Severely Disabled to subcontracts when contractors purchase the services for Government use;
- FAR part 44 to add purchase from nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled to the list of items a contracting officer must consider when reviewing a subcontract that is subject to the procedures at FAR Subpart 44.2, Consent to Subcontracts; and
- The clause at FAR 52.208–9, Contractor Use of Mandatory Sources of Supply, to inform offerors and contractors that certain services to be provided for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled.

These amendments implement changes in the Committee for Purchase From People Who Are Blind or Severely Disabled regulations (41 CFR 51–5.5(e)).

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may 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.*, because the rule contains a priority for subcontracts under services contracts with nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The analysis is summarized as follows:

The rule implements 41 CFR 51–5.5(e) relating to preferences for award of subcontracts under service contracts to nonprofit workshops designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)). The proposed rule will apply to all large and small entities that seek award of a subcontract under a Government services contract. Although awards of subcontracts to certain small entities may decrease as a result of the rule, the decrease will be offset by an increase in awards to nonprofit workshops. Nonprofit workshops meet the size standards for most acquisitions. Therefore, we do not expect the total number of subcontract awards to small entities to change as a result of this rule.

A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 8, 44, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 1999–017), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8, 44, and 52

Government procurement.

Dated: June 21, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 8, 44, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 8, 44, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Amend section 8.001 by revising paragraph (c) to read as follows:

8.001 Priorities for use of Government supply sources.

* * * * *

(c) The statutory obligation for Government agencies to satisfy their requirements for supplies or services available from the Committee for Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supplies or services for Government use.

3. Revise section 8.003 to read as follows:

8.003 Contract clause.

Insert the clause at 52.208–9, Contractor Use of Mandatory

Sources of Supply and Services, in solicitations and contracts that require a contractor to provide supplies or services for Government use that are available from the Committee for Purchase From People Who Are Blind or Severely Disabled. The contracting officer must identify in the contract schedule the supplies or services that must be purchased from a mandatory source and the specific source.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

4. In section 44.202–2, amend the introductory text of paragraph (a) by

removing ''shall'' and adding ''must'' in its place; and revising paragraph (a)(4) to read as follows:

44.202–2 Considerations.

(a) * * *

(4) Has the contractor complied with the prime contract requirements regarding—

(i) Small business subcontracting, including, if applicable, its plan for subcontracting with small, small disadvantaged and women-owned small business concerns (see part 19); and

(ii) Purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)) (see part 8)?

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. In section 52.208–9, revise the section and clause headings, paragraphs (a) and (b), and the second sentence in paragraph (c) to read as follows:

52.208–9 Contractor Use of Mandatory Sources of Supply or Services.

* * * * *

Contractor Use of Mandatory Sources of Supply or Services (Date)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or a JWOD central nonprofit agency has authorized purchase from other sources.

(c) * * * For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. * * *

* * * * *

(End of clause)

[FR Doc. 00–16454 Filed 6–30–00; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 2000–300]

RIN 9000–AI83

Federal Acquisition Regulation; Truth in Negotiations Act Threshold

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995.

DATES: Interested parties should submit comments in writing on or before September 1, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.2000–300@gsa.gov

Please submit comments only and cite FAR case 2000–300 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–0692. Please cite FAR case 2000–300.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends FAR 15.403–4 to implement the requirements of 10 U.S.C. 2306a(a)(7) and 41 U.S.C. 254b(a)(7). These statutes require review of the Truth in Negotiations Act threshold every 5 years, starting October 1, 1995. The proposed increase of $50,000 is based on escalation of 10.22 percent from 1994 to 2000, calculated using the gross domestic product deflators from the fiscal year 2001 budget.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to 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.*, because most contracts and subcontracts with small entities do not require the submission of cost or pricing data. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000–300), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies; however, the proposed changes to the FAR do not significantly change the information collection requirements that have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, under OMB Clearance Number 9000–0045.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: June 26, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR part 15 be amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 15.403–4 by revising paragraph (a)(1) to read as follows:

15.403–4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a)(1) The contracting officer must obtain cost or pricing data only if the contracting officer concludes that none of the exceptions in 15.403–1(b) applies. However, if the contracting officer has sufficient information available to

determine price reasonableness, then the contracting officer should consider requesting a waiver under the exception at 15.403–1(b)(4). The threshold for obtaining cost or pricing data is $550,000. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, for existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to submit cost or pricing data (but see waivers at 15.403–1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (*e.g.,* a $200,000 modification resulting from a reduction of $400,000 and an increase of $200,000 is a pricing adjustment exceeding $550,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring cost or pricing data if—

(A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or

(B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

* * * * *

[FR Doc. 00–16523 Filed 6–30–00; 8:45 am]

BILLING CODE 6820–EP–U

Federal Register

Monday,
July 3, 2000

Part V

Department of Health and Human Services

Office of Public Health and Science; Standards of Compliance for and Provision of Abortion-Related Services in Family Planning Services Projects; Final Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 59

RIN: 0940–AA00

Standards of Compliance for Abortion-Related Services in Family Planning Services Projects

AGENCY: Office of Population Affairs, OPHS, DHHS.

ACTION: Final rules.

SUMMARY: The rules issued below revise the regulations that apply to grantees under the federal family planning program by readopting the regulations, with one revision, that applied to the program prior to February 2, 1988. Several technical changes to the regulation are also made to remove and/or update obsolete regulatory references. The effect of the revisions made by the rules below is to revoke the compliance standards, promulgated in 1988 and popularly known as the ''Gag Rule,'' that restricted family planning grantees from providing abortion-related information in their grant-funded projects.

DATES: These rules are effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Samuel S. Taylor, Office of Population Affairs, (301) 594–4001.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services issues below regulations establishing requirements for recipients of family planning services grants under section 1001 of the Public Health Service Act, 42 U.S.C. 300. The rules below adopt, with minor technical amendments and one substantive modification, the regulations proposed for public comment on February 5, 1993, at 58 FR 7464. They accordingly revoke the compliance standards, known as the ''Gag Rule,'' promulgated on February 2, 1988.

By notice published elsewhere in this issue of the **Federal Register**, the Department is separately acting to reinstitute, with minor changes, the interpretations of the statute relating to the provision of abortion-related information and services that applied to grantees prior to the issuance of the Gag Rule. The Secretary had previously proposed reinstituting these interpretations in the notice of February 5, 1993 and requested public comment on this proposed action; the public comment period was subsequently reopened by notice of June 23, 1993, 58 FR 34024.

I. Background

In 1988, the Secretary of Health and Human Services issued rules, widely known as the ''Gag Rule,'' which substantially revised the longstanding polices and interpretations defining what abortion-related activities were permissible under Title X's statutory limitation on abortion services. That statutory limitation, section 1008 (42 U.S.C. 300a–6), provides that ''[n]one of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.'' The rules issued on February 2, 1988 (53 FR 2922) set out detailed requirements that (1) Prohibited the provision to Title X clients of nondirective counseling on all pregnancy options and referral to abortion providers, (2) required physical and financial separation of abortion-related activities from Title X project activities, and (3) prohibited Title X projects from engaging in activities that encourage, promote, or advocate abortion. These requirements are presently codified principally at 42 CFR 59.7–59.10.

The February 2, 1988 ''Gag Rule'' was extremely controversial: The proposed rules generated approximately 75,000 public comments, many of which were negative. 53 FR 2922. The rules were subsequently challenged in several district courts by a variety of providers, provider organizations, and others. Although the requirements embodied in the Gag Rule were upheld by the Supreme Court in 1991 as a permissible construction of section 1008, the rules continued to be a source of controversy, with the provider and medical communities litigating after 1991 to prevent enforcement of the rules. Following his inauguration in 1993, President Clinton ordered the Secretary to suspend the rules and initiate a new rulemaking:

> The Gag Rule endangers women's lives and health by preventing them from receiving complete and accurate medical information and interferes with the doctor-patient relationship by prohibiting information that medical professionals are otherwise ethically and legally required to provide to their patients. Furthermore, the Gag Rule contravenes the clear intent of a majority of the members of both the United States Senate and House of Representatives, which twice passed legislation to block the Gag Rule's enforcement but failed to override Presidential vetoes.
>
> For these reasons, you have informed me that you will suspend the Gag Rule pending the promulgation of new regulations in accordance with the ''notice and comment'' procedures of the Administrative Procedure Act. I hereby direct you to take that action as soon as possible. I further direct that, within 30 days, you publish in the **Federal Register** new proposed regulations for public comment.

Presidential Memorandum of January 22, 1993, published at 58 FR 7455 (February 5, 1993). The Secretary subsequently suspended the 1988 rules on February 5, 1993 (58 FR 7462) and issued proposed rules for public comment (58 FR 7464).

The notice of proposed rulemaking proposed to revise the program regulations by readopting the program regulations as they existed prior to the adoption of the Gag Rule, which would have the effect of revoking the Gag Rule. It also proposed that the policies and interpretations in effect prior to the issuance of the Gag Rule be reinstated, both in substance and in form. As noted in the proposed rules, these policies and interpretations, which had been in effect for a considerable time prior to 1988, were set out largely, ''in the 1981 Family Planning Guidelines and in individual policy interpretations.'' 58 FR 7464. The pre-1988 interpretations had been developed during the 1970's and early 1980's in response to questions arising out of the Department's initial interpretation that section 1008 not only prohibited Title X projects from performing or providing abortions, but also prohibited actions by Title X projects that ''promoted or encouraged'' abortion as a method of family planning. Over time, questions were raised, and answered in a series of legal opinions, as to whether particular actions would violate the statute by promoting or encouraging abortion as a method of family planning. As summarized in the proposed rules, the answers that were developed were generally as follows:

> Title X projects [are] required, in the event of an unplanned pregnancy and where the patient requests such action, to provide nondirective counseling to the patient on all options relating to her pregnancy, including abortion, and to refer her for abortion, if that is the option she selects. However, consistent with the long-standing Departmental interpretation of the statute, Title X projects [are] not * * * permitted to promote or encourage abortion as a method of family planning, such as by engaging in pro-choice litigation or lobbying activities. Title X projects [are] also * * * required to maintain a separation (that is more than a mere exercise in bookkeeping) of their project activities from any activities that promote or encourage abortion as a method of family planning.

Id. By notice dated June 23, 1993 (58 FR 34024), the Secretary made available for public comment a detailed exposition of the prior policies and interpretations.

In the public comment periods, the Secretary received 146 comments,

virtually all of which concerned the proposed policies and interpretations rather than the proposed regulations themselves. Approximately one-third of these opposed the proposed policies and interpretations on various grounds; most of these comments were from individuals who, in general, were opposed to any change to the Gag Rule. The remainder of the public comments, most of which were from providers and other health organizations, generally supported the reinstatement of the prior policies and interpretations, although a number of these comments suggested that they be modified in various respects. The public comments and the Secretary's response thereto are summarized below.

II. Public Comment and Departmental Response

The public comment generally focused on a few issues raised by the rulemaking. As noted above, these comments generally pertained to the proposed policies and interpretations rather than to the proposed regulatory language itself. Accordingly, the comments on the issues raised in the rulemaking are summarized below, and the Secretary's response thereto is provided.

A. Lack of a Rational Basis To Revoke the Gag Rule; Necessity for Continuation of the Gag Rule

Most of the comments in opposition to the proposed rules came from individuals, and most objected to the proposed revocation of the Gag Rule on the ground that abortion is wrong or that tax dollars should not be used to provide abortion services of any kind. Several comments also objected that the Secretary had not rational basis for revoking the Gag Rule, as it had never gone into operation. For example, a comment signed by fifteen members of Congress argued that—

> HHS intends to discard the February 2, 1988 regulations in their entirety * * * regardless of whether any particular portion was the subject of court challenge or legislative action. * * * We believe the rejection of the 1988 rule is precipitous and that each portion of the 1988 regulations must be reviewed on its merits and justification provided in any final regulations as to why the 1988 clarifications were or were not maintained in a new rule.

With respect to the comments objecting to the revocation of the Gag Rule or the use of tax dollars for abortion on moral grounds, the Secretary notes that, under the interpretations adopted in conjunction with the regulations below, the funding of abortion or activities that promote or encourage abortion with Title X funds has been and will continue to be prohibited. Rather, what changes under the interpretations reinstated in conjunction with the regulations below is which activities are considered to ''promote or encourage'' abortion. In contrast to the position taken under the Gag Rule, under the present view (which was also the Department's view of the statute prior to 1988), the provision of neutral and factual information about abortion is not considered to promote or encourage abortion as a method of family planning. Indeed, the rule itself, now requires the provision to pregnant women, on request, of neutral, factual information and non-directive counseling on each of three options. The basic statutory interpretation underlying both the Gag Rule and the specific policies that governed the Title X program prior to 1988—that section 1008 prohibits activities that promote or encourage abortion as a method of family planning—remains unchanged.

With respect to the contentions that the Secretary lacks a rational basis for revoking the Gag Rule and that she must justify each separate part of the Gag Rule being discarded, we do not agree. The pre-1988 interpretation of the statute represents a permissible exercise of administrative discretion. The crucial difference between this approach and the Gag Rule is one of experience. Because of ongoing litigation, the Gag Rule was never implemented on a nationwide basis, so that its proponents can point to no evidence that it can and will work operationally on a national basis in the Title X program. The policies reflected in, and interpretations reinstituted in conjunction with, the regulations below, on the other hand, have been used by the program for virtually its entire history; indeed, they have been in effect during the pendency of this rulemaking. Both the program managers and the Title X grantee community are well-versed in these policies and interpretations, and the grantees have in the past generally been able to operate in compliance with them. Further, as evidenced by the public comment received, the reinstituted policies and interpretations are generally acceptable to the grantee community, in contrast to the compliance standards in the Gag Rule, which were generally unacceptable to the grantee community. This factor likewise favors their adoption, as it suggests a far greater likelihood of voluntary compliance by grantees. Finally, the suggestion that the Gag Rule provisions should be accepted or rejected separately is rejected as unsound. The provisions of the Gag Rule were an interrelated set of requirements that depended on several underlying assumptions about how the Title X program should work; moreover, they depended in part on several definitions that applied to all the major provisions of the Gag Rule. *See*, in this regard, 53 FR 2923, 2925; *see also*, the discussion of definitions at 53 FR 2926–2927.

B. Failure To Comply With the Administrative Procedure Act; Vagueness of Standards

A number of comments, from both proponents of and opponents to the proposed rules, objected to the failure to publish the actual policies and interpretations as part of the proposed rule on the ground that this violated the public comment requirements of the Administrative Procedure Act (APA); several comments argued that it was impossible to comment on policies that had never been published. A related criticism was that several of the interpretations described in the preamble to the notice of proposed rulemaking, particularly the interpretation relating to physical separation, were too vague.

The Secretary agreed that the provision of further information on the specific details of the pre-1988 policies and interpretations would promote more helpful public comment. Accordingly, by notice dated June 23, 1993 (58 FR 34024), the Department made available on request a summary of the policies and interpretations in existence prior to 1988. The June notice also extended the public comment period for 45 days, to permit further substantive comment on the prior policies and interpretations. Over a third of the public comments, including the majority of the comments from individuals, were received during the re-opened and comment period. The Secretary has thus addressed the concern about notice of the content of the policies and interpretations expressed by these comments.

As is further discussed below, the Secretary has incorporated in the regulatory text the policies relating to nondirective counseling and referral of the 1981 Program Guidelines for Project Grants for Family Planning Services (1981 Guidelines). The comments urging that these Guidelines requirements be reflected in the regulations have thus been accepted. With respect to the longstanding program interpretations, however, the Secretary does not agree that the Department is required to set out those

interpretations in the regulations promulgated below and accordingly, has not accepted the comments suggesting that it do so. As noted above, the interpretations themselves were developed in the classic way in which statutory interpretations are done: That is, they have generally been developed in legal opinions written to answer questions about how the statutory prohibition, as initially interpreted by the Department, applied to particular situations. This is not an unusual approach within the program as a whole: Interpretive guidance has been provided on a number of issues (*e.g.*, fee schedules, use of certain methods) over the years, as particular questions have arisen in the course of the program. While the program could incorporate those interpretations in the legislative rules below, the Secretary has decided not to do so. With respect to the areas that continue to be covered by guidance, the Secretary believes that incorporating the guidance into the regulations below would be inadvisable and unnecessary. The Secretary has thus chosen to preserve the program's flexibility to address new issues that may arise in this area.

Moreover, the Title X program grantees have operated on the basis of the policies of the 1981 Guidelines and the interpretations summarized in the notice published elsewhere in this issue of the **Federal Register** for virtually the entire history of the program and in general compliance with them. As the comment of one State agency grantee stated with regard to this issue:

> The [State] Family Planning Program has been a participant in the nation's Title X program since the early 1970's. The rules and *1981 Family Planning Guidelines* in place prior to the ''Gag Rule'' were adequate guidance to the state for program operation and for compliance with the statutory prohibition related to abortions. These guidelines and directives have been used successfully for many years in providing quality medical care, education and counseling to clients in the program.

The audits of 14 Title X grantees conducted by the GAO and of 31 Title X grantees conducted by the Department's Office of the Inspector General in the 1980's showed only minor compliance problems. Indeed, the principal recommendation of both audit reports was that the Department provide more specific guidance to its grantees than that previously available in the program guidelines and prior legal opinions, not that the Department undertake major disallowances, require major corrective actions, or develop new interpretations of the law such as that embodied in the Gag Rule. *See, e.g.*, Comp. Gen. Rep. No GAO/HARD–HRD–82–106 (1982), at 14–15. The Secretary is addressing this recommendation through the specific guidance in the notice published elsewhere in this edition of the **Federal Register** and believe that the notice will provide grantees with sufficient guidance to reduce or eliminate potential variations in grantee practice.

The Secretary views this final rule, the principal purposes of which are to revoke the Gag Rule and adopt the counseling and referral requirements noted, as separate and severable from the Notice. The interpretations set out in the Notice are being set out in order to clarify the Department's view of the statute and its operation in practical terms, and because so much of the public comment received was directed at the interpretations reflected in the Notice rather than at the revision of the regulation itself. Were the policies set forth in the Notice to be challenged or invalidated, it is our view that the Title X program could still be administered under the rules below in compliance with the statute, in that grantees would be prohibited by § 59.5(a)(5) below from providing abortions as part of the Title X family project and from engaging in counseling and referral practices inconsistent with the regulatory requirements adopted in that section. Such an outcome would be consistent with a permissible interpretation of the statute.

C. Amend, or Adopt a More Restrictive Reading of, the Statute

Fifteen of the comments that stated support for the proposed policies and interpretations suggested, however, that the prior limitations in the policies and interpretations with respect to what abortion-related activities a Title X project could engage in be eliminated. A few of these comments suggested that the statutory prohibition of section 1008 be repealed outright. Most of the comments suggested in essence that the statute be read strictly to prohibit only the use of funds for abortions, thereby permitting Title X projects to engage in a number of abortion-related activities that would not be permitted under the pre-1988 interpretations.

With respect to the suggestion that section 1008 be repealed, such an action is obviously outside the scope of what can be accomplished through rulemaking and thus cannot be accepted in this context. With respect to the remaining comments, while the Secretary agrees that the statute could on its face be read only to proscribe the use of Title X funds for the provisions of abortion, this is not considered to be the better reading of the statutory language. Rather, the legislative history of section 1008 indicates that that section was intended to restrict the permissible scope of abortion-related services provided under Title X. Conf. Rep. No. 1667, 97th Cong., 2d Sess. 8–9 (1970). The floor statements by the section's principal sponsor, Rep. Dingell, indicated that the section's restrictions on the ''use'' of Title X funds should be read as having a broader scope that is urged by these comments:

> Mr. Speaker, I support the legislation before this body. I set forth in my extended remarks the reasons why I offered to the amendment which prohibited abortion as a method of family planning * * *. With the ''prohibition of abortion'' the committee members clearly intended that abortion is not to be encouraged or promoted in any way through this legislation. Programs which include abortion as a method of family planning are not eligible for funds allocated through this Act.

116 Cong. Rec. 37375 (1970). The Department has consistently, since 1972, read section 1008 as incorporating this legislation on activities that ''promote or encourage'' abortion as a method of family planning. This interpretation is well-known to Congress, which has not, to date amended section 1008. Thus, there is legal support for this longstanding interpretation of the statute. Moreover, there is nothing in the rulemaking record that suggests that this fundamental reading of the statute, as it was administered before the Gag Rule, presented major operational problems for Title X projects. Accordingly, the Secretary has not accepted the suggestions made by this group of comments that section 1008 be read only to prohibit the provision of, or payment for, abortions.

D. Abortion Information and Counseling

The Gag Rule prohibited the provision of information other than information directed at protecting maternal and fetal health to women determined to be pregnant; thus, it prohibited what is generally known as ''options counseling'', *i.e.*, the provision to pregnant women in a nondirective fashion of neutral, factual information about all options for the management of a pregnancy, including abortion. *See*, 42 CFR 59.8 (1989 ed.). The pre-1988 policies, in contrast, required options counseling, if requested. As stated in the 1981 ''Title X Guidelines'':

> Pregnant women should be offered information and counseling regarding their pregnancies. Those requesting information on options for the management of an

unintended pregnancy are to be given non-directive counseling on the following alternative courses of action, and referral upon requests:

- Prenatal care and delivery
- Infant care, foster care, or adoption
- Pregnancy termination.

The June, 1993 summary of the pre-1988 interpretations also stated that Title X projects were not permitted to provide options counseling that promoted abortion or encouraged patients to obtain abortion, but could advise patients of all medical options and accompanying risks.

Most of those comments supporting adoption of the proposed rules appeared to agree with the pre-1988 policies and interpretations. However, there appeared to be some confusion among those who agreed with the pre-1988 requirement for options counseling as to how much information and counseling could be provided. Several of these comments also suggested that the ''on request'' limitation be deleted, particularly where State law requires the provision of information about abortion to women considering that option.

Several comments opposing adoption of the proposed rules and revocation of the Gag Rule also specifically addressed the issue of counseling. Several of these comments suggested that counseling on ''all options'' include the option of keeping the baby, and two comments suggested that the rules should contain an exception for grantees or individuals who object to providing such information and counseling on moral grounds.

A number of comments argued that the regulatory text should reflect the requirement for nondirective counseling and referral. These comments recommended that the final regulations include specific language providing for options counseling as a necessary component of quality reproductive health care services. Some cited medical ethics and good medical care as requiring that patients receive full and complete information to enable them to make informed decisions. For example, a leading medical organization commented that all women, regardless of their income level, have a right to full and accurate information about all options for managing an unwanted pregnancy. The organization pointed out that it is essential that the program regulations contain specific language about the counseling and referral requirements, and recommended the incorporation of sections of the 1981 Title X program guidelines into the regulations so as to be absolutely clear that pregnancy counseling and referral must be provided to patients facing an unwanted pregnancy upon request. Congress has also repeatedly indicated that it considers this requirement to be an important one: the program's four most recent appropriations, Pub. L. 104–208 (110 Stat. 300–243), Pub. L. 105–78 (111 Stat. 1478), Pub. L. 105–277 (112 Stat. 2681), and Pub. L. 106–113 (113 Stat. 1501–225), required that pregnancy counseling in the Title X program be ''nondirective.'' Consequently, the Secretary has decided to reflect this fundamental program policy in the regulatory text. *See,* § 59.5(a)(5) below. The interpretive summary has also been revised to reflect this change to the regulation. However, in response to the apparent confusion as to the amount of counseling permitted to be provided under the pre-1988 interpretations, the interpretive summary clarifies that Title X grantees are not restricted as to the completeness of the factual information they may provide relating to all options, including the option of pregnancy termination. It should be noted, though, that the previous restriction as to the ''type'' of information that may be provided about abortion continues: Information and counseling provided by Title X projects on all options for pregnancy management, including pregnancy termination, must be nondirective. Thus, grantees may provide as much factual, neutral information about any option, including abortion, as they consider warranted by the circumstances, but may not steer or direct clients toward selecting any option, including abortion, in providing options counseling.

The Secretary is retaining the ''on request'' policy in the regulatory language adopted below, on the ground that it properly implements the requirement for nondirective counseling. If projects were to counsel on an option even where a client indicated that she did not want to consider that option, there would be a real question as to whether the counseling was truly nondirective or whether the client was being steered to choose a particular option. We note that under the ''on request'' policy a Title X grantee is not prohibited from offering to a pregnant client information and counseling on all options for pregnancy management, including pregnancy termination; indeed, such an offer is required under § 59.5(a)(5) below. However, if the client indicates that she does not want information and counseling on any particular option, that decision must be respected. The regulatory language below reflects this policy. Also, consistent with longstanding program practice and sound public health policy (see the discussion in the following paragraphs) and to avoid ambiguity in when the offer of pregnancy options counseling must be made, the rule has been clarified to require the offer of pregnancy options counseling to be made whenever a pregnant client presents, not just when the pregnancy is ''unintended.''

With respect to the suggestion that counseling on ''keeping the baby'' be provided, the Secretary views that suggestion as co-extensive with the requirement for the provision of counseling on prenatal care and delivery, as the remaining counseling option set out in the 1981 ''Title X Guidelines'' and the regulatory language adopted below relates to foster care and adoption. If a more directive form of counseling is meant by this suggestion, it is rejected as inconsistent with the underlying interpretation, recently reinforced by Congress, that counseling on pregnancy options should be nondirective.

Finally, the Secretary rejects the suggestion that an exception to the requirement for options counseling be carved out for those organizations that object to providing such counseling on religious or moral grounds. First, totally omitting information on a legal option or removing an option from the client's consideration necessarily steers her toward the options presented and is a directive form of counseling. Second, the Secretary is unaware of any current grantees that object to the requirement for nondirective options counseling, so this suggestion appears to be based on more of a hypothetical than an actual concern. Third, the requirement for nondirective options counseling has existed in the Title X program for many years, and, with the exception of the period 1988–1992, it has always been considered to be a necessary and basic health service of Title X projects. Indeed, pregnancy testing is a common and frequent reason for women coming to visit a Title X clinic: in 1995, an estimated 1.1 million women obtained pregnancy tests in Title X clinics. (National Survey of Family Growth, 1995 cycle, special table.) Clearly, a significant number of Title X clients have a need for information and counseling relating to pregnancy. Fourth, this policy is also consistent with the prevailing medical standards recommended by national medical groups such as the American College of Obstetricians and Gynecologists and the American Medical Association. ''Guidelines for Women's Health Care,'' American College of Obstetricians and

Gynecologists, 1996 ed., at 65; ''Pregnancy Choices: Raising the Baby, Adoption, and Abortion,'' American College of Obstetricians and Gynecologists, September, 1993, reviewed December, 1995; ''Code of Medical Ethics: Current Opinions with Annotations,'' American Medical Association, 199–1997 ed. Accordingly, the Secretary has not accepted this suggestion.

The corollary suggestion, that the requirement to provide options counseling should not apply to employees of a grantee who object to providing such counseling on moral or religious grounds, is likewise rejected. In addition to the foregoing considerations, such a requirement is not necessary: under 42 U.S.C. 300a–7(d), grantees may not require individual employees who have such objections to provide such counseling. However, in such cases the grantees must make other arrangements to ensure that the service is available to Title X clients who desire it.

E. Referral for abortion

The Gag Rule specifically prohibited referral for abortion as a method of family planning and required grantees to give women determined to be pregnant a list of providers of prenatal care, which list could not include providers ''whose principal business is the provision of abortion.'' 42 CFR 59.8(a) (1989 ed.). The Gag Rule permitted referral to an abortion provider only where there was a medical emergency. 42 CFR 59.8(a)(2) (1989 ed.). By contrast, the 1981 Guidelines required appropriate referral on request, while the pre-1988 interpretations permitted Title X projects to make what was known as a ''mere referral'' for abortion; a ''mere referral'' was considered to be the provision to the client of the name and address and/or telephone number of an abortion provider. Affirmative actions, such as obtaining a consent for the abortion, arranging for transportation, negotiating a reduction in the fee for an abortion or arranging for or scheduling the procedure, were considered to be prohibited by section 1008. The pre-1988 rules (§ 59.5(b)(1)) were interpreted by the agency to require referral for abortion where medically indicated. *See, Valley Family Planning* v. *State of North Dakota,* 489 F.Supp. 238 (D.N.D. 1980), *aff'd.,* 661 F.2d 99 (8th Cir. 1981).

A number of comments, mostly from individuals and organizations supporting revocation of the Gag Rule, suggested modifications of the proposed referral policies and interpretations. Most of these comments suggested that the content limitations on referrals be broadened, with Title X grantees being permitted to provide other relevant information, such as comparative charges, stage of pregnancy up to which referral providers may under State law or will provide abortion, the number of weeks of estimated gestation, etc. These comments argued that the provision of such factual information does not ''promote or encourage'' abortion any more than does the provision of the abortion providers' names and addresses and/or telephone numbers. One comment also suggested that the restriction on negotiating fees for clients referred for abortion conflicts with the requirement to refer for abortion where medically indicated.

Several comments opposing revocation of the Gag Rule also expressed problems with the proposed referral policies and interpretations. A few comments urged that referrals to agencies that can assist clients who choose the ''keeping the baby'' or adoption options should be required. Another comment criticized the requirement for referral where ''medically indicated'' as confusing. Revisions suggested were that ''self-referrals'' for abortion be specifically prohibited, to reduce commercialization and profiteering by Title X grantees who are also abortion providers and that grantees who objected to abortion on moral or religious grounds be permitted not to make abortion referrals.

The Secretary agrees with the comments advocating expanding the content of what information may be provided in the course of an abortion referral. The content (as opposed to action) restrictions of the ''mere referral'' policy proceeded from an assumption that the provision of information other than the name and address and/or telephone number of an abortion provider might encourage or promote abortion as a method of family planning. The Secretary now agrees, based on experience and the comments of several providers on this point, that the provision of the types of additional neutral, factual information about particular providers described above is likely to do little, if anything, to encourage or promote the selection of abortion as a method of family planning over and above the provision of the information previously considered permissible; at most, such information would seem likely to assist clients in making a rational selection among abortion providers, if abortion is being considered. Moreover, it does not seem rational to restrict the provision of factual information in the referral context, when no similar restriction applies in the counseling context. Accordingly, the Secretary has revised the interpretations summarized in the notice section to clarify that grantees are not restricted from providing neutral, factual information about abortion providers in the course of providing an abortion referral, when one is requested by a pregnant Title X client.

Consistent with the incorporation of the requirement for nondirective counseling in the regulations, the regulations below also include the remaining requirement from the 1981 Guidelines, the requirement to provide a referral, if requested by the client. As referenced previously, a number of comments argued that the regulatory text should reflect the requirement for nondirective counseling and referral. One comment described the provision of factual information and referral as requested as both a necessary and significant component of the Title X program for many years. Another comment pointed out that the program guideline requirements regarding pregnancy options counseling and referral have been used for many years, are well understood and accepted in the Title X provider community, and should be required services in Title X family planning clinics. Since the services about which pregnancy options counseling is provided are not ones which a Title X project typically provides, the provision of a referral is the logical and appropriate outcome of the counseling process.

The Secretary is not accepting the remainder of the comments on this issue, as they either proceed from a misunderstanding of, or do not raise valid objections to, the regulations and the proposed policies and interpretations. The comment arguing that the restriction on negotiating fees conflicts with the requirement to refer for abortion where medically indicated is based on a misunderstanding of that requirement: in such circumstances, the referral is not for abortion ''as a method of family planning'' (*i.e.*, to determine the number and/or space of one's children) but is rather for the treatment of a medical condition; thus, the statutory prohibition does not apply, so there is no restriction on negotiating fees and similar actions. The suggestion that referrals to agencies that can assist clients who choose the options of ''keeping the baby'' or adoption be required is likewise rejected as unnecessary. Under the regulatory language adopted below, the options of prenatal care and delivery and adoption are options that are required to be part of the options counseling process, so an

appropriate referral for one or the other option would be required, if the client chose one of those options and requested a referral. However, requiring a referral for prenatal care and delivery or adoption where the client rejected those options would seem coercive and inconsistent with the concerns underlying the ''nondirective'' counseling requirement. The Secretary also rejects the criticism that the provision requiring referral for abortion where medically indicated is undefined and confusing. The meaning of the regulatory requirement for referrals where medically indicated (which applies to all medical services not provided by the project, not just abortion services) has not in the past been a source of confusion for providers, and the Secretary believes that Title X medical personnel are able to make the medical judgments this requirement calls for.

The Secretary likewise rejects the suggestion that ''self-referrals'' for abortion be banned. Very few current Title X providers are also abortion providers: it is estimated that, over the past decade, the percentage of Title X providers located with or near abortion providers has been at or below five percent, with approximately half of these providers consisting of hospitals. Thus, the issue this comment raises is irrelevant to the vast majority of Title X grantees and the program as a whole. Moreover, with respect to those few grantees that are also abortion providers, some may be the only or one of only a few abortion providers in their service area, making ''self-referrals'' a necessity in such situations. The Department has no evidence that commercialization and profiteering are occurring in these circumstances; absent such evidence, the Secretary sees no reason to limit or cut off a legal service option for those Title X clients who freely select it. However, the Department will continue to monitor the issue of self-referrals in the Title X program, to forestall the type of problem suggested by these commenters.

Finally, the Secretary rejects the suggestion that the referral requirement not apply to providers that object to it on moral or religious grounds for the same reasons it objected to the same suggestion with respect to counseling.

F. Physical and Financial Separation

The Gag Rule required Title X projects to be organized so as to have a physical and financial separation from prohibited abortion activities, determined by whether there was ''objective integrity and independence [of the Title X project] from prohibited activities.'' 42 CFR 59.9 (1989 ed.). This determination was to be based on a case-by-case review of facts and circumstances. Factors relevant to this determination included, but were not limited to, the existence of separate accounting records, the degree of separation from facilities (such as treatment, consultation, examination, and waiting room) in which prohibited activities occurred and the extent of such prohibited activities, the existence of separate personnel, and the extent of the presence of evidence of identification of the Title X project and the absence of identification of material promoting abortion. *Id.*

The pre-1988 interpretations required Title X grantees to maintain physical and financial separation between the Title X project and any abortion-related activities they conducted, in that a Title X grantee was required to ensure that the Title X-supported project was separate and distinguishable from those activities. This requirement was held to go beyond a requirement for the technical allocation of funds between Title X project activities and impermissible abortion activities. However, it was considered permissible for a hospital grantee to provide abortions, as long as ''sufficient separation'' was maintained, and common waiting rooms were also permissible, as long as no impermissible materials were present. Common staff and unitary filing systems were also permissible, so long as costs were properly allocated and, with respect to staff members, their abortion-relation activities were performed in a program that was itself separate from the Title X project. The test, as articulated in the summary made available for comment by the June 23, 1993 notice, was ''whether the abortion element in a program of family planning services bulks so large and is so intimately related to all aspects of the program as to make it difficult or impossible to separate the eligible and non-eligible items of cost.''

These interpretations received by far the most specific and extensive public comment. The vast majority of this public comment was from providers and provider organizations and was negative. Although it was generally agreed that the financial separation of Title X project activities from abortion-related activities was required by statute and, in the words of one comment, ''absolutely necessary,'' many of these comments objected that requiring additional types of separation would be unnecessary, costly, and medically unwise. The argument was made that the requirement for physical separation is unnecessary, as it is not required by the statute which, on its face, requires financial separation only. Further, it was argued that since Title X grantees are subject to rigorous financial audits, it can be determined whether program funds have been spent on permissible family planning services, without additional requirements being necessary. With respect to the issue of cost, it was generally objected that requiring separation of staff and facilities would be inefficient and cost ineffective. For example, one comment argued that—

> The wastefulness and inefficiency of the separation requirements is * * * illustrated by the policy which allows common waiting rooms, but disallows ''impermissible materials'' in them. This puts grantees in the position of having to continuously monitor health information for undefined ''permissibility'' or to build a separate waiting room just to be able to utilize those materials * * *.

It was argued that these concerns were particularly important for small and rural clinics ''that may be the only accessible Title X family planning and/or abortion providers for a large population of low-income women.'' Of particular concern for such clinics was the duplication of costs inherent in the separation requirements, as they—

> cannot afford to operate separate facilities or to employ separate staff for these services without substantially increasing the prices of * * * services. Nor can they offer different services on different days of the week because so many of their patients * * * are only able to travel to the clinic on one day.

Many providers also pointed out that requiring complete physical separation of services would be inconsistent with public health principles, which recommend integrated health care, and would impact negatively on continuity of care. As one comment stated, ''women's reproductive health needs are not artificially separated between services: a woman who needs an abortion may also need contraceptive services, and may at another time require parental care.'' Several providers objected in particular that such a separation would, in the words of one comment, ''remove * * * one of the most opportune time[s] to facilitate the entry of the abortion patent into family planning counseling, which is at the post-abortion check-up.'' it was also pointed out that separation of services would burden women, by making them ''make multiple appointments or trips to visit different staff or facilities.'' Finally, the separation policy was objected to by several of the comments that otherwise generally supported the proposed rule

as unnecessarily broad, ambiguous, and vague.

Several of the comments opposing the revocation of the Gag Rule and the adoption of the proposed rules likewise objected specifically to the separation requirements, generally on the ground that the pre-1988 policies were vague and unenforceable. Two comments also argued that, if the pre-1988 requirement of physical separation was to be reinstituted, it made no sense to revoke § 59.9 of the Gag Rule in its entirety, as that section of the Gag Rule contained specific standards to implement this requirement; alternatively, it was argued that if the Secretary is going to use different standards to determine whether the requisite physical separation existed, those should be published for public comment.

The Secretary agrees that the comments on both sides of this issue have identified substantial concerns with the pre-1988 interpretations with respect to the issue of how much physical separation should be required between a grantee's Title X project activities and abortion-related activities. The Secretary agrees with the comments that the pre-1988 interpretation that some physical separation was required was unenforceable. Indeed, since the pre-1988 interpretations had held that it was permissible to provide abortions on a Title X clinic site and to have common waiting areas, records, and staff (subject largely to proper allocation of costs), it was difficult to tell just what degree and kind of physical separation were prohibited. As a consequence, the agency attempted to enforce this requirement on only a few occasions prior to 1988. The Secretary does not agree with opponents of the proposed rules, however, who argued that the ''physical separation'' requirements in § 59.9 of the Gag Rule should be retained on the ground that they provide a necessary clarification of this issue. Although § 59.9 provided ostensibly more specific standards, the fundamental measure of compliance under that section remained ambiguous: ''the degree of separation from facilities [in which prohibited activities occurred] and the extent of such prohibited activities,'' and ''[t]he extent to which'' certain materials were present or absent. Furthermore, since under § 59.9 compliance was to be determined on a ''facts and circumstances'' basis, this section of the Gag Rule provided grantees with less specific advance notice of the compliance standards than did the pre-1988 policies and interpretations. Moreover, the change in policy from the more concrete policies proposed during the Gag Rule rulemaking to the less concrete ''facts and circumstances'' standard ultimately adopted in the final Gag Rule as a result of the public comment suggests the practical difficulties of line-drawing in this area. In fact, since the Gag Rule was never implemented on a national basis, the precise contours of the compliance standards of § 59.9 were never determined. The Secretary has accordingly not accepted the suggestion from several opponents of the proposed rule that the policies of § 59.9 be retained.

As noted by many of the comments from groups that generally supported the revocation of the Gag Rule, the statute does not on its face require physical separation; rather, by its terms it is addressed to the use of ''funds.'' While the interpretation of the statute by agency counsel on which the requirement for physical separation is based was reasonable, it is not the only possible reading of the statute. Rather, the fundamental question under the statute is, as the agency sees it, whether Title X funds are used by Title X grantees to promote or encourage abortions as a method of family planning in the Title X-assisted project. The Department has traditionally viewed a grant project as consisting of an identified set of activities supported in whole or in part by grant funds. If a Title X grantee can demonstrate by its financial records, counseling and service protocols, administrative procedures, and other means that—within the identified set of Title X-supported activities—promotion or encouragement of abortion as a method of family planning does not occur, then it is hard to see what additional statutory protection is afforded by the imposition of a requirement for ''physical'' separation. Indeed, in the light of the enforcement history noted above, it is not unreasonable to say that the standard of ''physical'' separation has, as a practical matter, had little relevance or applicability in the Title X program to date. Moreover, the practical difficulty of drawing lines in this area, both as experienced prior to 1988 and as evident in the history of the Gag Rule itself, suggests that this legal interpretation is not likely ever to result in an enforceable compliance policy that is consistent with the efficient and cost-effective delivery of family planning services. Accordingly, the Secretary has accepted the suggestion of a number of the comments that the requirement for physical separation be dropped; the interpretations summarized in the notice published in the notices section of this edition of the **Federal Register** are revised accordingly. This decision makes it unnecessary to respond to the remaining comments on the issue.

G. Advocacy Restrictions

The Gag Rule, at 42 CFR 59.10 (1989 ed.), prohibited Title X projects from encouraging, promoting, or advocating abortion as a method of family planning. This section prohibited Title X projects from engaging in actions to ''assist women to obtain abortions or increase the availability or accessibility of abortion for family planning purposes,'' including actions such as lobbying for the passage of legislation to increase the availability of abortion as a method of family planning, providing speakers to promote the use of abortion as a method of family planning, paying dues to any group that as a significant part of its activities advocated abortion as a method of family planning, using legal action to make abortion available as a method of family planning, and developing or disseminating materials advocating abortion as a method of family planning. The pre-1988 interpretations likewise prohibited the promotion or encouragement of abortion as a method of family planning through advocacy activities such as providing speakers, bringing legal action to liberalize statutes relating to abortion, and producing and/or showing films that tend to encourage or promote abortion as a method of family planning. However, under those prior interpretations, it was considered permissible for Title X grantees to be dues-paying members of abortion advocacy groups, so long as there were other legitimate program-related reasons for the affiliation.

Very few comments were received concerning these proposed interpretations. Those received from persons and entities that generally supported the proposed rules generally argued against the restriction on showing films advocating abortion, on the ground that it was possible to violate this restriction by showing a film that was purely factual and detailed relative risks. The few comments on this part of the policies and interpretations received from those who generally opposed revoking the Gag Rule pointed out the similarity between the advocacy policies articulated in the proposed interpretations and § 59.10 of the Gag Rule and argued that § 59.10 should accordingly be reinstated.

As set out above, the Secretary is of the view the Gag Rule cannot and should not be adopted piecemeal, as recommended by these comments. Moreover, the Secretary is of the view

that the prohibition against dues paying contained in § 59.10 is not required by the statute and does not represent sound public policy. Accordingly, the suggestion that § 59.10 be reinstated has not been adopted. With respect to the criticism of the prohibition against Title X grantees showing films advocating abortion as a method of family planning, it is recognized that the prohibition should not encompass the kind of neutral, factual information that grantees are permitted to provide in the counseling context; the interpretations have been clarified accordingly. To the extent that these comments seek to further liberalize the advocacy restrictions, however, they are rejected as inconsistent with the Secretary's basic interpretation of section 1008.

H. Miscellaneous

A number of comments were received on miscellaneous issues. Those comments, and the Secretary's responses thereto, are summarized below.

1. Changes outside the scope of the rulemaking

Several comments were received advocating changes to other sections of the regulations on issues other than the issue of compliance with section 1008. These comments included the following suggestions: that the regulations be revised to permit natural family planning providers to be Title X grantees; that the regulations be revised to prohibit single method providers from participating in Title X projects; that the footnote in the regulation addressing Pub. L. 94–63 be revised to state that the law also forbids coercion to carry a pregnancy to term; that the regulations be revised to deal with recent medical developments, such as HIV or Norplant. All of these suggestions are rejected on the ground that they exceed the scope of the rulemaking because these issues were not the subject of the Notice of Proposed Rulemaking.

2. Audit standards

Several providers urged that the OMB audit standards for Title X projects be revised to reflect the change in the regulations. While this comment is likewise outside the scope of the rulemaking, the Department intends to work with the Office of Management and Budget to revise the program audit standards to reflect the regulations below and the policies and interpretations also being reinstituted.

3. Separation of Powers

Two comments, including one from four members of Congress, argued that the suspension of the Gag Rule violated the separation of powers insofar as it misspent federal tax dollars without amendment to the statute or compliance with the APA. The Secretary disagrees that suspension of the Gag Rule violated either the statute or the APA. The Gag Rule was, in the Secretary's view, a permissible interpretation of the statute, but not the only permissible interpretation of the statute; thus, suspension of those rules (and reinstitution of the Department's longstanding policies and interpretations of the statute) is not inconsistent with the statute. Nor was the suspension action inconsistent with the APA, as the findings which the APA requires be made in such circumstances were made. Finally, the Secretary notes that this issues is now moot, with the publication of the regulations below.

I. Technical Amendments

Because the proposed rules proposed the reissuance of the program regulations that were issued in 1980, it was recognized that—

> some of the other regulations cross-referenced in the rules below may no longer be operative or citations may need to be updated. However, such housekeeping details will be addressed in the final rules.

58 FR 7464. Further review of the proposed regulations has established that this is indeed the case. Accordingly, a number of technical amendments have been made to the regulations, to delete obsolete statutory or regulatory references or to clarify the existing provisions or incorporate new regulatory or other references made relevant by subsequent changes in the law. A summary of the technical amendments, and the reasons therefor, follows:

1. *§ 59.2 (definition of ''low income family''):* The reference to ''Community Services Administration Income Poverty Guidelines (45 CFR 1060.2)'' is changed to ''Poverty Guidelines issued pursuant to 42 U.S.C. 9902(2).'' This change reflects a change in the law, effected by Pub. L. 97–35, § 673.

2. *§ 59.2 (definition of ''State''):* The definition of this term is changed to reflect statutory changes regarding the Trust Territories of the Pacific Islands effected by Pub. L. 99–239 (relating to the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau).

3. *§ 59.5(a)(8):* The reference to the ''CSA Income Poverty Guidelines'' is changed, consistent with and for the reason set out above with respect to § 59.2 (definition of ''low income family'').

4. *§ 59.9:* The reference to ''Subpart Q'' of 45 CFR Part 74 has been deleted, as that subpart has been revoked. A reference to 45 CFR Part 92 has been added, to reflect the requirements at that part that apply by their terms of State and local governments.

5. *§ 59.10:* The references to 42 CFR Part 122 and 45 CFR Part 19 have been deleted, as those parts have been revoked. A reference to 37 CFR Part 401, which applies by its terms, has been added, reflecting a change in the law. The description of 45 CFR Part 74 has been changed, to reflect accurately the current title of that part. A reference to 45 CFR Part 92 has been added, to reflect the requirements at that part that apply by their terms to State and local governments.

6. § 59.11: The word ''documented'' has been inserted before the word ''consent'' in this section to clarify what was implicit in this section, that the consent for disclosure must be documented by the project.

7. § 59.12 (proposed): The proposed section (which was the prior section relating to inventions and discoveries) has been deleted, as it has been superseded by the government-wide regulations at 37 CFR Part 401, a reference to which has been added to § 59.10. This change has also occasioned the renumbering of the proposed § 59.13.

The above changes are all technical in nature and simply bring the regulations issued below into conformity with current law. They are thus essentially housekeeping in nature, as noted in the proposed rules. Accordingly, and for the reasons set out above, the Secretary finds that public comment on these changes would be impracticable, unnecessary, and contrary to the public interest and that good cause therefore exists for omitting public comment thereon.

III. Effective Date

These regulations are adopted effective upon publication, as they meet the conditions for exception from the requirement for a 30-day delay in effective date under 5 U.S.C. 553(d). First, by revoking the Gag Rule, the regulations below relieve the restrictions imposed on grantees' conduct of their Title X projects by the Gag Rule. Second, the policies adopted in the regulations below and the interpretations adopted in conjunction with them are already largely in effect, by virtue of the suspension of the Gag Rule and the reinstitution of the pre-

1988 policies and interpretations effected by the interim rules of February 5, 1993. To the extent this *status quo* is changed by the revision of the policies and interpretations in question, the effect of those revisions is to clarify and simplify certain of the present restrictions, which should make complying with the policies and interpretations easier for grantees than is presently the case. Thus, no useful purpose would be served by delaying the effective date of these regulations, and the Secretary accordingly finds that good cause exists for making them effective upon publication.

IV. Analysis of Impacts

The Secretary has examined the impacts of the final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612), and certifies that this final rule will not have a significant impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act (the Act) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 (adjusted for inflation) in any year. This rule will not result in such an expenditure; consequently, it is not covered by Section 202 of the Act.

Executive Order 13132 requires that a Federalism Assessment be prepared in any cases in which policies have significant federalism implications as defined in the Executive Order. The Department does not intend or interpret this final rule as imposing additional costs or burdens on the States. The Department has evaluated the public comments. Public comments from State and local health departments indicate support for the Title X policies contained in the final rule and the interpretations to ensure the provision of quality medical care and patients' rights to comprehensive services. In the interest of consistent program operation and uniform understanding of the policy, the final rule codifies what has been longstanding program policy and is consistent with current program practice.

The Office of Management and Budget has reviewed this rule pursuant to Executive Order 12866.

List of Subjects in 42 CFR Part 59.

Family planning—birth control; Grant programs—health; Health facilities.

Dated: June 28, 2000.

David Satcher,

Assistant Secretary for Health and Surgeon General.

Approved: June 28, 2000.

Donna E. Shalala,

Secretary.

PART 59—GRANTS FOR FAMILY PLANNING

For the reasons set out in the preamble, subpart A of part 59 of title 42, Code of Federal Regulations, is hereby revised to read as follows:

Subpart A—Project Grants for Family Planning Services

Sec.
59.1 To what programs do these regulations apply?
59.2 Definitions.
59.3 Who is eligible to apply for a family planning services grant?
59.4 How does one apply for a family planning services grant?
59.5 What requirements must be met by a family planning project?
59.6 What procedures apply to assure the suitability of informational and educational material?
59.7 What criteria will the Department of Health and Human Services use to decide which family planning services projects to fund and in what amount?
59.8 How is a grant awarded?
59.9 For what purposes may grant funds be used?
59.10 What other HHS regulations apply to grants under this subpart?
59.11 Confidentiality.
59.12 Additional conditions.

Subpart A—Project Grants for Family Planning Services

Authority: 42 U.S.C. 300a–4.

§ 59.1 To what programs do these regulations apply?

The regulations of this subpart are applicable to the award of grants under section 1001 of the Public Health Service Act (42 U.S.C. 3200) to assist in the establishment and operation of voluntary family planning projects. These projects shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children.

§ 59.2 Definitions.

As used in this subpart:

Act means the Public Health Service Act, as amended.

Family means a social unit composed of one person, or two or more persons living together, as a household.

Low income family means a family whose total annual income does not exceed 100 percent of the most recent Poverty Guidelines issued pursuant to 42 U.S.C. 9902(2). ''Low-income family'' also includes members of families whose annual family income exceeds this amount, but who, as determined by the project director, are unable, for good reasons, to pay for family planning services. For example, unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources.

Nonprofit, as applied to any private agency, institution, or organization, means that no part of the entity's net earnings benefit, or may lawfully benefit, any private shareholder or individual.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

State includes, in addition to the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, the U.S. Outlaying Islands (Midway, Wage, *et al.*), the Marshall Islands, the Federated State of Micronesia and the Republic of Palau.

§ 59.3 Who is eligible to apply for a family planning services grant?

Any public or nonprofit private entity in a State may apply for a grant under this subpart.

§ 59.4 How does one apply for a family planning services grant?

(a) Application for a grant under this subpart shall be made on an authorized form.

(b) An individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of the grant, including the regulations of this subpart, must sign the application.

(c) The application shall contain—

(1) A description, satisfactory to the Secretary, of the project and how it will meet the requirements of this subpart;

(2) A budget and justification of the amount of grant funds requested;

(3) A description of the standards and qualifications which will be required for all personnel and for all facilities to be used by the project; and

(4) Such other pertinent information as the Secretary may require.

§ 59.5 What requirements must be met by a family planning project?

(a) Each project supported under this part must:

(1) Provide a broad range of acceptable and effective medically approved family planning methods

(including natural family planning methods) and services (including infertility services and services for adolescents). If an organization offers only a single method of family planning, it may participated as part of a project as long as the entire project offers a broad range of family planning services.

(2) Provide services without subjecting individuals to any coercion to accept services or to employ or not to employ any particular methods of family planning. Acceptance of services must be solely on a voluntary basis and may not be made a prerequisite to eligibility for, or receipt of, any other services, assistance from or participation in any other program of the applicant.[1]

(3) Provide services in a manner which protects the dignity of the individual.

(4) Provide services without regard of religion, race, color, national origin, handicapping condition, age, sex, number of pregnancies, or martial status.

(5) Not provide abortion a method of family planning. A project must:

(i) Offer pregnant women the opportunity to provided information and counseling regarding each of the following options:

(A) Prenatal care and delivery;

(B) Infant care, foster care, or adoption; and

(C) Pregnancy termination.

(ii) If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, and referral upon request, except with respect to any option(s) about which the pregnant woman indicates she does not wish to receive such information and counseling.

(6) Provide that priority in the provision of services will be given to persons from low-income families.

(7) Provide that no charge will be made for services provided to any persons from a low-income family except to the extent that payment will be made by a third party (including a government agency) which is authorized to or is under legal obligation to pay this charge.

(8) Provide that charges will be made for services to persons other than those from low-income families in accordance with a schedule of discounts based on ability to pay, except that charges to persons from families whose annual income exceeds 250 percent of the levels set forth in the most recent Poverty Guidelines issued pursuant to 42 U.S.C. 9902(2) will be made in accordance with a schedule of fees designed to recover the reasonable cost of providing services.

(9) If a third party (including a Government agency) is authorized or legally obligated to pay for services, all reasonable efforts must be made to obtain the third-party payment without application of any discounts. Where the cost of services is to be reimbursed under title XIX, XX, or XXI of the Social Security Act, a written agreement with the title XIX, XX or XXI agency is required.

(10)(i) Provide that if an application relates to consolidation of service areas or health resources or would otherwise affect the operations of local or regional entities, the applicant must document that these entities have been given, to the maximum feasible extent, an opportunity to participate in the development of the application. Local and regional entities include existing or potential subgrantees which have previously provided or propose to provide family planning services to the area proposed to be served by the applicant.

(ii) Provide an opportunity for maximum participation by existing or potential subgrantees in the ongoing policy decisionmaking of the project.

(11) Provide for an Advisory Committee as required by § 59.6.

(b) In addition to the requirements of paragraph (a) of this section, each project must meet each of the following requirements unless the Secretary determines that the project has established good cause for its omission. Each project must:

(1) Provide for medical services related to family planning (including physician's consultation, examination prescription, and continuing supervision, laboratory examination, contraceptive supplies) and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices.

(2) Provide for social services related to family planning, including counseling, referral to and from other social and medical services agencies, and any ancillary services which may be necessary to facilitate clinic attendance.

(3) Provide for informational and educational programs designed to—

(i) Achieve community understanding of the objectives of the program;

(ii) Inform the community of the availability of services; and

(iii) Promote continued participation in the project by persons to whom family planning services may be beneficial.

(4) Provide for orientation and in-service training for all project personnel.

(5) Provide services without the imposition of any durational residency requirement or requirement that the patient be referred by a physician.

(6) Provide that family planning medical services will be performed under the direction of a physician with special training or experience in family planning.

(7) Provide that all services purchased for project participants will be authorized by the project director or his designee on the project staff.

(8) Provide for coordination and use of referral arrangements with other providers of health care services, local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other federal programs.

(9) Provide that if family planning services are provided by contract or other similar arrangements with actual providers of services, services will be provided in accordance with a plan which establishes rates and method of payment for medical care. These payments must be made under agreements with a schedule of rates and payment procedures maintained by the grantee. The grantee must be prepared to substantiate, that these rates are reasonable and necessary.

(10) Provide, to the maximum feasible extent, an opportunity for participation in the development, implementation, and evaluation of the project by persons broadly representative of all significant elements of the population to be served, and by others in the community knowledgeable about the community's needs for family planning services.

§ 59.6 What procedures apply to assure the suitability of informational and educational material?

(a) A grant under this section may be made only upon assurance satisfactory to the Secretary that the project shall provide for the review and approval of informational and educational materials developed or made available under the project by an Advisory Committee prior to their distribution, to assure that the materials are suitable for the population

[1] Section 205 of Pub. L. 94–63 states: "Any (1) officer or employee of the United States, (2) officer or employee of any State, political subdivision of a State, or any other entity, which administers or supervises the administration of any program receiving Federal financial assistance, or (3) person who receives, under any program receiving Federal assistance, compensation for services, who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving Federal financial assistance shall be fined not more than $1,000 or imprisoned for not more than one year, or both."

or community to which they are to be made available and the purposes of title X of the Act. The project shall not disseminate any such materials which are not approved by the Advisory Committee.

(b) The Advisory Committee referred to in paragraph (a) of this section shall be established as follows:

(1) *Size.* The Committee shall consist of no fewer than five but not more than nine members, except that this provision may be waived by the Secretary for good cause shown.

(2) *Composition.* The Committee shall include individuals broadly representative (in terms of demographic factors such as race, color, national origin, handicapped condition, sex, and age) of the population or community for which the materials are intended.

(3) *Function.* In reviewing materials, the Advisory Committee shall:

(i) Consider the educational and cultural backgrounds of individuals to whom the materials are addressed;

(ii) Consider the standards of the population or community to be served with respect to such materials;

(iii) Review the content of the material to assure that the information is factually correct;

(iv) Determine whether the material is suitable for the population or community to which is to be made available; and

(v) Establish a written record of its determinations.

§ 59.7 What criteria will the Department of Health and Human Services use to decide which family planning services projects to fund and in what amount?

(a) Within the limits of funds available for these purposes, the Secretary may award grants for the establishment and operation of those projects which will in the Department's judgment best promote the purposes of section 1001 of the Act, taking into account:

(1) The number of patients, and, in particular, the number of low-income patients to be served;

(2) The extent to which family planning services are needed locally;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in these regulations.

(b) The Secretary shall determine the amount of any award on the basis of his estimate of the sum necessary for the performance of the project. No grant may be made for less than 90 percent of the project's costs, as so estimated, unless the grant is to be made for a project which was supported, under section 1001, for less than 90 percent of its costs in fiscal year 1975. In that case, the grant shall not be for less than the percentage of costs covered by the grant in fiscal year 1975.

(c) No grant may be made for an amount equal to 100 percent for the project's estimated costs.

§ 59.8 How is a grant awarded?

(a) The notice of grant award specifies how long HHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for three to five years.

(b) Generally the grant will initially be for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 59.9 For what purpose may grant funds be used?

Any funds granted under this subpart shall be expended solely for the purpose for which the funds were granted in accordance with the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles prescribed in 45 CFR Part 74 or Part 92, as applicable.

§ 59.10 What other HHS regulations apply to grants under this subpart?

Attention is drawn to the following HHS Department-wide regulations which apply to grants under this subpart. These include:

37 CFR Part 401—Rights to inventions made by nonprofit organizations and small business firms under government grants, contracts, and cooperative agreements

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 74—Uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations; and certain grants and agreements with states, local governments and Indian tribal governments

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefitting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements to state and local governments

§ 59.11 Confidentiality.

All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

§ 59.12 Additional conditions.

The Secretary may, with respect to any grant, impose additional conditions prior to or at the time of any award, when in the Department's judgment these conditions are necessary to assure orb protect advancement of the approved program, the interests of public health, or the proper use of grant funds.

[FR Doc. 00–16758 Filed 6–30–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

Provision of Abortion-Related Services in Family Planning Services Projects

AGENCY: Office of Population Affairs, OPHS, DHHS.

ACTION: Notice.

SUMMARY: This notice informs the public of the interpretations relating to the statutory requirement that no funds appropriated under Title X of the Public Health Service Act be used in programs in which abortion is a method of family planning.

FOR FURTHER INFORMATION CONTACT: Samuel S. Taylor, Office of Population Affairs, (301) 594–4001.

SUPPLEMENTARY INFORMATION: On February 5, 1993, the Department of Health and Human Services published in the **Federal Register** a notice of proposed rulemaking that proposed to revise the regulations at 42 CFR Part 59, Subpart A. Subpart A of Part 59 sets forth the program requirements applicable to grantees under section 1001 of the Public Health Service (PHS) Act, 42 U.S.C. 300, *et seq.* The notice of proposed rulemaking proposed to revise that subpart by readopting the program regulations as they existed prior to February 2, 1988. This action would have the effect of revoking the regulations published on February 2, 1988, commonly known as the ''Gag Rule,'' which set forth standards for the compliance by such grantees with section 1008 of that Act, 42 U.S.C. 300a–6.

The February 5, 1993 notice of proposed rulemaking also proposed to reinstitute the pre-1988 policies and interpretations regarding compliance with section 1008. 58 FR 7464. As explained in the notice of proposed rulemaking, those policies and interpretations derived from previous opinions of the Department concerning section 1008. To promote more useful public comment in the rulemaking process, the Department subsequently made available a more detailed summary of the policies and interpretations and reopened the public comment period. 58 FR 34042 (June 23, 1993).

A number of public comments on the prior policies and interpretations were obtained during the reopened comment period, and the public comments received during both comment periods were generally focused on the prior policies and interpretations rather than on the proposed regulatory language. The Department has changed one paragraph of the regulations and has modified its prior interpretations in several particulars based in part on the public comment received. These modifications, and the grounds therefor, are described in the preamble to the final rules published on this date in the rules section of the **Federal Register.** The interpretations, as so modified, are set out in the summary statement below. The summary below is also reorganized from the summary statement made available for public comment, for purposes of clarification.

Accordingly, to provide guidance to grantees in order to promote uniform administration of the program and facilitate grantee compliance with the interpretations that are being reinstituted in conjunction with the final regulations adopted on this date, provided below is a summary of the program regulatory requirements and interpretations that relate to section 1008 of the PHS Act.

Program Policies Regarding the Title X National Family Planning Program and the Section 1008 Abortion Prohibition

Section 1008 of the Title X statute, 42 U.S.C. 300a–6, states: ''None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.'' This prohibition applies not only to the performance of abortion by a Title X project, but also to the conduct of certain abortion-related activities by the project. However, the prohibition does not apply to all the activities of a Title X grantee, but only to those within the Title X project. This statement summarizes the Department requirements and interpretations in existence prior to the imposition of the 1988 ''Gag Rule'' with regard to implementation of section 1008, as modified following the rulemaking of 1993.

1. General Principles

In general, section 1008 prohibits Title X programs from engaging in activities which promote or encourage abortion as a method of family planning. However, section 1008 does not prohibit the funding under Title X of activities which have only a possibility of encouraging or promoting abortion; rather, a more direct nexus is required. The general test is whether the immediate effect of the activity in question is to promote or encourage the use of abortion as a method of family planning. If the immediate effect of the activity in question is essentially neutral, then it is not prohibited by the statute. Thus, a Title X project may not provide services that directly facilitate the use of abortion as a method of family planning, such as providing transportation for an abortion, explaining and obtaining signed abortion consent forms from clients interested in abortions, negotiating a reduction in fees for an abortion, and scheduling or arranging for the performance of an abortion, promoting or advocating abortion within Title X program activities, or failing to preserve sufficient separation between Title X program activities and abortion-related activities.

2. Abortion Counseling and Referral

Under 42 CFR 59.5(a)(5), a Title X project must:

Not provide abortion as a method of family planning. A project must:

(i) Offer pregnant women the opportunity to be provided information and counseling regarding each of the following options:

(A) Prenatal care and delivery;

(B) Infant care, foster care, or adoption; and

(C) Pregnancy termination.

(ii) If requested to provide such information and counseling, provide neutral, factual information and nondirective counseling on each of the options, and referral on request, except with respect to any option(s) about which the pregnant woman indicates she does not wish to receive such information and counseling.

However, there are limitations on what abortion counseling and referral is permissable under the statute. A Title X project may not provide pregnancy options counseling which promotes abortion or encourages persons to obtain abortion, although the project may provide patients with complete factual information about all medical options and the accompanying risks and benefits. While a Title X project may provide a referral for abortion, which may include providing a patient with the name, address, telephone number, and other relevant factual information (such as whether the provider accepts Medicaid, charges, etc.) about an abortion provider, the project may not take further affirmative action (such as negotiating a fee reduction, making an appointment, providing transportation) to secure abortion services for the patient. Where a referral to another provider who might perform an abortion is medically indicated because of the patient's condition or the condition of the fetus (such as where the woman's life would be endangered), such a referral by a Title X project is not prohibited by section 1008 and is required by 42 CFR 59.5(b)(1). The limitations on referrals do not apply in cases in which a referral is made for medical indications.

3. Advocacy Activities

A Title X project may not promote or encourage the use of abortion as a method of family planning through advocacy activities such as providing speakers to debate in opposition to anti-abortion speakers, bringing legal action to liberalize statutes relating to abortion, or producing and/or showing films that encourage or promote a favorable attitude toward abortion as a method of family planning. Films that present only neutral, factual information about abortion are permissible. A Title X project may be a dues paying participant in a national abortion advocacy organization, so long as there are other legitimate program-related reasons for the affiliation (such as access to certain information or data useful to the Title X project). A Title X project may also discuss abortion as an available alternative when a family planning method fails in a discussion of relative risks of various methods of contraception.

4. Separation

Non-Title X abortion activities must be separate and distinct from Title X project activities. Where a grantee conducts abortion activities that are not part of the Title X project and would not be permissible if they were, the grantee must ensure that the Title X-supported project is separate and distinguishable from those other activities. What must be looked at is whether the abortion element in a program of family planning services is so large and so intimately related to all aspects of the program as to make it difficult or impossible to separate the eligible and non-eligible items of cost.

The Title X project is the set of activities the grantee agreed to perform in the relevant grant documents as a condition of receiving Title X funds. A grant applicant may include both project and nonproject activities in its grant application, and, so long as these are properly distinguished from each other and prohibited activities are not reflected in the amount of the total approved budget, no problem is created. Separation of Title X from abortion activities does not require separate grantees or even a separate health facility, but separate bookkeeping entries alone will not satisfy the spirit of the law. Mere technical allocation of funds, attributing federal dollars to non-abortion activities, is not a legally supportable avoidance of section 1008.

Certain kinds of shared facilities are permissible, so long as it is possible to distinguish between the Title X supported activities and non-Title X abortion-related activities: (a) A common waiting room is permissible, as long as the costs properly pro-rated; (b) common staff is permissible, so long as salaries are properly allocated and all abortion related activities of the staff members are performed in a program which is entirely separate from the Title X project; (c) a hospital offering abortions for family planning purposes and also housing a Title X project is permissible, as long as the abortion activities are sufficiently separate from the Title X project; and (d) maintenance of a single file system for abortion and family planning patients is permissible, so long as costs are properly allocated.

Whether a violation of section 1008 has occurred is determined by whether the prohibited activity is part of the funded project, not by whether it has been paid for by federal or non-federal funds. A grantee may demonstrate that prohibited abortion-related activities are not part of the Title X project by various means, including counseling and service protocols, intake and referral procedures, material review procedures, and other administrative procedures.

Dated: June 28, 2000.

Samuel S. Taylor,

Acting Director, Office of Population Affairs.

[FR Doc. 00–16759 Filed 6–30–00; 8:45 am]

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Federal Register

Monday,
July 3, 2000

Part VI

Department of Transportation

Federal Railroad Administration

49 CFR Parts 215, 220, and 238

Passenger Equipment Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 215, 220, and 238

[FRA Docket No. PCSS–1, Notice No. 6]

RIN 2130–AA95

Passenger Equipment Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document specifically responds to the petitions for reconsideration related to the inspection, testing, maintenance, and movement of defective equipment provisions that FRA received in response to its May 12, 1999 final rule establishing comprehensive Federal safety standards for railroad passenger equipment. This document clarifies and amends the final rule as it relates to these provisions.

EFFECTIVE DATE: The amendments to the final rule are effective July 3, 2000.

FOR FURTHER INFORMATION, CONTACT: Ronald Newman, Staff Director, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, Mail Stop 25, Washington, DC 20590 (telephone: 202-493–6300); Daniel Alpert, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6026); or Thomas Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6036).

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1999, FRA issued a final rule establishing comprehensive Federal safety standards for railroad passenger equipment. *See* 64 FR 25540. FRA received petitions for reconsideration of the final rule from nine separate parties. These petitions sought reconsideration of numerous provisions contained in the final rule which generally involved the following major topics: structural design; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. The purpose of this document is to address the issues raised in the petitions for reconsideration relating to the final rule requirements regarding the inspection, testing, and maintenance of passenger equipment and the movement of such equipment when it becomes defective as well as other miscellaneous provisions related to those topics. FRA believes that it is necessary to address these issues as quickly as possible in order to allow railroads sufficient time to complete the development of the training protocols required by the final rule and to begin the process of training their employees on the requirements of the final rule. Due to the complexity of some of the structural and fire safety issues raised in the petitions for reconsideration and because FRA's technical staff has concentrated its attention on resolving the issues related to the grandfathering of existing passenger equipment, FRA intends to respond to the issues raised in the petitions for reconsideration that are related to fire safety and the structural design of passenger equipment in a separate notice that will be published in the **Federal Register** in the near future.

In response to the final rule, FRA received petitions for reconsideration from five parties raising various issues relating to the inspection, testing, maintenance, and movement for repair provisions contained in the final rule. These petitioners included:

American Association of Private Railroad Car Owners, Inc. (AAPRCO),
American Public Transit Association (APTA),
Brotherhood of Railway Carmen Division of the Transportation Communications International Union (BRC),
National Railroad Passenger Corporation (Amtrak), and
Transportation Workers Union of America (TWU).

The specific issues and recommendations raised by these petitioners, and FRA's response to those petitions are discussed in detail in the ''Section-by-Section Analysis'' portion of the preamble. The section-by-section analysis also contains a detailed discussion of each provision which is being clarified or amended from the May 12, 1999 final rule. This will enable the regulated community to more readily compare this document with the preamble discussions contained in the final rule and will aid the regulated community in understanding the requirements of the rule. All of the changes being made to the final rule in this response to the petitions for reconsideration are intended to be clarifying or technical amendments or are within the scope of the issues and options discussed, considered, and raised in either the 1997 Notice of Proposed Rulemaking (NPRM) or the final rule.

The following discussion is intended to address the general concerns raised by the BRC regarding FRA's collection and reliance on the power brake defect ratios contained in FRA's database. The BRC submitted a petition for reconsideration which raised numerous issues regarding power brake defect ratios and their use in this proceeding. In its petition the BRC contends that data developed in joint field inspections (i.e., FRA, BRC, and the carriers) during the Passenger Equipment Safety Standards process have been ignored in favor of traditional FRA safety data. The BRC asserts the data it developed regarding inspections by carmen and train crews were ignored by FRA when developing the NPRM and final rule and that FRA instead relied on data contained in its database. The BRC maintains that the data upon which FRA has relied to justify the new safety regulations are highly suspect, inaccurate, and unreliable.

The BRC contends that its own review of FRA safety data has uncovered instances where the same inspection data have been counted twice, three times, and even six times when calculating power brake defect ratios. BRC further states that it has uncovered numerous incidents in which FRA conducted power brake inspections while equipment is not connected to a source of compressed air, and contends that these types of inspections uncover only the most obvious defects in the power brake system. Thus, they contend that other defects that are less obvious, but no less dangerous, are not detected in these types of inspections. The BRC contends that FRA's inclusion of these types of inspections causes an artificial deflation of power brake defect ratios since the entire brake system is not inspected. The BRC contends that the deflation of these ratios is demonstrated by FRA in the 1998 NPRM proposing modification of the power brake regulations related to freight operations (63 FR 48294; Sept. 9, 1998). The BRC argues that although FRA noted an average freight power brake defect ratio of 3.9 percent in the 1998 NPRM, data collected in joint FRA, BRC and carrier inspections under various Safety Assurance and Compliance (SACP) initiatives reveal actual defect ratios of over 20 to 25 percent. The BRC asserts that FRA considered these data issues to be important enough to hold a public meeting on May 27, 1999 to discuss the issues related to FRA's inspection and reporting practices. Consequently, in a letter dated May 10, 1999, and in its petition, the BRC requested withdrawal of the final rule until more reliable safety data exist or are developed to justify the final rule.

Although the BRC's petition for reconsideration alludes to several

concerns regarding FRA's collection and reporting of power brake defect data, the petition does not allege that the accident/incident data presented by FRA in the final rule were inaccurate. In the May 12, 1999, final rule, FRA noted that its accident/incident data related to intercity passenger and commuter train operations support the general assumption that the current practices of these operations in the area of power brake inspection, testing, and maintenance are for the most part sufficient to ensure the safety of the public. *See* 64 FR 25556. The final rule noted that between January 1, 1990, and October 31, 1996, there were only five brake-related accidents involving commuter and intercity passenger railroad equipment and that no casualties resulted from any of these accidents. The total damage to railroad equipment reported to FRA totaled approximately $650,000, or $96,000 annually.

In the final rule, FRA also noted that between January 1, 1995, and October 31, 1996, FRA inspected approximately 13,000 commuter and intercity passenger rail units for compliance with 49 CFR part 232. FRA noted that the power brake defect ratio for these units during this period was approximately 0.8 percent. Furthermore, during this same period FRA inspected approximately 6,300 locomotives for compliance with 49 CFR part 229. The brake defect ratio for these units was approximately 4.65 percent. *See* 64 FR 25556–57. Although these defect ratios were presented in the general preamble portion of the final rule and the NPRM, there is nothing in either document or in the specific discussions of the various provisions proposed in the NPRM or retained in the final rule to indicate that these defect ratios were relied upon or used as a basis for developing any of the provisions. They were merely presented for illustrative purposes and were only relied on to the limited extent as discussed below.

The allegations regarding FRA's collection and reporting of power brake defect ratios raised by the BRC in its petition are virtually identical to the issues the organization raised with regard to the 1998 NPRM on freight power brakes or are directly related to those concerns. Therefore, FRA believes it is necessary to provide a general discussion explaining the limitations of using defect data collected by FRA, how defect data are used by FRA when developing a regulation, and how defect data are collected by FRA. As the concerns raised by BRC are applicable to FRA's collection of defect data for both freight and passenger equipment, the discussion will generally discuss freight defect data and the concerns related to that data raised at a public meeting conducted on May 27, 1999, but are equally applicable to defect data on passenger equipment.

Data on brake defects are collected by FRA inspectors as they do general rail equipment inspections and during special projects conducted under the SACP. FRA has consistently maintained that the power brake defect data it collects are not suitable for use in any statistical analysis of brake defects. In order to perform a statistically valid analysis, either all cars and locomotives must be inspected (prohibitively expensive), or a statistically valid sample must be collected. For the sample to be valid for the purpose of statistical analysis, the sample must be randomly selected so that it will represent the same characteristics as the universe of data. Random samples have several unique characteristics. They are unbiased, meaning that each unit has the same chance of being selected. Random samples are independent, or the selection of one unit has no influence on the selection of other units. Most statistical methods depend on independence and lack of bias. Without a randomized sample design, there can be no dependable statistical analysis, and no way to measure sampling error, no matter how the data are modified. Random sampling ''statistically guarantees'' the accuracy of the results.

The sampling method used for regular FRA inspections is not random. It is more of a combination between a *judgment* sample and an opportunity sample. The opportunity sample basically just takes the first sample population that comes along, while the judgment sample is based on ''expert'' opinion. The sampling method used for SACP inspections is also a judgment sample, where FRA is focusing its inspections on a specific safety concern. This method is extremely prone to bias, as FRA is typically investigating known problem areas. Furthermore, some SACP inspections are joint inspections with rail labor representatives. Consequently, it is unknown whether the final reports reflect only FRA defects, as many of the joint inspections had both railroad and FRA defects recorded.

Neither the regular FRA inspections nor the SACP inspections were designed for random data collection. Although both are very useful to FRA, they were not designed for this purpose, and the data should be used carefully. FRA believes that data collected during routine inspections are the most likely data to accurately reflect the condition of the fleet. However, both FRA inspection data and SACP data lack any measuring device; a defect is a defect, and no distinction is made between a critical defect versus a minor defect. Furthermore, the estimated correlation coefficients between defects and accidents were not found to be statistically significant. This does not mean that defects cannot lead to collisions or derailments as the lack of correlation could easily be a result of non-random sampling. Therefore, the data collected both during routine FRA inspections and under SACP cannot be used as a proxy for data collected by means of a random sample for the purpose of statistical analysis. The sample is not random, so no dependable statistical analysis may be performed. Consequently, FRA did not and will not use the data regarding power brake defects for the purpose of conducting a purely statistical analysis.

Power brake defect ratios were not specifically relied on when developing any provision contained in the final rule or in the NPRM which preceded the final rule. Although power brake defect ratios were considered, they were not used as the exclusive or necessary basis for any of the provisions proposed in the NPRM or contained in the final rule. They were generally used to aid FRA in identifying problem areas, which in turn helped FRA identify brake issues and practices that needed to be addressed. For example, the existence of high power brake defect ratios at a particular location or on a particular railroad likely indicated the existence of certain practices or procedures that created or contributed to the high defect levels. As is evident from the discussions of the various requirements contained in both the NPRM and in the final rule, FRA considered a massive amount of information and data when developing the rule.

Although the data regarding defect ratios contained in FRA's database have limited usefulness in the context of developing a regulation, the data are very useful to FRA in other ways. The data are useful in measuring a railroad's general compliance level and aid in identifying problem areas or locations. This information aids FRA in allocating its inspection forces and permits FRA to focus its enforcement on locations or issues which are in the greatest need of such scrutiny. By focusing its enforcement in this manner, FRA is able to make the best use of its limited resources.

Although the preceding discussion details the limitations of using the data collected by FRA regarding power brake defects when developing a regulation, FRA believes that a more detailed

discussion of FRA's collection of power brake defect data is needed in order to address the issues raised or alluded to by the BRC in its petition. As noted above, FRA conducted a public meeting on May 27, 1999, in order to address general concerns raised by various parties regarding the accuracy of the FRA's power brake defect data and to provide interested parties the opportunity to develop the issues they generally raised in oral and written comments regarding the data. Although this public meeting was held in connection with the NPRM regarding power brake regulations related to freight operations, many of the issues are identical to the issues raised by the BRC in its petition in this proceeding. At this May 27, 1999, public meeting, representatives of several labor organizations raised issues regarding the accuracy and use of the power brake defect data complied by FRA. These commenters generally alleged that the method by which FRA collects power brake defect data results in the underreporting of defects which in turn results in a systematic deflation of power brake defect ratios.

Specific issues raised at this public meeting and in subsequent written comments include: the overreporting of units inspected during FRA inspections; the calculation and deflation of the power brake defect ratio; the inspection procedures used by FRA that tend to exclude certain categories of power brake defects; potential discrepancies in the input data relative to the activity codes from FRA field inspection reports to FRA's database; the performance of power brake inspections by FRA inspectors on cars that are not properly charged or connected to a source of compressed air; FRA's reliance on the railroads for the total number of cars inspected; and the wide variance between FRA inspectors and FRA regions in the number of units inspected, the number of defects reported, and the resulting defect ratios.

In order to understand some of the issues raised, it is necessary to understand how inspection data developed by an FRA inspector are entered into FRA's database. FRA Motive Power & Equipment (MP&E) inspectors conduct inspections of railroad passenger and freight equipment pursuant to various parts of the Federal regulations contained in title 49 of the Code of Federal Regulations. Principally, these include inspections under the following: part 215—Freight Car Safety Standards; part 229—Locomotive Safety Standards; part 231—Safety Appliance Standards; and part 232—Power Brakes and Drawbars. When performing an inspection under each of these parts, an FRA inspector will fill out the appropriate inspection form which indicates the number of units inspected under each part as well as the number of defective conditions found on those units. In the context of performing power brake inspections under part 232, an inspection of a car means a unit count of one. When this type of inspection is conducted, inspectors inspect various brake-related car components such as: Foundation brake rigging, air hoses, angle cocks, brake shoes, and, where possible, piston travel. When an inspector performs an inspection of a brake test required under part 232, the unit count for such a test is the train consist, block of cars, or car being tested. For example, when an inspector observes the performance of an initial terminal brake test, the entire train would constitute one unit count.

The BRC has raised various issues regarding FRA's calculation of power brake defect ratios both at the public meeting and in its petition. Several of these concerns involve the potential overreporting of the number of units inspected which then results in the deflation of power brake defect ratios. One concern addressed the practice of counting a single car or locomotive as a unit count under each of the MP&E regulations that it is inspected under. For example, a freight car, MU locomotive, or passenger car could be considered a unit count under part 215, part 229, part 231, and part 232 respectively if an FRA inspector were to inspect that car or locomotive under each of those provisions. Thus, one vehicle could be represented as three unit counts. It is claimed that this practice inflates the number of units inspected and thus, deflates defect ratios. This concern would be valid if FRA were to attempt to express a defect ratio for combined parts of the CFR. For example, if FRA were to attempt to express an MP&E defect ratio (a combination of parts 215, 229, 231, and 232), then the method by which FRA collects data would result in an inflation of the number of units inspected and the resulting defect ratio would be skewed. For purposes of analysis, FRA's database is constructed so that defect ratios are expressed only in terms of each separate part of the CFR.

A second concern, raised at both the public meeting and in BRC's petition, involves the potential of duplicate inspection reports being submitted by different FRA inspectors when engaged in team inspections. The BRC alleges that FRA inspectors are significantly inflating the number of power brake units being inspected by submitting duplicate reports for the same inspection activity when groups of FRA inspectors perform inspections at the same location. In an effort to investigate this concern, FRA designed a computer program to search for potentially duplicate inspection reports submitted during the years of 1995 through 1998. Table 1 displays the figures regarding power brake inspections conducted by FRA for the years of 1995 through 1998 that are contained in FRA's database.

TABLE 1.—POWER BRAKE INSPECTIONS AND DEFECT RATIOS: 1995 THROUGH 1998

Calendar year	Power brake units	Power brake defective units	Power brake defect ratios
1995	611,824	24,387	.03986
1996	646,140	28,795	.04456
1997	582,685	26,004	.04463
1998	585,663	26,286	.04488

In order to identify potential duplicate reports, the computer program was designed to identify inspection reports in which two or more FRA inspectors were in the same county, on the same day, on the same railroad, and in which at least one unit-count code matched. Table 2 displays the results of this search, showing the number of potential duplicate reports that were submitted from 1995 through 1998 and showing the potential number of overreported units.

TABLE 2.—POTENTIAL DUPLICATE POWER BRAKE INSPECTIONS: 1995 THROUGH 1998

Calendar year	Inspection reports with More than one matching unit	Total units reported twice	Potential duplicate units (half of total units)
1995	39	1,965	983
1996	154	12,646	6,323
1997	342	19,482	9,741
1998	182	8,692	4,346

Table 3 and Table 4 display the impact of the potential duplicate reports on the calculation of power brake defect ratios. FRA believes that the data contained in Table 3 and Table 4

establish that the impact of potential duplicate reports on the defect ratios presented in the NPRM is insignificant when considered in the context of nationwide data.

TABLE 3.—REVISED POWER BRAKE DATA CONSIDERING POTENTIAL DUPLICATE REPORTS: 1995 THROUGH 1998

Calendar Year	Power brake units inspected	Potential duplicate units	Units inspected minus potential duplcate units	Defective units	Defect ratios after adjusting for potential duplicate units
1995	611,824	983	610,841	24,387	.03992
1996	646,140	6,323	639,817	28,795	.04501
1997	582,685	9,741	572,994	26,004	.04539
1998	585,663	4,346	581,317	26,286	.04522

TABLE 4.—EFFECT OF POTENTIAL DUPLICATE REPORTS ON POWER BRAKE DEFECT RATIOS: 1995 THROUGH 1998

Calendar year	Defect ratios before adjustment for potential duplicates	Defect ratios after adjustment for potential duplicates	Difference
1995	.03986	.03992	.00006
1996	.04456	.04501	.00045
1997	.04463	.04539	.00076
1998	.04488	.04522	.00034

It should be noted that the numbers presented in Tables 2 through Table 4 overstate the actual impact of potential duplicate inspection reports. For the year 1998, FRA conducted an in-depth analysis of the potential duplicate reports found by the computer program. The computer program identified 393 potential duplicate inspection reports for the year 1998. However, included in this grouping were unique inbound inspection reports, outbound inspection reports and split inspection reports. In addition, there were inspection reports from inspectors who worked in the same county, but at different locations. Each of these reports was removed from the 393 potentially duplicate inspection reports identified by the computer program based on a report-by-report analysis of each of the reports by FRA MP&E specialists. This analysis left 182 potential duplicate reports for 1998, which were used to calculate the figures presented in Tables 2 through 4 for 1998. Although these tables note 182 potential duplicate inspection reports involving 8,692 units (4,346 duplicates), a further analysis of the reports by FRA found that only 54 of the inspection reports were actually found to be duplicative. These 54 duplicate inspection reports involved the overreporting of just 3,073 units rather than the 4,346 units identified in Table 2. As an in-depth analysis was not performed on the potential duplicate inspection reports identified by the computer program for the years of 1995 through 1997, the figures provided for those years in all likelihood greatly overstate the actual number of duplicate claims submitted in each of those years. Thus, the actual impact of duplicate inspection reports is even less than the small percentages indicated in Table 4 above.

Although the impact of duplicate inspection reports is insignificant, FRA believes that a brief discussion of how these duplicate inspection reports happened is necessary in order to assure interested parties that such occurrences are rare and that FRA has taken steps to avoid these inaccuracies. In 1994, FRA had four inspection forms for the Agency's five inspection disciplines. The Operating Practices and Hazardous Materials disciplines shared the same form. FRA also had a Quality Improvement Plan (QIP) daily activity report form to help the Agency track resource allocations, including the amount of time required to perform certain inspections. When ''team inspections'' occurred, one inspector completed the inspection report for the entire team. However, each inspector on the team was also required to complete a separate QIP report to receive credit for the inspection. On January 1, 1995, a newly developed single inspection form (FRA 6180.96) for all disciplines became operational. Furthermore, in May of 1995, FRA discontinued the collection of QIP-time data based on FRA's conclusion that it had adequate information from previous QIP reports regarding the time it takes to conduct various inspections. In addition, the new inspection form incorporated many of the previous QIP codes. In August 1995, FRA converted to a data collection system using personal computers.

After conducting the analysis discussed above, it was determined that 26 FRA MP&E inspectors inadvertently prepared all of the involved duplicate inspection reports. Furthermore, FRA was not aware that the new computer system did not filter out duplicate inspection reports. After becoming aware of these problems based on reports from its field personnel, FRA specifically addressed the issue of inspection reporting at FRA's multi-regional conference conducted in 1998. At this conference, FRA's Office of Safety management provided specific guidance on preparing reports that would eliminate potential duplicate reporting. During this same period, FRA also changed its computer software to give inspectors credit for inspections while at the same time preventing potential duplicate reporting. Furthermore, on March 5, 1999, FRA re-issued reporting procedures designed to prevent duplicate inspection reports when team inspections are conducted. These procedures were issued to all Federal and State inspection personnel and to all FRA Regional Administrators and Deputy Regional Administrators.

Subsequent to the public meeting conducted in May of 1999, FRA made two modifications to the summary data produced by its database in order to clarify the meaning of the data and to avoid misunderstanding by outside parties. The first modification relates to safety appliance inspections conducted under 49 CFR part 231. The summary data previously contained the heading ''SA & PB (cars and locomotives).'' This heading may have caused some confusion because the heading suggests that it applies to both safety appliance and power brake inspections when in reality the data captured under this heading only concern safety appliance

inspections under part 231. This heading has been modified to read ''SA (cars and locomotives)'' to more accurately reflect the information contained under this heading. FRA has also modified the summary data by eliminating the calculation of an MP&E defect ratio. As discussed above, FRA believes that the calculation of a composite MP&E defect ratio is inappropriate based on the way FRA collects the information contained in its database and would result in a deflation of MP&E defect ratios. Therefore, defect ratios will only be presented for each separate MP&E CFR part.

In response to the issue raised regarding FRA's practice of conducting brake inspections under part 232 while cars are not connected to a source of compressed air or not completely charged with air, FRA has developed a separate reporting code for brake inspections conducted in this manner. This reporting code will become effective in mid-2000 and will indicate when brake inspections are conducted on cars or trains that are not charged with compressed air. Although FRA agrees that the most thorough brake inspection is performed when a car or train is charged, a large majority of the brake components on a car can be inspected for abnormalities without the actual application of the air brakes. For example, the following defects can all be discovered regardless of whether a car or train is charged with air or not: cut-out air brakes, brake connection pins missing, brake rigging down or dragging, brake shoes worn to the extent that the backing plate comes in contact with the tread of the wheel, angle cocks missing or broken, retainer valves broken or missing, and air brake piping bent or broken. When FRA inspectors conduct train air brake tests, they inspect all of the components noted above as well as the operation of the train air brakes while under the required air pressures. FRA has conducted inspections of brake equipment in this manner for decades and will continue to conduct brake inspections under part 232 on equipment that is both on and off a source of compressed air. Moreover, the issue of inspecting cars for brake defects while not connected to a source of compressed air is a very infrequent occurrence in the passenger equipment context. Virtually all passenger equipment is inspected by FRA while it is connected to a source of compressed air. FRA believes that the addition of a code to identify those inspections conducted while equipment is not connected to a source of compressed air will provide a more accurate assessment of defective brake system components.

Two other issues raised by various individuals at the May 27, 1999, public meeting concerned FRA's reliance on railroads to determine the number of cars inspected and the wide variation among FRA inspectors and among FRA Office of Safety regions with regard to the number of units inspected and defects reported. FRA acknowledges that FRA inspectors frequently rely on information provided by the railroad regarding car counts when initially conducting an inspection, information that is sometimes higher than the actual number of cars being inspected. However, in most instances FRA inspectors request a copy of the consist prior to finalizing their inspection reports to ensure a proper unit count. FRA has issued guidance to its inspectors to ensure that the unit counts on all inspections are accurate.

Although FRA acknowledges that the number of brake inspections conducted varies somewhat from inspector to inspector and from region to region, FRA contends that these variations are the result of competing priorities and varying workloads within each region. FRA makes every effort to standardize its inspection activities by providing substantial training to each of its inspectors. This training is comprised of both classroom and on-the-job training. In addition to basic and advanced training provided through FRA's field liaison training staff, classroom training is also conducted at least once a year at the regional or multi-regional conferences. Product-specific training is provided by manufacturers, suppliers, and other sources (*e.g.,* General Electric, General Motors-EMD, and Westinghouse Air Brake Company). Many FRA regions also conduct discipline-specific conferences, with training on new regulations and issues provided by various subject matter experts. On-the-job training is provided through FRA Regional Specialists and senior inspectors. These individuals will work one-on-one with the inspectors on the various types of inspections that the inspector is required to conduct. FRA also frequently issues enforcement guidance to its inspectors in the form of technical bulletins in order to ensure consistent enforcement of the regulations.

The BRC's petition also asserts that FRA ignored the data developed by its organization when developing the final rule. However, the final rule discussed in detail the information provided by the BRC, compiled by carmen stationed at Union Station in Washington, DC from January 1996 through February of 1997, describing defective conditions allegedly found on Amtrak trains traveling through Union Station. *See* 64 FR 25567. The BRC submitted this data in support of its contention that large numbers of defects were being discovered on long-distance passenger trains and that the existing 1,000-mile intermediate brake interval for such trains should not be extended or eliminated. In the discussion, FRA noted that the lack of detail in the information submitted by the BRC, made it is impossible to determine whether the vast majority of the alleged defective conditions were contrary to the Federal regulations or whether the conditions were merely contrary to Amtrak's voluntary maintenance standards or operating practices. In addition, based on the description of some of the conditions, they would not be considered defective conditions under current Federal regulations. Furthermore, the vast majority of the conditions alleged in the document were not power brake defects, and thus, under the current regulations, would not have been required to have been inspected at a 1,000-mile inspection; nor did the regulations in effect at the time of BRC's inspections mandate any type of mechanical inspection on passenger equipment, except under 49 CFR parts 223 (glazing), 231 (safety appliances), and 232 (power brakes). Moreover, the vast majority of the alleged conditions were mechanical and wheel defects which would not be addressed in a power brake inspection.

In the final rule, FRA also made clear that the documentation submitted by the BRC regarding defective conditions found on cars at Union Station in Washington, DC did not indicate a safety problem on long-distance intercity passenger trains. Assuming that all of the cars cited in the BRC's submission were in fact defective as alleged, it appears that approximately 750 cars were defective. However, the documentation also reveals that approximately 1,300 trains were inspected; thus, using a conservative estimate of 10 cars per train, approximately 13,000 cars were inspected. Therefore, approximately only six percent of the cars inspected were found to contain either a brake defect or other mechanical defect. Furthermore, of the approximate 750 cars alleged to have been found defective, only approximately 20 percent of those cars contained a defect related to power brakes. Consequently, only about one to two percent of the total cars inspected contained a power-brake-related defect. Moreover, from the

information provided, it appears that none of the trains contained in the BRC submission was involved in any type of accident or incident related to the defective conditions alleged.

Section-by-Section Analysis

Amendments to 49 CFR Part 215

A clarifying amendment is being made to the applicability provisions of this part contained in § 215.3. The modification is being made to clarify that the requirements contained in this part do not apply to express cars and other unpowered vehicles being hauled in a passenger train that is inspected, tested, maintained, and operated pursuant to the Passenger Equipment Safety Standards contained in part 238. FRA believes that this clarification is consistent with FRA's existing general policy not to subject this type of equipment to the requirements of part 215. FRA also believes this clarifying change is necessary to avoid potential misunderstandings of the interrelationship between part 215 and part 238. FRA further believes that the applicability of the inspection, testing, and maintenance requirements contained in part 238 to this type of equipment will adequately ensure the safety and proper operation of this equipment when used in passenger operations. It should be noted that when this type of equipment is used in a freight train the requirements of part 215 will become applicable to its operation. Furthermore, the applicability or non-applicability of part 215 to this equipment is not in any way intended to affect the use or classification of the equipment under other provisions contained in Title 49 of the Code of Federal Regulations.

Amendments to 49 CFR Part 220

A technical amendment to part 220, addressing communications in connection with railroad operations, is made to the definition of ''train'' contained in § 220.5. The technical amendment merely adds a reference to part 238 in that definition to ensure that trains operated under the testing provisions of part 238 are covered by the railroad communication requirements of part 220.

Amendments to 49 CFR Part 238

Section 238.1 Purpose and Scope

Paragraph (c) has been modified in response to petitions filed by APTA and Amtrak. Both these parties recommended that FRA extend the date by which railroads covered by the final rule must adopt and comply with a training, qualification, and designation program required by § 238.109. Both of these petitioners contend that the date of compliance required in the final rule (July 12, 2001) provides an insufficient time for railroads to establish and implement the required training programs. In a letter dated September 30, 1999, FRA separately responded to these two petitions. In that letter, FRA agreed to extend the period of time by which railroads must adopt training programs and train their workforces under the final rule to December 31, 2001. Thus, conforming changes have been made in this paragraph to indicate that railroads will not be responsible for compliance with the provisions contained in §§ 238.15, 238.17, 238.19, 238.107, 238.109, and subpart D of this part until January 1, 2002.

As FRA stated in the final rule, FRA recognizes the interrelationship between the proper training of railroad personnel and the implementation of the provisions on inspection, testing, and maintenance and on movement of defective equipment. *See* 64 FR 25575. In order for railroads to comply with the requirements related to the inspection, testing, and maintenance and the requirements regarding the movement of defective equipment, the railroads must first be provided a sufficient amount of time to develop and implement proper training programs. Therefore, as the date by which railroads are to adopt training programs required by this final rule and to train their workforces has been extended until the end of 2001, this paragraph has been modified to indicate that the provisions on inspection, testing, and maintenance and on movement for repair do not become applicable until that time. Of course, the statutory provision at 49 U.S.C. 20303 will continue to apply to movements for repair of cars that are defective under 49 CFR parts 231 or 232.

Section 238.5 Definitions

A new definition of the term ''actuator'' is added in response to the Transport Workers Union of America (TWU) concerns regarding the final rule's allowance to rely on brake indicators during the performance of Class IA brake tests. The TWU's petition indicates that there may be some misunderstanding of the difference between brake indicators, allowed to be used during Class IA brake tests, and actuators, which are permitted to be relied upon during Class I brake tests. A ''brake indicator'' is generally a device actuated by brake cylinder pressure that indicates whether the brakes are applied or released. In contrast, an ''actuator'' is a device directly activated by the movement of the brake cylinder piston that provides an indication of piston travel. Thus, because an actuator is tied directly to the movement of the brake cylinder piston and because direct observation of the brake cylinder piston is not possible or extremely difficult on some passenger equipment, FRA has allowed and will continue to allow the use of these devices to determine proper piston travel on passenger equipment as part of Class I brake tests. A brake indicator is useful and is appropriate for Class IA and Class II brake tests.

The definition of ''effective brake'' is also being slightly modified in response to TWU's petition, which generally contended that vehicles with excessive piston travel should be considered to have inoperative or ineffective brakes when calculating the percentage of operative brakes in a train under § 238.15. It appears that part of TWU's concern may be based on a misunderstanding as to what constitutes excessive piston travel sufficient to render a brake ineffective. In order to add clarity to the issue, FRA believes it is necessary to explain that a brake will not be considered ineffective until its piston travel exceeds the maximum prescribed limits for the brake. Although the final rule did not contain specific piston travel limits for various brake systems, the intent of the final rule was to retain the specific piston travel limits contained in the existing regulations. *See* 49 CFR 232.11(c). Thus, this definition is being modified to clarify that on vehicles equipped with nominal 12-inch stroke brake cylinders, the brake will not be considered effective if the piston travel exceeds 10½ inches.

The definition of ''primary responsibility'' has been slightly modified in response to a petition for reconsideration submitted by APTA. APTA's petition sought clarification of whether the time spent by supervisors of mechanical employees would be considered consistent with the duties that a qualified maintenance person (QMP) would be required to perform when determining a supervisor's primary responsibility. FRA's intent when issuing the final rule was to allow supervisory mechanical personnel to be considered QMP's if they were otherwise properly trained as required by this final rule. Therefore, the definition of ''primary responsibility'' has been modified in order to clarify that time spent supervising employees engaged in the functions of troubleshooting, inspection, testing, maintenance, or repair of train brake and mechanical components and systems covered by this part shall be considered work that is generally

consistent with the function of troubleshooting of such systems and components. The final rule also made clear that the totality of the circumstances should be considered in those situations where an employee does not spend 50 percent of the day engaged in any one readily identifiable type of activity.

The definition of ''qualified person'' has also been modified, in response to a petition from the TWU. The definition in the final rule reads as follows:

> *Qualified person* means a person determined by the railroad to have the knowledge and skills necessary to perform one or more functions required under this part. The railroad determines the qualifications and competencies for employees designated to perform various functions in the manner set forth in this part.

See 64 FR 25664. In its petition, the TWU contends that this definition of ''qualified person'' is so broad that a railroad could lawfully consider just about anyone to be a qualified person. Due to this, the TWU recommends that any task for which the final rule requires to be performed by a qualified person be changed to require that the task be performed by either a carman or a QMP. Although FRA disagrees with the assertion that a ''qualified person'' should not be permitted to perform the tasks identified in the final rule that the person is able to perform properly, FRA does agree that the definition of ''qualified person'' contained in the final rule may be overly vague and susceptible to abuse and misunderstanding. Therefore, the definition of a ''qualified person'' is being modified in order to clarify what is required of a railroad when it designates a person as qualified to perform a particular task.

The modified definition of ''qualified person'' is intended to clarify that the person is to receive training pursuant to the training, qualification, and designation program required under § 238.109. The definition also makes clear that although a person may be deemed a ''qualified person'' for the performance of one task, that same person may or may not be considered a ''qualified person'' for the performance of another task. The final rule permits certain tasks to be performed by a ''qualified person.'' For example, these tasks include the performance of some brake inspections, interior mechanical inspections, and the handling of defective equipment in some circumstances. FRA would expect employees performing these various tasks to have different levels of training. For example, a person receiving appropriate training to be deemed a ''qualified person'' for the purpose of performing Class IA brake tests should not be deemed a ''qualified person'' for the purpose of moving defective equipment or performing interior mechanical inspections, unless specific training is provided that individual which specifically covers those tasks. The modified definition stresses that the individual must have received appropriate training to perform the task for which the railroad is assigning the person responsibility to perform.

The definition of ''running gear defect'' is also being modified, in response to petitions from APTA and Amtrak. The modified definition eliminates propulsion system components from the definition. As the definition contained in the final rule pertains only to conditions not in compliance with part 238 and because part 238 does not cover propulsion system components for the most part, FRA agrees with the petitioners that the definition of ''running gear defect'' contained in the final rule creates confusion as to how locomotives with propulsion system defects must be handled. FRA believes that propulsion system defects, which are found on locomotives, are sufficiently covered by part 229 of this chapter, containing locomotive safety standards. Thus, locomotives with conditions that are not in compliance with part 229 should be handled in accordance with the provisions contained in that part regarding the movement of defective equipment. The only potential propulsion system component directly addressed in part 238 is dynamic brakes, and separate handling restrictions have been imposed in the final rule and clarified in this document when this component is found to be inoperative. *See* 64 FR 25679 and discussion of § 238.305(e)(15) below. Consequently, propulsion system components have been removed from the definition of ''running gear defect.''

Although the TWU's petition requests modification of the definitions of ''bind'' and ''foul,'' FRA believes that the definitions of these terms in the final rule are sufficiently clear. *See* 64 FR 25661–62. The TWU contends that the definitions of these terms fail to address every possible condition that could affect the proper operation of a brake system. FRA believes that the conditions noted by TWU as not being covered by these definitions are sufficiently covered by the definition of ''effective brake'' contained in the final rule. *See* 64 FR 25661. Thus, even though a condition may not cause a brake to ''bind'' or ''foul,'' the condition would cause the brake not to be an ''effective brake'' as defined in the final rule. Furthermore, FRA is modifying the language contained in the Class I brake test requirements regarding the operation of the brake rigging to include language that the rigging or system mounted on a car for transmission of the braking force operates as intended and does not bind or foul. Therefore, even though a condition may not cause the brake rigging to ''bind'' or ''foul,'' the condition could cause the brake not to operate as intended and thus, render the brake ineffective.

TWU's petition also seeks clarification of the definition of ''switching service'' to further explain what constitutes a ''train movement.'' Although FRA does not believe that the final rule definition of ''switching service'' needs to be modified, a brief discussion of what constitutes a ''train movement'' may be useful. FRA's determination of whether the movement of cars is a ''train movement,'' potentially subject to some of the requirements of this part, or a ''switching movement'' is and will be based on the voluminous case law developed by various courts of the United States. FRA's general rule of thumb as to whether a trip constitutes a ''train movement'' requires five or more cars (in a passenger context this number would likely be lower) coupled together that are hauled a distance of at least one mile without a stop to set off or pick up a car and not moving for the purpose of assembling or disassembling a train. However, FRA may consider movements of less than one mile ''train movements'' if various circumstances exist. In determining whether a particular movement constitutes a ''train movement,'' FRA conducts a multi-factor analysis based upon the discussions contained in various court decisions on the subject. *See, e.g., United States* v. *Seaboard Air Line R.R.*, 361 U.S. 78 (1959); *Louisville & Jeffersonville Bridge Co.* v. *United States*, 249 U.S. 543 (1919). The following factors are taken into consideration by FRA: the purpose of the movement; the distance traveled without a stop to set out or pick up cars; the number of cars hauled; and the hazards associated with the particular route traveled (*e.g.*, the existence of public or private crossings with or without active crossing warning systems, the steepness of the grade, the existence of curves, any other conditions that minimize the locomotive engineer's sight distance, and any other conditions that may create a greater need for power brakes during the movement). The existence of

any of these hazards would tend to weigh towards the finding of a ''train movement,'' since these are the types of hazards against which the power brake provisions of the Federal rail safety laws were designed to give protection.

Section 238.9 Responsibility for Compliance

Amtrak petitioned FRA for reconsideration of this section to clarify the responsibility of a railroad or other entity that is involved in the operation of passenger trains but does not maintain the equipment used in such trains. Amtrak noted that it is a contract operator of commuter service in at least one urban area where it does not exercise any control over who performs the maintenance of the commuter equipment it operates. In this circumstance, Amtrak reported it has no contractual responsibility for ensuring that the condition of the equipment complies with applicable legal requirements. Amtrak also explained that four commuter operations are conducted on Amtrak's Northeast Corridor (NEC) using equipment that is not maintained by Amtrak. Amtrak believed that the regulation would appear to impose upon an entity, such as itself, that operates passenger trains as a contractor, or that allows commuter authorities to operate passenger trains on its rail lines, responsibility to ensure that equipment maintained by other entities is in full compliance with the regulation. Amtrak noted the expense involved if it were to ensure that equipment maintained by other entities is in full compliance with the regulation, including potential operational delays. Assuming FRA did not intend to require entities like Amtrak to perform independent inspections on equipment maintained by others, Amtrak requested that FRA amend this section by adding the following paragraph: ''For purposes of this section, a railroad that hauls, or permits to be hauled on its line, any passenger train or passenger equipment shall not be required to perform independent inspections of equipment maintained by entities that are not selected by the railroad and under control of the railroad in performing the maintenance of equipment services.'' Amtrak further stated that it does not dispute responsibility for hauling, or permitting to be hauled, equipment if it has actual knowledge of a condition that does not comply with the standards.

As explained in the preamble to the final rule, paragraphs (a)(1) and (a)(2) prohibit a railroad subject to part 238 from committing a series of specified acts with respect to a train or a piece of passenger equipment while the train or passenger equipment is in service if it has a condition that does not comply with part 238 or if it has not been inspected and tested as required by part 238. In particular, consistent with 49 U.S.C. chapter 203, paragraph (a)(1) imposes a strict liability standard with respect to violations of the safety appliance and power brake provisions of part 238. In addition to the acts prohibited by paragraph (a)(2) (that is, the use, haul, offering in interchange, or accepting in interchange of defective or not properly inspected equipment), paragraph (a)(1) prohibits a railroad from merely permitting the use or haul on its line of such equipment if it does not conform with the safety appliance and power brake provisions. *See* 49 CFR 238.3(b). By contrast, paragraph (a)(2) imposes a lower standard of liability for using, hauling, delivering in interchange, or accepting in interchange a train or passenger equipment that is defective or not properly inspected, in violation of another provision of this part; a railroad subject to this part is liable only if it knew, had notice, or should have known of the existence of either the defective condition of the equipment or the failure to inspect and test.

As noted, the liability standard contained in paragraph (a)(1) is consistent with longstanding Federal law. FRA did not intend to impose any new standard on railroads through paragraph (a)(1), at least insofar as this paragraph subjects railroads to liability for permitting the use on their lines of equipment with a defective power brake or safety appliance. As a result, even before this final rule, Amtrak has been subject to liability for permitting equipment with a defective power brake or safety appliance to be operated over its NEC trackage. Likewise, the Nation's freight railroads have been—and are—subject to liability for permitting the use on their lines of Amtrak or other passenger equipment with such defective conditions. As paragraph (a)(1) effectively restates otherwise applicable Federal law, FRA has not adopted Amtrak's request for reconsideration as it relates to paragraph (a)(1). FRA notes that the safety appliance and power brake laws do not specifically impose inspection requirements on Amtrak or a freight railroad to inspect passenger equipment merely because the equipment is used on its lines, though these laws would subject Amtrak or a freight railroad to liability for permitting the use on their lines of Amtrak or other passenger equipment with such defective conditions. However, FRA generally does not intend to hold a freight railroad or Amtrak responsible for passenger equipment not in compliance with part 238 merely because the passenger equipment operates over the freight railroad's or Amtrak's trackage. Further, FRA does not intend to hold Amtrak responsible for passenger equipment not in compliance with part 238 merely because it provides the crews to operate the passenger equipment. FRA would look for more of a connection between the railroad and the defective condition of the equipment than these.

As this discussion indicates, a number of entities may be involved in a single passenger train operation. For example, the following entities (and/or others) may be involved in the operation of a commuter railroad: a local governmental authority may fund and organize the commuter rail operation, and own the passenger equipment; a freight railroad may host the operation by providing the trackage over which the passenger trains operate and dispatching the trains; Amtrak may provide the crews to operate the trains; and another entity may inspect, test, and maintain the equipment. Here, the freight railroad, Amtrak, and the entity maintaining the equipment are all performing services for, or on behalf of, the governmental authority funding and organizing the operation. As a result, the governmental authority holds ultimate responsibility for the condition of the passenger equipment and compliance with these passenger equipment safety standards.

Of course, as provided in paragraph (c), any other person who performs any action on behalf of a railroad or any person who performs any action covered by this part is required to perform that action in the same manner as required of a railroad or be subject to FRA enforcement action. Continuing with the above example, the contractor who inspects, tests, and maintains the passenger equipment on behalf of the governmental authority (the railroad) is thereby subject to liability for failing to perform properly an inspection required by this part, for instance. Whether this contractor is otherwise a railroad in its own right, as Amtrak is, is not necessary for purposes of its assumption of responsibility for compliance with part 238.]

As noted above, paragraph (a)(2) imposes a lower standard of liability for using, hauling, delivering in interchange, or accepting in interchange a train or passenger equipment that is defective or not properly inspected, in violation of a provision of this part other than a power brake or safety appliance

provision. A railroad subject to this part is liable only if it knew, had notice, or should have known of the existence of either the defective condition of the equipment or the failure to inspect and test. (Again, paragraph (a)(1) imposes a strict liability standard with respect to violations of the safety appliance and power brake provisions of part 238.) As written, paragraph (a)(2) effectively embodies Amtrak's reconsideration request. First of all, Amtrak (or a freight or other host railroad) is in no way subject to liability for merely permitting to be hauled or used on its trackage a train or passenger equipment that is defective or not properly inspected in violation of a provision of this part other than a power brake or safety appliance provision. Further, Amtrak is not subject to liability for merely using, hauling, delivering in interchange, or accepting in interchange a train or passenger equipment that is defective or not properly inspected, in violation of a provision of this part other than a power brake or safety appliance provision. As a result, Amtrak is not subject to liability for merely providing the crews to operate the passenger equipment in the commuter railroad example discussed above. FRA notes that, as a general matter, paragraph (a)(2) is not drafted to impose a strict liability standard on railroads for using or hauling passenger equipment that is defective or not properly inspected, in violation of a provision of this part other than a power brake or safety appliance provision. As a result, even if Amtrak were potentially subject to liability for using or hauling passenger equipment under paragraph (a)(2)—as in the case where it uses or hauls its own equipment; or inspects, tests, and maintains passenger equipment on behalf of another railroad—Amtrak would not incur liability in fact unless it knew, had notice, or should have known of the existence of either the defective condition of the equipment or the failure to inspect and test (other than for a power brake or safety appliance provision).

The TWU, in its petition for reconsideration, suggested that paragraph (a)(2) is at best misleading and open to misinterpretation with respect to current statutory requirements, focusing on use of the phrase ''other than safety appliance and power brake provisions of this part.'' However, as discussed above, § 238.9 is specially drafted to retain the specific liability standards of the power brake and safety appliance laws, through inclusion of paragraph (a)(1). Paragraph (a)(2), and its use of the phrase ''other than safety appliance and power brake provisions of this part,'' cannot be read in isolation of paragraph (a)(1), which specifically addresses power brakes and safety appliances. FRA makes clear that § 238.9 does not exclude safety appliances and power brakes from the compliance requirements.

Though not the subject of a petition for reconsideration, FRA notes for clarification that a violation of paragraph (a)(3) would include failing to keep a record required by this part; failing to submit a test plan required by this part; and failing to perform an analysis required by this part. A railroad is strictly liable for any such violation. Of course, FRA retains enforcement discretion whether to assess a penalty or take other action in these and any other instances of non-compliance with part 238.

Section 238.15 Movement of Passenger Equipment With Power Brake Defects

A conforming change has been made to the introductory text of this section to indicate that the requirements contained in the section do not become effective until January 1, 2002. As noted previously, by letter dated September 30, 1999, FRA extended the period of time by which railroads must adopt training programs and train their workforces under the final rule to December 31, 2001. This letter was issued in response to petitions for reconsideration submitted by APTA and Amtrak. In the letter, FRA noted the interrelationship between the proper training of railroad personnel and the implementation of the provisions on inspection, testing, and maintenance and on movement of defective equipment. Consequently, this modification is consistent with the date by which a railroad is to have completed the training of its employees.

Paragraphs (b) and (c)(2) of this section have been slightly modified in response to petitions submitted by Amtrak and the TWU seeking clarification of the liability standards related to the movement of defective equipment. The provisions regarding a railroad's responsibility for compliance contained in § 238.9, and discussed in detail above, make clear that a strict liability standard will be applied to power brake components not in compliance with the requirements of this part. In order to ensure that there is no misunderstanding regarding this standard of liability, FRA has modified the language contained in paragraphs (b) and (c)(2) to reflect the fact that a railroad must have knowledge of the existence of a defective condition in order to haul a car for the purposes of repair under the provisions contained in this section. The modifications made to these paragraphs make clear that such knowledge will be established by tagging the defective equipment or entering the existence of the defective condition into an automated tracking system. Consequently, if a railroad lacks knowledge of the existence of a power brake defect and uses the defective equipment, then the railroad may be held liable for civil penalties.

Similarly, paragraph (c) of this section has been slightly modified in order to clarify that passenger equipment which develops ineffective or inoperative brakes while en route may be moved for repair without civil penalty liability only if all of the requirements contained in this section are met. Although this was FRA's intent when including the requirements contained in this paragraph, the specific wording of the paragraph may have caused some parties to misinterpret or misunderstand its meaning. Thus, if FRA were to discover a unit of passenger equipment being used or hauled with inoperative or ineffective brakes without the provisions of paragraph (c) being otherwise met, then a violation may be assessed pursuant to this paragraph for improper movement of an en route power brake defect.

A clarifying change has been made to paragraph (d)(1)(ii) of this section regarding the calculation of operative brakes on trains equipped with tread brake units (TBUs). FRA believes that the wording of the final rule may have created some uncertainty as to how the percentage of operative brakes is to be calculated on trains equipped with a mixture of TBUs and other types of brakes. The change clarifies FRA's intent when issuing the final rule that the calculation of operative brakes based on the number of operative TBUs is for trains equipped solely with TBUs. *See* 64 FR 25583. For example, if a train utilizes a mixture of TBU and disc brakes, the calculation of the percentage of operative brakes is to be determined by first dividing the number of axles in the train with operative brakes by the total number of axles in the train and then multiplying that fraction (expressed as a decimal fraction) by 100.

FRA received a petition from the TWU requesting elimination of the final rule's list of conditions that do not render power brakes inoperative for purposes of calculating the percentage of operative brakes. FRA disagrees that such an approach is necessary. The purpose of the calculation is to determine the percentage of operative brakes, and the conditions listed in paragraph (d)(1)(iv) of the final rule do

not render the power brakes inoperative. Many of the listed conditions constitute a violation under other provisions contained in the final rule or another regulatory provision for which separate penalties are provided.

A cut-out or ineffective power brake is an inoperative power brake, but the failure or cutting out of a secondary brake system does not result in inoperative power brakes; for example, failure of the dynamic brake does not render the power brake inoperative. Furthermore, inoperative handbrakes or power brakes overdue for maintenance or stenciling do not render the power brakes inoperative on the car and should not be deemed inoperative power brakes for purposes of the calculation. The final rule and other regulations contain separate penalties for operating a car that has an inoperative handbrake, is overdue for maintenance, lacks the proper stenciling, or is not properly inspected and tested. Although FRA disagrees that the list of conditions contained in paragraph (d)(1)(iv) should be eliminated, clarifying language has been added to paragraph (d)(1)(iv) to ensure that the conditions listed are not to be considered inoperative power brakes for purposes of calculating the percentage of operative brakes but are considered power brake defects under other provisions of part 238.

Paragraph (d)(1)(iv)(C) of this section is also being slightly modified in response to the TWU's petition indicating some confusion regarding when a car with excessive piston travel should not be considered to have inoperative brakes for the purpose of calculating the percentage of operative brakes pursuant to paragraph (d). When including the exception contained in this paragraph, it was FRA's intent to recognize that some brake systems are required to have certain piston travel ranges at the time that a Class I brake test is performed that do not necessarily render the brakes ineffective if those piston travel ranges are exceeded while the equipment is en route. Thus, although a car may be found with piston travel that exceeds the Class I brake test limits, such excess travel does not render the brakes inoperative until the piston travel exceeds the outside limits established for that particular type of piston design. However, piston travel that exceeds the applicable Class I brake test limits would be considered a defective condition if the piston travel were not adjusted at the time that a Class I brake test were performed, and would be considered a partial failure to perform a Class I brake test pursuant to § 238.313(g). In order to clarify this intent, FRA has not only modified the language contained in this paragraph but has also modified the definition of ''effective brake'' and the Class I brake test requirements to include the existing piston travel limitations that are applicable to vehicles equipped with nominal 12-inch stroke brake cylinders. *See* 49 CFR 232.11(c) and 232.12(f)(1).

The TWU's petition also raises concerns, many of which were raised in response to the NPRM, regarding the final rule provisions governing the movement of defective equipment and the potential allowance for railroads to utilize an automated tracking system rather than directly tagging defective equipment. After a review of the petition, FRA believes that it is unnecessary to modify any of the provisions contained in the final rule regarding these issues. FRA concedes that the requirements regarding the movement of equipment with defective power brakes allow such equipment to be moved to the nearest forward location where the necessary repairs can be effectuated and in some instances to be moved past a location where the necessary repairs could be conducted. FRA believes that the requirements contained in the final rule are fully consistent with Congress' intent when enacting the statutory provisions regarding the movement of such equipment nearly a century ago. The preamble to the final rule provided a detailed discussion outlining FRA's position on this issue and need not be reiterated here. *See* 64 FR 25568–72, 25581–85. It should be noted that there are concerns in the context of passenger train operations that do not exist in the freight arena when determining whether a location is one where the necessary repairs can be made. Chief among these concerns is the safety of the passengers on the train with the power brake defect and the safety of passengers on following trains. FRA believes these two overriding concerns provide sufficient justification for permitting passenger train operations greater flexibility in moving defective equipment than is available to a freight operator.

FRA also believes that the definition of ''repair point'' contained in the final rule is sufficiently clear and does not require modification as requested in the TWU petition. The preamble to the final rule makes clear that the determination of whether a location should be considered a location where necessary repairs can be made is one which must be conducted on a case-by-case basis after consideration of a variety of factors. *See* 64 FR 25571, 25584–85. FRA continues to believe that it is virtually impossible to develop a standard establishing what constitutes a location where repairs can be made that would address the variety of operations covered by the final rule and that such determinations are best left to FRA's inspectors in the field. *Id.*

FRA also sees no reason to modify the requirement that operators of long-distance passenger trains designate the locations where repairs can be conducted on the equipment they operate. Although FRA agrees that this provision puts the control of what locations constitute repair locations in the hands of the railroad, FRA believes that the operators of these long-distance intercity trains are in the best position to determine which locations have the necessary expertise to handle the repairs of the somewhat advanced braking systems utilized in passenger trains. Due to the unique technologies used on the brake systems of these operations and the unique operating environments, the facilities and personnel necessary to conduct proper repairs on this equipment are somewhat specialized and limited. Moreover, the final rule contains a broad performance-based requirement that railroads operating this equipment designate a sufficient number of repair locations to ensure the safe and timely repair of the equipment. Contrary to the beliefs of some labor representatives, FRA believes that this performance standard provides FRA sufficient grounds to institute civil penalty enforcement actions or take other enforcement actions if, based on its expertise and experience, FRA believes the railroad is failing to designate an adequate number of repair locations.

FRA also believes that the final rule fully addressed the concerns of various labor representatives regarding the use of automated tracking systems in lieu of direct tagging of defective equipment. *See* 64 FR 25572, 25582. FRA believes that provisions must be provided to allow railroads to take advantage of existing and developing technologies regarding the electronic maintenance and retention of records. FRA believes that the use of such a medium to track defective equipment can expedite the identification and repair of defective equipment and, thus, reduce the time that defective equipment is operated in passenger service. Furthermore, the final rule contains specific provisions regarding FRA's ability to monitor and review a railroad's automated tracking system and provides FRA the ability to prohibit or revoke a railroad's ability to utilize such a system in lieu of directly tagging defective equipment if FRA finds that the automated tracking system is not properly secure, is inaccessible to

FRA or a railroad's employees, or fails to adequately track and monitor the movement of defective equipment. Moreover, if the automated tracking system developed and implemented by a railroad does not accurately and adequately record the information required by this part, the railroad would be in violation of the movement for repair provisions and subject to civil penalty liability for the subsequent defect for which the unit was being hauled for repair.

Section 238.17 Movement of Passenger Equipment With Other Than Power Brake Defects

A conforming change has been made to the introductory text of this section to indicate that the requirements contained in the section do not become applicable until January 1, 2002. As noted previously, by letter dated September 30, 1999, FRA extended the period of time by which railroads must adopt training programs and train their workforces under the final rule to December 31, 2001. Consequently, this modification is consistent with the date by which a railroad is to complete the training of its employees.

Paragraph (b) of this section has been slightly modified to include a reference to the exceptions contained in § 238.305(c) and (d) and § 238.307(c)(1) regarding the continued use in passenger service of passenger cars found with certain interior defects found at the car's interior calendar day mechanical inspection. In response to petitions filed by APTA and Amtrak, FRA has modified the provisions contained in §§ 238.305 and 238.307 to permit passenger cars found with certain types of interior defects at a daily interior inspection to continue in passenger service until its next interior calendar day mechanical inspection. The modifications made in §§ 238.305 and 238.307 contain various operational, mechanical, and inspection requirements related to the continued use of such equipment. The modifications being made to §§ 238.305 and 238.307 are discussed in detail below.

Paragraph (c) of this section has been slightly modified to include a reference to the exception contained in § 238.307(c)(1) regarding the continued use in passenger service of passenger cars found with defective seats while en route. In response to petitions filed by APTA and Amtrak, FRA has modified the provisions contained in § 238.307 to permit passenger cars found with defective seats to continue in passenger service. The modifications made in § 238.307 contain various requirements related to the continued use of such equipment. The modifications being made to § 238.307 are discussed in detail below.

Paragraph (d) of this section has been modified in response to a petition submitted by APTA requesting modification of the requirements related to the inspection of the roller bearings on passenger equipment involved in a derailment. FRA agrees that the requirements for roller bearing inspections on derailed equipment contained in the final rule were essentially a reiteration of the requirements contained in part 215 of this chapter related to such inspections on freight cars. FRA recognizes that the freight car inspection requirements are not easily applicable to many types of passenger equipment because the wheels on such equipment cannot be spun freely or manually rotated. Therefore, FRA is modifying the provisions contained in paragraph (d)(1) to allow the inspection of the roller bearings on derailed passenger equipment to be in accordance with the railroad's procedures for handling defective equipment. The APTA PRESS Maintenance Committee is currently in the process of developing a standard regarding the inspection, testing, and maintenance of cars that have derailed, to serve as a guide to all passenger railroads. FRA expect railroads to adopt those procedures or incorporate similar procedures for handling derailed equipment and will enforce those procedures that are adopted.

Paragraph (d)(2) has also been slightly modified to incorporate the recommendations proposed by APTA in its petition. This paragraph requires that a roller bearing be disassembled from the axle and inspected internally if any one of the four enumerated conditions exists. The modifications being made to this paragraph clarify that an on-track rolling test of the wheel set will be considered sufficient to meet the requirement that the wheel set be spun freely. As noted above, the wheels on many types of passenger equipment cannot be spun freely; thus, alternate method of inspection is necessary. FRA also adopts APTA's suggestion to require disassembly of the roller bearing if the truck on the equipment was dragged on the ground for more than 100 feet, which is more stringent than the 200-foot threshold contained in the final rule.

FRA finds the concerns raised by the TWU in its petition regarding the inadequacies of the final rule provisions relating to the movement of defective passenger equipment to be based on a general misunderstanding of the provisions contained both in this part and in 49 CFR part 215. The TWU generally asserts that the movement restrictions of the final rule need to be modified to be at least as restrictive as the requirements contained in part 215 regarding the movement of defective freight cars. The petition also asserts that qualified persons should not be allowed to make any of the determinations required in this section and that on-site personnel should not be permitted to relay information to qualified personnel via radio.

In FRA's view, the provisions contained in the final rule of part 238 regarding the movement of defective equipment are in many ways more stringent than the requirements related to freight cars contained in part 215. For example, a passenger car found with a defect in the running gear (which include virtually all of the components addressed in part 215) may not be moved in passenger service from the point where the car receives a calendar day mechanical inspection and may only be used in passenger service until its next calendar day mechanical inspection if such a condition is found en route and the car is properly tagged. Whereas, a freight car containing a part 215 defect could potentially be used in freight service under part 215 from subsequent mechanical inspections and could remain in use for numerous days and for hundreds of miles, provided the car is properly tagged.

FRA also believes that the TWU's objection to the final rule allowance that a ''qualified person'' may approve the continued use of a defective passenger vehicle is somewhat misplaced. The final rule only permits a ''qualified person'' to authorize the continued use of a vehicle with a non-running-gear defect, which is a defective condition that does not affect the mechanical operation of the equipment and is generally a defect in the interior of the vehicle that is specific to a passenger car. The final rule requires that the continued use of a vehicle containing a running gear defect (defects similar to those addressed in part 215) must be authorized by a ''qualified maintenance person.'' Furthermore, the clarifications contained in this document establish that a ''qualified person'' must receive specific training covering the tasks he or she is deemed qualified to perform.

FRA also believes that the TWU's request for elimination of the final rule provisions permitting on-site personnel to relay information to qualified personnel (QMP or QP) regarding defective equipment ignores the reality of current passenger operations and fails to acknowledge the fact that

mechanical-type personnel are not readily available at every location on a railroad's line of road. Moreover, requiring passenger trains to sit at locations until qualified personnel can physically arrive to inspect the equipment is not prudent in many cases and could endanger the passengers on both the train waiting to be inspected and on trailing trains. Furthermore, when such off-site determinations are made, the final rule allows that the equipment with running gear defects be moved only to the next forward location where the equipment can be inspected by a QMP to verify the description of the defect provided by the on-site personnel.

It should also be noted that prior to the issuance of the final rule there were no Federal requirements addressing the inspection of mechanical components on passenger equipment or limitations on the movement of passenger equipment with defective mechanical components. FRA's general intent when issuing the final rule was to capture the best practices of the industry with regard to the inspection and testing of passenger equipment and attempt to codify current best practices with regard to the movement of defective equipment, which have generally proven to be safe and effective. Thus, FRA did not intend to impose every requirement applicable to the inspection and movement of freight equipment in a rule designed for passenger operations, nor did it view such a requirement as necessary.

Section 238.19 Reporting and Tracking of Repair to Defective Passenger Equipment

A conforming change is being made to paragraph (a) of this section to indicate that the requirements contained in the section do not become applicable until January 1, 2002. As noted previously, by letter dated September 30, 1999, FRA extended the period of time by which railroads must adopt training programs and train their workforces under the final rule to December 31, 2001. Consequently, this modification is consistent with the date by which a railroad is required to complete the training of its employees. The title of this section has also been slightly modified to clarify the purpose of the requirements contained in this section.

Paragraph (a)(2) of this section is being slightly modified in order to clarify the information which must be retained in the reporting and tracking system. The modification clarifies that the date that a defective condition is discovered must be included in the retained information. FRA recognizes that the final rule requirement to record the date on which the defect occurred would be impossible to determine in many instances and it was not FRA's intent to require the recording of that information. Rather, FRA intended that the date on which the defective condition was discovered by the railroad to be recorded and has modified the final rule language accordingly.

Subpart B—Safety Planning and General Requirements

Section 238.107 Inspection, Testing, and Maintenance Plan

A conforming change is being made to paragraph (a) of this section to indicate that the requirements contained in the section do not become applicable until January 1, 2002. As noted previously, by letter dated September 30, 1999, FRA extended the period of time by which railroads must adopt training programs and train their workforces under the final rule to December 31, 2001. Consequently, this modification is consistent with the date by which a railroad is required to complete the training of its employees.

Section 238.109 Training, Qualification, and Designation Program

Paragraphs (a) and (b) of this section are being amended in accordance with FRA's letter dated September 30, 1999, addressed to representatives of APTA and Amtrak in response to their petitions for reconsideration of the provisions contained in this section. APTA and Amtrak petitioned for reconsideration of this section as providing an insufficient time for railroads to establish and implement training programs. APTA's petition notes that several commuter railroads will be unable to comply because of the large number of employees that must be trained. According to the petition, it will take up to three years to administer the training programs to these railroads' current employees and one year initially to prepare and validate the training courses. The APTA petition specifically references the potential impact on the Long Island Rail Road, and on July 27, 1999, FRA received a letter describing the potential impact on this railroad. The Long Island Rail Road and Amtrak submissions both raise logistical concerns associated with implementing the training programs because of their large workforces.

APTA's petition further states that to efficiently and effectively meet the three-year refresher training requirement in the final rule, railroads need to provide the new training program to one-third of their workforce every year. The petition notes that if railroads initially train more than that percentage in one year, they must retrain that same percentage of their workforce every third year, resulting in an inefficient training workload now and in the future. For this reason and the others discussed above, the petitions request that FRA allow railroads 48 months from the date of the publication of the final rule to adopt training programs and train their workforces as required by this section.

The final rule recognizes the interrelationship between the proper training of railroad personnel and the implementation of the inspection, testing, and maintenance and movement of defective equipment provisions contained in the final rule. See 64 FR 25575. In order for railroads to comply with the requirements related to the inspection, testing, and maintenance requirements and the requirements regarding the movement of defective equipment, the railroads must first be provided a sufficient amount of time to develop and implement proper training programs. The final rule further states that the process of developing training programs or modifying existing programs to meet the requirements of the final rule should be completed within a year, and that railroads will need several months to a year to rotate their employees through the programs in order not to disrupt the operation of their railroads. Accordingly, the final rule provided railroads with 26 months from the date of publication of the final rule to develop and train their employees as required by the rule.

After carefully considering the submitted petitions, FRA responded to the petitions in a letter dated September 30, 1999. In that letter, FRA agreed to extend the date by which railroads must adopt training programs and train their workforces under the final rule to no later than December 31, 2001. Paragraph (a) of this section has been amended to reflect this extension. In that letter, FRA noted that its principal concern in granting any additional time to railroads is delaying the date by which the final rule's inspection, testing, and maintenance requirements must apply. In particular, there are now generally no Federal inspection, testing, and maintenance requirements for exterior and interior (non-brake) mechanical components of passenger cars, and consequently no immediate regulatory means for FRA to ensure that such components meet minimum levels of safety.

In the September 30, 1999 letter, FRA made clear that the chief objective of the

training requirements contained in this section is to ensure that the appropriate passenger railroad employees and contractors understand the Federal inspection, testing, and maintenance requirements as they relate to their involvement with railroad passenger equipment. FRA believed that the additional two years, requested in the petitions, to implement the training requirements requested was not necessary since the focus of the required training is to be on the Federal inspection, testing, and maintenance requirements, not on voluntary railroad or industry standards. FRA also noted that, with the exception of newly emerging passenger railroads, passenger railroads are not starting from a blank slate to train their workforces. Passenger railroads should already have training programs in place, and these training programs could be adapted to include the training specifically required by this section. Furthermore, both the APTA inspection, testing, and maintenance standards, and those FRA inspection, testing, and maintenance standards required under this part, are based on the current best practices of the passenger railroad industry. Neither arose from a vacuum.

In FRA's response letter, FRA recognized that some of the specific requirements contained in this section could be easily misunderstood to cover inspection, testing, and maintenance tasks not required by part 238—such as those tasks required only under an APTA or Amtrak maintenance standard. This was not FRA's intent when issuing the final rule. Therefore, FRA noted that it would amend the language contained in this section to clarify that the focus of the training required in this section is on the Federal inspection, testing, and maintenance requirements for passenger equipment in this part. Consequently, paragraph (a) and paragraphs (b)(1) through (b)(7) have been slightly modified in order to clarify that the focus of the training required under this section is the Federal requirements related to the inspection, testing, and maintenance of passenger equipment.

The September 30, 1999, letter also responded to the concerns of APTA, Amtrak, and the Long Island Rail Road regarding the issue of refresher training. In the letter, FRA agreed that it would amend the refresher training interval contained in the final rule to alleviate the concern that large portions of a railroad's workforce would be required to undergo refresher training under this section in the same year due to condensing the initial training period to less than three years. FRA noted that the final rule would have permitted refresher training to be conducted at intervals of less than three years and thus, provide railroads with the ability to accelerate their retaining of some employees to relieve workforce allocation issues. However, FRA believes that it is more important for passenger railroads to initially train their workforces pursuant to the requirements of this section and direct their resources in this regard, rather than be immediately concerned with the need to provide refresher training soon after the initial training is completed. Therefore, FRA stated that it would amend the final rule to allow those individuals trained by no later than December 31, 2001, pursuant to this section, not to undergo their first refresher training until four years after the completion of their original training. Thereafter, such individuals would be required to undergo refresher training at an interval not to exceed three years, as currently provided in the final rule. FRA also made clear, that for individuals trained after December 31, 2001, under this section, (*e.g.,* new hires) the refresher training interval would remain at three years as provided in the final rule. Consequently, paragraph (b)(11) has been amended to include the extension of the first refresher training cycle for employees initially trained prior to January 1, 2002.

One concern raised by APTA in its petition for reconsideration, which was not addressed in FRA's response letter, is the issue of the transferability of an individual's training credentials from one railroad to another either in the context of the individual changing his or her employer or working for multiple railroads while remaining in the employ of only one railroad. Nothing in the final rule prohibits a railroad from utilizing training provided to one of its employees by another railroad in order to qualify that employee. In FRA's view, the previous training would have to cover the tasks and equipment for which the employee will have responsibility on the ''successor'' railroad and the previous training would have to be adequately documented by the training railroad, such documentation provided to the ''successor'' railroad, and maintained by the ''successor'' railroad. Furthermore, the transferring employee's period for refresher training would start to run from the time of the employee's previous training received on the other railroad.

Subpart C—Specific Requirements for Tier I Passenger Equipment

Section 238.231 Brake System

This section contains general brake system performance requirements that apply on or after September 9, 1999, to Tier I passenger equipment except as otherwise provided. APTA, in its petition for reconsideration, states that this section fails to make clear if the requirements in this section apply to new or existing equipment, or both. APTA believes that, while most equipment will meet the performance requirements in this section, applying new design requirements to existing equipment invariably causes problems and may result in a number of waiver requests to FRA. FRA's intent when issuing the final rule was to require the provisions contained in this section to apply to all Tier I passenger equipment, both existing and new, unless otherwise specifically stated to be applicable only to new equipment. Except as discussed below, FRA is not aware of any existing passenger equipment which would not meet the requirements contained in this section nor does APTA's petition provide any indication of equipment that could not meet the requirements. If such equipment exists, FRA would expect necessary modification to be made to the equipment or appropriate waivers to be submitted to FRA for its consideration.

FRA acknowledges that the provisions related to the operation and design of locomotives equipped with blended brakes contained in paragraph (j) should have been applicable only to new locomotives. Although there is no existing documentation or information available to FRA to indicate that existing locomotives would not meet the requirements of paragraph (j)(1)-(j)(3) of this paragraph, verification that existing locomotives meet the requirements could be very expensive and time consuming. Compliance with paragraph (j)(4) may be problematic for some equipment designs and this is an important reason for insisting on appropriate maintenance of dynamic brakes. Furthermore, there are other requirements contained both in this section and in this part which ensure that a train's primary braking system is capable of stopping a train within the existing signal spacing (§ 238.231(a)) and that the dynamic brakes on locomotives are operational within a very short time of being discovered defective (§ 238.303(e)(15)). Consequently, FRA has amended paragraph (j) to clarify that it applies only to new locomotives equipped with blended braking systems. Narrowing the

application of this provision will allow proper testing to be conducted when the equipment is being designed and assembled.

A new paragraph (h)(3) is being added in order to clarify the general requirements related to the use of hand brakes found in paragraphs (h)(1) and (h)(2) of this section. Because the final rule contains specific provisions requiring passenger equipment to be equipped with hand brakes, FRA believes that the addition of the existing general requirements regarding their use constitutes a clarifying amendment to the hand brake requirements. FRA's inclusion of specific provisions requiring passenger equipment to be equipped with hand brakes establishes FRA's intent that those hand brakes are to be used in at least the same manner as required under the existing regulations. The provisions contained in this paragraph merely incorporate the existing general requirements related to the setting and releasing of hand brakes and will impose no additional burden on the railroads. *See* 49 CFR 232.13(f). The language has been slightly modified from that contained in the existing regulations for purposes of clarity.

Paragraph (m) of this section is being modified in response to Amtrak's petition, which asserts that it currently permits trains to operate with up to two cars in the consist being operated in direct release mode while the rest of the train operates in graduated release mode. It is also FRA's understanding that the direct release cars operated by Amtrak in this fashion are hauled at the rear of the train. The reason Amtrak hauls cars in this manner is because some vehicles it operates in its passenger trains are equipped with AB type brake valves which can be operated only in a direct release mode. Thus, under the final rule the hauling of just one of these cars would require the rest of the train to be changed over to a direct release mode. FRA is not aware of any safety issues that have arisen from Amtrak's current method of operation and agrees with Amtrak's assertion that operation in this manner would not affect the stopping distance of a train. Furthermore, FRA's intent when including this provision in the final rule was to incorporate the current best practices of Amtrak and its operation of express equipment. Consequently, paragraph (m) is modified to allow no more than two cars to be operated in direct release mode when the rest of the train is operated in graduated release mode provided those cars are hauled at the rear of the train.

A new paragraph (n) is added to this section to include the existing procedures for eliminating the presence of compressed air in a vehicle's brake system prior to adjusting piston travel or working on brake rigging. As FRA is clarifying the requirements related to excessive piston travel and to adjusting piston travel while performing Class I brake tests, FRA believes, that for purposes of clarity and to avoid misunderstandings, it is also necessary to include the existing basic procedures that are to be undertaken prior to making such adjustments. These procedures address the safety of employees responsible for making piston travel or brake rigging adjustments by ensuring that the brake system or brake system components on which they will be working are void of all compressed air. The procedures contained in this new paragraph are currently contained in the existing power brake regulations and are currently part of virtually every railroad's operating and inspection practices. *See* 49 CFR 232.12(j). Therefore, no new burden is being created by FRA's retention of these existing provisions.

A new paragraph (o) is added to this section to clarify and alert the operators of passenger trains that they may be required to comply with the provisions requiring the use of a two-way end-of-train device (EOT) contained in part 232 of this chapter. This addition is merely for the purpose of clarity. The provisions regarding two-way EOTs are currently applicable to certain passenger train operations, and the inclusion of this paragraph is not intended to expand the applicability of those provisions but merely to inform passenger train operators of their potential applicability.

Amtrak raised an issue in its petition regarding the requirements contained in paragraph (h)(1) for equipping new locomotives with a hand or parking brake. Amtrak sought clarification as to whether a pneumatically operated parking brake would meet the manual application and release requirements of this paragraph. Amtrak's petition did not provide a specific description or design of the pneumatically operated parking brake for which it sought clarification. A pneumatically operated parking brake would meet the requirements of this section if it were designed to permit the manual application and release of the brake in some fashion. The ability to manually apply or release the brake would not have to be the primary means of applying or releasing the brake, but manual capability must be available if necessary.

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment

Section 238.301 Scope

A conforming change is being made to paragraph (b) of this section to indicate that the requirements contained in subpart D do not become applicable until January 1, 2002. As noted previously, by letter dated September 30, 1999, FRA extended the period of time by which railroads must adopt training programs and train their workforces under the final rule to December 31, 2001. Consequently, this modification is consistent with the date for when a railroad is required to complete the training of its employees.

Section 238.303 Exterior Calendar Day Mechanical Inspection of Passenger Equipment

Paragraph (b) of this section regarding the performance of exterior mechanical inspections on cars added to a passenger train is being modified in response to petitions filed by APTA and AAPRCO. Both these parties contend that the requirement to perform an exterior mechanical inspection at the time a passenger car or private car is added to a train is overly burdensome and unnecessary. They contend that at many locations where such cars are added to trains there is not a QMP available to perform such an inspection. They also note that there is currently no requirement to perform such an inspection when cars are added a passenger train and there has been no indication of any safety hazard being caused by this practice. Furthermore, they assert that the final rule already requires that a car added to a train must receive an exterior mechanical inspection sometime on the day on which it is added to the train. APTA also contends that passenger equipment used on commuter operations do not sit for long periods on sidings, no more than a weekend at most, and other cars that are in trains that remain together but not used over a weekend are not required to receive such an inspection before they are used; thus, the rule lacks consistency.

After consideration of the petitions received, FRA believes that there is a significant difference between traditional passenger equipment hauled by most commuter and intercity operations and the express and intermodal equipment being hauled by some passenger trains. FRA agrees that the need to mechanically inspect traditional passenger equipment and private cars immediately upon their being added to a train is not as great as

when express or freight-type cars are added to a train. Currently, when traditional passenger equipment and private cars are added to a passenger train, there is no requirement to conduct a mechanical inspection, and at many locations such inspections are not performed. FRA has found no indication of safety being compromised by these practices and agrees that requiring such an inspection could have significant cost implications to some operations. Furthermore, FRA agrees that traditional passenger equipment is less prone to developing mechanical defects than is freight equipment because the passenger equipment is not switched in and out of trains as often and does not undergo the rigors inherent to the loading and unloading of freight equipment. Moreover, any equipment added to a passenger train that does not receive a mechanical inspection when added will be required to receive an exterior mechanical inspection sometime during that calendar day on which the car is added to the train. Consequently, the final rule has been amended to permit traditional passenger cars and private cars to be added to a train without receiving an exterior mechanical inspection under this section, provided that the vehicle had received an exterior mechanical inspection pursuant to this section on the last day it was used in passenger service and the train crew operating the train to which the vehicle is added is notified of the date, time, and location of that inspection.

However, the current practice within the industry is to conduct thorough mechanical inspections on express cars, intermodal equipment (*e.g.,* RoadRailers''), and other freight-type equipment at the time it is added to a passenger train. Furthermore, this type of equipment is relatively new, and its performance history is not as clear as traditional passenger equipment. Moreover, FRA also agrees that this type of equipment carries a greater potential of developing exterior mechanical defects because this equipment is subject to the more frequent switching and the stresses of loading and unloading inherent in its use. Consequently, the final rule requirement that these types of cars must receive an exterior mechanical inspection pursuant to this section at the time they are added to a train unless they received such an inspection within the previous calendar day is retained. In such circumstances, the train crew must be notified of the date, time, and location where the previous exterior mechanical inspection was performed.

As noted above, paragraph (b) of the final rule has also been modified to clarify that the train crew must be notified of the date, time, and location where the previous exterior mechanical inspection was performed in order to add a car without performing an exterior mechanical inspection at the time it is added to a train. The final rule merely stated that the train crew must be provided ''documentation'' of the previous mechanical inspection. *See* 64 FR 25617, 25678. However, as APTA correctly asserts in its petition, the final rule does not indicate how or in what form the documentation is to be provided. To clarify the issue, FRA is amending the final rule to indicate that the train crew must be notified of the date, time, and location that the previous exterior mechanical inspection was performed on the vehicle in order to be excepted from the requirement to perform a mechanical inspection at the time the vehicle is added to the train. FRA intends to make clear that this notification may be provided in any format that best suits the railroad's operation. Thus, for example, the notification may be either written, electronic, or by radio.

Paragraph (e)(7)(ii) has been slightly modified in response to APTA's petition which asserts that the final rule requirement that each friction side bearing not run in contact unless designed to carry weight fails to recognize the design of some passenger equipment. APTA claims that this requirement fails to recognize passenger equipment, such as Metra gallery cars, which are designed to operate in contact but to carry no weight. FRA agrees that the final rule fails to cover this type of equipment, which was not FRA's intent when issuing the final rule. When issuing the final rule, FRA did not realize that the side bearings on some passenger equipment are designed to operate in contact but carry no weight. Consequently, FRA is modifying the final rule to require that the friction side bearings do not run in contact unless designed to operate in that manner. FRA believes this amended language permits the use of equipment with friction side bearings designed to operate in contact but carry no weight, while also prohibiting the use of equipment that is not designed to operate with friction side bearings in contact unless the equipment is designed to carry weight.

Paragraph (e)(8)(x) has also been slightly modified to clarify the requirement contained in that paragraph in response to Amtrak's petition. In its petition, Amtrak contends that paragraphs (e)(8)(iii) and (e)(8)(x) of the final rule appear to be in conflict because paragraph (e)(8)(iii) allows some leeway when a break in a rim exists based on the width of the tread; whereas, (e)(8)(x) would make any break in the rim condemnable. Paragraph (e)(8) of the final rule contains a listing of wheel conditions that would render a wheel defective. The conditions contained in this paragraph are identical to the wheel conditions identified in part 229 related to locomotives. *See* 49 CFR 229.75. FRA agrees with the comments provided by Amtrak, and will modify paragraph (e)(8)(x) to clarify that the language contained in the provision related to cracks or breaks in the rim of a wheel is intended to be limited by the language contained in paragraph (e)(8)(iii) regarding breaks in the rim of a wheel. Paragraph (e)(8)(x) is intended to cover situations where there is a crack in the rim of a wheel which may not constitute a break under subparagraph (iii). This would include thermal and other cracks that do not actually result in the rim being broken.

Paragraph (e)(15) of this section is being amended in response to a petition for reconsideration submitted by APTA requesting that defective dynamic brakes on an MU locomotive not be considered a running gear defect pursuant to the movement of defective equipment provisions contained in § 238.17. APTA contends that the restrictions imposed in the final rule treating dynamic brakes on MU locomotives as running gear defects will create equipment shortages on some passenger operations because equipment found with defective dynamic brakes would not be permitted to continue in service until repaired. APTA asserts that FRA's treatment of these brake systems is inconsistent with FRA's discussions in the final rule regarding blended braking systems and dynamic brakes on conventional locomotives. APTA requests that MU locomotives discovered with defective dynamic brakes be permitted to continue in service to their next exterior calendar day inspection. APTA contends that thermal damage to the wheels on these vehicles will not occur in such a short period of time.

After consideration of APTA's petition, FRA agrees that the final rule requirements related to defective dynamic brakes on MU locomotives may have the potential to create certain operational difficulties on some railroads that were not envisioned by FRA when issuing the final rule. Although FRA continues to believe that extended use of an MU locomotive with defective dynamic brakes significantly increases the potential for causing thermal stress to the wheels of the vehicle, FRA must agree that there is no evidence showing that use of an MU

locomotive with no dynamic brakes for a short period of time (less than 48 hours) will result in thermal stress to the wheels. Consequently, the final rule is being amended specifically to include requirements for the handling of MU locomotives discovered with defective dynamic brakes. The amended provisions are similar to the final rule provisions regarding conventional locomotives in that both sets of provisions require locomotives discovered with defective dynamic brakes to be conspicuously tagged in the cab of the locomotive and require the locomotive engineer to be notified in writing that the dynamic brakes on the locomotive are inoperative. A copy of the required tag will meet the requirement for written notification.

The amendment to the final rule will accept APTA's recommendation and will allow MU locomotives discovered with dynamic brakes to continue in service until the locomotive's next exterior mechanical inspection. Thus, if an MU locomotive's dynamic brakes are discovered defective during the performance of an exterior calendar day inspection mechanical inspection, it may continue to be used in passenger service until the performance of the locomotive's next exterior calendar day mechanical inspection under this part, provided it is properly tagged and the locomotive engineer informed of the defective condition in writing. Similarly, if an MU locomotive is discovered to have inoperative dynamic brakes while en route, it may continue to be used in passenger service only until its next exterior calendar day inspection is required to be performed and the tagging and notification requirements noted above would apply. FRA believes that the flexibility provided by these modifications is consistent with the recommendations of APTA and is sufficient to allow a railroad to arrange for appropriate repairs to be made to the locomotives without interrupting or significantly impacting the service it provides to the public.

A new paragraph (e)(16) has been added in response to petitions submitted by APTA and Amtrak requesting elimination of the 92-day periodic mechanical inspection contained in § 238.307 of the final rule. As discussed in detail below, FRA is granting APTA's and Amtrak's petition and thus, is moving some of the inspection requirements contained in the 92-day periodic mechanical inspection to the exterior and interior calendar day mechanical inspections. APTA's petition suggested that the roller bearing inspection requirements contained in the 92-day periodic inspection be moved to the exterior calendar day inspection. FRA accepts this suggestion and thus, this new paragraph contains the roller bearing inspection requirements previously contained in § 238.307(c)(6) of the final rule. *See* 64 FR 25681.

A technical change has been made to paragraph (g)(2)(iv) of this section to clarify the nature of the record that must be retained regarding the performance of exterior mechanical inspections. The final rule requires that the signature of the inspector was to be part of the record; however, the final rule specifically allows the record to be maintained electronically. Thus, FRA's intent when issuing the final rule was to allow some type of electronic signature or electronic identification to serve as the inspector's signature. In order to avoid confusion, this paragraph has been modified to clarify that the signature or some type of electronic identification of the inspector must be included in the required record.

The TWU's petition objects to the exterior mechanical inspection provisions contained in the final rule contending that the provisions do not meet or are not as stringent as the requirements contained in 49 CFR part 215 related to the mechanical inspection of freight cars and thus, do not ensure the safety of the traveling public. FRA disagrees with this assessment for several reasons. First, it should be noted that no Federal requirements currently exist regarding the mechanical inspection of passenger equipment. However, most passenger railroad operations conduct mechanical inspections on their equipment and these practices have generally ensured the safety of the equipment. Thus, the rule's intent was to capture and codify the current best industry practices related to the mechanical inspection of passenger equipment.

Secondly, the mechanical inspection provisions contained in the final rule cover many of the same mechanical components addressed in part 215 and further require that an exterior mechanical inspection be performed on passenger equipment by a highly qualified inspector every calendar day that the equipment is in service. Whereas, under part 215, freight equipment is only required to be mechanically inspected when the equipment is added to a train and the inspection may or may not be performed by a highly qualified inspector. *See* 49 CFR 215.13 and Appendix D to part 215. Thus, in the freight context a car may be used for multiple days without receiving any additional mechanical inspection but the one it received when being added to the train. Therefore, although the mechanical inspection requirements of the final rule are not identical to those contained in part 215, FRA believes they are equally if not more stringent than those contained in part 215 and are more than sufficient to ensure the safety of passenger train operations. Finally, as discussed in detail above, FRA believes that the movement restrictions imposed by the final rule on passenger equipment containing a mechanical defect are comparable to the restrictions placed on freight equipment containing similar defects under part 215.

Section 238.305 Interior Calendar Day Mechanical Inspection of Passenger Cars

Paragraph (c) is being modified and a new paragraph (d) is being added in response to petitions filed by APTA and Amtrak requesting modification of the movement provisions related to certain ''minor'' interior defects and their request that the 92-day periodic mechanical inspection be eliminated. APTA and Amtrak assert that the interior stenciling, marking, vestibule lighting provisions, and the requirements relating to trap doors and seats should not be treated as stringently as other non-running gear defects under the movement of defective equipment provisions contained in § 238.17 of the final rule. These parties contend that equipment containing conditions not in compliance with the above noted requirements should be permitted to be moved out of an interior calendar day inspection without having the car locked out and empty as the final rule requires. They request that the equipment be permitted to remain in passenger service until the vehicle's next interior mechanical inspection. APTA asserts that requiring equipment with these ''minor'' defects to be locked out and empty will actually create more safety problems than it solves. According to APTA, the final rule requirement would require passengers to be crowded on to fewer cars and would result in more passengers standing in the aisles and in vestibules, creating environments where more injuries are likely to occur.

FRA tends to agree with the concerns raised by both APTA and Amtrak and is reorganizing paragraph (c) to allow equipment with certain non-complying interior conditions to remain in passenger service if the non-complying conditions are discovered during an interior calendar day mechanical inspection. The non-complying conditions to which FRA is extending

some flexibility include the requirements related to stenciling and marking, trap doors, vestibule illumination, and doors. A new paragraph (d) contains provisions for allowing equipment with these non-complying conditions to remain in passenger service and requires certain determinations to be made by a qualified person or QMP prior to continuing the equipment in service and that a record be maintained of the non-complying condition. Although the intent of the final rule was to generally have mechanical inspections conducted at locations where all necessary repairs could be conducted, FRA recognizes that some interior inspections may be conducted at outlying locations or at a location lacking the necessary parts or components to fix a particular defective condition. However, in order to remain consistent with the general intent of the final rule, paragraph (d) requires a qualified person or QMP to determine that the necessary repairs cannot be made at the time the interior mechanical inspection is performed. FRA believes that if the necessary repairs can be conducted with the equipment and supplies available, and within the time available, the repairs should be made.

In addition to the requirements contained in paragraph (d), paragraph (c) contains specific requirements based on the defective condition involved when continuing certain equipment in passenger service after being found in non-compliance during an interior calendar day mechanical inspection. The additional conditions are intended to ensure the safety of passengers and are attached to the requirements related to the continued used of non-complying trap doors, vestibule lighting, and doors. The additional requirements attached to the continued use of a car with a defective door are the same as those contained in the final rule. FRA intends to make clear that the restrictions and flexibility permitted in paragraphs (c) and (d) are only applicable to equipment found with a non-complying condition discovered at an interior calendar day mechanical inspection. Interior non-complying conditions that are discovered while a piece of equipment is en route, must be handled in accordance with the provisions for such en route defects contained in § 238.17 of the final rule. Although FRA believes some leeway should be provided when certain non-complying conditions are discovered at the time that an interior mechanical inspection is being performed, FRA believes that the railroad should be able to take adequate steps to ensure that equipment found with non-complying conditions while en route are moved to locations where necessary repairs can be performed either prior to or at the next required interior mechanical inspection.

Paragraph (c) has also been modified to include a provision which was part of the 92-day periodic mechanical inspection contained in § 238.307(c) of the final rule. This modification is being made in response to petitions submitted by APTA and Amtrak requesting elimination of the 92-day periodic mechanical inspection. As discussed in detail below, FRA is granting APTA's and Amtrak's petition and thus, is moving some of the inspection requirements contained in the 92-day periodic mechanical inspection to the exterior and interior calendar day mechanical inspections. APTA's petition suggested that the requirements related to the condition of floors on passenger cars contained in the 92-day periodic inspection be moved to the exterior calendar day inspection. FRA accepts this suggestion and thus, paragraph (c) contains the inspection requirements related to floors previously contained in § 238.307(c)(1) of the final rule. *See* 64 FR 25680.

A technical change has been made to the paragraph redesignated as paragraph (f)(2)(iv) of this section to clarify the nature of the record that must be retained regarding the performance of interior mechanical inspections. The final rule requires that the signature of the inspector was to be part of the record; however, the final rule specifically allows the record to be maintained electronically. Thus, FRA's intent when issuing the final rule was to allow some type of electronic signature or electronic identification to serve as the inspector's signature. In order to avoid confusion, this paragraph has been modified to clarify that the signature or a unique electronic identification of the inspector must be included in the required record.

The TWU again objects to the final rule's provision which allows a qualified person to perform the interior mechanical inspection required by this section. The TWU contends that the determination of who is considered to be a qualified person is left totally to the discretion of the railroad and thus, recommends that a QMP be required to perform these inspections. FRA continues to disagree with the contention raised by the TWU. FRA believes that the clarifications made to the definition of ''qualified person,'' discussed in detail above, address the concerns of TWU and ensure that properly trained individuals perform these inspections. Furthermore, the final rule made clear that FRA's original position was to require the interior inspections to be performed by qualified maintenance persons. However, after several discussions with members of the Working Group and several other representatives of passenger railroads, FRA determined that the training and experience typical of QMPs is not necessary and often does not apply to inspecting interior safety components of passenger equipment. In addition, the flexibility created by permitting someone less qualified than a qualified maintenance person can reduce the cost of performing the mechanical safety inspection since the most economical way to accomplish the mechanical inspection is to combine the exterior inspection with the Class I brake test, and then have a crewmember inspect on arrival at the final terminal or have a trained coach cleaner combine the interior coach inspection with coach cleaning. Moreover, the type of components being inspected during an interior mechanical inspection do not affect the general operation of the train and do not require the extensive knowledge of the interrelationship between the mechanical components or brake system components that would be necessary when performing an exterior mechanical inspection or Class I brake test.

Section 238.307 Periodic Mechanical Inspection of Passenger Cars and Unpowered Vehicles Used in Passenger Trains

This section has been amended in response to petitions submitted by APTA and Amtrak regarding the final rule requirement to conduct periodic mechanical inspections at a 92-day interval. Both APTA and Amtrak contend that the industry does not currently inspect passenger equipment at this interval. Some railroads periodically inspect their equipment more frequently and many inspect their equipment on a less frequent basis. Both petitioners note that FRA did not propose a 92-day inspection interval in the NPRM and believe that the increase in the frequency of such inspection is unjustified and inconsistent with current industry practice. APTA contends that the final rule requirement to conduct a 92-day periodic mechanical inspection will seriously impact equipment utilization and will require its member railroads to purchase approximately 30–60 new passenger coaches in order to have a sufficient number of replacement units available when cars are removed from service to have the inspection performed. The purchase of these replacement units will

cost the industry approximately $45–90 million dollars. Amtrak also recommends that periodic intervals of 180 days and 365 days be provided for RoadRailer® and express cars, respectively, due to the fact that they are less complicated than other types of passenger equipment and their safety record does not justify more frequent periodic mechanical inspections.

In the final rule, FRA made clear that its adoption of the 92-day periodic mechanical inspection interval was an attempt to incorporate the current practices of the industry. *See* 64 FR 25620. When issuing the final rule FRA believed that railroads were conducting periodic mechanical inspection at cycles that were less than 92 days. After review of the petitions, it appears that several railroads conduct periodic mechanical inspections and maintenance at intervals which are greater than 92 days. As it was not FRA's intention to significantly alter the current inspection practices when proposing the 92-day periodic interval, FRA grants the petitions of APTA and Amtrak to the extent that they request elimination of the 92-day periodic mechanical inspection interval. Thus, the final rule is being amended, as requested by the petitioners, by eliminating the 92-day periodic inspection and requiring a 184-day periodic mechanical inspection interval similar to that proposed in the NPRM. *See* 62 FR 49809. Therefore, many of the components required by the final rule to be inspected on a 92-day basis are being moved to a 184-day cycle and the requirements related to the inspection of passenger car floors and roller bearings are being moved to the exterior calendar day inspection provisions as discussed above. Consequently, paragraph (c) of this section is being modified to require periodic mechanical inspection of passenger equipment at 184-day intervals.

Two of the requirements contained in paragraph (c) are also being modified in response to Amtrak's petition seeking clarification of the periodic inspection requirements related to draft gears and center casting on trucks. Amtrak contends that the final rule is unclear as to what steps must be taken to ensure that these two components are in proper condition. Amtrak seeks clarification that the requirement that center castings are not cracked or broken does not require that the cars be jacked and the trucks rolled out. Amtrak also seeks clarification that the determination that a car's draft gear is not broken does not require the dropping of the cover plates under the car. Amtrak contends that imposition of either of these procedures will greatly increase the cost of performing periodic mechanical inspections. As it was not FRA's intent to require the extensive type of inspections that Amtrak details in its petition, the final rule is amended to clarify that cover plates do not need to be dropped when inspecting draft gears and that cars do not need to be jacked and trucks rolled out when determining whether center castings are broken at the periodic mechanical inspection. Although FRA believes that the most effective method of determining whether center casting on trucks are cracked or broken is to jack the car and roll out the truck, FRA recognizes the cost and time implications of requiring such an inspection every 184 days. However, FRA believes this type of extensive inspection should be performed periodically. Consequently, in accordance with the recommendation made by APTA in its petition, the final rule is amended to require this extensive inspection of a truck center casting at the COT&S cycle provided in § 238.309 for the vehicle. FRA believes this is an opportune time in which to conduct this inspection and will impose the least burden on the railroads.

It should be noted that FRA is not granting APTA's petition as it relates to the extension of the inspection of couplers. APTA's petition requested extension of the inspection requirement regarding the distance between coupler guard arm and the knuckle nose to a period consistent with a vehicle's COT&S interval. APTA contends that in order to conduct this inspection cars must be uncoupled and that the final rule requirement to conduct this inspection every 184 days will require unnecessary uncoupling of train consists that rarely experience undesired partings. Although FRA recognizes the impact of the inspection requirement, FRA finds no reason to extend the interval related to this inspection requirement and believes that railroads will not be substantially affected by retaining the final rule interval. Furthermore, in response to the NPRM, APTA requested that the coupler inspection requirements be moved to the periodic mechanical inspection interval, which FRA did in the final rule. *See* 64 FR 25561, 25620, 25681. FRA will not now extend the inspection interval further without credible data showing that the component will not fail between the periodic inspection interval. In paragraph (b) of this section in the final rule, FRA provided railroads the option to develop alternative intervals for performing inspections for specific components or equipment based on a more quantitative reliability assessment completed as part of their system safety programs. The final rule contained a detail discussion regarding a railroad's use of reliability assessments to change the periodic inspection intervals contained in the final rule. *See* 64 FR 25621–22, 25680, and 25704–05. Individual railroads may want to pursue the extension of the coupler inspection requirement through this approach.

The requirement related to the inspection of seats and seat attachments which will be contained in paragraph (c)(1) of this modified section is amended to include provisions for moving equipment discovered with non-complying seats or seat attachments. FRA agrees with the general statements of Amtrak and APTA that this interior component should not be handled in the same manner as other non-running gear defects pursuant to § 238.17 of the final rule. FRA agrees that it makes no sense to lock-out an entire car when only one seat is found broken or loose, which can be isolated and rendered unuseable without impacting the safety of the people traveling on the train. Although FRA believes that defective seats should be repaired as soon as possible, FRA recognizes that repairs to this component may be more difficult in some circumstances than the repairs required to fix other interior components. FRA also agrees that the safety impacts of locking-out an entire car is probably greater than the safety impacts of allowing passengers on a car with a seat that is rendered unuseable. Thus, separate requirements related to the handling of equipment found with non-complying seats or seat attachments are being included in this paragraph. This paragraph permits a car that is found with a non-complying seat to be used in passenger service until the performance of an interior calendar day mechanical inspection on the day following the discovery of the defective condition, provided the seat is rendered unuseable, a notice is prominently displayed on the seat, and a record is maintained with the date and time that the non-complying condition was discovered.

A technical change has been made to the paragraph redesignated as paragraph (e)(1) of this section to clarify the nature of the record that must be retained regarding the performance of interior mechanical inspections. The final rule requires that the signature of the inspector was to be part of the record; however, the final rule specifically allows the record to be maintained electronically. Thus, FRA's intent when

issuing the final rule was to allow some type of electronic signature or electronic identification to serve as the inspector's signature. In order to avoid confusion, this paragraph has been modified to clarify that the signature or some type of electronic identification of the inspector must be included in the required record. This paragraph has also be reorganized, with no substantive change, in order to bring it into conformity with the record keeping provisions contained in other sections of the final rule.

Section 238.309 Periodic Brake Equipment Maintenance

Paragraph (d) of this section is being modified in response to Amtrak's petition seeking recognition of its current practice of performing periodic brake system maintenance on equipment equipped with AB, ABD, ABDX, and equivalent brake systems. Amtrak contends that AB-type brake valves have proven very reliable and that there is no COT&S cycle for these types of brake valves in freight operations. Amtrak asserts that it has over 450 cars equipped with AB-type brake systems and because such brake systems are not a 26–C or equivalent brake system the final rule would impose a three year COT&S maintenance interval on these cars. Amtrak contends that it has conducted COT&S on these types of brake systems on a six-year cycle since 1982 and this interval has proven safe and reliable. Thus, Amtrak asserts that reducing the COT&S interval for these vehicles would result in a significant cost burden to the railroad with no safety justification for such a reduction.

FRA agrees with Amtrak's concerns and is granting its petition as it relates to this issue. When issuing the final rule, it was FRA's intent to incorporate existing industry practices as they relate to the performance of COT&S on passenger equipment. At that time, FRA staff working on this rulemaking were not aware that Amtrak operated some vehicles equipped with AB-type brake systems. FRA agrees that the current COT&S interval of six years conducted on this type of equipment has proven safe and reliable. Consequently, the final rule is amended to provide a six year COT&S interval for passenger coaches and other unpowered vehicles equipped with AB-type brake systems.

It should be noted that the BRC's petition generally asserts that increases in the time interval for COT&S provided in the final rule have not been bolstered by significant safeguards for dry air. The rationale for the COT&S intervals provided in the final rule are fully explained in the section-by-section analysis related to this section in the final rule. FRA points out that the extension of the COT&S interval related to MU locomotives draws a distinction between locomotive fleets that are 100 percent equipped with air dryers and those locomotive fleets that are not so equipped. The preamble to the final rule also explains that virtually all of the required COT&S intervals are based on extensive tests or previous waivers granted by FRA for which service experience has been satisfactory. *See* 64 FR 25622–23.

Section 238.311 Single Car Test

Paragraph (e)(1) of this section is being modified in response to AAPRCO's petition seeking an exception for private cars from the requirement to perform a single car test on any vehicle which is placed in service after being out of service for 30 days or more. AAPRCO contends that the final rule requirement contained in this paragraph imposes a significant cost to the owners of private cars. They assert that private cars are used on an occasional basis in many instances and may sit for months in between trips. Furthermore, they contend that the cost and availability of locations where single car tests can be performed on a private car makes the requirement overly burdensome to private car owners. The AAPRCO contends that the yearly single car test required by Amtrak during the annual inspection of a private car is sufficient to ensure the integrity of the brake systems on such equipment. FRA agrees with the concerns raised by AAPRCO in its petition. Consequently, FRA is amending the final rule to exclude private cars from the requirement to have a single car test performed when such a car is placed in service after being out of service for 30 days or more.

Section 238.313 Class I Brake Test

Paragraph (c) of this section regarding the performance of a Class I brake test on cars added to a passenger train is being modified in response to petitions filed by APTA and AAPRCO. Both these parties contend that the requirement to perform a Class I brake test at the time a passenger vehicle is added to a train is overly burdensome and unnecessary. They contend that at many locations where such cars are added to trains there is not a QMP available to perform such an inspection. They also note that under current regulations when cars are added to a passenger train only an intermediate-type brake test is required on the cars being added. Furthermore, they assert that the final rule requires that cars added to a train must receive a Class I brake test sometime during the day in which they are added to the train. APTA also notes that FRA's treatment of cars being added to a train is more stringent than the current and final rule requirements for cars departing on the first run of the day that are already entrained. Under the final rule cars in a train may depart on their first run of the day with only a Class IA brake test being performed. Consequently, these petitioners request that cars added to a train be permitted to be added after the performance of a Class I or Class IA brake test.

After consideration of the petitions received, FRA believes that the final rule requirement that a Class I brake test be performed on cars added to a passenger train is overly burdensome and somewhat inconsistent with the current regulatory provision when equipment is added to a passenger train. FRA agrees that the final rule requirement that a Class I brake test be performed when the equipment is added to a train is inconsistent with the requirements related to performing a Class IA brake test prior to the first run of a train on any given calendar day. FRA also recognizes that equipment may be added to a passenger train at a location where a QMP is not readily available to perform a Class I brake test. Furthermore, any equipment added to a passenger train that does not receive a Class I brake test when added to a train is required to receive a Class I brake test sometime during that calendar day on which the car is added to the train. Moreover, FRA believes that a Class IA brake test, although performed by a person likely to be less qualified than a QMP, generally ensures that the brake system on a piece of equipment operates as intended. Consequently, the final rule has been amended to require that when a vehicle is added to a train it must receive either a Class I or Class IA brake test unless the vehicle had received a Class I brake test pursuant to this section within the previous calendar day, has not been off a source of compressed air for more than four hours prior to being added to the train, and the train crew operating the train to which the vehicle is added is notified of the date, time, and location of that inspection.

As noted above, paragraph (c) of the final rule has also been modified to clarify that the train crew must be notified of the date, time, and location where the previous Class I brake test was performed in order to add a vehicle to a train without performing either a Class I or Class IA brake test at the time it is added to a train. The final rule

merely stated that the train crew must be provided ''documentation'' of the previous brake test. *See* 64 FR 25682. However, as APTA correctly asserts in its petition, the final rule does not indicate how or in what form the documentation is to be provided. To clarify the issue, FRA is amending the final rule to indicate that the train crew must be notified of the date and time that the previous Class I brake test was performed on the vehicle and the location where that inspection was performed on the vehicle in order to be excepted from the requirement to perform a Class I or Class IA brake test at the time the vehicle is added to the train. FRA intends to make clear that this notification may be provided in any format that best suits the railroad's operation. Thus, the notification may be either written, electronic, or via radio communication.

A clarifying change is being made to paragraph (g) of this section to explain that a Class I brake test is to be performed at the air pressure at which the train will be operated but not less than 90 psi. Although the final rule did not contain this specific requirement, FRA believes that it was understood that all the brake tests in this part were to be performed at either the pressure at which the train would be operated or 90 psi, whichever is greater, and it is currently standard industry practice to perform brake tests at these pressures. Consequently, in order to prevent any confusion or misunderstanding, the final rule is being amended to specifically state that the brake test is to be performed at the pressure at which the train will be operated or at 90 psi, whichever is greater.

Paragraph (g)(3) is being modified in response to the petition submitted by the TWU, which indicated that some confusion exists regarding what constitutes an effective brake. In order to prevent misunderstandings and avoid confusion, the final rule is being modified to clarify the difference between Class I brake test piston travel limits and the piston travel limits at which a brake will be considered not to be effective. As part of this clarification, the existing piston travel requirements related to the performance of initial terminal inspections on vehicles equipped with 8½-inch and 10-inch diameter brake cylinders, currently contained at § 232.12(f), are being added to this paragraph. Although these piston travel limits and adjustment requirements were not specifically included in the final rule, it was clearly FRA's intent to have the requirements remain in effect for passenger equipment containing such brake systems. FRA believes this modification also clarifies the definition of ''effective brake'' by making clear that although a car may be found with piston travel that exceeds the Class I brake test limits, and that piston travel must be adjusted at a Class I brake test, such excess travel does not render the brakes inoperative until the piston travel exceeds the outside limits established for that particular type of piston design. However, piston travel that exceeds the applicable Class I brake test limits would be considered a defective condition if the piston travel were not adjusted at the time that a Class I brake test was performed, and would be considered a partial failure to perform a Class I brake test pursuant to § 238.313(g). FRA also believes that the modifications being made to this paragraph more clearly delineate how the brakes are to be inspected during the performance of a Class I brake test.

The language added to this paragraph clarifies that if the piston travel on a standard 12-inch stroke brake cylinder is found to be more than 9 inches or less than 7 inches of piston travel at the time that a Class I brake test is performed, it must be adjusted to nominally 7½ inches. It should be noted that this adjustment requirement is slightly different from the existing 7-inch nominal adjustment requirement. However, this change is consistent with the requirements proposed by FRA in the 1998 NPRM related to brake system safety standards for freight and other non-passenger trains and equipment. See 63 FR 48340, 48363. The change is based on a request from the industry to change the nominal adjustment for these brake cylinders to 7½ inches from 7 inches because several railroads were finding it extremely difficult to adjust piston travel to precisely 7 inches and that in some cases the adjustment would be marginally less than 7 inches and, thus, require readjustment. Therefore, in order to provide a small measure for error when adjusting piston travel, FRA proposed that the adjustment be changed to nominally 7½ inches for freight equipment containing these types of brake systems. FRA believes this same margin for error should be extended to passenger equipment containing a similar brake system and, thus, has incorporated the change in this paragraph.

Paragraphs (g)(4) and (g)(15) are being modified in response to petitions submitted by Amtrak and AAPRCO. Both these parties seek clarification of the final rule requirement that the communicating signal system is tested and known to be operating as intended and the requirement that the communication of brake pipe pressure changes at the rear of the train is verified. These parties assert that the requirement regarding operation and testing of the communicating signal system should either be deleted or clarified to acknowledge that a tested and operating two-way radio system meets the requirement. Amtrak notes that it has not maintained the electric feature in the communication train line because the railroad uses radios carried by train crew members to serve the same function. Amtrak also seeks clarification of the requirement to verify communication of brake pipe pressure changes at the rear of the train to permit this requirement to be met through observation of the application and release of the brakes on the rear car of the train. Amtrak seeks this clarification to ensure that an air gauge is not required at the rear of passenger trains, which would be consistent with the existing regulations.

FRA supports the positions discussed above and believes that there is nothing in the final rule to indicate that the practices discussed above would not meet the requirements contained in the final rule. In fact, it was FRA's intent to consider a tested and operated two-way radio system to meet the requirement in paragraph (g)(4) of the final rule as well as to permit visual observation of the application and release of the rear car to serve as a method for verifying that proper communication of brake pipe changes at the rear of the train under paragraph (g)(15), which is currently permitted. However, in order to avoid confusion or misunderstanding, the final rule is being modified to acknowledge acceptance of the practices discussed above.

Paragraph (g)(11) of this section is being slightly modified in response to a petition submitted by the TWU. In its petition, the TWU requests modification of the definitions of ''bind'' and ''foul,'' contending that the definitions of these terms fail to address every possible condition that could affect the proper operation of a brake system. FRA believes that the conditions noted by TWU as not being covered by these definitions are sufficiently covered by the definition of ''effective brake'' contained in the final rule. See 64 FR 25661. Thus, even though a condition may not cause a brake to ''bind'' or ''foul,'' the condition would cause the brake not to be an ''effective brake'' as defined in the final rule. In order to fully address TWU's concerns, FRA is modifying the language contained in paragraph (g)(11), regarding the operation of the brake rigging, to include language that the rigging or

system mounted on a car for transmission of the braking force operates as intended and does not bind or foul. This modification is intended to clarify that even though a condition may not cause the brake rigging to ''bind'' or ''foul,'' the condition could cause the brake not to operate as intended and, thus, render the brake ineffective.

Paragraph (h) of this section is being amended in order to make the record keeping requirements pertaining to Class I brake tests consistent with the record keeping requirements applicable to mechanical inspections addressed in §§ 238.303 through 238.307. Rather than specifically requiring that a written record of the performance of a Class I brake test be maintained in the cab of the controlling locomotive, FRA believes that a railroad should be allowed to maintain records in a fashion that best suits their operations and that the record keeping requirements related to inspections, mechanical and brake, be consistent. FRA also believes that the provisions must be revised to allow railroads to take advantage of existing and developing technologies regarding the electronic maintenance and retention of records. Consequently, this paragraph is being amended to make it consistent with the record keeping provisions applicable to the performance of mechanical inspections.

The petitions of the BRC and the TWU raise general objections to FRA's renaming of the various brake inspections and departing from the terminology used in the current regulations, and also object to an approach which allows major brake tests to be performed anytime during a calendar day. As these parties raised these same objections when both the ANPRM and the NPRM were issued, FRA believes that the issues have been fully addressed in the preambles to the NPRM and the final rule. See 62 FR 49737–39, 64 FR 25563, and 25624–28. Contrary to the contentions of these parties, FRA does not believe that the final rule's designation of the brake inspections as Class I, Class IA, and Class II in any way conflicts with previous case law regarding the inspection of passenger equipment. FRA continues to believe that the classifications contained in the final rule clearly delineate what is required at each inspection, better clarify when each inspection is to be performed, and avoid the potential confusion caused by the terminology used in the present regulations.

Section 238.315 Class IA Brake Test

A clarifying change is being made to paragraph (f) of this section to explain that a Class IA brake test is to be performed at the air pressure at which the train will be operated. This clarifying change is identical to the change made in § 238.313 regarding Class I brakes tests. Although the final rule did not contain this specific requirement, FRA believes that it was understood that all the brake tests in this part were to be performed at this pressure, and it is standard industry practice to perform brake tests at the pressure at which a train will be operated. Consequently, in order to prevent any confusion or misunderstanding, the final rule is being amended to specifically state that the brake test is to be performed at the pressure at which the train will be operated.

Paragraphs (f)(5) and (f)(6) of this section are being slightly modified in order to conform with the clarifying changes being made with regard to the Class I brake test requirements. The modifications made in these paragraphs clarify that the requirement to have a tested and operating communicating signal system may be met by having a tested and operating two-way radio system, and that verification that brake pipe changes are being communicated at the rear of the train may be accomplished through observation of the application and release of the brakes on the rear car of the train. These clarifying changes are identical to the changes made in § 238.313(g)(4) and (g)(15) discussed above.

The TWU's petition raises the same objection to allowing the use of brake indicators as was raised in the TWU's response to the NPRM. The TWU again asserts that brake indicators should not be permitted to be used to perform a brake inspection because they are prone to malfunction and do not prove a true indication as to whether the brakes operate as intended. In the final rule, FRA acknowledged the concerns raised by various commenters regarding the use of piston travel indicators and agreed that indicators do not provide 100 percent certainty that the brakes are effective. However, FRA noted that brake system piston travel or piston cylinder pressure indicators have been used with satisfactory results for many years and that the indicators have proven themselves effective enough to be preferable to requiring an inspector to assume a dangerous position. Moreover, the use of a brake indicator is only permitted to be relied on to aid in the performance of a Class IA brake test when such an inspection is required to be performed at a location where it is impossible or hazardous to the safety of the inspector to physically observe the application and release of the brakes.

Section 238.317 Class II Brake Test

Paragraph (d)(1) of this section is being modified in order to clarify the method by which a railroad must verify that the brakes on the rear car of a train apply and release in response to signals from the engineer's brake valve when conducting a Class II brake test. The second clause of this paragraph has been slightly modified to acknowledge that a gauge ''or similar device'' at the rear of the train indicates that brake pipe pressure changes are properly communicated. FRA is adding the words ''or similar device'' in order to clarify that an indicator that provides a positive indication regarding the increase and decrease in brake pipe pressure at the rear car may be utilized to meet this requirement in lieu of direct observation of the application and release of the brakes on the rear car in a train.

Paragraph (d)(3) of this section is being slightly modified in order to conform with the clarifying changes being made with regard to the Class I and Class IA brake test requirements. The modification made in this paragraph clarifies that the requirement to have a tested and operating communicating signal system may be met by having a tested and operating two-way radio system. This clarifying change is identical to the changes made in § 238.313(g)(4) and § 238.315(f)(6) discussed above.

Appendix A to Part 238—Schedule of Civil Penalties

Appendix A to this part contains the schedule of civil penalties to be used in connection with this part. Conforming changes are being made to the schedule of civil penalties based on the changes being made to the final rule discussed in detail above.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This response to petitions for reconsideration of the final rule has been evaluated in accordance Executive Order 12866 and DOT policies and procedures. Although the final rule met the criteria for being considered a significant rule under those policies and procedures, the amendments contained in this response to petitions for reconsideration of the final rule are not considered significant because they either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the

rule. The economic impact of the amendments and clarifications contained in this response to petitions for reconsideration will generally reduce the cost of compliance with the rule. However, the cost reduction will be of a minimal nature and does not alter FRA's original analysis of the costs and benefits associated with the original final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this response to petitions for reconsideration does not have a significant impact on a substantial number of small entities. Because the amendments contained in this document either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations.

Paperwork Reduction Act

This response to petitions for reconsideration of the final rule does not change any of the information collection requirements contained in the original final rule.

Environmental Impact

FRA has evaluated this response to petitions for reconsideration of the final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA Procedures)(64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

Federalism Implications

FRA believes it is in compliance with Executive Order 13132. Because the amendments contained in this response to petitions for reconsideration of the final rule either clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, this document will not have a substantial effect 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. This response to petitions for reconsideration of the final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

List of Subjects

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 220

Penalties, Radio, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

PART 215—[AMENDED]

1. The authority citation for part 215 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Section 215.3 is amended by adding a new paragraph (c)(4) to read as follows:

§ 215.3 Application.

* * * * *

(c) * * *

(4) Operated in a passenger train and that is inspected, tested, maintained, and operated pursuant to the requirements contained in part 238 of this chapter.

PART 220—[AMENDED]

3. The authority citation for part 220 is revised to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 21301–21302, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

4. Section 220.5 is amended by revising the definition of *Train* to read as follows:

§ 220.5 Definitions.

* * * * *

Train means one or more locomotives coupled with or without cars, requiring an air brake test in accordance with 49 CFR part 232 or part 238, except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains.

* * * * *

PART 238—[AMENDED]

5.–6. The authority citation for part 238 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Subpart A—General—[Amended]

7. Section 238.1(c) is revised to read as follows:

§ 238.1 Purpose and scope.

* * * * *

(c) Railroads to which this part applies shall be responsible for compliance with all of the requirements contained in §§ 238.15, 238.17, 238.19, 238.107, 238.109, and subpart D of this part effective January 1, 2002.

* * * * *

8. Section 238.5 is amended by adding a definition for *Actuator,* and revising the definitions for *Brake, effective, Primary responsibility, Qualified person,* and *Running gear defect* to read as follows:

§ 238.5 Definitions.

* * * * *

Actuator means a device directly actuated by the movement of the brake cylinder piston which provides an indication of the piston travel.

* * * * *

Brake, effective means a brake that is capable of producing its required designed retarding force on the train. A brake is not effective if its piston travel is in excess of the maximum prescribed limits. On vehicles equipped with nominal 12-inch stroke brake cylinders, the brake is not effective if its piston travel exceeds 10½ inches.

* * * * *

Primary responsibility means the task that a person performs during at least 50 percent of the time that the person is working. The totality of the circumstances will be considered on a case-by-case basis in circumstances where an individual does not spend 50 percent of his or her workday engaged in any one readily identifiable type of activity. Time spent supervising employees engaged in the functions of troubleshooting, inspection, testing, maintenance, or repair of train brake and mechanical components and systems covered by this part shall be considered work which is generally consistent with the function of troubleshooting of such systems and components for the purpose of the definition of this term and the definition of ''Qualified Maintenance Person.''

* * * * *

Qualified person means a person who has received, as a part of the training, qualification, and designation program required under § 238.109, instruction and training necessary to perform one or more functions required under this part. The railroad is responsible for determining that the person has the knowledge and skills necessary to perform the required function for which the person is assigned responsibility. The railroad determines the qualifications and competencies for employees designated to perform various functions in the manner set forth in this part. Although the rule uses the term ''qualified person'' to describe a person responsible for performing various functions required under this part, a person may be deemed qualified to perform some functions but not qualified to perform other functions. For example, although a person may be deemed qualified to perform the Class II brake test required by this part, that same person may or may not be qualified to perform the Class IA brake test or authorize the movement of defective equipment under this part. The railroad will determine the required functions for which an individual will be deemed a ''qualified person'' based upon the instruction and training the individual has received pursuant to § 238.109 on a particular function.

* * * * *

Running gear defect means any condition not in compliance with this part which involves a truck component, a draft system component, a wheel, or a wheel component.

* * * * *

9. Section 238.15 is amended by revising the first sentence of the introductory text, paragraphs (b), introductory text, (c), introductory text, (c)(2), introductory text, (d)(1)(ii), (d)(1)(iv), and (d)(1)(iv)(C) to read as follows:

§ 238.15 Movement of passenger equipment with power brake defects.

Beginning on January 1, 2002, the following provisions of this section apply to railroads operating Tier I passenger equipment covered by this part. * * *

* * * * *

(b) *Limitations on movement of passenger equipment containing a power brake defect at the time a Class I or IA brake test is performed.* Except as provided in paragraph (c) of this section (which addresses brakes that become defective en route after a Class I or IA brake test was performed), a commuter or passenger train that has in its consist passenger equipment containing a power brake defect at the time that a Class I or IA brake test (or, for Tier II trains, the equivalent) is performed may only be moved, without civil penalty liability under this part— * * *

* * * * *

(c) *Limitations on movement of passenger equipment in passenger service that becomes defective en route after a Class I or IA brake test.* Passenger equipment hauled or used in service in a commuter or passenger train that develops inoperative or ineffective power brakes or any other power brake defect while en route to another location after receiving a Class I or IA brake test (or, for Tier II trains, the equivalent) may be hauled or used by a railroad for repair, without civil penalty liability under this part, if the applicable operating restrictions set forth in paragraphs (d) and (e) of this section are complied with and all of the following requisites are satisfied:

* * * * *

(2) *Record.* A tag or card is placed on both sides of the defective passenger equipment, or an automated tracking system is provided, with the following information about the defective passenger equipment:

* * * * *

(d) * * *

(ii) For trains equipped with only tread brake units (TBUs), the percentage of operative power brakes shall be determined by dividing the number of operative TBUs by the total number of TBUs in the train.

* * * * *

(iv) The following brake conditions not in compliance with this part do not render power brakes inoperative for purposes of this calculation:

* * * * *

(C) Piston travel that is in excess of the Class I brake test limits required in § 238.313 but that does not exceed the maximum prescribed limits for considering the brakes to be effective; and

* * * * *

10. Section 238.17 is amended by revising the first sentence of the introductory text, paragraphs (b), introductory text, (c), introductory text, (d)(1), (d)(2)(ii), and (d)(2)(iv) to read as follows:

§ 238.17 Movement of passenger equipment with other than power brake defects.

Beginning on January 1, 2002, the following provisions of this section apply to railroads operating Tier I passenger equipment covered by this part. * * *

* * * * *

(b) *Limitations on movement of passenger equipment containing defects found at time of calendar day inspection.* Except as provided in §§ 238.303(e)(15), 238.305(c) and (d), and 238.307(c)(1), passenger equipment containing a condition not in conformity with this part at the time of its calendar day mechanical inspection may be moved from that location for repair if all of the following conditions are satisfied: * * *

* * * * *

(c) *Limitations on movement of passenger equipment that develops defects en route.* Except as provided in §§ 238.303(e)(15), 238.307(c)(1), and 238.503(f), passenger equipment that develops en route to its destination, after its calendar day mechanical inspection is performed and before its next calendar day mechanical inspection is performed, any condition not in compliance with this part, other than a power brake defect, may be moved only if the railroads complies with all of the following requirements or, if applicable, the special requirements in paragraph (e) of this section:

* * * * *

(d) *Inspection of roller bearing on equipment involved in a derailment.*

(1) A railroad shall not continue passenger equipment in service that has a roller bearing whose truck was involved in a derailment unless the bearing has been inspected and tested in accordance with the railroad's procedures for handling defective equipment.

(2) * * *

(ii) It makes any unusual noise when its wheel set is spun freely (an on-track rolling test is acceptable) or when the bearing is manually rotated;

(iii) * * *

(iv) Its truck was dragged on the ground for more than 100 feet.

* * * * *

11. Section 238.19 is amended by revising the section heading, the first sentence of paragraph (a) and paragraph (a)(2) to read as follows:

§ 238.19 Reporting and tracking of repairs to defective passenger equipment.

(a) *General.* Beginning on January 1, 2002, each railroad shall have in place a reporting and tracking system for passenger equipment with a defect not in conformance with this part. * * *

* * * * *

(2) The date the defect was discovered;

* * * * *

Subpart B—Safety Planning and General Requirements—[Amended]

12. The first sentence of § 238.107(a) is revised to read as follows:

§ 238.107 Inspection, testing, and maintenance plan.

(a) *General.* Beginning on January 1, 2002, the following provisions of this section apply to railroads operating Tier I passenger equipment covered by this part. * * *

* * * * *

13. Section 238.109 is amended by revising the first sentence of paragraph (a), by revising paragraphs (b)(1) through (b)(7) and paragraph (b)(11) to read as follows:

§ 238.109 Training, qualification, and designation program.

(a) Beginning on January 1, 2002, each railroad shall have adopted a training, qualification, and designation program for employees and contractors that perform any of the inspections, tests, or maintenance required by this part, and shall have trained such employees and contractors in accordance with the program. * * *

* * * * *

(b) As part of this program, the railroad shall, at a minimum:

(1) Identify the tasks related to the inspection, testing, and maintenance required by this part that must be performed on each type of equipment that the railroad operates;

(2) Develop written procedures for the performance of the tasks identified in paragraph (b)(1) of this section;

(3) Identify the skills and knowledge necessary to perform each task identified in paragraph (b)(1) of this section;

(4) Adopt a training curriculum that includes classroom and ''hands-on'' lessons designed to impart the skills and knowledge identified as necessary to perform each task identified in paragraph (b)(1) of this section. The training curriculum shall specifically address the Federal regulatory requirements contained in this part that are related to the performance of the tasks identified;

(5) Require all employees and contractors to successfully complete the training course that covers the equipment and tasks for which they are responsible that are required by this part as well as the specific Federal regulatory requirements contained in this part related to equipment and tasks for which they are responsible;

(6) Require all employees and contractors to pass a written examination covering the equipment and tasks for which they are responsible that are required by this part as well as the specific Federal regulatory requirements contained in this part related to equipment and tasks for which they are responsible;

(7) Require all employees and contractors to individually demonstrate ''hands-on'' capability to successfully perform the tasks required by this part that must be performed as part of their duties on the type equipment to which they are assigned;

* * * * *

(11) Require periodic refresher training, at an interval not to exceed three years, that includes classroom and ''hands-on'' training, as well as testing; except, employees and contractors that have completed their initial training under this part prior to January 1, 2002, shall not be required to complete their first periodic refresher training until four years after the completion of their initial training, and every three years thereafter;

* * * * *

Subpart C—Specific Requirements for Tier I Passenger Equipment—[Amended]

14. Section 238.231 is amended by revising paragraphs (j), introductory text, and (m) and by adding new paragraphs (h)(3), (n), and (o) to read as follows:

§ 238.231 Brake system.

* * * * *

(h) * * *

(3) The air brake shall not be depended upon to hold equipment standing unattended on a grade (including a locomotive, a car, or a train whether or not a locomotive is attached). When required, a sufficient number of hand brakes shall be applied to hold the train or equipment before the air brakes are released. Any hand brakes applied to hold equipment shall not be released until it is known that the air brake system is properly charged.

* * * * *

(j) Locomotives ordered after September 8, 2000, or placed in service for the first time after September 9, 2002, that are equipped with blended brakes shall be designed so that: * * *

* * * * *

(m) When a passenger train is operated in either direct or graduated release—

(1) all the cars in the train consist shall be set up in the same operating mode or

(2) up to two cars may be operated in direct release mode when the rest of the cars in the train are operated in graduated release mode, provided that the cars operated in direct release mode are hauled at the rear of the train consist.

(n) Before adjusting piston travel or working on brake rigging, the cutout cock in the brake pipe branch must be closed and the air reservoirs must be voided of all compressed air. When cutout cocks are provided in brake cylinder pipes, these cutout cocks may be closed, and air reservoirs need not be voided of all compressed air.

(o) All passenger trains to which this part applies shall comply with the requirements covering the use of two-way end-of-train devices contained in part 232 of this chapter.

* * * * *

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment—[Amended]

15. Section 238.301 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 238.301 Scope.

* * * * *

(b) Beginning on January 1, 2002, the requirements contained in this subpart shall apply to railroads operating Tier I passenger equipment covered by this part.* * *

* * * * *

16. Section 238.303 is amended by revising paragraphs (b), (e)(7)(ii), (e)(8)(x), (e)(15)(i), and (g)(2)(iv) and by adding a new paragraph (e)(16) to read as follows:

§ 238.303 Exterior calendar day mechanical inspection of passenger equipment.

* * * * *

(b) Each passenger car and each unpowered vehicle added to a passenger train shall receive an exterior calendar day mechanical inspection in accordance with the following:

(1) Except as provided in paragraph (b)(2) of this section, each passenger car and each unpowered vehicle added to a passenger train shall receive an exterior calendar day mechanical inspection at the time it is added to the train unless notice is provided to the train crew that an exterior mechanical inspection was performed on the car or vehicle on the last day it was used in passenger service. The notice required by this section shall contain the date, time, and

location of the last exterior mechanical inspection;

(2) Each express car, freight car, and each unit of intermodal equipment (*e.g.,* RoadRailers®) added to a passenger train shall receive an exterior calendar day mechanical inspection at the time it is added to the train, unless notice is provided to the train crew that an exterior mechanical inspection was performed on the car within the previous calendar day. The notice required by this section shall contain the date, time, and location of the last exterior mechanical inspection.

* * * * *

(e) * * *

(7) * * *

(ii) Each friction side bearing does not run in contact unless designed to operate in that manner; and

* * * * *

(8) * * *

(x) Except as provided in paragraph (e)(8)(iii) of this section, a crack or break in the flange, tread, rim, plate, or hub;

* * * * *

(15) * * *

(i) MU locomotives equipped with dynamic brakes found not to be in operating mode or containing a defective condition which prevents the proper operation of the dynamic brakes shall be handled in accordance with the following requirements:

(A) A tag bearing the words ''inoperative dynamic brakes'' shall be securely displayed in a conspicuous location in the cab of the locomotive and contain the locomotive number, the date and location where the condition was discovered, and the signature of the individual who discovered the condition;

(B) The locomotive engineer shall be informed in writing that the dynamic brakes on the locomotive are inoperative at the location where the locomotive engineer first takes charge of the train; and

(C) The inoperative or defective dynamic brakes shall be repaired or removed from service by or at the locomotive's next exterior calendar day mechanical inspection.

* * * * *

(16) All roller bearings do not have any of the following conditions:

(i) A sign of having been overheated as evidenced by discoloration or other telltale sign of overheating, such as damage to the seal or distortion of any bearing component;

(ii) A loose or missing cap screw;

(iii) A broken, missing, or improperly applied cap screw lock; or

(iv) A seal that is loose or damaged or permits leakage of lubricant in clearly formed droplets.

* * * * *

(g) * * *

(2) * * *

(iv) The signature or electronic identification of the inspector.

* * * * *

17. Section 238.305 is amended as follows:

a. Paragraphs (d) and (e) are redesignated as paragraphs (e) and (f).

b. A new paragraph (d) is added.

c. Paragraph (c) and redesignated paragraph (f)(2)(iv) are revised. The addition and revisions to § 238.305 read as follows:

§ 238.305 Interior calendar day mechanical inspection of passenger cars.

* * * * *

(c) As part of the interior calendar day mechanical inspection, the railroad shall verify conformity with the following conditions, and nonconformity with any such condition renders the car defective whenever discovered in service, except as provided in paragraphs (c)(5) through (c)(10), and paragraph (d) of this section:

(1) All fan openings, exposed gears and pinions, exposed moving parts of mechanisms, pipes carrying hot gases and high-voltage equipment, switches, circuit breakers, contactors, relays, grid resistors, and fuses are installed in non-hazardous locations or equipped with guards to prevent personal injury.

(2) Floors of passageways and compartments are free from oil, water, waste, or any obstruction that creates a slipping, tripping, or fire hazard, and floors are properly treated to provide secure footing.

(3) All D rings, pull handles, or other means to access manual door releases are in place based on a visual inspection.

(4) All emergency equipment, including a fire extinguisher, pry bar, auxiliary portable lighting, and first aid kits, as applicable, are in place.

(5) The words ''Emergency Brake Valve'' are legibly stenciled or marked near each brake pipe valve or shown on an adjacent badge plate.

(6) All doors and cover plates guarding high voltage equipment are marked ''Danger—High Voltage'' or with the word ''Danger'' and the normal voltage carried by the parts so protected.

(7) All safety-related signage is in place and legible.

(8) All trap doors safely operate and securely latch in place in both the up and down position. A non-complying car may continue in passenger service pursuant to paragraph (d) of this section, if the trap door can be secured by locking out the door for which it is used.

(9) All vestibule steps are illuminated. A non-complying car may continue in passenger service pursuant to paragraph (d) of this section, if the car will be used solely in high-platform service.

(10) All end doors and side doors operate safely and as intended. A non-complying car may continue in passenger service pursuant to paragraph (d) of this section, if at least one operative and accessible door is available on each side of the car; and a notice is prominently displayed directly on the defective door indicating that the door is defective.

(d) Any passenger car found not to be in compliance with the requirements contained in paragraphs (c)(5) through (c)(10) of this section at the time of its interior calendar day mechanical inspection may remain in passenger service until the car's next interior calendar day mechanical inspection where it must be repaired or removed from passenger service; provided, all of the specific conditions contained in paragraphs (c)(8) through (c)(10) of this section are met and all of the following requirements are met:

(1) A qualified person or a qualified maintenance person determines that the repairs necessary to bring the car into compliance cannot be performed at the time that the current day's interior mechanical inspection is conducted;

(2) A qualified person or a qualified maintenance person determines that it is safe to move the equipment in passenger service; and

(3) A record is maintained of the non-complying condition with the date and time that the condition was first discovered.

* * * * *

(f) * * *

(2) * * *

(iv) The signature or electronic identification of the inspector.

* * * * *

18. Section 238.307 is amended as follows:

a. Paragraph (d) is removed,

b. Paragraphs (e) through (g) are redesignated as paragraphs (d) through (f) respectively, and

c. Paragraph (c) and redesignated paragraph (e)(1) are revised to read as follows:

§ 238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains.

* * * * *

(c) The periodic mechanical inspection shall specifically include the

following interior and exterior mechanical components, which shall be inspected not less frequently than every 184 days. At a minimum, this inspection shall determine that:

(1) Seats and seat attachments are not broken or loose. If a car is found with a seat that is not in compliance with this requirement while being used between periodic mechanical inspections, the equipment may continue to be used in passenger service until the performance of an interior calendar day mechanical inspection pursuant to § 238.305 on the day following the discovery of the defective condition provided the seat is rendered unuseable, a notice is prominently displayed on the seat, and a record is maintained with the date and time that the non-complying condition was discovered.

(2) Luggage racks are not broken or loose.

(3) All beds and bunks are not broken or loose, and all restraints or safety latches and straps are in place and function as intended.

(4) A representative sample of emergency window exits on the railroad's passenger cars properly operate, in accordance with the requirements of § 239.107 of this chapter.

(5) Emergency lighting systems are operational.

(6) With regard to switches:

(i) All hand-operated switches carrying currents with a potential of more than 150 volts that may be operated while under load are covered and are operative from the outside of the cover;

(ii) A means is provided to display whether the switches are open or closed; and

(iii) Switches not designed to be operated safely while under load are legibly marked with the voltage carried and the words ''must not be operated under load''.

(7) Each coupler is in the following condition:

(i) The distance between the guard arm and the knuckle nose is not more than 5⅛ inches on standard type couplers (MCB contour 1904), or not more than 5⁵⁄₁₆ inches on D&E couplers;

(ii) The free slack in the coupler or drawbar not absorbed by friction devices or draft gears is not more than ½ inch; and

(iii) The draft gear is not broken, to the extent possible without dropping cover plates.

(8) All trucks are equipped with a device or securing arrangement to prevent the truck and car body from separating in case of derailment.

(9) All center castings on trucks are not cracked or broken, to the extent possible without jacking the car and rolling out the trucks. However, an extensive inspection of all center castings shall be conducted by jacking the equipment and rolling out the trucks at each COT&S cycle provided in § 238.309 for the equipment.

(10) All mechanical systems and components of the equipment are free of all the following general conditions that endanger the safety of the crew, passengers, or equipment:

(i) A continuous accumulation of oil or grease;

(ii) Improper functioning of a component;

(iii) A crack, break, excessive wear, structural defect, or weakness of a component;

(iv) A leak;

(v) Use of a component or system under a condition that exceeds that for which the component or system is designed to operate; and

(vi) Insecure attachment of a component.

(11) All of the items identified in the exterior calendar day mechanical inspection contained at § 238.303 are in conformity with the conditions prescribed in that section.

(12) All of the items identified in the interior calendar day mechanical inspection contained at § 238.305 are in conformity with the conditions prescribed in that section.

* * * * *

(e) *Records.* (1) A record shall be maintained of each periodic mechanical inspection required to be performed by this section. This record may be maintained in writing or electronically, provided FRA has access to the record upon request. The record shall be maintained either in the railroad's files, the cab of the locomotive, or a designated location in the passenger car. The record shall be retained until the next periodic mechanical inspection of the same type is performed and shall contain the following information:

(i) The date of the inspection;

(ii) The location where the inspection was performed;

(iii) The signature or electronic identification of the inspector; and

(iv) The signature or electronic identification of the inspector's supervisor.

* * * * *

19. Section 238.309 is amended by revising paragraph (d) to read as follows:

§ 238.309 Periodic brake equipment maintenance.

* * * * *

(d) *Passenger coaches and other unpowered vehicles.* The brake equipment on each passenger coach and each unpowered vehicle used in a passenger train shall be cleaned, repaired, and tested at intervals in accordance with following schedule:

(1) Every 2,208 days for a coach or vehicle equipped with an AB-type brake system.

(2) Every 1,476 days for a coach or vehicle equipped with a 26–C or equivalent brake system; and

(3) Every 1,104 days for a coach or vehicle equipped with other than an AB, ABD, ABDX, 26–C, or equivalent brake system.

* * * * *

20. Section 238.311 is amended by revising paragraph (e)(1) to read as follows:

§ 238.311 Single car test.

* * * * *

(e) * * *

(1) Except for private cars, a car or vehicle is placed in service after having been out of service for 30 days or more; or

* * * * *

21. Section 238.313 is amended by revising paragraphs (c), (g), introductory text, (g)(3), (g)(4), (g)(11), (g)(15), and (h) to read as follows:

§ 238.313 Class I brake test.

* * * * *

(c) Each passenger car and each unpowered vehicle added to a passenger train shall receive a Class I or Class IA brake test at the time it is added to the train unless notice is provided to the train crew that a Class I brake test was performed on the car within the previous calendar day and the car has not been disconnected from a source of compressed air for more than four hours prior to being added to the train. The notice required by this section shall contain the date, time, and location of the last Class I brake test.

* * * * *

(g) A Class I brake test shall be performed at the air pressure at which the train's air brakes will be operated, but not less than 90 psi, and shall be made to determine and ensure that:

* * * * *

(3) Piston travel is within prescribed limits, either by direct observation, observation of an actuator, or in the case of tread brakes by determining that the brake shoe provides pressure to the wheel. For vehicles equipped with 8½-inch or 10-inch diameter brake cylinders, piston travel shall be within 7 to 9 inches. If piston travel is found to be less than 7 inches or more than 9

inches, it must be adjusted to nominally 7½ inches. Proper release of the brakes can be determined by observation of the clearance between the brake shoe and the wheel or between the brake pad and the brake disc.

(4) The communicating signal system is tested and known to be operating as intended; a tested and operating two-way radio system meets this requirement;

* * * * *

(11) The brake rigging or the system mounted on the car for the transmission of the braking force operates as intended and does not bind or foul so as to impede the force delivered to a brake shoe, impede the release of a brake shoe, or otherwise adversely affect the operation of the brake system;

* * * * *

(15) The communication of brake pipe pressure changes at the rear of the train is verified, which may be accomplished by observation of an application and release of the brakes on the last car in the train.

* * * * *

(h) *Records.* A record shall be maintained of each Class I brake test performed.

(1) This record may be maintained in writing or electronically, provided FRA has access to the record upon request.

(2) The written or electronic record must contain the following information:

(i) The date and time that the Class I brake test was performed;

(ii) The location where the test was performed;

(iii) The identification number of the controlling locomotive of the train;

(iv) The total number of cars inspected during the test; and

(v) The signature or electronic identification of the inspector.

(3) This record shall be maintained at the place where the inspection is conducted or at one central location and shall be retained for at least 92 days.

* * * * *

22. Section 238.315 is amended by revising paragraphs (f), introductory text, (f)(5) and (f)(6) to read as follows:

§ 238.315 Class IA brake test.

* * * * *

(f) A Class IA brake test shall be performed at the air pressure at which the train's air brakes will be operated and shall determine and ensure that:

* * * * *

(5) The communication of brake pipe pressure changes at the rear of the train is verified, which may be accomplished by observation of an application and release of the brakes on the last car in the train; and

(6) The communicating signal system is tested and known to be operating as intended; a tested and operating two-way radio system meets this requirement.

* * * * *

23. Section 238.317 is amended by revising paragraphs (d)(1) and (d)(3) to read as follows:

§ 238.317 Class II brake test.

* * * * *

(d) * * *

(1) The brakes on the rear unit of the train apply and release in response to a signal from the engineer's brake valve or controller of the leading or controlling unit, or a gauge or similar device located at the rear of the train or in the cab of the rear unit indicates that brake pipe pressure changes are properly communicated at the rear of the train;

(2) * * *

(3) The communicating signal system is tested and known to be operating as intended; a tested and operating two-way radio system meets this requirement.

* * * * *

24. Appendix A to part 238 is amended as follows:

a. The entry for section 238.231 is revised;

b. In the entry for section 238.303 by adding (e)(16);

c. In the entry for section 238.305 by revising (c)(1) through (c)(9) and adding (c)(10), (c)(11), and (f);

d. In the entry for section 238.307 by revising (c)(1) through (c)(7), adding (c)(8) through (c)(10), (d), (e)(1), and (e)(1)(i)–(iv); and

e. In the entry for section 238.313 by adding (g)(3).

The revisions and additions read as follows:

Appendix A to Part 238—Schedule of Civil Penalties [1]

* * * * *

Section	Violation	Willful violation
* * * * *	*	*
238.231 Brake System (a)–(g), (i)–(n)	2,500	5,000
(h)(1), (2) Hand or parking brake missing or inoperative	5,000	7,500
(h)(3) Hand or parking brake not applied to hold equipment unattended on grade or prematurely released	5,000	7,500
* * * * *	*	*
238.303 Exterior mechanical inspection of passenger equipment:		
* * * * *	*	*
(e)(16) Roller bearings:		
(i) Overheated	5,000	7,500
(ii) Cap screw loose or missing	2,500	5,000
(iii) Cap screw lock broken or missing	1,000	2,000
(iv) Seal loose, damaged, or leaks lubricant	2,500	5,000
* * * * *	*	*
238.305 Interior mechanical inspection of passenger equipment:		
* * * * *	*	*
(c)(1) Failure to protect against personal injury	2,500	5,000
(c)(2) Floors not free of condition that creates hazard	2,500	5,000
(c)(3) Access to manual door release not in place	2,000	4,000
(c)(4) Emergency equipment not in place	1,000	2,000
(c)(5) Emergency brake valve not stenciled or marked	2,500	5,000
(c)(6) Door or cover plates not properly marked	2,500	5,000
(c)(7) Safety signage not in place or legible	1,000	2,000
(c)(8) Trap door unsafe or improperly secured	2,500	5,000

Section	Violation	Willful violation
(c)(9) Vestibule steps not illuminated	2,000	4,000
(c)(10) Door not safely operate as intended	2,500	5,000
(c)(11) Seat broken, loose, or not properly attached	2,500	5,000
(f) Record of inspection:		
(1), (4) Failure to maintain record of inspection	2,000	4,000
(2) Record contains insufficient information	1,000	2,000
* * * * * * *		
238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles:		
* * * * * * *		
(c)(1) Seat or seat attachment broken or loose	2,500	5,000
(c)(2) Luggage rack broken or loose	2,500	5,000
(c)(3) Bed, bunks, or restraints broken or loose	2,500	5,000
(c)(4) Emergency window exit not properly operate	2,500	5,000
(c)(5) Emergency lighting not operational	2,500	5,000
(c)(6) Switches not in proper condition	2,500	5,000
(c)(7) Coupler not in proper condition	2,500	5,000
(c)(8) Truck not equipped with securing arrangement	2,500	5,000
(c)(9) Truck center casting cracked or broken	5,000	7,500
(c)(10) General conditions endangering crew, passengers	2,500	5,000
(d) Manual door release not operate as intended	2,500	5,000
(e)(1) Failure to maintain record of inspection	2,000	4,000
(i)–(iv) Record contains insufficient information	1,000	2,000
* * * * * * *		
238.313 Class I brake test:		
* * * * * * *		
(g) * * *		
(3) Failure to adjust piston travel (per car)	2,500	5,000
* * * * * * *		

* * * * *

Issued in Washington, D.C., on June 19, 2000.

Jolene M. Molitoris,

Federal Railroad Administrator.

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Monday,
July 3, 2000

Part VII

The President

Proclamation 7325—To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

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Presidential Documents

Title 3—

The President

Proclamation 7325 of June 29, 2000

To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501, 503(a)(1)(A), and 503(c)(1) of title V of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2461, 2463(a)(1)(A), and 2463(c)(1)), the President may designate or withdraw designation of specified articles provided for in the Harmonized Tariff Schedule of the United States (HTS) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2. Pursuant to section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 503(c)(2)(D) of the 1974 Act (19 U.S.C. 2463(c)(2)(D)), are subject to competitive need limitations on the preferential treatment afforded under the GSP to eligible articles.

3. Pursuant to section 503(c)(2)(C) of the 1974 Act (19 U.S.C. 2463(c)(2)(C)), a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the competitive need limitations in section 503(c)(2)(A) (19 U.S.C. 2463(c)(2)(A)) during the preceding calendar year.

4. Pursuant to section 503(c)(2)(F) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)), the President may disregard the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)(i)(II)) with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year does not exceed an amount set forth in section 503(c)(2)(F)(ii) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)(ii)).

5. Pursuant to section 503(d) of the 1974 Act (19 U.S.C. 2463(d)), the President may waive the application of the competitive need limitations in section 503(c)(2)(A) with respect to any eligible article from any beneficiary developing country if certain conditions are met.

6. Pursuant to section 503(c)(2)(E) of the 1974 Act (19 U.S.C. 2463(c)(2)(E)), section 503(c)(2)(A)(i)(II) shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States on January 1, 1995.

7. Pursuant to sections 501 and 503(a)(1)(A) of the 1974 Act, and after receiving advice from the International Trade Commission in accordance with section 503(e), I have determined to designate certain articles, previously designated under section 503(a)(1)(B), as eligible articles when imported from any beneficiary developing country.

8. Pursuant to section 503(c)(1) of the 1974 Act, I have determined to limit the application of duty-free treatment accorded to certain articles from certain beneficiary developing countries.

9. Pursuant to section 503(c)(2)(A) of the 1974 Act, I have determined that certain beneficiary countries should no longer receive preferential tariff

treatment under the GSP with respect to certain eligible articles imported in quantities that exceed the applicable competitive need limitation.

10. Pursuant to section 503(c)(2)(C) of the 1974 Act, I have determined that certain countries should be redesignated as beneficiary developing countries with respect to certain eligible articles that previously had been imported in quantities exceeding the competitive need limitations of section 503(c)(2)(A).

11. Pursuant to section 503(c)(2)(F) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) should be waived with respect to certain eligible articles from certain beneficiary developing countries.

12. Pursuant to section 503(d) of the 1974 Act, I have determined that the competitive need limitations of section 503(c)(2)(A) should be waived with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the International Trade Commission on whether any industries in the United States are likely to be adversely affected by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c), that such waivers are in the national economic interest of the United States.

13. Pursuant to section 503(c)(2)(E) of the 1974 Act (19 U.S.C. 2463(c)(2)(E)), I have determined that the limitation provided for in section 503(c)(2)(A)(i)(II) shall not apply with respect to HTS subheading 3817.10.50 because no like or directly competitive article was produced in the United States on January 1, 1995.

14. Section 604 of the 1974 Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide that one or more countries that have not been treated as beneficiary developing countries with respect to one or more eligible articles should be designated as beneficiary developing countries with respect to such article or articles for purposes of the GSP, and that one or more countries should no longer be treated as beneficiary developing countries with respect to one or more eligible articles for purposes of the GSP, general note 4(d) to the HTS is modified as provided in section A of Annex I to this proclamation.

(2)(a) In order to designate certain articles as eligible articles for purposes of the GSP when imported from any beneficiary developing country, the Rates of Duty 1–Special subcolumn for certain HTS subheadings is modified as provided in section B(1) of Annex I to this proclamation.

(b) In order to provide preferential tariff treatment under the GSP to a beneficiary developing country that has been excluded from the benefits of the GSP for certain eligible articles, the Rates of Duty 1–Special subcolumn for each of the HTS subheadings enumerated in section B(2) of Annex I to this proclamation is modified as provided in such section.

(c) In order to provide that one or more countries should not be treated as a beneficiary developing country with respect to certain eligible articles for purposes of the GSP, the Rates of Duty 1–Special subcolumn for each of the HTS subheadings enumerated in section B(3) of Annex I to this proclamation is modified as provided in such section.

(3) A waiver of the application of section 503(c)(2)(A) of the 1974 Act shall apply to the eligible articles in the HTS subheadings and to the beneficiary developing countries set forth in Annex II to this proclamation.

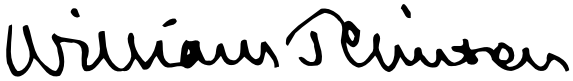
(4) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(5)(a) The modifications made by Annex I to this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2000.

(b) The action taken in Annex II to this proclamation shall be effective on the date of publication of this proclamation in the **Federal Register**.

(c) The action taken in paragraph 13 of this proclamation shall be effective on the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of June, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.



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Annex I

Modifications to the Harmonized Tariff Schedule of the United States (HTS)
Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 2000.
Section A. General note 4(d) to the Harmonized Tariff Schedule of the United States (HTS) is modified by:
(1). deleting the following subheadings and the country set out opposite such subheadings:

0811.20.40 Chile	7202.50.00 Russia
1701.91.10 Brazil	

(2). adding, in numerical sequence, the following provisions and countries set out opposite them:

0713.90.80 India	5007.90.30 India
0714.90.45 Costa Rica	5702.39.10 India
1102.90.30 El Salvador	6302.99.10 India
2001.90.45 India	7113.19.25 India
2008.19.25 Peru	7113.20.25 India
2008.99.45 Dominican Republic	7418.19.10 India
4010.19.50 Brazil	8211.95.50 Pakistan
4104.39.20 India	8450.90.20 Ecuador
4412.92.40 Ecuador	8708.99.67 Brazil

(3). adding, in alphabetical order, the country or countries set out opposite the following subheadings:

0714.20.10 Colombia	2008.50.20 Turkey
1602.50.20 Brazil	2905.42.00 Brazil
1702.30.22 Jamaica	3212.90.00 Colombia
2004.10.40 Peru	4106.20.30 Pakistan
2008.19.30 Turkey	7801.99.30 Colombia

Section B. Each enumerated article's preferential tariff treatment under the Generalized System of Preferences (GSP) in the HTS is modified as provided in this section.
(1). For subheadings 7202.99.10 and 8104.30.00, the Rates of Duty 1–Special subcolumn is modified by deleting the symbol ''A+'' and inserting an ''A'' in lieu thereof.
(2). For the following subheadings, the Rates of Duty 1–Special subcolumn is modified by deleting the symbol ''A*'' and inserting an ''A'' in lieu thereof.

0811.20.40
1701.91.10
7202.50.00

(3). For the following provisions, the Rates of Duty 1–Special subcolumn is modified by deleting the symbol ''A'' and inserting an ''A*'' in lieu thereof:

0713.90.80	2008.19.25	4412.92.40	7113.19.25	8450.90.20
0714.90.45	2008.99.45	5007.90.30	7113.20.25	8708.99.67
1102.90.30	4010.19.50	5702.39.10	7418.19.10	
2001.90.45	4104.39.20	6302.99.10	8211.95.50	

Annex II

Harmonized Tariff Schedule of the United States (HTS)
Subheadings and Countries Granted Waivers of the Application of Section 503(c)(2)(A) of the 1974 Act

HTS Subheading	Country
7202.50.00	Russia
7202.99.10	Brazil

[FR Doc. 00–17012
Filed 6–30–00; 10:55 am]
Billing code 3190–01–P

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40967–41320 3

CFR PARTS AFFECTED DURING JULY

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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ENVIRONMENTAL PROTECTION AGENCY

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South Carolina; published 6-5-00

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Federal home loan bank system:

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Health Care Financing Administration

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HEALTH AND HUMAN SERVICES DEPARTMENT

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Defense Department demonstration project; published 6-2-00

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S. 1967/P.L. 106–228

To make technical corrections to the status of certain land held in trust for the Mississippi Band of Choctaw Indians, to take certain land into trust for that Band, and for other purposes. (June 29, 2000; 114 Stat. 462)

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1700–End	(869–042–00075–7)	18.00	[5] Apr. 1, 2000
25	(869–042–00076–5)	52.00	Apr. 1, 2000
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–042–00078–1)	56.00	Apr. 1, 2000
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
*§§ 1.301–1.400	(869–042–00080–3)	29.00	Apr. 1, 2000
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441-1.500	(869-042-00082-0)	36.00	Apr. 1, 2000
§§ 1.501–1.640	(869–038–00083–1)	27.00	[6] Apr. 1, 1999
*§§ 1.641–1.850	(869–042–00084–6)	41.00	Apr. 1, 2000
§§ 1.851–1.907	(869–042–00085–4)	43.00	Apr. 1, 2000
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–042–00090–1)	31.00	Apr. 1, 2000
40–49	(869–042–00091–9)	18.00	Apr. 1, 2000
50–299	(869–042–00092–7)	23.00	Apr. 1, 2000
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–042–00094–3)	12.00	Apr. 1, 2000
*600–End	(869–042–00095–1)	12.00	Apr. 1, 2000
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869–038–00098–9)	39.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[7] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–038–00126–8)	14.00	[7] July 1, 1999
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87-135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–038–00162–4)	36.00	Oct. 1, 1999
400–429	(869–038–00163–2)	44.00	Oct. 1, 1999
430–End	(869–038–00164–1)	54.00	Oct. 1, 1999
43 Parts:			
1–999	(869–038–00165–9)	32.00	Oct. 1, 1999
1000–end	(869–038–00166–7)	47.00	Oct. 1, 1999
44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–038–00170–5)	30.00	Oct. 1, 1999
1200–End	(869–038–00171–3)	40.00	Oct. 1, 1999
46 Parts:			
1–40	(869–038–00172–1)	27.00	Oct. 1, 1999
41–69	(869–038–00173–0)	23.00	Oct. 1, 1999
70–89	(869–038–00174–8)	8.00	Oct. 1, 1999
90–139	(869–038–00175–6)	26.00	Oct. 1, 1999
140–155	(869–038–00176–4)	15.00	Oct. 1, 1999
156–165	(869–038–00177–2)	21.00	Oct. 1, 1999
166–199	(869–038–00178–1)	27.00	Oct. 1, 1999
200–499	(869–038–00179–9)	23.00	Oct. 1, 1999
500–End	(869–038–00180–2)	15.00	Oct. 1, 1999
47 Parts:			
0–19	(869–038–00181–1)	39.00	Oct. 1, 1999
20–39	(869–038–00182–9)	26.00	Oct. 1, 1999
40–69	(869–038–00183–7)	26.00	Oct. 1, 1999
70–79	(869–038–00184–5)	39.00	Oct. 1, 1999
80–End	(869–038–00185–3)	40.00	Oct. 1, 1999
48 Chapters:			
1 (Parts 1–51)	(869–038–00186–1)	55.00	Oct. 1, 1999
1 (Parts 52–99)	(869–038–00187–0)	30.00	Oct. 1, 1999
2 (Parts 201–299)	(869–038–00188–8)	36.00	Oct. 1, 1999
3–6	(869–038–00189–6)	27.00	Oct. 1, 1999
7–14	(869–038–00190–0)	35.00	Oct. 1, 1999
15–28	(869–038–00191–8)	36.00	Oct. 1, 1999
29–End	(869–038–00192–6)	25.00	Oct. 1, 1999
49 Parts:			
1–99	(869–038–00193–4)	34.00	Oct. 1, 1999
100–185	(869–038–00194–2)	53.00	Oct. 1, 1999
186–199	(869–038–00195–1)	13.00	Oct. 1, 1999
200–399	(869–038–00196–9)	53.00	Oct. 1, 1999
400–999	(869–038–00197–7)	57.00	Oct. 1, 1999
1000–1199	(869–038–00198–5)	17.00	Oct. 1, 1999
1200–End	(869–038–00199–3)	14.00	Oct. 1, 1999
50 Parts:			
1–199	(869–038–00200–1)	43.00	Oct. 1, 1999
200–599	(869–038–00201–9)	22.00	Oct. 1, 1999

Title	Stock Number	Price	Revision Date
600–End	(869–038–00202–7)	37.00	Oct. 1, 1999
CFR Index and Findings Aids	(869–042–00047–1)	53.00	Jan. 1, 2000
Complete 1999 CFR set		951.00	1999
Microfiche CFR Edition:			
Subscription (mailed as issued)		290.00	1999
Individual copies		1.00	1999
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 1999, through January 1, 2000. The CFR volume issued as of January 1, 1999 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 1999, through April 1, 2000. The CFR volume issued as of April 1, 1999 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 2000

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
July 3	July 18	August 2	August 17	Sept 1	October 2
July 5	July 20	August 4	August 21	Sept 5	October 3
July 6	July 21	August 7	August 21	Sept 5	October 4
July 7	July 24	August 7	August 21	Sept 5	October 5
July 10	July 25	August 9	August 24	Sept 8	October 10
July 11	July 26	August 10	August 25	Sept 11	October 10
July 12	July 27	August 11	August 28	Sept 11	October 10
July 13	July 28	August 14	August 28	Sept 11	October 11
July 14	July 31	August 14	August 28	Sept 12	October 12
July 17	August 1	August 16	August 31	Sept 15	October 16
July 18	August 2	August 17	Sept 1	Sept 18	October 16
July 19	August 3	August 18	Sept 5	Sept 18	October 17
July 20	August 4	August 21	Sept 5	Sept 18	October 18
July 21	August 7	August 21	Sept 5	Sept 19	October 19
July 24	August 8	August 23	Sept 7	Sept 22	October 23
July 25	August 9	August 24	Sept 8	Sept 25	October 23
July 26	August 10	August 25	Sept 11	Sept 25	October 24
July 27	August 11	August 28	Sept 11	Sept 25	October 25
July 28	August 14	August 28	Sept 11	Sept 26	October 26