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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–127–AD; Amendment 39–12372; AD 2001–16–04]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 Series Airplanes Equipped With Pratt & Whitney Canada Model PW127B Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050 series airplanes equipped with certain Pratt & Whitney Canada Model PW127B engines. This action requires replacing both torque sensor No. 1 and the electrical connectors on the wiring harness between torque sensor No. 1 and the auto-feathering unit (AFU). This action is necessary to prevent inadvertent autofeathering of the propellers, due to interruption of the torque signal between torque sensor No. 1 and the AFU, which could result in loss of engine power and loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 22, 2001.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 22, 2001.

Comments for inclusion in the Rules Docket must be received on or before September 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket Number 2001–NM–127–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–127–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, ANM–116, FAA, Transport Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on Fokker Model F27 Mark 050 series airplanes equipped with certain Pratt & Whitney Canada Model PW127B engines. The RLD advises that there have been several incidents of inadvertent autofeathering of the propellers, due to interruption of the torque signal between torque sensor No. 1 and the auto-feathering unit (AFU). The current electrical connectors on the torque sensor and on the wiring harness between the torque sensor and the AFU allow movement between the pins and sockets, causing fretting damage, which can lead to interruption of the signal between torque sensor No. 1 and the AFU. This condition, if not corrected, could result in additional incidents of inadvertent autofeathering of the propellers, which could lead to loss of engine power and loss of control of the airplane.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF50–61–019, dated July 11, 1997. The Fokker Service Bulletin refers to Pratt & Whitney Canada Service Bulletin No. 21533, dated December 16, 1996, as an additional source of service information. The Pratt & Whitney Canada service bulletin describes procedures for replacing the torque sensor with one with an improved connector and replacing two connectors on the electrical wiring harness with improved connectors. Accomplishment of the actions specified in the Pratt & Whitney Canada service bulletin is intended to adequately address the identified unsafe condition. The RLD classified the Pratt & Whitney Canada service bulletin as mandatory and issued Dutch airworthiness directive 1997–090(A), dated August 29, 1997, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent inadvertent autofeathering of the propeller caused by interruption of the torque signal between torque sensor No. 1 and the AFU, which could result in loss of engine power and loss of control of the airplane. This AD requires replacing torque sensor No. 1 with one having an improved connector and

replacing the electrical connectors on the wiring harness with improved connectors. The actions are required to be accomplished in accordance with the Pratt & Whitney Canada service bulletin described previously.

Cost Impact

None of the Fokker Model F27 Mark 050 series airplanes, equipped with Pratt & Whitney Canada Model PW127B engines, which are affected by this action, are 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 2 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $30,000. Based on these figures, the cost impact of this AD would be $30,120 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–127–AD.'' The postcard will be date stamped and returned to the commenter.

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:

2001–16–04 Fokker Services B.V.: Amendment 39–12372. Docket 2001–NM–127–AD.

Applicability: Model F27 Mark 050 series airplanes equipped with Pratt & Whitney Canada Model PW127B engines, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent autofeathering of the propellers, due to interruption of the torque signal between torque sensor No. 1 and the auto-feathering unit (AFU), which could result in loss of engine power and loss of control of the airplane, accomplish the following:

Replacement

(a) Within one year after the effective date of this AD: Replace the torque sensor No. 1 with a new, improved unit, having part number (P/N) 3115558–01; and replace electrical connectors P6 (to torque sensor No. 1) and P16 (to the AFU) on the electrical wiring harness with improved connectors, in accordance with Pratt & Whitney Canada Service Bulletin No. 21533, dated December 16, 1996.

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, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an

appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

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

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

(d) The actions shall be done in accordance with Pratt & Whitney Canada Service Bulletin No. 21533, dated December 16, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. 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 3: The subject of this AD is addressed in Dutch airworthiness directive 1997–090(A), dated August 29, 1997.

Effective Date

(e) This amendment becomes effective on August 22, 2001.

Issued in Renton, Washington, on July 30, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19423 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB52

Recordkeeping Amendments to the Daily Computation of the Amount of Customer Funds Required To Be Segregated

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is amending Rule 1.32 to permit a futures commission merchant (''FCM''), in computing the amount of customer funds required to be held in segregated accounts pursuant to Section 4d of the Commodity Exchange Act (''Act''), to offset a net liquidating deficit or debit ledger balance in a customer's account with securities that have a ''ready market'', as defined by Rule 15c3–1(c)(11) of the Securities and Exchange Commission (''SEC''), and that are deposited by such customer to margin or guarantee the futures and option positions in such customer's account.[1] The amendments limit the amount of the offset to the market value of the securities, less the applicable haircuts set forth in SEC Rule 15c3–1(c)(2)(vi). The amendments also require an FCM to maintain a security interest in the securities, including a written authorization to liquidate the securities at the FCM's discretion, and to segregate the securities in a safekeeping account with a bank, trust company, clearing organization of a contract market, or another FCM.

EFFECTIVE DATE: August 7, 2001.

FOR FURTHER INFORMATION CONTACT: Thomas J. Smith, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone (202) 418–5495; electronic mail *tsmith@cftc.gov*

SUPPLEMENTARY INFORMATION

I. Rule Amendments

On October 31, 2000,[2] the Commission published for comment proposed amendments to Rule 1.32 that would permit an FCM, in computing the amount of customer funds required to be held in segregated accounts pursuant to Section 4d of the Act, to offset a net liquidating deficit or a net debit balance in a customer's commodity trading account with securities deposited by such customer to margin or guarantee his account (the ''proposing release'').[3] The comment period expired on December 1, 2000. The National Futures Association (''NFA'') filed the only comment letter. NFA supported the proposed amendments. The Commission is, therefore, adopting the amendments as proposed.

Section 4d of the Act requires, among other things, that an FCM segregate from its own assets all money, securities, and other property held for customers as margin for their commodity futures and option contracts, as well as gains accruing to such customers from open futures and option positions. The statute also prohibits an FCM from using the money, securities, or property of one customer to margin or secure futures or option positions of another customer.

Commission Regulations 1.20 through 1.30 implement the segregation of funds provisions of Section 4d. Rule 1.32, a related recordkeeping regulation, requires each FCM to prepare a daily computation which shows: (1) The amount of funds that an FCM is required to segregate for customers who are trading on U.S. commodity exchanges pursuant to the Act and Commission regulations; (2) the amount of funds the FCM actually has in segregated accounts; and (3) the amount, if any, of the FCM's residual interest in the customer funds segregated. The computations required by Rule 1.32 are hereinafter collectively referred to as the ''segregation computation''.[4]

Currently, in preparing the segregation computation, an FCM may offset a net liquidating deficit or a net debit balance in a customer's commodity trading account with U.S. Treasury obligations that are deposited by such customer to margin or guarantee his account. An FCM is not permitted, however, to offset a net liquidating deficit or net debit balance by the value of any other readily marketable securities deposited by the customer.[5]

The amendments to Rule 1.32 permit an FCM, in computing the amount of customer funds required to be held in segregated accounts pursuant to Section 4d of the Act, to offset a net liquidating deficit or net debit balance in a customer's account with securities that have a ''ready market'' as defined by SEC Rule 15c3–1(c)(11). SEC Rule 15c3–1(c)(11) defines ''ready market'' to include a recognized established securities market in which there exist independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide

[1] Commission regulations cited herein may be found at 17 CFR Ch. I (2000). SEC regulations cited herein may be found at 17 CFR Ch. II (2000). The Commodity Exchange Act may be found at 7 U.S.C. 1 *et. seq.* (1994), as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

[2] 65 FR 64904 (October 31, 2000).

[3] A distinction is sometimes drawn between a *net liquidating deficit* and a *debit balance.* A net liquidating deficit is an amount owed to the FCM resulting from the combination of the customer's debit or credit ledger balance and the mark-to-market gain or loss on any open positions in the customer's account. A debit balance is the amount owed to the FCM by the customer represented by the debit ledger balance, and implies that there are no open positions in the account.

[4] Regulation 1.32 further requires that an FCM complete the segregation computation for each trading day prior to 12:00 noon on the next business day and that the computation, and all supporting data, be maintained for a five-year period in accordance with Commission Rule 1.31.

[5] The proposing release contains a more detailed explanation of the development of the disparate treatment afforded U.S. Treasuries and other readily marketable securities in offsetting net liquidating deficits or net debit balances.

competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.[6] Therefore the amendments expand the securities against which an FCM could offset a customer's net liquidating deficit or net debit balance from just U.S. Treasuries to any security that has a ready market as defined in the SEC's rule.[7]

The amount of the offset is limited to the market value of the securities, less applicable haircuts set forth in SEC Rule 15c3–1(c)(2)(vi).[8] Furthermore, an FCM is required to maintain a security interest in the securities, including the written authorization to liquidate the securities at the FCM's discretion, and to segregate the securities in a safekeeping account with a bank, trust company, clearing organization of a contract market, or another FCM.[9]

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–611 (1994), requires that agencies, in adopting rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities.[10] The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.[11] In this regard, the Commission notes that it did not receive any comments regarding the RFA implications of the amendments to Rule 1.32.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (Supp. I 1995), imposes certain requirements on federal agencies (including the Commission) to review rules and rule amendments to evaluate the information collection burden that they impose on the public. The Commission believes that the amendments to Rule 1.32 do not impose an information collection burden on the public.

C. Administrative Procedure Act

The Administrative Procedure Act provides that the required publication of a substantive rule shall be made not less than 30 days before its effective date, but provides an exception for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.''[12] Amended Rule 1.32 will relieve current restrictions imposed upon FCMs by permitting an FCM, in computing the amount of customer funds required to be held in segregated accounts pursuant to Section 4d of the Act, to offset a net liquidating deficit or debit ledger balance in a customer's account with readily marketable securities that were deposited by such customer to margin or guarantee the futures and option positions in such customer's account. Accordingly, the Commission has determined to make Rule 1.32 effective immediately.

D. Cost Benefit Analysis

Section 15 of the Act, as amended by the Commodity Futures Modernization Act of 2000, requires the Commission to consider the costs and benefits of its actions before issuing a new regulation under the Act. The amended section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations.

The Commission has considered the amendments in light of the factors listed above and has determined to adopt the amendments as proposed. In this regard, the amendments to Rule 1.32 are expected to increase the efficiency and competitiveness of FCMs by reducing the amount of capital that such FCMs are obligated to contribute to customer segregation accounts to cover deficit or debit balances when the deficits or debits may be offset by readily marketable securities deposited as margin by customers. Furthermore, the amendments are not expected to have a significant adverse impact on the protections currently afforded customers and market participants as FCMs will continue to be subject to the Commission's requirements regarding the segregation of customer funds and other financial requirements.

List of Subjects in 17 CFR Part 1

Brokers, Commodity Futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4d, 4f, 4g and 8a(5) thereof, 7 U.S.C. 6d, 6f, 6g and 12a(5) (1994), as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (1994), as

[6] The definition goes on to say that a ''ready market'' will also be deemed to exist where securities have been accepted as collateral for a loan by a bank as defined in section 3(a)(6) of the Securities and Exchange Act of 1934 and where the broker or dealer demonstrates to its Examining Authority that such securities adequately secure such loans as that term is defined in Rule 15c3–1(c)(5). This portion of the definition of a ''ready market'' is not applicable to the amended Rule 1.32.

[7] For example, if a customer deposits equity securities with a current market value of $100,000 as margin and his account incurs a $20,000 trading loss, the customer's account has a net equity of $80,000. The current interpretations of the segregation requirement, however, require the FCM to maintain the full $100,000 in segregation. The FCM generally meets this obligation by depositing an additional $20,000 of its own cash or U.S. Treasury securities into the segregation account.

Under amended Rule 1.32, an FCM would be permitted to offset a customer's net deficit or debit balance by the fair market value of any readily marketable securities deposited by such customer. In the above example, the FCM would not have to deposit $20,000 of its own funds into the segregation account provided that the fair market value of the securities, net of certain haircuts as discussed below, exceeded $80,000.

[8] SEC Rule 15c3–1(c)(2)(vi) sets forth haircuts that a broker or dealer is required to apply to investment securities in computing its adjusted net capital. This Rule and the haircuts are incorporated by reference in the Commission's net capital rule. See Commission Rule 1.17(c)(2)(vi)(B).

[9] An FCM is also required to set aside in special accounts a certain amount of funds for U.S.-domiciled customers who trade on non-U.S. commodity markets. (See Commission Rule 30.7, which identifies this as the ''secured amount.'') Unlike Section 4d of the Act and Commission Rule 1.20, which require an FCM to segregate for the total net liquidating equities in accounts of customers who are trading on U.S. markets, Rule 30.7 requires the FCM to set aside only an amount that equals the margin required on foreign market open positions, plus or minus the mark-to-market gain or loss on such positions. This is normally less than the net liquidating equity in such accounts. However, an FCM is permitted to set aside funds for customers trading on foreign markets in an amount which is calculated in the same manner as that done in determining Section 4d segregation requirements. If an FCM chooses to calculate its foreign secured amount requirement using the same method as it uses to calculate the segregation requirements under section 4d of the Act, then the FCM would be able to use the same type of offset as permitted under amended Rule 1.32.

[10] 47 FR 18618, 18619–18620 (April 30, 1982).

[11] 47 FR 18619–18620.

[12] 5 U.S.C. 553(d) (1994).

amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. No. 106–554, 114 Stat. 2763 (2000).

2. Section 1.32 is revised to read as follows:

§ 1.32 Segregated account; daily computation and record.

(a) Each futures commission merchant must compute as of the close of each business day:

(1) The total amount of customer funds on deposit in segregated accounts on behalf of commodity and option customers;

(2) the amount of such customer funds required by the Act and these regulations to be on deposit in segregated accounts on behalf of such commodity and option customers; and

(3) the amount of the futures commission merchant's residual interest in such customer funds.

(b) In computing the amount of funds required to be in segregated accounts, a futures commission merchant may offset any net deficit in a particular customer's account against the current market value of readily marketable securities, less applicable percentage deductions (*i.e.,* ''securities haircuts'') as set forth in Rule 15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 241.15c3–1(c)(2)(vi)), held for the same customer's account. The futures commission merchant must maintain a security interest in the securities, including a written authorization to liquidate the securities at the futures commission merchant's discretion, and must segregate the securities in a safekeeping account with a bank, trust company, clearing organization of a contract market, or another futures commission merchant. For purposes of this section, a security will be considered readily marketable if it is traded on a ''ready market'' as defined in Rule 15c3–1(c)(11)(i) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(11)(i)).

(c) The daily computations required by this section must be completed by the futures commission merchant prior to noon on the next business day and must be kept, together with all supporting data, in accordance with the requirements of § 1.31.

Issued in Washington, DC on August 1, 2001 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 01–19722 Filed 8–6–01; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8948]

RIN 1545–AY43

Minimum Cost Requirement Permitting the Transfer of Excess Assets of a Defined Benefit Pension Plan to a Retiree Health Account; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, June 19, 2001 (66 FR 32897) relating to the minimum cost requirement under section 420, which permits the transfer of excess assets of a defined benefit pension plan to a retiree health account.

DATES: This correction is effective June 19, 2001.

FOR FURTHER INFORMATION CONTACT: Janet A. Laufer or Vernon S. Carter, (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 420 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8948), that were the subject of FR Doc. 01–15255, is corrected as follows:

1. On page 32900, column 1, amendatory instruction Paragraph 1., lines 2 and 3, the language ''for part 1 continues to read in part as follows:'' is corrected to read ''for part 1 is amended by adding a new entry in numerical order to read in part as follows:''.

2. On page 32900, column 1, the authority citation is corrected to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.420–1 also issued under 26 U.S.C. 420(c)(3)(E).

LaNita Van Dyke,

Acting, Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 01–19787 Filed 8–6–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[TD 8961]

RIN 1545–BA04

Modification of Tax Shelter Rules II

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations modify the rules relating to the requirement that certain corporate taxpayers file a statement with their Federal corporate income tax returns under section 6011(a) and the registration of confidential corporate tax shelters under section 6111(d). These regulations provide the public with additional guidance needed to comply with the disclosure rules under section 6011(a), the registration requirement under section 6111(d), and the list maintenance requirement under section 6112 applicable to tax shelters. The temporary regulations affect corporations participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and organizers of potentially abusive tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These temporary regulations are effective August 2, 2001.

Applicability Date: For dates of applicability, see § 1.6011–4T(g) and § 301.6111–2T(h).

FOR FURTHER INFORMATION CONTACT: Danielle M. Grimm (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR parts 1 and 301 to provide modified rules relating to the disclosure of certain reportable transactions by corporate investors on their Federal corporate income tax returns under section 6011 and the registration of confidential corporate tax shelters under section 6111.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding section 6011 (TD 8877, REG–103735–00), section 6111 (TD 8876, REG–110311–98), and section 6112 (TD 8875, REG–103736–00) (collectively, the February regulations). The February

regulations were published in the **Federal Register** (65 FR 11205, 65 FR 11215, 65 FR 11211) on March 2, 2000. On August 11, 2000, the IRS issued temporary and proposed regulations regarding sections 6011, 6111, and 6112 (TD 8896, REG–103735–00, REG–110311–98, REG–103736–00) (collectively, the August regulations). The August regulations were published in the **Federal Register** (65 FR 49909) on August 16, 2000, modifying the February regulations.

Based on comments that have been received, the IRS and Treasury have determined that certain additional interim changes to the temporary and proposed regulations are warranted. The changes in the proposed rules are published elsewhere in this issue of the **Federal Register**.

These interim changes are intended to assist taxpayers and ease tax administration by simplifying and clarifying certain provisions of the regulations, addressing certain practical problems relating to compliance with the regulations, and making certain other changes relating to the scope of the regulations. The IRS and Treasury continue to evaluate all the comments and recommendations received, and other changes may be made in the final regulations.

Explanation of Provisions

1. Different Foreign Tax Treatment Characteristic in § 1.6011–4T(b)(3)(i)(F)

Under section 6011, reportable transactions include listed transactions and transactions that have at least two of six specified characteristics. One of the characteristics is present if the expected characterization of any significant aspect of the transaction for Federal income tax purposes differs from the expected characterization of such aspect of the transaction for purposes of taxation of any party to the transaction in another country. Commentators have suggested that the inclusion of this characteristic causes the regulations to be overinclusive. Based on these comments and further review, the IRS and Treasury have removed this characteristic from the temporary and proposed regulations.

2. Clarification of Exceptions Under § 1.6011–4T

a. ''Long-standing and generally accepted exception'' in § 1.6011–4T(b)(3)(ii)(B)

The temporary regulations under section 6011 provide that a transaction, other than a listed transaction, is not a reportable transaction if one of four exceptions is satisfied. One exception applies if the taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a long-standing and generally accepted understanding that the expected Federal income tax benefits (taking into account any combination of intended tax consequences) from the transaction are allowable under the Code for substantially similar transactions.

Commentators have requested additional guidance on the meaning of the phrase ''long-standing and generally accepted'' that is contained in this exception. This exception is intended to apply to transactions the structure of which is customary and the intended tax treatment of which is widely known and generally accepted as properly allowable under the Internal Revenue Code. Ordinarily, a determination as to whether the intended tax treatment of a transaction has achieved such a level of general acceptance cannot be made unless information relating to the structure and tax treatment of substantially similar transactions has been in the public domain and widely known for a period of years. However, the applicability of this exception does not depend on such general acceptance having existed for any minimum period of time. Accordingly, the IRS and Treasury have eliminated the phrase ''long-standing'' from the exception and have added language to clarify the scope of the exception. Corresponding changes have been made in § 301.6111–2T.

b. ''No reasonable basis exception'' in § 1.6011–4T(b)(3)(ii)(C)

This exception generally provides that a transaction, other than a listed transaction, is not reportable if the taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. Commentators have requested additional guidance on the no reasonable basis determination. Accordingly, the regulations clarify that for purposes of this exception, whether the IRS would have a reasonable basis for its position is to be determined by applying the same standard as that applicable to taxpayers under § 1.6662–3(b)(3). Thus, the reasonable basis standard is not satisfied by an IRS position that would be merely arguable or that would constitute merely a colorable claim. The determination of whether the IRS would have such a reasonable basis is qualitative in nature and does not depend on any percentage or other quantitative assessment of the likelihood that the taxpayer would ultimately prevail if a significant portion of the expected tax benefits were disallowed by the IRS. Corresponding changes have been made to newly redesignated § 301.6111–2T(b)(4)(i).

3. Economic Substance Test

Commentators have suggested that the economic substance test, as articulated in § 301.6111–2T(b)(3), may encompass transactions for which registration pursuant to section 6111(d) or list maintenance under section 6112 would not be appropriate. Further, the IRS and Treasury believe that substantially all transactions encompassed by the economic substance test for which registration and list maintenance are appropriate will constitute other tax structured transactions within the meaning of § 301.6111–2T(b)(4). Accordingly, the economic substance test as described in § 301.6111–2T(b)(3) is removed from the temporary and proposed regulations under section 6111.

4. Presumption Against Confidentiality

Section 301.6111–2T(c)(3) contains a presumption that, unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter provides express written authorization to each offeree permitting the offeree (and each employee, representative, or other agent of such offeree) to disclose the structure and tax aspects of the transaction to any and all persons, without limitation of any kind on such disclosure. There has been a request to clarify the phrase ''to disclose the structure and tax aspects of the transaction.'' Accordingly, the IRS and Treasury have added language to clarify that this phrase is to be construed broadly and includes all materials (including opinions or other tax analyses) that are provided to the offeree related to the structure and tax aspects of the transaction.

5. Tax Shelter Registration in § 301.6111–2T(e)(2)(ii)(E)

The August regulations provided that the Form 8264, ''Application for Registration of a Tax Shelter,'' was to be filed with the Kansas City Service Center. Recently, the Service issued Announcement 2001–62 (2001–24 I.R.B. 1337), instructing taxpayers to file these forms with the Ogden Service Center. The instructions to Form 8264 will be revised to reflect the change in filing location. Accordingly, the regulations

are amended to provide that the Form 8264 is to be filed as prescribed in the instructions to the form.

6. Effective Date

The regulations are applicable August 2, 2001. However, in general, taxpayers may rely on the regulations after February 28, 2000.

Special Analyses

It has been determined that this Treasury decision is 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 impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Danielle M. Grimm, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6011–4T is amended as follows:

1. Paragraph (b)(3)(i)(F) is removed.
2. Paragraphs (b)(3)(ii)(B) and (C) are revised.
3. Paragraph (b)(5) is amended by removing the language ''long-standing and'' from the fifth sentence in *Example 1* and the seventh sentence in *Example 3.*
4. Paragraph (g) is revised.

The revisions and addition read as follows:

§ 1.6011–4T Requirement of statement disclosing participation in certain transactions by corporate taxpayers (Temporary).

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(B) The taxpayer has participated in the transaction in the ordinary course of its business in a form consistent with customary commercial practice, and the taxpayer reasonably determines that there is a generally accepted understanding that the taxpayer's intended tax treatment of the transaction (taking into account any combination of intended tax consequences) is properly allowable under the Internal Revenue Code for substantially similar transactions. There is no minimum period of time for which such a generally accepted understanding must exist. In general, however, a taxpayer cannot reasonably determine whether the intended tax treatment of a transaction has become generally accepted unless information relating to the structure and tax treatment of such transactions has been in the public domain (e.g., rulings, published articles, etc.) and widely known for a sufficient period of time (ordinarily a period of years) to provide knowledgeable tax practitioners and the IRS reasonable opportunity to evaluate the intended tax treatment. The mere fact that the taxpayer may have received an opinion or advice from one or more knowledgeable tax practitioners to the effect that the taxpayer's intended tax treatment of the transaction should or will be sustained, if challenged by the IRS, is not sufficient to satisfy the requirements of this paragraph (b)(3)(ii)(B).

(C) The taxpayer reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. This paragraph (b)(3)(ii)(C) applies only if the taxpayer reasonably determines that there is no basis that would meet the standard applicable to taxpayers under § 1.6662–3(b)(3) under which the IRS could disallow any significant portion of the expected Federal income tax benefits of the transaction. Thus, the reasonable basis standard is not satisfied by an IRS position that would be merely arguable or that would constitute merely a colorable claim. However, the taxpayer's determination of whether the IRS would or would not have a reasonable basis for such a position must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, administrative guidance, and judicial decisions that establish principles of general application in the tax law (e.g., *Gregory* v. *Helvering,* 293 U.S. 465 (1935)). The determination of whether the IRS would or would not have such a reasonable basis is qualitative in nature and does not depend on any percentage or other quantitative assessment of the likelihood that the taxpayer would ultimately prevail if a significant portion of the expected tax benefits were disallowed by the IRS.

* * * * *

(g) *Effective date.* This section applies to Federal corporate income tax returns filed after February 28, 2000. However, paragraphs (b)(3)(ii)(B), (b)(3)(ii)(C), and (b)(5) *Examples 1* and *3,* of this section apply to Federal corporate income tax returns filed after August 2, 2001. Taxpayers may rely on the rules in paragraphs (b)(3)(ii)(B), (b)(3)(ii)(C), and (b)(5) *Examples 1* and *3,* of this section for Federal corporate income tax returns filed after February 28, 2000. Otherwise, the rules that apply with respect to Federal corporate income tax returns filed after February 28, 2000, and on or before August 2, 2001, are contained in § 1.6011–4T in effect prior to August 2, 2001 (see 26 CFR part 1 revised as of April 1, 2001).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 301.6111–2T is amended as follows:

1. Paragraph (b)(1) is revised.
2. Paragraph (b)(3) is removed.
3. Paragraphs (b)(4), (b)(5), (b)(6) and (b)(7) are redesignated paragraphs (b)(3), (b)(4), (b)(5) and (b)(6), respectively.
4. Newly redesignated paragraph (b)(3) introductory text is amended by revising the reference to ''(b)(4)'' to read ''(b)(3)''.
5. Newly redesignated paragraph (b)(3)(ii) is revised.

6. Newly redesignated paragraph (b)(4) introductory text is amended by removing the reference ''(b)(5)(i)'' and adding ''(b)(4)(i)'' in its place.

7. Newly redesignated paragraph (b)(4)(i) is revised.

8. Newly redesignated paragraph (b)(4)(ii) is amended by removing the reference ''(b)(6)'' and adding ''(b)(5)'' in its place.

9. Newly redesignated paragraph (b)(6) is amended as follows:

a. Paragraph (b)(6), introductory text, is revised.

b. *Example 1* is removed.

c. ''*Example 2.*'' is redesignated as ''*Example.*''

d. The language ''long-standing and'' is removed from paragraph (i) in the newly redesignated *Example.*

e. The fourth sentence of paragraph (i) in the newly redesignated *Example* is removed.

f. Paragraph (ii) in the newly redesignated ''*Example*'' is revised.

10. Paragraphs (c)(3) and (e)(2)(ii)(E) are revised.

11. Paragraph (h) is amended by adding 3 sentences at the end.

The revisions and additions read as follows:

§ 301.6111–2T Confidential corporate tax shelters (temporary).

* * * * *

(b) * * * (1) *In general.* The avoidance or evasion of Federal income tax will be considered a significant purpose of the structure of a transaction if the transaction is described in paragraph (b)(2) or (3) of this section. However, a transaction described in paragraph (b)(3) of this section need not be registered if the transaction is described in paragraph (b)(4) of this section. For purposes of this section, Federal income tax benefits include deductions, exclusions from gross income, nonrecognition of gain, tax credits, adjustments (or the absence of adjustments) to the basis of property, and any other tax consequences that may reduce a taxpayer's Federal income tax liability by affecting the timing, character, or source of any item of income, gain, deduction, loss, or credit.

* * * * *

(3) * * *

(ii) There is a generally accepted understanding that the expected Federal income tax benefits from the transaction (taking into account any combination of intended tax consequences) are properly allowable under the Internal Revenue Code for substantially similar transactions. There is no minimum period of time for which such a generally accepted understanding must exist. In general, however, a tax shelter promoter (or other person who would be responsible for registration under this section) cannot reasonably determine whether the intended tax treatment of a transaction has become generally accepted unless information relating to the structure and tax treatment of such transactions has been in the public domain (e.g., rulings, published articles, etc.) and widely known for a sufficient period of time (ordinarily a period of years) to provide knowledgeable tax practitioners and the IRS reasonable opportunity to evaluate the intended tax treatment. The mere fact that one or more knowledgeable tax practitioners have provided an opinion or advice to the effect that the intended tax treatment of the transaction should or will be sustained, if challenged by the IRS, is not sufficient to satisfy the requirements of this paragraph (b)(3)(ii).

(4) * * *

(i) In the case of a transaction other than a transaction described in paragraph (b)(2) of this section, the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no reasonable basis under Federal tax law for denial of any significant portion of the expected Federal income tax benefits from the transaction. This paragraph (b)(4)(i) applies only if the tax shelter promoter (or other person who would be responsible for registration under this section) reasonably determines that there is no basis that would meet the standard applicable to taxpayers under § 1.6662–3(b)(3) of this chapter under which the IRS could disallow any significant portion of the expected Federal income tax benefits of the transaction. Thus, the reasonable basis standard is not satisfied by an IRS position that would be merely arguable or that would constitute merely a colorable claim. However, the determination of whether the IRS would or would not have a reasonable basis for such a position must take into account the entirety of the transaction and any combination of tax consequences that are expected to result from any component steps of the transaction, must not be based on any unreasonable or unrealistic factual assumptions, and must take into account all relevant aspects of Federal tax law, including the statute and legislative history, treaties, administrative guidance, and judicial decisions that establish principles of general application in the tax law (*e.g., Gregory* v. *Helvering,* 293 U.S. 465 (1935)). The determination of whether the IRS would or would not have such a reasonable basis is qualitative in nature and does not depend on any percentage or other quantitative assessment of the likelihood that the taxpayer would ultimately prevail if a significant portion of the expected tax benefits were disallowed by the IRS.

* * * * *

(6) *Example.* The following example illustrates the application of paragraphs (b)(1) through (4) of this section. Assume, for purposes of the example, that the transaction is not the same as or substantially similar to any of the types of transactions that the IRS has identified as listed transactions under section 6111 and, thus, is not described in paragraph (b)(2) of this section. The example is as follows:

Example. * * *

(ii) *Analysis.* The transaction represented by this combination of financial instruments is a transaction described in paragraph (b)(3) of this section. However, if Y is uncertain whether this transaction is described in paragraph (b)(3) of this section, or is otherwise uncertain whether registration is required, Y may apply for a ruling under paragraph (b)(5) of this section, and the transaction will not be required to be registered while the ruling is pending or for sixty days thereafter.

(c) * * *

(3) *Presumption.* Unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter provides express written authorization to each offeree permitting the offeree (and each employee, representative, or other agent of such offeree) to disclose to any and all persons, without limitation of any kind, the structure and tax aspects of the transaction, and all materials of any kind (including opinions or other tax analyses) that are provided to the offeree related to such structure and tax aspects.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(E) Sign the Form 8264 and file the form as prescribed in the instructions to the form.

* * * * *

(h) *Effective date.* * * * However, paragraphs (b)(1), (b)(3)(ii), (b)(4)(i), (b)(6) *Example* (i) and (ii), (c)(3), and (e)(2)(ii)(E) of this section apply to confidential corporate tax shelters in which any interests are offered for sale after August 2, 2001. The rules in paragraphs (b)(1), (b)(3)(ii), (b)(4)(i), (b)(6), (b)(6)*Example*(i) and (ii), (c)(3), and (e)(2)(ii)(E), of this section may be relied upon for confidential corporate tax shelters in which any interests are

offered for sale after February 28, 2000. Otherwise, the rules that apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000, and on or before August 2, 2001 are contained in this § 301.6111–2T in effect prior to August 2, 2001 (See 26 CFR part 301 revised as of April 1, 2001).

§ 301.6112—1T [Amended]

Par. 5. Section 301.6112–1T is amended by removing the authority citation immediately following the section.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Mark Weinberger,

Assistant Secretary of the Treasury.

[FR Doc. 01–19615 Filed 8–2–01; 2:50 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–00–044]

RIN 2115–AE46

Special Local Regulations for Marine Events; Chester River, Kent Island Narrows, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting permanent special local regulations for fireworks displays held over the waters of the Chester River, Kent Island Narrows, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in portions of the Chester River before, during and after the fireworks displays.

DATES: This rule is effective September 6, 2001.

ADDRESSES: Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–044 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore Maryland, 21226–1791, telephone number (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 5, 2001, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Fireworks Displays, Chester River, Kent Island Narrows, Maryland, in the **Federal Register** (66 FR 18056). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

At various times throughout the year, fireworks displays are held over the waters of the Chester River, Kent Island Narrows, Maryland. The events consist of pyrotechnic displays fired from a barge positioned north of Kent Island Narrows, Maryland. A fleet of spectator vessels gathers nearby to view the fireworks displays. Due to the dangers inherent in fireworks displays, vessel traffic will need to be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Comments and Changes

There have been no changes made in the Final Rule, as we received no comments on the NPRM.

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).

Although this rule will prevent traffic from transiting a portion of the Chester River during the events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

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 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 the effected portions of the Chester River during the event.

Although this rule will prevent traffic from transiting or anchoring in a portion of the Chester River during the events, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. No assistance was requested by any small business, organization, or governmental jurisdiction.

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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State law or local governments and would either preempt State law or

impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

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 create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES.**

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 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add § 100.506 to read as follows:

§ 100.506 Fireworks Displays, Chester River, Kent Island Narrows, Maryland.

(a) Definitions:

(1) *Regulated Area.* The regulated area is defined as the waters of the Chester River enclosed within the arc of a circle with a radius of 150 yards and with its center located at latitude 38°58′36″ N, longitude 076°14′18″ W. All coordinates reference Datum NAD 1983.

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

(3) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(b) *Special Local Regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

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

(i) Stop the vessel immediately when directed to do so by any official patrol.

(ii) Proceed as directed by any official patrol.

(c) *Effective Dates:* This section is effective annually from 8:30 p.m. on July 4 until 9:30 p.m. on July 5 and from 8:30 p.m. on the first Sunday in September until 9:30 p.m. on the following day.

(d) *Enforcement Times:* It is expected that this section will be enforced annually from 8:30 p.m. to 9:30 p.m. on July 4 and on the first Sunday in September. However, if the event is postponed due to inclement weather, then this section will be enforced the next day. Notice of the enforcement time will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

Dated: July 23, 2001.

Thad W. Allen,

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

[FR Doc. 01–19734 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–01–041]

RIN 2115–AE46

Special Local Regulations for Marine Events; Patuxent River, Solomons, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations for ''The Cradle of Invasion'' historical reenactment to be held on the waters of the Patuxent River near Solomons, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Patuxent River during the event.

DATES: This rule is effective from 9:30 a.m. eastern time on August 11, 2001 to 12:30 p.m. eastern time on August 12, 2001.

ADDRESSES: Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–01–041 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, Marine

Events Coordinator, Commander, Coast Guard Activities Baltimore, phone (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The historical reenactment will take place on August 11 and 12, 2001. The event will consist of a mock amphibious landing and beach assault, involving 5 Navy personnel carriers and various support vessels. The special local regulations are necessary to provide for the safety of event participants, support vessels, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event. In addition, advance notifications will be made via the Local Notice to Mariners, marine information broadcasts, and area newspapers.

Background and Purpose

The Calvert Marine Museum will sponsor ''The Cradle of Invasion'', a naval amphibious landing historical reenactment, on August 11 and August 12, 2000. The event will consist of 5 vintage U.S. Navy vessels following a pre-planned route from a pier south of Point Patience to an amphibious landing site north of Point Patience on the waters of the Patuxent River near Solomons, Maryland. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Patuxent River near Solomons, Maryland. The temporary special local regulations will be enforced from 9:30 a.m. to 12:30 p.m. eastern time on August 11 and August 12, 2001 and will restrict general navigation in the regulated areas during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated areas. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

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).

Although this regulation prevents traffic from transiting portions of the Patuxent River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

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 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 the effected portions of the Patuxent River during the event.

Although this regulation prevents traffic from transiting portions of the Patuxent River during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

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 temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.** 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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State law or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES.**

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 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. Add a temporary section, § 100.35T–05–041 to read as follows:

§ 100.35T–05–041 Patuxent River, Solomons, Maryland.

(a) *Regulated area.* Includes all waters of the Patuxent River, Solomons, Maryland, enclosed by a line drawn southwesterly from latitude 38°36′51″ N, longitude 076°28′20″ W, to latitude 38°36′22″ N, longitude 076°28′35″ W, thence westerly to latitude 38°36′20″ N, longitude 076°29′21″ W, thence northerly to latitude 38°37′28″ N, longitude 076°29′22″ W, thence easterly to latitude 38°37′28″ N, longitude 076°28′38″ W, thence southerly to and ending at latitude 38°37′08″ N, longitude 076°28′38″ W. All coordinates reference Datum NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(c) *Special Local Regulations:*

(1) All persons and/or vessels not authorized as participants or official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

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

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

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

(d) *Effective Dates:* This section is effective from 9:30 a.m. eastern time on August 11, 2001 to 12:30 p.m. eastern time on August 12, 2001.

(e) *Enforcement Times:* This section will be enforced from 9:30 a.m. to 12:30 p.m. eastern time on August 11 and 12, 2001.

Dated: July 26, 2001.

T.C. Paar,

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

[FR Doc. 01–19735 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–036]

Special Local Regulations for Marine Events; Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.515 during the Defender's Day fireworks display to be held September 8, 2001, over the waters of the Patapsco River at Baltimore, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.515 is effective from 5:30 p.m. to 11 p.m. eastern time on September 8, 2001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2513.

SUPPLEMENTARY INFORMATION: The City of Baltimore will sponsor the Defender's Day fireworks display on September 8, 2001 over the waters of the Patapsco River, Baltimore, Maryland. The fireworks display will be launched from a barge positioned within the regulated area. A fleet of spectator vessels is expected to gather nearby to view the aerial display. In order to ensure the safety of spectators and transiting vessels, 33 CFR 100.515 will be in effect for the duration of the event. Under provisions of 33 CFR 100.515, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: July 23, 2001.

Thad W. Allen,

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

[FR Doc. 01–19730 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–040]

RIN 2115–AE46

Special Local Regulations for Marine Events; Inner Harbor, Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations for the National Aquarium in Baltimore 20th Anniversary Celebration Fireworks Display, an event to be held over the waters of the Inner Harbor, Patapsco River, Baltimore, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Inner Harbor, Patapsco River during the event.

DATES: This rule is effective from 9:15 p.m. to 10 p.m. eastern time on August 8, 2001.

ADDRESSES: Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–01–040 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, telephone number (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register.** The Coast Guard received the request for special local regulations on July 12, 2001. We were notified of the need for special local regulations with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event on August 8, 2001. Because of the danger inherent in fireworks displays, special local regulations are necessary to provide for the safety of spectators and transiting vessels. For safety reasons, it is in the public interest to have these regulations in effect during the event. In addition, there will be extensive advance notifications made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

Background and Purpose

On August 8, 2001, the National Aquarium in Baltimore will sponsor a fireworks display above the waters of the Inner Harbor, Patapsco River. The fireworks will be launched from a barge anchored in the Inner Harbor. A fleet of spectator vessels is expected to gather near the event site to view the aerial demonstration. To provide for the safety of spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the fireworks display.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Inner Harbor, Patapsco River, Baltimore, Maryland. The regulated area is a 140′ radius around the fireworks barge. The temporary special local regulations will be in effect from 9:15 p.m. to 10 p.m. eastern time on August 8, 2001. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of spectators and transiting vessels.

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).

Although this regulation prevents traffic from transiting a portion of the Inner Harbor, Patapsco River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

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 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 the effected portions of the Inner Harbor, Patapsco River during the event.

Although this regulation prevents traffic from transiting a portion of the Inner Harbor, Patapsco River during the event, the effect of this regulation will not be significant because of the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers so mariners can adjust their plans accordingly.

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 temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State law or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a marine event are specifically excluded from further analysis and documentation under that section. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

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 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. A temporary section, § 100.35T–05–040 is added to read as follows:

§ 100.35T–05–040 Inner Harbor, Patapsco River, Baltimore, Maryland.

(a) *Regulated Area.* The waters of the Inner Harbor, Patapsco River enclosed within the arc of a circle with a radius of 140′ and its center located at latitude 39°17′00″ N, longitude 076°36′30″ W. All coordinates reference Datum NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(c) *Special Local Regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

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

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

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

(d) *Effective Dates.* This section is effective from 9:15 p.m. to 10 p.m. eastern time on August 8, 2001.

Dated: July 26, 2001.

T.C. Paar,

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

[FR Doc. 01–19731 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–01–038]

RIN 2115–AE46

Special Local Regulations for Marine Events; Prospect Bay, Kent Island Narrows, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is adopting temporary special local regulations during the ''Thunder on the Narrows'' hydroplane races to be held on the waters of Prospect Bay near Kent Island Narrows, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Prospect Bay during the event.

DATES: This rule is effective from 9:30 a.m. eastern time on August 4, 2001 to

6:30 p.m. eastern time on August 5, 2001.

ADDRESSES: Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–01–038 and are available for inspection or copying at Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, phone (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register.** The Coast Guard received the request for special local regulations on June 26, 2001. We were notified of the need for special local regulations with insufficient time to publish a NPRM, allow for comments, and publish a final rule prior to the event on August 4, 2001. This event involves high speed racing boats and a large spectator fleet is expected. Because of safety concerns for the participants and spectators, it is in the public interest to have these regulations in effect on August 4 and 5, 2001.

Background and Purpose

On August 4 and August 5, 2001, the Kent Narrows Racing Association will sponsor the ''Thunder on the Narrows'' powerboat races, on the waters of Prospect Bay, Kent Island Narrows, Maryland. The event will consist of 75 Hydroplanes and Jersey Speed Skiffs racing in heats counter-clockwise around an oval racecourse. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the races, vessel traffic will be temporarily restricted to provide for the safety of spectators, participants and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of Prospect Bay. The temporary special local regulations will be enforced from 9:30 a.m. to 6:30 p.m. eastern time on August 4 and August 5, 2001. The effect will be to restrict general navigation in the regulated areas during the event. Except for participants in the ''Thunder on the Narrows'' powerboat races and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow non-participating vessels to transit the event area between races. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

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).

Although this regulation prevents traffic from transiting a portion of Prospect Bay during the event, the effect of this regulation will not be significant due to the limited duration of the regulation, the fact that the Patrol Commander will allow non-participating vessels to transit the event area between races, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

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 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 the effected portions of Prospect Bay during the event.

Although this regulation prevents traffic from transiting or anchoring in a portion of Prospect Bay during the event, the effect of this regulation will not be significant because of its limited duration, the fact that the Patrol Commander will allow non-participating vessels to transit the event area between races, and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

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 temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State law or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

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.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We prepared an ''Environmental Assessment'' in accordance with Commandant Instruction M16475.1C, and determined that this rule will not significantly affect the quality of the human environment. The ''Environmental Assessment'' and ''Finding of No Significant Impact'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects

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 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add a temporary section, § 100.35T–05–038 to read as follows:

§ 100.35T–05–038 Prospect Bay, Kent Island Narrows, Maryland.

(a) Definitions:

(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(2) *Official Patrol.* The Official Patrol is any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant.* Includes all vessels participating in the Thunder on the Narrows Hydroplane Races under the auspices of the Marine Event Permit, issued to the Event Sponsor and approved by Commander, Coast Guard Activities Baltimore.

(4) *Regulated Area.* Includes all waters of Prospect Bay enclosed by the following points:

Latitude	Longitude
38°57′52.0″ N	076°14′48.0″ W, to
38°58′02.0″ N	076°15′05.0″ W, to
38°57′38.0″ N	076°15′29.0″ W, to
38°57′28.0″ N	076°15′23.0″ W, to
38°57′52.0″ N	076°14′48.0″ W.

All coordinates reference Datum NAD 1983.

(b) *Special Local Regulations:*

(1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol; and

(ii) Proceed as directed by any official patrol.

(c) *Effective Dates:* This section is effective from 9:30 a.m. eastern time on August 4, 2001 to 6:30 p.m. eastern time on August 5, 2001.

(d) *Enforcement Times.* This section will be enforced from 9:30 a.m. to 6:30 p.m. eastern time on August 4 and August 5, 2001.

Dated: July 26, 2001.

T. C. Paar,

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

[FR Doc. 01–19733 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–01–047]

RIN 2115–AE47

Drawbridge Operation Regulations: Donald Ross Road Bridge (ICW), West Palm Beach, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the regulations governing the operation of the Donald Ross Road Bridge across the Intracoastal Waterway mile 1009.3, West Palm Beach, Palm Beach County, Florida. This temporary rule allows the bridge owner or operator to alter the operating schedule to open on a schedule consistent with the PGA Boulevard Bridge schedule. This temporary rule is required to alleviate vehicle traffic overflow created by construction of the PGA Boulevard Bridge.

DATES: This rule is effective from 12:01 a.m. on July 31, 2001 until 11:59 p.m. on September 3, 2001.

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 [CGD07–01–047] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6744.

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. Publishing an NPRM was unnecessary and contrary to the public interest since this rule only slightly modifies the current operating schedule for a limited period of time. Moreover, this regulation will only have a minimal impact on marine and vehicular traffic because the bridge will be operating on the same schedule as the PGA Boulevard Bridge.

For the same reasons, 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**.

Background and Purpose

The Donald Ross Road Bridge across the Atlantic Intracoastal Waterway mile 1009.3 at West Palm Beach, Palm Beach County, Florida, has a vertical clearance of 35.0 feet in the closed position and a horizontal clearance of 90 feet between fenders. On June 27, 2001, the Florida Department of Transportation and Palm Beach County, requested a modification from the current operating regulation in 33 CFR 117.261(r) which requires the draw to open on signal; except that from 1 October to 31 May, Monday through Friday, except federal holidays, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour.

Under this temporary rule, from July 31, 2001 until September 3, 2001, the Donald Ross Road Bridge shall open on signal; except that from 7 a.m. to 7 p.m., Monday through Friday except Federal holidays, both single spans need open only on the quarter-hour and three-quarter hour. On Saturdays, Sundays and Federal holidays from 8 a.m. to 6 p.m., both single spans need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

This temporary rule will alleviate vehicular traffic caused by construction on the PGA Boulevard Bridge which is located approximately 3.3 miles downstream of the Donald Ross Road Bridge.

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 10(e) of the regulatory policies and procedures of DOT is unnecessary. The changes to the bridge's operating schedule will have a minimal impact on vehicular and marine traffic. Further, the temporary regulations still allow for regularly scheduled bridge openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant economic effect upon a substantial number of small entities. ''Small entities'' include 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 because the regulations allow openings on a regular basis.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer 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 entities may 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 calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect 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 32(e) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 12:01 a.m. on July 31, 2001 until 11:59 p.m. on September 3, 2001, temporarily suspend paragraph (r) and add temporary paragraph (vv) to read as follows:

§ 117.26 Atlantic Intracoastal Waterway from St. Mary's River to Key Largo.

* * * * *

(vv) The Donald Ross Road Bridge shall open on signal; except that from 7 a.m. to 7 p.m., Monday through Friday except Federal holidays, both single spans need open only on the quarter-hour and three-quarter hour. On Saturdays, Sundays and Federal holidays from 8 a.m. to 6 p.m., both single spans need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. The draw shall open as soon as possible for the passage of public vessels of the United States and vessels in distress.

Dated: July 27, 2001.

J.S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 01–19727 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. NY50–224a, FRL–7024–7]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the State of New York. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing commercial and industrial solid waste incinerator (CISWI) sources. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing CISWI sources in the state and if it submits a negative declaration letter in place of the State Plan.

DATES: This direct final rule is effective on October 9, 2001 without further notice, unless EPA receives adverse comment by September 6, 2001.

If an adverse comment is received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittal is available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233–3251

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3892.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

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A. What action is EPA taking today?
B. Why is EPA approving New York's negative declaration?
C. What if an existing CISWI source is discovered after today's action becomes effective?
D. What is the background for Emission guideline and State Plans?
E. Where can you find the EG requirements for CISWI sources?
F. Who must comply with the requirements?
G. What are EPA's conclusions?
H. Administrative Requirements

A. What Action Is EPA Taking Today?

The Environmental Protection Agency (EPA) is approving a negative declaration submitted by the State of New York dated February 1, 2001. This negative declaration concerns existing commercial and industrial solid waste incinerators (CISWI) throughout the State of New York. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled ''Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units'' (65 FR 75338, December 1, 2000; and corrected at 66 FR 16605, March 27, 2001). The negative declaration officially certifies to EPA that, to the best of the State's knowledge, there are no CISWI sources in operation in the State of New York.

B. Why Is EPA Approving New York's Negative Declaration?

EPA has evaluated the negative declaration submitted by New York for consistency with the Clean Air Act (Act), EPA guidelines and policy. EPA has determined that New York's negative declaration meets all the requirements and, therefore, EPA is approving the State's certification that there are no existing CISWI units in operation throughout the State.

EPA's approval of New York's negative declaration is based on the following:

(1) New York has met the requirements of § 60.23(b) in Title 40, part 60, subpart B of the *Code of Federal Regulations* (40 CFR part 60) for submittal of a letter of negative declaration that certifies there are no existing facilities in the State. Such certification exempts the State from the requirements to submit a plan.

(2) EPA's own source inventory indicates there are no existing CISWI units operating in the State of New York. In November 2000, EPA compiled an inventory of CISWI sources (Docket No. A–94–63, IV–J–28) as a required element of a CISWI Federal Plan that is

to be proposed in 2001. EPA's CISWI inventory was developed from EPA's Industrial Combustion Coordinated Rulemaking[1] (ICCR) survey database. The ICCR survey database contains incineration data compiled by EPA in 1998 from responses to an information collection request.

C. What if an Existing CISWI Source Is Discovered After Today's Action Becomes Effective?

Section 60.2530 of 40 CFR 60, subpart DDDD (page 75363 @ 65 FR 75338, December 1, 2001) requires that if, after the effective date of today's action, an existing CISWI unit is found in the State, the Federal Plan implementing the EG would automatically apply to that CISWI unit until a State Plan is approved by EPA.

D. What Is the Background for Emission Guidelines and State Plans?

Section 111(d) of the Act requires that pollutants controlled under New Source Performance Standards (NSPS) must also be controlled at existing sources in the same source category. Once an NSPS is issued, EPA then publishes an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop State Plans to adopt the EG into their body of regulations.

Under section 129 of the Act, the EG is not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. State Plans must be at least as protective as the EG, and they become federally enforceable upon EPA approval. The procedures for adopting and submitting State Plans, as well as state requirements for a negative declaration, are in 40 CFR part 60, subpart B.

EPA originally issued the Subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules (60 FR 65414).

E. Where Can You Find the EG Requirements for CISWI sources?

On December 1, 2000, under sections 111 and 129 of the Act, EPA issued the NSPS applicable to new CISWI sources and the EG applicable to existing CISWI sources. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC and DDDD (65 FR 75338), respectively.

F. Who Must Comply With the EG Requirements?

All CISWI sources that commenced construction on or before November 30, 1999 (''existing CISWI sources'') must comply with these requirements. See § 60.2555 of 40 CFR part 60, subpart DDDD for a list of incinerator source categories that are exempt from the federal requirements for CISWIs.

G. What Are EPA's Conclusions?

EPA has determined that New York's negative declaration meets all the requirements and, therefore, EPA is approving New York's certification that no CISWI units are in operation in New York State. If any existing CISWI sources are discovered in the future, the Federal Plan implementing the EG would automatically apply to that CISWI unit until the State Plan is approved by EPA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the negative declaration should relevant adverse comments be filed. This rule will be effective October 9, 2001 without further notice unless the Agency receives significant, material adverse comments by September 6, 2001.

If EPA receives significant, material adverse comments by the above date, the Agency will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register.** EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

H. Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

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 rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13132

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(b) 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. Under section 6(c) of Executive Order 13132, EPA 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.

EPA has concluded that this rule may have federalism implications. The only reason why this rule may have federalism implications is if in the future a CISWI source is found in the State of New York the source will become subject to the Federal Plan until a State Plan is approved by EPA. However, it will not impose substantial direct compliance costs on state or local governments, nor will it preempt state law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this rule.

[1] The ICCR has not been proposed by EPA and is not planned for publication in the future.

Executive Order 13175

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because as a negative declaration it is not subject to the CISWI EG requirements. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective October 9, 2001 unless EPA receives material adverse written comments by September 6, 2001.

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: July 26, 2001

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

Part 62, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

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

Authority: 62 U.S.C. 7401–7671q.

Subpart HH—New York

2. Part 62 is amended by adding new § 62.8106 and an undesignated heading to subpart HH to read as follows:

Air Emissions From Existing Commercial and Industrial Solid Waste Incinerator Units

§ 62.8106 Identification of plan—negative declaration.

Letter from the New York State Department of Environmental Conservation, submitted February 1, 2001, certifying that there are no commercial and industrial solid waste incinerators in the State of New York subject to part 60, subpart DDDD of this chapter.

[FR Doc. 01–19558 Filed 8–6–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–310–1310–PB–24 1A]

RIN 1004–AC54

Oil and Gas Leasing: Onshore Oil and Gas Operations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; delay of effective date.

SUMMARY: The Bureau of Land Management (BLM) is further delaying the effective date to remove 43 CFR 3162.2(a) and to add 43 CFR 3162.2–7 until November 6, 2001.

DATES: The effective date to remove 43 CFR 3162.2(a) and to add 43 CFR 3162.2–7 was originally published in a final rule in the **Federal Register** on January 10, 2001 (66 FR 1883). The effective date was delayed in **Federal Register** documents published on February 8, 2001 (66 FR 9527) and April 10, 2001 (66 FR 18569). This document further delays the effective date for 90 days to November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Donnie Shaw, Fluid Minerals Group, Bureau of Land Management, Mail Stop 401LS, 1849 ''C'' Street, NW., Washington, DC 20240; telephone (202) 452–0382 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, except holidays, for assistance in reaching Mr. Shaw.

SUPPLEMENTARY INFORMATION: To the extent that 5 U.S.C. 553 applies to this action, the action is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, we find pursuant to 5 U.S.C. 553(b)(3)(b) that the provision of an opportunity for public comment on whether to delay the effective date of the rule is impracticable and unnecessary inasmuch as the Department cannot adequately review the comments previously filed and reach a conclusion before August 8, 2001. The Department sought public comment on specific components of the rule in the **Federal Register** notice published on April 10, 2001. We received several highly technical comments and cannot complete the review before August 8, 2001. The Department is further delaying the effective date to November 6, 2001, to provide for continued review.

Dated: July 31, 2001.

J. Steven Griles,

Deputy Secretary of the Interior.

[FR Doc. 01–19669 Filed 8–6–01; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 01–195]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to our rules that will extend the deadline for receipt of non-recurring services. The Commission also adopts a rule that will establish a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline. We believe these modifications will ensure that schools and libraries have a reasonable and predictable deadline for implementation of non-recurring services. The Report and Order was published in the **Federal Register** on July 24, 2001. Some of the rules contained information collection requirements.

DATES: Section 54.507(d) published at *66* FR *38375,* July 24, 2001 was approved by the Office of Management and Budget (OMB) and effective on July 23, 2001.

FOR FURTHER INFORMATION CONTACT: Katherine Tofigh, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400 TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On June 29, 2001 the Commission released a Report and Order (Order), 66 FR 38375 (July 24, 2001), that adopted a rule that will provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. Specifically, the rule will extend the deadline for receipt of non-recurring services from June 30, to September 30 following the close of the funding year. Finally, the Commission adopts a rule that will establish a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline. The Commission believes these modifications will provide schools and libraries with more time to install non-recurring services, and thereby make greater use of their universal service discounts. A summary of the Order was published in the **Federal Register**. See 65 FR 38375 (July 24, 2001). Some of the rules contained information collection requirements that required OMB approval. On July 23, 2001, OMB approved the information collections. See OMB No. 3060–0992. The rule amendments adopted by the Commission in the Order took effect on July 23, 2001. This publication satisfies the statement in the Order that the Commission would publish a document in the **Federal Register** announcing the effective date of the rules.

List of Subjects in 47 CFR Part 54

Communications common carriers, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–19679 Filed 8–6–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA 2001–9404; Notice 2]

RIN 2127–AI42

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adjusts certain civil penalties authorized for violations of odometer tampering and theft prevention statutes administered by the National Highway Traffic Safety Administration (NHTSA). The Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires us to take this action at least every four years. The penalties that are increased were last adjusted in March 1997.

DATES: The final rule is effective September 6, 2001.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, electronic mail ''TVinson@nhtsa.dot.gov'', 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 ((''Adjustment Act''), 28 U.S.C. Sec. 2461 note, Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (''Collection Act,'' Pub. L. 104–134), requires us and other Federal agencies to regularly adjust certain civil penalties for inflation. Under these laws, each agency must make an initial inflationary adjustment for all applicable civil penalties, and must make further adjustments of these penalty amounts at least once every four years. The Collection Act limited the initial increase to 10 percent of the penalty being adjusted.

Our initial adjustment of civil penalties under these legislative authorities was published on February 4, 1997 (62 FR 5167). We established 49 CFR part 578, *Civil Penalties,* which applies to violations that occur on and after March 6, 1997. These adjustments resulted in the maximum permissible increases of 10 percent. On July 14, 1999, we further adjusted certain penalties to enhance their deterrent effect (64 FR 37876), effective August 13, 1999. As we are now at the end of the four-year period following the initial adjustment, we reviewed the penalties that have remained unchanged since 1997, and, on May 18, 2001, proposed adjusting those penalties where the statutory formulae authorize it (66 FR 27621). We received one comment on the proposal, from the National Automobile Dealers Association (NADA), which confirmed our methodology. NADA ''expects these higher penalty figures will help to deter odometer and theft law violations and thus will help to protect dealers and their customers.''

Method of Calculation

Under the Adjustment Act as amended by the Collection Act, we determine the inflation adjustment for each applicable civil penalty by increasing the maximum civil penalty amount per violation by the cost-of-living adjustment, and then applying a rounding factor. Sec. 5(b) of the Adjustment Act defines the ''cost-of-living'' adjustment as:

> ''the percentage (if any) for each civil monetary penalty by which—
>
> (1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds
>
> (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.''

Since the adjustment will be effective before December 31, 2001, the ''Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment'' is the CPI for June 2000. This figure is 172.4. NHTSA's penalties were initially adjusted in February 1997 based on the CPI figure for June 1996, which was 156.7. The factor that we have used in calculating the increase, then, is 172.4 divided by 156.7, or 1.1001914, rounded to 1.1. Any calculated increase under this adjustment is then subject to a specific rounding formula set forth in Sec. 5(a) of the Adjustment Act. Under the formula:

Any increase shall be rounded to the nearest:

(1) multiple of $10 in the case of penalties less than or equal to $100;

(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000.

Review of Civil Penalties Prescribed by Section 578.6

Sec. 578.6 contains the civil penalties authorized by the statutes that we enforce. We have reviewed these penalties, multiplied each of them by 1.1, considered the nearest higher multiple specified in the rounding provisions, and concluded that only the penalties discussed below may be increased.

Sec. 578.6(f) Odometer tampering and disclosure. The maximum civil penalty for a related series of violations of 49 U.S.C. Chapter 327 is $110,000, as specified in Sec. 578.6(f)(1). The inflation factor raises this figure to $121,000. Under the formula, any increase in a penalty shall be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000. Accordingly, we are amending Sec. 576.8(f)(1) to increase the maximum civil penalty to $120,000 for a related series of violations of the odometer tampering and disclosure provisions. However, the maximum civil penalty for a single violation remains at $2,200 because the inflation-adjusted figure of $2,420 is not yet at a level to be rounded to the nearest multiple of $1,000.

Sec. 578.6(g) Vehicle theft prevention. Under Sec. 578.6(g)(1), the maximum civil penalty for a related series of violations of 49 U.S.C. 33114(a)(1–4) is $275,000. The inflation factor raises this figure to $302,500. Under the formula, any increase in a penalty shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. Accordingly, we are amending Sec. 576.8(g)(1)to increase the maximum civil penalty to $300,000 for a related series of violations of the vehicle theft prevention provisions. However, the maximum penalty for a single violation remains at $1,100.

Under Sec. 578.6(g)(2), a person that violates 49 U.S.C. 33114(a)(5) is liable for a civil penalty of not more than $110,000 a day for each violation. The inflation factor modified by the rounding factor results in this penalty being raised to $120,000, and we are amending Sec. 578.6(g)(2) to reflect this adjustment as well.

Effective Date

The amendments are effective September 6, 2001. The adjusted penalties will apply to violations occurring on and after the effective date.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' This action is limited to the adoption of adjustments of certain civil penalties under statutes that the agency enforces, and has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this final rule will have no significant economic impact on a substantial number of small entities. The following is my statement providing the factual basis for the

certification (5 U.S.C. Sec. 605(b)). The amendments primarily affect manufacturers of motor vehicles. Manufacturers of motor vehicles are generally not small businesses within the meaning of the Regulatory Flexibility Act.

The Small Business Administration's regulations define a small business in part as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC), SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer.

For manufacturers of passenger cars and light trucks, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Since each manufacturer serves a niche market, often specializing in replicas of ''classic'' cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most 500 cars manufactured per year by U.S. small businesses.

In contrast, in 2001, there are approximately nine large manufacturers producing passenger cars, and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks. We do not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

Further, small organizations and governmental jurisdictions will not be significantly affected as the price of motor vehicles ought not to change as the result of this rule. As explained above, this action is limited to the adoption of a statutory directive, and has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

Finally, this action will not affect our civil penalty policy under the Small Business Regulatory Enforcement Fairness Act (62 FR 37115, July 10, 1997). We shall continue to consider the appropriateness of any civil penalty to the size of the business charged.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (PL 96–511), we state that there are no requirements for information collection associated with this rulemaking action.

National Environmental Policy Act

We have also analyzed this rulemaking action under the National Environmental Policy Act and determined that it has no significant impact on the human environment.

Executive Order 12612 (Federalism)

We have analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 12612, and have determined that it has no significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. § 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires, Penalties.

PART 578—CIVIL PENALTIES

1. The authority citation for 49 CFR Part 578 continues to read as follows:

Authority: Pub. L. 101–410, Pub. L. 104–134, 49 U.S.C. 30165, 30505, 32308, 32309, 32507, 32709, 32710, 32912,and 33115; delegation of authority at 49 CFR 1.50.

2. Section 578.6 is amended by revising the last sentence of paragraph (f)(1), the last sentence of paragraph (g)(1), and paragraph (g)(2) to read as follows:

* * * * *

578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

* * * * *

(f) *Odometer tampering and disclosure.* (1) * * * The maximum civil penalty under this paragraph for a related series of violations is $120,000.

* * * * *

(g) *Vehicle theft prevention.* (1) * * * The maximum penalty under this paragraph for a related series of violations is $300,000.

(2) A person that violates 49 U.S.C. 33114(a)(5) is liable to the United States government for a civil penalty of not more than $120,000 a day for each violation.

* * * * *

Issued on: August 1, 2001.

L. Robert Shelton,

Executive Director.

[FR Doc. 01–19740 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0102208032–110902–02; I.D. 072301E]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Commercial Quota Transfer and Fishery Reopening

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota transfer; fishery reopening.

SUMMARY: NMFS announces that the State of Maryland, the Commonwealth of Virginia, and the State of Florida have transferred a total of 700,000 lb (317,515 kg) of commercial bluefish quota to the State of North Carolina from their respective 2001 quotas. NMFS has adjusted the quotas and announces the revised commercial quotas of Atlantic bluefish for each state involved and the reopening of the commercial Atlantic bluefish fishery in North Carolina. This action is permitted under the regulations implementing the Fishery Management Plan for the Bluefish Fishery (FMP) and is intended to reduce discards and economic impacts in the North Carolina commercial bluefish fishery.

DATES: Effective August 2, 2001 through December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Management Specialist, (978) 281–9103, fax (978) 281–9135, e-mail Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic bluefish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through Florida. The

process to set the annual commercial quota and the percent allocated to each state are described in § 648.160.

The initial total commercial quota for bluefish for the 2001 calendar year was set equal to 9,583,010 lb (4,348,008 kg) (66 FR 23625, May 9, 2001). The resulting quota for North Carolina was 3,072,386 lb (1,394,005 kg), for Maryland was 287,662 (130,518 kg), for Virginia was 1,138,412 lb (516,521 kg), and for Florida was 964,021 lb (437,396 kg). The commercial quota for North Carolina was attained and the fishery closed on May 15, 2001 (66 FR 27043).

The final rule implementing Amendment 1 to the FMP was published on July 26, 2000 (65 FR 45844), and allows two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), to transfer or combine part or all of their annual commercial quota. The Regional Administrator must consider the criteria set forth in § 648.160 (f)(1) in the evaluation of requests for quota transfers or combinations.

Maryland, Virginia, and Florida have agreed to transfer 100,000 lb (45,359 kg), 300,000 lb (136,116 kg), and 300,000 lb (136,116 kg) of their respective 2001 commercial quotas to North Carolina. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met, and publishes this notification of quota transfer. The revised quotas for the calendar year 2001 are: Maryland, 187,662 lb (85,122 kg); Virginia, 838,412 lb (380,405 kg); Florida, 664,021 (301,195 kg); and North Carolina, 3,772,386 lb (1,711,126 kg). NMFS also announces the reopening of the commercial bluefish fishery in North Carolina.

This action does not alter any of the conclusions reached in the environmental impact statement prepared for Amendment 1 to the FMP regarding the effects of bluefish fishing activity on the human environment. Amendment 1 established procedures for setting an annual coastwide commercial quota for bluefish and a formula for determining the commercial quota for each state. Amendment 1 also established the quota transfer provision. This is a routine administrative action that reallocates commercial quota within the scope of previously published environmental analyses.

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 1, 2001.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 01–19770 Filed 8–2–01; 4:29 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 010108006–1198–03; I.D. 050101D]

RIN 0648–AO97

Fisheries off West Coast States and in the Western Pacific Pacific Coast Groundfish Fishery; Amendment 14

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; announcement of approval of an amendment to a fishery management plan.

SUMMARY: NMFS announces the approval of Amendment 14 to the Pacific Coast Groundfish Fishery Management Plan (FMP) and issues a final rule to implement portions of it. Amendment 14 creates a permit stacking program for limited entry permits with sablefish endorsements. This permit stacking program will lengthen the duration of the limited entry, fixed gear primary sablefish fishery. It is intended to increase safety in that fishery, to provide flexibility to participants, and to reduce capacity in the limited entry fixed gear fleet.

DATES: Effective August 2, 2001.

ADDRESSES: Copies of Amendment 14 to Pacific Coast Groundfish FMP and the environmental assessment/regulatory impact review (EA/RIR) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier or Becky Renko at: phone, 206–526–6140; fax, 206–526–6736, and email, *yvonne.dereynier@noaa.gov*or *becky.renko@noaa.gov*, or Svein Fougner at: phone, 562–980–4000; fax, 562–980–4047; and email, *svein.fougner@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This Federal Register document is also accessible via the internet at the website of the Office of the Federal Register: *http://www.access.gpo.gov/su-docs/aces/aces140.html*.

Background

The notice of availability for Amendment 14 was published on May 9, 2001 (66 FR 23660), and NMFS requested public comments on Amendment 14 through July 9, 2001. A proposed rule to implement portions of Amendment 14 was published on June 8, 2001 (66 FR 30869). NMFS requested public comment on the proposed rule through July 9, 2001. During the comment periods on the notice of availability and on the proposed rule, NMFS received 3 letters of comment, which are addressed later in this preamble. See the preamble to the proposed rule for additional background information on the fishery and on this rule.

NMFS approved Amendment 14 on July 30, 2001. Amendment 14 introduces a permit stacking program in the limited entry, fixed gear primary sablefish season. Under Amendment 14, a vessel owner is allowed to ''stack'' up to three sablefish endorsed permits on his/her vessel in order to harvest the cumulative sablefish limits associated with each of the stacked permits. Permit stacking allows fleet participants with greater harvest capacity to better match their sablefish cumulative limits with individual vessel capacity by stacking multiple permits. For each stacked permit, a vessel will be removed from the fishery, reducing overall limited entry fixed gear fishery capacity. Amendment 14 will allow longer fishing seasons. Beyond the safety benefits of a longer season, fishers will be able to use the time to fish more selectively and to increase their incomes by improving the quality of their ex-vessel product.

The Pacific Fishery Management Council (Council) adopted Amendment 14 in November 2000. Amendment 14 is complex, with many provisions that will be time-consuming to implement. However, some of the Amendment 14 provisions most desired by the fleet can be and with this final rule, are being implemented for the 2001 season, including a longer primary sablefish season and allowing up to three limited entry permits to be registered with a single vessel. The fixed gear sablefish fleet has been in favor of a longer duration primary sablefish season for several years, wishing to end the derby-style fishery and to move to a slower paced and safer season. For this reason, NMFS decided to split implementation of Amendment 14 into two rulemakings with the first one implementing the less complex provisions in time for the 2001

season, and the second to follow later in time for the 2002 season and beyond.

Under this final rule: (1) up to three sablefish endorsed permits may be registered for use with a single vessel; (2) the limited entry, fixed gear primary sablefish season opens on August 15 and ends on October 31, 2001; (3) a vessel may fish for sablefish during the primary season with any of the gears specified on at least one of the limited entry sablefish endorsed permits registered for use with that vessel; (4) no person may hold (own or lease) more than three sablefish endorsed limited entry permits unless that person owned more than three permits as of November 1, 2000; (5) no partnership or corporation may own a sablefish endorsed limited entry permit unless that partnership or corporation owned a permit as of November 1, 2000; (6) cumulative limits for species other than sablefish and for the sablefish daily trip limit fishery remain per vessel limits and are not affected by permit stacking; and (7) the limited entry daily trip limit fishery for sablefish will be open during the primary season for vessels not participating in the primary season.

NMFS expects that the proposed rule to implement the additional provisions of Amendment 14 for 2002 and beyond will propose the following: (1) holding the limited entry, fixed gear primary sablefish season from April 1 through October 31; (2) requiring persons, partnerships, and corporations owning sablefish endorsed limited entry permits to document the ownership interests in those permits to ensure that no person holds more than three permits; (3) prohibiting vessels that do not meet minimum frozen sablefish historic landing requirements to process sablefish at sea; (4) requiring persons who own sablefish endorsed limited entry permits who did not own sablefish endorsed permits on November 1, 2000, to be on board their vessels while those vessels are participating in the primary sablefish fishery; (5) requiring vessels landing sablefish against their primary season cumulative limits to report to enforcement officers before making any sablefish landings; and (6) charging participants a fee to cover the management costs of this program.

Comments and Responses

During the comment period for Amendment 14, NMFS received three letters of comment: one letter was written by an association of seafood processors; one letter was written by an association of vessel owners and an association of fishing crew members; and one letter was written by the United States Coast Guard (USCG). Comments received address both Amendment 14 and the proposed rule to implement Amendment 14.

Comment 1: Amendment 14 is consistent with National Standard 10 because it improves the safety in this fishery. The longer fishing season will also give vessel owners the flexibility to fish their sablefish tier limits at times when sablefish prices are high, rather than only during a short opening.

Response: NMFS agrees. National Standard 10 requires that conservation measures, to the extent practicable, promote the safety of human life at sea. For the past several years, overcapitalization and competition in the fixed gear sablefish fleet have resulted in an intense derby-style fishery. The rule increases the duration of the fishery from 9 days in 2000 to 2.5 months in 2001. Participants in past limited entry fixed gear sablefish fisheries often complained that fishing during the derby meant working for several days at a time without sleep. The rule allows holders of sablefish endorsed limited entry permits to harvest their sablefish tier limits at a reasonable pace and during optimal weather and ocean conditions.

NMFS also agrees that Amendment 14 and this final rule will give permit holders more flexibility to fish for sablefish under optimal marketing conditions. In past years, the short derby season prevented permit holders from taking advantage of changes in the sablefish market, and the sablefish produced from the derby would briefly flood the market. Most West Coast sablefish is exported to Japan, where consumers pay higher prices for carefully handled fish. Amendment 14 will give fishers a chance to slow down their operations so that they have a better product to offer to the market and will allow them to choose their fishing time to coincide with higher market prices.

Comment 2: This permit stacking program limits the number of permits that may be stacked and held by a single individual. This provision will limit social disruptions in the fishery while also allowing a reasonable concentration of capital.

Response: NMFS agrees. While the Council intended Amendment 14 to reduce overall fleet capacity, the Council also wished to ensure that the fleet would remain a locally owned, owner operated fleet. Thus, Amendment 14 allows no more than three permits per vessel, and no more than three permits per person, partnership, or corporation, unless that person, partnership, or corporation held more than three permits as of the Council's November 1, 2000, decision date on Amendment 14. By allowing up to three permits per vessel, Amendment 14 could reduce the number of vessels participating in the fishery by as much as two-thirds. The Council has expressed a goal of reducing fleet capacity in West Coast groundfish fisheries, and Amendment 14 is a step in that direction.

Comment 3: Amendment 14 sets an accumulation limit of three permits, prohibiting a person, partnership or corporation from holding more than three permits. The amendment also allows an exception to this accumulation limit for persons, partnerships, or corporations that owned more than three permits as of November 1, 2000. A permit accumulation limit is contrary to the Council's goal of reducing capacity in the groundfish fishery. Further, an exception to the permit accumulation limit creates an elite class of permit holders and allows those meeting the exception an excessive share of fishing privileges. Both the accumulation limit and the exception to that limit should be disapproved.

Response: NMFS disagrees. In October 2000, the Council completed a Strategic Plan, which discussed the Council's goals for the future of the groundfish fishery. One goal is to reduce vessel overcapacity, with the objective of reducing the size of the groundfish fleet by one-half. As stated in the response to Comment 2, Amendment 14 could reduce the size of the affected segment of the groundfish fleet by up to two-thirds. Amendment 14 allows some consolidation, but no unlimited consolidation, because it could cause excessive concentration of control over this segment of the fleet. Thus, the primary sablefish fishery is expected to become more efficient without dramatically changing the character of the fleet.

The commenter is correct in saying that Amendment 14 allows persons, partnerships, or corporations who owned more than three permits as of November 1, 2000, to continue to own those same permits. If, however, one of these initial permit holders were to sell one of his/her originally owned permits, the maximum number of permits that person could own would be reduced. As of November 1, 2000, it appears that only four persons had ownership interest in more than three permits, and none of those persons owned more than 5 permits. (Since NMFS does not currently have complete ownership information, this number may be low). NMFS does not believe that this small number of excepted permit owners

creates an ''elite class,'' particularly given that the number of exempted permit owners is expected to decrease over time. Amendment 14 could have required persons owning in excess of three permits to sell those excess permits, but the Council did not wish to unnecessarily disrupt existing fishing businesses, but rather wanted to guide future developments.

Comment 4: Under Amendment 14, a vessel owner who stacks more than one permit on his/her vessel would not be required to permanently combine those permits. Stacked permits could be ''unstacked'' and freely traded. Allowing permit unstacking is contrary to the Council's goal of capacity reduction. The Amendment 14 provision to allow unstacking should be disapproved because it will prevent the program from reducing the number of vessels in the sablefish fishery or in other non-sablefish groundfish fisheries.

Response: NMFS agrees that permanent capacity reduction could have been achieved if Amendment 14 had not allowed permit owners to separate and unstack their permits. However, permit owners would likely be more reluctant to stack and consolidate their permits if they could not again separate those permits, particularly considering the uncertainty in how other segments of the fishery will be managed in the future. For example, Council advisory groups have discussed establishing rockfish endorsements, similar to sablefish endorsements, and/or adopting an individual quota (IQ) program. Without a resolution of these issues, permit holders might be reluctant to permanently stack permits. In 2004–2005, NMFS will review this provision and the state of groundfish management to see how well this provision works and whether there have been changes in the fishery that provide incentives to stack permits even if they cannot later be unstacked.

The Council's Strategic Plan emphasized voluntary methods of fleet reduction over mandatory methods. Allowing unstacking is in keeping with the Council's general practice of allowing some permit owner flexibility in how an owner uses his/her permits. NMFS also notes that limited entry program regulations prohibit permit owners from transferring their permits more than once per calendar year (50 CFR 660.335 (e)). This prohibition should ensure that stacked permits remain unused outside the primary sablefish season for up to a year per permit.

Comment 5: Amendment 14 requires permit owners to be on board the permitted vessel while that vessel is fishing for sablefish, unless the permit owner owned a limited entry sablefish endorsed permit on November 1, 2000. This owner-on-board requirement will preserve the basic character of the fleet, the majority of which are vessel owners operating their own boats.

Response: NMFS agrees. Amendment 14 is essentially an IQ program. An often-expressed concern about IQ programs is that, if fishing privileges are for sale, persons who do not fish could buy those privileges. Allowing persons who do not fish to own fishing privileges and then rent those privileges out to fishers is often referred to as ''share-cropping'' the fishing privileges. Members of the West Coast sablefish fleet were concerned that without an owner-on-board provision, permit ownership could flow out of fishing communities and into the hands of speculative non-fishing buyers. To ensure that only fishers could buy into the sablefish fleet, the Council included an owner-on-board provision in Amendment 14.

Comment 6: The owner-on-board provision could result in increased sablefish discards because a vessel operator who encounters sablefish when the owner is not on board would be forced to discard that sablefish. The exception to this requirement for permit owners who owned permits on November 1, 2000, is discriminatory and provides an excessive advantage to one group over another. Both the owner-on-board provision and the exception to that provision should be disapproved.

Response: At its June 2001 meeting, the Council addressed the concern that an owner-on-board provision could result in discard. The Council clarified its intent that Amendment 14 implementation require that the owner be on board from the start of the sablefish primary season until that vessel's primary season limits have been reached and that all sablefish harvested during this period count toward that vessel's primary sablefish season limits. Therefore, there will not be a period during which a vessel would have the ability to harvest rockfish or other groundfish and be required to discard sablefish because the owner was not on board.

As stated by the commenter, permit owners who owned permits on November 1, 2000, will be exempt from the owner-on-board requirement. This provision does provide an advantage to initial permit owners over permit owners who buy into the fleet. Amendment 14 provides a grandfathered exemption to this rule for initial permit owners to minimize disruption to the fleet while guiding future development of the fishery. As discussed above in the response to Comment 5, the owner-on-board requirement is intended to ensure that only fishers may buy into the fleet. Approximately 75 to 80 percent of the fleet is already owner-operated vessels; thus even most initial permit owners are expected to continue fishing their sablefish-endorsed permits.

NMFS supports the intention of the owner-on-board provision; however, the agency also believes that the permit stacking program could benefit from future analysis of the effects of this provision on the fishery. In 2004-2005, NMFS will analyze how this provision and the exemption to the owner-on-board requirement have affected participation in the fishery. At that time, the agency will consider whether an owner-on-board requirement is beneficial, considering all of the effects on the fishery and, if it is, whether it should also be applied to persons who owned permits as of November 1, 2000. NMFS believes that the fishery will need a few years of operating under Amendment 14 to test the effect of this provision.

Comment 7: Amendment 14 restricts permit ownership to individual human beings, unless a permit is owned by a partnership or corporation that owned that permit before November 1, 2000. This provision precludes efficiencies that might result from corporate or partnership ownership. When viewed in connection with the owner-on-board provision, restricting permit ownership to individuals also imposes a burden on small business owners. In a partnership or corporation belonging to a married couple, only one of the two could own the permit and would have to be on board when the permit is fished. If the permit owner suffers a medical emergency, Amendment 14's exemption to the owner-on-board requirement might not be approved in time to allow the couple to use the permit. As with other provisions, the exception to this provision allows an elite group to operate freely while restricting the actions of others. For these reasons, the restriction on partnership or corporations should be disapproved.

Response: NMFS agrees that this provision prevents persons who buy into the fleet from enjoying the efficiencies of partnership or corporate ownership of a permit. However, the Council intended this restriction to have the same effect as the owner-on-board provision. As with the owner-on-board provision, initial owners are exempted to ensure that they transition smoothly into the permit stacking program.

Persons buying into the fleet are required to be ''individual human'' persons both to ensure the owner-operator quality of the fleet and to implement the owner-on-board requirement.

NMFS supports the intention of the requirement that only individual humans may own permits; however, the agency also believes that the permit stacking program could benefit from future analysis of the effects of this provision on the fishery. In 2004–2005, NMFS will analyze how this provision and the exemption to the provision have affected participation in the fishery. At that time, the agency will consider whether this requirement is necessary and, if it is necessary, whether it should also be applied to persons who owned permits as of November 1, 2000. NMFS believes that the fishery will need a few years of operating under Amendment 14 to test the efficacy of this provision.

The commenter also mentions the medical exemption to the owner-on-board requirement. NMFS will process emergency applications swiftly. In addition, the fishery under Amendment 14 will be 2.5 months in duration. With the longer season, there is less need for swift action than there is during the current 8– to 9–day fishery.

Comment 8: The economic analysis of the effects of Amendment 14 on coastal communities and seafood processors is woefully inadequate. This is particularly problematic given that most of the provisions of Amendment 14 are based on the economics of the fishery, rather than on biology or conservation.

Response: NMFS disagrees. The effects of Amendment 14 on coastal communities and seafood processors are discussed throughout the EA/RIR/Initial Regulatory Flexibility Analysis (IRFA) for Amendment 14. NMFS also notes that several Amendment 14 provisions, like the owner-on-board requirement, reflect social values, rather than economic values.

Comment 9: The USCG supports Amendment 14 for its expected improvement to safety in the sablefish fishery. Safety improvements that NMFS expects to result from Amendment 14 are discussed in the response to Comment 1.

Response: The comment is noted.

Changes From the Proposed Rule

This final rule includes four significant changes to the regulatory text from the proposed rule. The first change is a result of June 2001 Council discussions on Amendment 14, held within the comment period on the proposed rule for this action. The Amendment 14 EA/RIR/IRFA included some ambiguous language within the provision that limited permit ownership to no more than three permits per person, with an exception for those persons who held more than three permits as of November 1, 2001. A ''permit owner'' is ''a person who owns a limited entry permit'' (50 CFR 660.302). A ''permit holder'' is ''a permit owner or a permit lessee'' (50 CFR 660.302). The Council confirmed that it had not intended Amendment 14 to allow a person to own three permits and then lease any number of additional permits. Nor had the Council intended to provide exemptions to the three-permit limit for persons who held more than three permits, but who did not own more than three permits as of November 1, 2000. Rather, the Council's intent had been to allow a person to hold no more than three permits, regardless of whether those permits are owned or leased. Further, exceptions to the limit of three permits will only be allowed for persons who owned more than three permits as of November 1, 2000. These clarifications are reflected in the regulations at 50 CFR 660.334 (d)(3)(ii). NMFS checked its permits records and concluded that, based on current information, all of the persons who held more than three permits as of November 1, 2000, were owners of those permits.

The second change is technical and is the result of NMFS having published two proposed rules in quick succession. On May 30, 2001 (66 FR 29276), NMFS published a proposed rule to revise the timing and frequency of limited entry permit transfers and to clarify and update overall limited entry program regulations. This rule proposed amending the then current regulatory text in 50 CFR 660.333-340. On June 8, 2001 (66 FR 30869), NMFS published the proposed rule to implement Amendment 14, which proposed amending the then current regulatory text in 50 CFR 660.333 and 660.336. On August 1, 2001 , NMFS filed the final rule revising limited entry program regulations with the **Federal Register**, which was effective on filing. Thus, this final rule revises the new regulations that were filed on August 1, 2001. Renumbering the limited entry program regulations did not result in any substantive changes to the Amendment 14 regulatory language. Although this trail of regulatory changes is somewhat confusing, NMFS believes that the resultant new regulatory text for the limited entry program regulations is more logically arranged and easier to understand.

The third change is to add a temporary provision at 50 CFR 660.335(e)(3)(ii), which allows limited entry permit holders with sablefish endorsements who transfer their permits between August 1 and August 14, 2001, to have the permit's registration with the new vessel effective August 15, 2001. Without this change, permit transfers made in the first part of August would be effective on the first day of the next major cumulative limit period, September 1, 2001. If all permit transfer activities for sablefish endorsed permits are effective for the start date of the primary sablefish fishery, participating vessels will have the opportunity to begin fishing at the same time.

The final change from the proposed rule is to change the start date of the primary sablefish fishery from August 1, 2001, to August 15, 2001. This later start date will allow permit holders to make arrangements for stacking or transferring their permits once this rule is effective, yet before the start of the season.

2001 Primary Sablefish Season and NMFS Actions

In addition to implementing Amendment 14, this final rule announces the season dates and cumulative landings limits for the 2001 limited entry, fixed gear, primary sablefish fishery. For the reasons stated here, NMFS announces the following changes to the 2001 annual specifications and management measures at 66 FR 2338, January 11, 2001, as amended at 66 FR 10211 (February 14, 2001), at 66 FR 18409 (April 9, 2001), at 66 FR 22467 (May 4, 2001), at 66 FR 28676 (May 24, 2001), at 66 FR 35388 (July 5, 2001), and at 66 FR 38162 (July 23, 2001) to read as follows:

(1) In Section IV, under B. *Limited Entry Fishery*, paragraph (2)(b)(i) is revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

* * * * *

(2) *Sablefish* * * *

(b) Nontrawl trip and size limits * * *

(i) *Primary season*. The primary season begins at 12 noon l.t. on August 15, 2001, and ends at 12 noon on October 31, 2001. There will be no pre-season or post-season closures in 2001. During the primary season, each vessel with at least one limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for each of the sablefish-endorsed limited entry permits registered for use with that vessel, for the tier(s) to which the permit(s) are assigned. For 2001, the following tier limits are in effect: Tier 1,

57,000 lb (25,855 kg); Tier 2, 26,000 lb (11,793 kg); Tier 3, 15,000 lb (6,804 kg). All limits are in round weight.

* * * * *

Classification

The Administrator, Northwest Region, NMFS, determined that Amendment 14 to the FMP is necessary for the conservation and management of the West Coast groundfish fishery, and that it is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

This rule implements a permit stacking program in a limited entry primary sablefish fishery. Because it relieves a restriction, under 5 U.S.C. 553 (d)(1) it is not subject to a 30–day delay in effectiveness.

A delay in effectiveness of this rule could unnecessarily restrict permit transfer and stacking activities and cause financial harm to sablefish fishery participants. In some parts of the West Coast, difficult autumn ocean conditions arise in September. Thus, a delay in effectiveness of this rule could also prevent permit holders from participating in the sablefish season during the more favorable August weather. For these reasons, the Assistant Administrator for Fisheries, NOAA, finds for good cause under 553 (d)(3) that delaying the effectiveness of this rule for 30 days would be contrary to the public interest.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) describing the impact of this action on small entities. The IRFA was summarized in the proposed rule published on June 8, 2001 (66 FR 30869). The following is the summary of the FRFA.

Amendment 14 primarily affects the holders of the 164 limited entry permits with sablefish endorsements, with some minor positive effects on the 66 permit holders without sablefish endorsements. All of the permit owners and vessels in the Pacific Coast, limited entry, fixed gear fleet are considered small entities under Small Business Administration standards.

The fixed gear fleet includes vessels that fish with longline and pot gear, varying in length between approximately 40-60 feet. All 36 limited entry pot vessels have sablefish endorsements. Of the 202 limited entry longline vessels, 136 have sablefish endorsements. The primary sablefish fishery is managed as a cumulative limit fishery, with participating vessels organized into three separate tiers based on permit catch history. Permits with the highest sablefish catch history are in Tier 1, while those with the lowest catch history are in Tier 3. Most of the sablefish endorsed pot vessels qualified for Tier 1, whereas most of the sablefish endorsed longline vessels qualified for Tier 3. Most vessels in the fleet are owner-operated.

There were two major alternatives considered under Amendment 14, with numerous possible combinations of alternatives for the 11 different provisions considered in the Amendment 14 EA/RIR. Continuing status quo, a derby fishery of less than 10 days in duration, would have continued the fishery's historically intense and unsafe management program. Continuing status quo would have also allowed only one permit per vessel, which would have been inefficient with the currently overcapitalized fleet. Permit stacking will allow vessel owners who wish to exit the fishery to sell or lease their permits to others who wish to continue in the fishery.

Amendment 14 is expected to have generally positive economic effects on small entities and to provide more choices and flexibility for fishery participants. Amendment 14 will significantly improve the safety of the primary fishery for participating vessels. Under the current management system, the primary fishery is less than 10 days long, a brief and intense fishery. This final rule will lengthen the fishery to 2.5 months duration in 2001 and a rule to be proposed for 2002 and beyond would extend the season to 6-7 months duration. Participants would have the opportunity to fish against their tiered cumulative limits at a more safe and rational pace than in past years. Changes to expenses associated with participating in the fishery could be both positive and negative. Vessel owners would likely hire fewer crew members if they do not have to fish in the same rapid-pace manner, but would spend more of their own time on the water. Participants may also have fewer gear expenses because the more-reasonably paced fishery would reduce chances of vessels losing gear. However, if these vessel owners catch their cumulative limits over a longer period of time, they may take more trips to do so and thereby use more gas to catch the same amount of fish. The major financial benefit to fishery participants would be that they would have more flexibility in deciding where and how to distribute operating expenses.

Permit owners who decide to purchase additional permits to have access to more sablefish within the primary season will have to contend with the initial cost of those additional permits. Some of the permit owners who have not participated in the primary season in past years may decide to sell their permits and will receive compensation for leaving the fishery.

In the past, limited entry permit holders without sablefish endorsements have been prohibited from participating in the daily trip limit fishery during the primary (regular + mop-up) season. Amendment 14 would revise the FMP to allow the daily trip limit fishery to occur during the primary season. This change relieves a burden for limited entry permit holders without sablefish endorsements and allow them to schedule their sablefish fishing at their convenience.

On the whole, Amendment 14 is expected to bring greater operational safety and more business planning flexibility to the participants in both the primary sablefish fishery and the daily trip limit fishery for sablefish. Permit stacking will allow fleet participants with greater harvest capacity to better match their sablefish cumulative limits with individual vessel capacity by stacking multiple permits. For each stacked permit, a vessel will be removed from the fishery, reducing overall primary fishery capacity. The Council will also be able to set longer, and therefore safer, fishing seasons. Beyond the safety benefits of a longer season, fishers will be able to use the time to fish more selectively and to increase their incomes by improving the quality of their ex-vessel product. It was for these reasons that NMFS and the Council have selected the alternative adopted by the final rule. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The Small Business Regulatory Enforcement Act of 1996 requires a plain language guide to assist small entities in complying with this rule. NMFS has produced a public notice for the 2001 season that includes frequently asked questions on Amendment 14 and the new sablefish season. Contact NMFS to request a copy of this public notice (see **ADDRESSES**) or see the NMFS Northwest Region's groundfish website at http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 1, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.302, a new definition for ''Ownership interest'' is added to read as follows:

§ 660.302 Definitions.

* * * * *

Ownership interest, with respect to a s ablefish endorsed permit, means participation in ownership of a corporation, partnership, or other entity that owns a sablefish endorsed permit. Participation in ownership does not mean owning stock in a publicly owned corporation.

* * * * *

3. In § 660.306, paragraphs (s) and (t) are revised to read as follows:

§ 660.306 Prohibitions.

* * * * *

(s) Take, retain, possess or land sablefish under the cumulative limits provided for the primary limited entry, fixed gear sablefish season, described in § 660.323 (a)(2), from a vessel that is not registered to a limited entry permit with a sablefish endorsement.

(t) Take, retain, possess, or land more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the primary limited entry, fixed gear sablefish season from a vessel authorized under § 660.323 (a)(2)(i) to participate in that season, as described at § 660.323 (a)(2)(ii).

* * * * *

4. In § 660.323, paragraph (a)(2) is revised to read as follows:

§ 660.323 Catch restrictions.

(a) * * *

(2) *Fixed gear sablefish.* This paragraph (a)(2) applies to the primary season for the fixed gear limited entry sablefish fishery north of 36° N. lat., except for paragraph (a)(2)(iii), of this section, which also applies to the open access fishery north of 36° N. lat. Limited entry and open access fixed gear sablefish fishing south of 36° N. lat. is governed by routine management measures imposed under paragraph (b) of this section.

(i) *Sablefish endorsement.* A vessel may not participate in the primary season for the fixed gear limited entry fishery, unless at least one limited entry permit with both a gear endorsement for longline or trap (or pot) gear and a sablefish endorsement is registered for use with that vessel. Permits with sablefish endorsements are assigned to one of three tiers, as described at § 660.334(d).

(ii) *Primary season— limited entry, fixed gear sablefish fishery*—(A) *Season dates.* North of 36° N. lat., the primary sablefish season for limited entry, fixed gear vessels begins at 12 noon l.t. on August 15 and ends at 12 noon l.t. on October 31.

(B) *Gear type.* During the primary season and when fishing against primary season cumulative limits, each vessel authorized to participate in that season under paragraph (a)(2)(i) of this section may fish for sablefish with any of the gear types, except trawl gear, endorsed on at least one of the permits registered for use with that vessel.

(C) *Cumulative limits.* (*1*) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. The Regional Administrator will annually calculate the size of the cumulative trip limit for each of the three tiers associated with the sablefish endorsement such that the ratio of limits between the tiers is approximately 1:1.75:3.85 for Tier 3:Tier 2:Tier 1, respectively. The size of the cumulative trip limits will vary depending on the amount of sablefish available for the primary fishery and on estimated discard mortality rates within the fishery. The size of the cumulative trip limits for the three tiers in the primary fishery will be announced in the **Federal Register** each year before the fishery opens.

(*2*) During the primary season, each vessel authorized to participate in that season under paragraph (a)(2)(i) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel. If multiple limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in the **Federal Register** for the tiers for those permits, except as limited by paragraph (a)(2)(ii)(c)(3) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under paragraph (a)(2)(iii) of this section.

(*3*) If a permit is registered to more than one vessel during the primary season in a single year, the second vessel may only take the portion of the cumulative limit for that permit that has not been harvested by the first vessel to which the permit was registered. The combined primary season sablefish landings for all vessels registered to that permit may not exceed the cumulative limit for the tier associated with that permit.

(*4*) A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips.

(iii) *Limited entry and open access daily trip limit fisheries.* (A) Before the start of the primary season, all sablefish landings made by a vessel authorized under paragraph (a)(2)(i) of this section to participate in the primary season will be subject to the restrictions and limits of the limited entry daily trip limit fishery for sablefish, which is governed by routine management measures imposed under paragraph (b) of this section.

(B) Following the start of the primary season, all landings made by a vessel authorized under paragraph (a)(2)(i) of this section to participate in the primary season will count against the primary season cumulative limit(s) associated with the permit(s) registered for use with that vessel. Once a vessel has reached its total cumulative allowable sablefish landings for the primary season under paragraph (a)(2)(ii)(C) of this section, any subsequent sablefish landings by that vessel will be subject to the restrictions and limits of the limited entry daily trip limit fishery for sablefish for the remainder of the calendar year.

(C) Vessels registered for use with a limited entry, fixed gear permit that does not have a sablefish endorsement may participate in the limited entry, daily trip limit fishery for as long as that fishery is open during the year, subject to routine management measures imposed under paragraph (b) of this section.

(D) Open access vessels may participate in the open access, daily trip limit fishery for as long as that fishery is open during the year, subject to the

routine management measures imposed under paragraph (b) of this section.

(iv) Trip limits. Trip and/or frequency limits may be imposed in the limited entry fishery on vessels that are not participating in the primary season, under paragraph (b) of this section. Trip and/or size limits to protect juvenile sablefish in the limited entry or open-access fisheries also may be imposed at any time under paragraph (b) of this section. Trip limits may be imposed in the open-access fishery at any time under paragraph (b) of this section.

* * * * *

5. In § 660.333, paragraph (a) is revised to read as follows:

§ 660.333 Limited entry fishery—general.

(a) *General*. In order for a vessel to participate in the limited entry fishery, the vessel owner must hold (by ownership or lease) a limited entry permit and, through SFD, must register that permit for use with his/her vessel. When participating in the limited entry fishery, a vessel is authorized to fish with the gear type endorsed on the limited entry permit registered for use with that vessel. There are three types of gear endorsements: trawl, longline, and pot (or trap). A sablefish endorsement is also required for a vessel to participate in the primary season for the limited entry fixed gear sablefish fishery, north of 36° N. lat. A limited entry permit confers a privilege of participating in the Pacific Coast limited entry groundfish fishery in accordance with Federal regulations in 50 CFR part 660.

* * * * *

6. In § 660.334, paragraphs (b), (c)(1)(i), and (d)(1) are revised, and (c)(3) and (d)(3) are added to read as follows:

§ 660.334 Limited entry permits—endorsements.

* * * * *

(b) *Gear Endorsements*. There are three types of gear endorsements: trawl, longline and pot (trap). When limited entry permits were first issued, some vessel owners qualified for more than one type of gear endorsement based on the landings history of their vessels. Each limited entry permit has one or more gear endorsement(s). Gear endorsement(s) assigned to the permit at the time of issuance will be permanent and shall not be modified. While participating in the limited entry fishery, the vessel registered to the limited entry permit is authorized to fish the gear(s) endorsed on the permit. While participating in the limited entry, primary fixed gear fishery for sablefish described at § 660.323(a)(2), a vessel registered to more than one limited entry permit is authorized to fish with any gear, except trawl gear, endorsed on at least one of the permits registered for use with that vessel. During the limited entry fishery, permit holders may also fish with open access gear; except that vessels fishing against primary sablefish season cumulative limits described at § 660.323 (a)(2)(ii)(C) may not fish with open access gear against those limits.

* * * * *

(c) * * *

(1) * * *

(i) If the permit is registered for use with a trawl vessel that is more than 5 ft (1.52 m) shorter than the size for which the permit is endorsed, it will be endorsed for the size of the smaller vessel. This requirement does not apply to a permit with a sablefish endorsement that is endorsed for both trawl and either longline or pot gear and which is registered for use with a longline or pot gear vessel for purposes of participating in the limited entry primary fixed gear sablefish fishery described at § 660.323 (a)(2).

* * * * *

(3) *Size endorsement requirements for sablefish endorsed permits*. Notwithstanding paragraphs (c)(1) and (2) of this section, when multiple permits are ''stacked'' on a vessel as described in § 660.335 (c), only one of the permits must meet the size requirements of those sections. Any additional permits that are stacked for use with a vessel participating in the limited entry primary fixed gear sablefish fishery may be registered for use with a vessel even if the vessel is more than 5 feet longer or shorter than the size endorsed on the permit.

(d) * * *

(1) *General*. Participation in the limited entry fixed gear sablefish fishery during the primary season described in § 660.323 (a)(2) north of 36° N. lat., requires that an owner of a vessel hold (by ownership or lease) a limited entry permit, registered for use with that vessel, with a longline or trap (or pot) endorsement and a sablefish endorsement. Up to three permits with sablefish endorsements may be registered for use with a single vessel. Limited entry permits with sablefish endorsements are assigned to one of three different cumulative trip limit tiers, based on the qualifying catch history of the permit.

* * * * *

(3) *Ownership Requirements and Limitations*. (i) No partnership or corporation may own a limited entry permit with a sablefish endorsement unless that partnership or corporation owned a limited entry permit with a sablefish endorsement on November 1, 2000. Otherwise, only individual human persons may own limited entry permits with sablefish endorsements.

(ii) No person, partnership, or corporation may have ownership interest in or hold more than three permits with sablefish endorsements, except for persons, partnerships, or corporations that had ownership interest in more than 3 permits with sablefish endorsements as of November 1, 2000. The exemption from the maximum ownership level of 3 permits only applies to ownership of the particular permits that were owned on November 1, 2000. Persons, partnerships or corporations that had ownership interest 3 or more permits with sablefish endorsements as of November 1, 2000, may not acquire additional permits beyond those particular permits owned on November 1, 2000, until they own fewer than 3 permits; at that time they may not exceed the ownership cap of 3 permits.

(iii) A partnership or corporation will lose the exemptions provided in paragraphs (d)(3)(i) and (ii) of this section on the effective date of any change in the corporation or partnership from that which existed on November 1, 2000. A ''change'' in the partnership or corporation means a change in the corporate or partnership membership, except a change caused by the death of a member providing the death did not result in any new members. A change in membership is not considered to have occurred if a member becomes legally incapacitated and a trustee is appointed to act on his behalf, nor if the ownership of shares among existing members changes, nor if a member leaves the corporation or partnership and is not replaced. Changes in the ownership of publicly held stock will not be deemed changes in ownership of the corporation.

* * * * *

7. In § 660.335, the section heading is revised, paragraphs (c) through (h) are designated as (d) through (i), respectively, a new paragraph (c) is added, and the newly redesignated paragraphs (d)(1) and (e)(3) are revised to read as follows:

§ 660.335 Limited entry permits—renewal, combination, stacking, change of permit ownership or permit holdership, and transfer.

* * * * *

(c) ''*Stacking'' Limited Entry Permits*. ''Stacking'' limited entry permits refers to the practice of registering more than one permit for use with a single vessel. Only limited entry permits with

sablefish endorsements may be ''stacked.'' Up to three limited entry permits with sablefish endorsements may be registered for use with a single vessel during the primary sablefish season described at § 660.323 (a)(2)(ii). Privileges, responsibilities, and restrictions associated with stacking permits to participate in the primary sablefish fishery are described at § 660.323 (a)(2) and at § 660.334 (d).

(d) *Changes in permit ownership and permit holder*—(1) *General*. The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for limited entry permits with sablefish endorsements that does not meet the ownership requirements for those permits described at § 660.334 (d)(3).

* * * * *

(e) * * *

(3) *Effective date*. (i) Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit. Transfers of permits designated as participating in the ''B'' platoon will become effective no sooner than the first day of the next ''B'' platoon major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit. No transfer is effective until the limited entry permit has been reissued as registered with the new vessel.

(ii) Notwithstanding paragraph (i) of this section, if SFD receives the original sablefish endorsed permit, and a complete transfer application by August 14, 2001, the resultant change in vessel registration will be effective August 15, 2001, or as soon thereafter as the transfer has been approved. Transfer applications received after August 14, 2001, would be subject to the restrictions in paragraph (i) of this section.

* * * * *

[FR Doc. 01–19769 Filed 8–2–01; 4:53 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 152
Tuesday, August 7, 2001

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

Food Safety and Inspection Service

9 CFR Parts 317 and 327

[Docket No. 00–036A]

RIN 0583–AC85

Product Labeling: Defining United States Cattle and United States Fresh Beef Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is requesting comments on the need for regulations to clarify the definition of ''United States cattle'' and ''United States fresh beef products'' for labeling purposes. FSIS also is requesting comments on whether such beef products should bear labeling claims that are different from the claims that are permitted under the Agency's current policy on beef products that are made from animals that are documented to have been born, raised, slaughtered and prepared in the United States or that have been produced in the United States. The Conference Report accompanying the Agriculture Appropriations Act for 2000 directed the Secretary to promulgate regulations defining which cattle and fresh beef products are ''Products of the U.S.A.'' The Report stated that clarifying regulations would facilitate the development of voluntary, value-added promotion programs that benefit U.S. producers, business, industry, consumers, and commerce.

DATES: Comments must be received on or before October 9, 2001.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, Docket #00–036A, Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program Development, and Evaluation, FSIS, at (202) 205–0279 or by FAX at (202) 205–3625.

SUPPLEMENTARY INFORMATION:

Background

The Conference Committee report that accompanied the Agriculture Appropriations Act of 2000 [1] directed the Secretary of Agriculture, in consultation with the affected industries, to promulgate regulations to define which cattle and fresh beef products are Products of the U.S.A.'' The report also directed the Secretary to determine the terminology that would best reflect in labeling that such beef products are, in fact, U.S. products. The report stated that the conferees believe that there is an ''absence of clarity concerning the definition of S cattle and US fresh beef products. This limitation hinders the ability of producers to promote their products as ''Product of the U.S.A.''

The Food Safety and Inspection Service (FSIS) of the Department of Agriculture (USDA) is responsible for ensuring that meat and meat food products are safe, wholesome, and accurately labeled. The Agency administers a regulatory program for meat and meat products under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*). FSIS' regulations and program requirements also ensure that foreign countries exporting meat and meat food products to the United States impose inspection requirements that are equivalent to U. S. requirements, and that those countries fully implement their requirements.

Under the mandate of FMIA, FSIS issues regulations to ensure that labeling bearing statements about product origins, *e.g.,* ''USA Beef,'' are truthful, accurate, and not misleading. Under FSIS regulations and policies, producers and processors wishing to make such label statements must submit documentation that verifies that the statements are truthful and accurate. The Agriculture Marketing Service (AMS) has the authority to establish voluntary programs under the Agricultural Marketing Act (7 U.S.C. 1621–1627) to verify or certify the origin of animals that is reflected in labeling statements. Producers wishing to make such statements are not required to have their production practices verified/certified by an AMS program.

[1] Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (Public Law 106–78; October 23, 1999).

FSIS Labeling Policy

Geographic Labeling

FSIS regulations (9 CFR 317.8) permit fresh beef products to be labeled with terms such as ''U.S. (Species),'' ''U.S.A. Beef,'' and ''Fresh American Beef.'' Such terms are viewed by the Agency as geographic claims associated with animal raising and production. FSIS interprets these terms to mean that the cattle to which the terms are applied were born, raised, slaughtered, and prepared in the United States or in specific geographic locations in the United States.

Producers and processors voluntarily may label products with such geographic claims and other production claims as long as those claims are substantiated. To substantiate labeling claims, producers must provide testimonials and affidavits that include the producer's operational protocol that supports the labeling claim that the food product was derived from animals that were born, raised, slaughtered, and prepared in the United States.

Labeling to Meet Export Requirements

For many years, ''Product of the U.S.A.'' has been applied to product that is exported to other countries to meet those countries' country-of-origin labeling requirements (9 CFR 327.14; FSIS Policy Memo 080 (April 16, 1985)). Products that meet all FSIS requirements for domestic products also may be distributed in U.S. commerce with such labeling. No further documentation is required. ''Product of the U.S.A.'' has been applied to products that, at a minimum, have been prepared in the United States. It has never been construed by FSIS to mean that the product is derived only from animals that were born, raised, slaughtered, and prepared in the United States. The only requirement for products bearing this labeling statement is that the product has been prepared (i.e., slaughtered, canned, salted, rendered, boned, etc.). No further distinction is required. In addition, there is nothing to preclude the use of

this label statement in the domestic market, which occurs, to some degree.

This term has been used on livestock products that were derived from cattle that originated in other countries and that were slaughtered and prepared in the United States. Also, the cattle could have been imported, raised in U.S. feed lots, and then slaughtered and prepared in the United States. The beef products from these cattle can be labeled as ''Product of the U.S.A.'' for domestic and export purposes.

Labeling of Imported Beef Products

Under Section 20 of the FMIA (21 U.S.C. 620), imported beef products are to be treated as ''domestic'' product upon entry into the United States. However, all products imported into the United States are required to bear the name of their country of origin on the container in which they are shipped, as well as the number assigned by the foreign meat inspection system to the establishment in which they were prepared. If imported beef or beef products are intended to be sold intact to a processor, wholesaler, food service institution, grocer, or household consumer, the original packaging with the country-of-origin labeling and establishment number must remain with the product.

When an imported product has been further prepared, the labeling requirements for the resultant product are the same as for domestic product. The addition of a country-of-origin labeling statement is not required by FSIS, although the Agency would approve a label for a product with the original country-of-origin statement if the label meets all of FSIS' labeling requirements.

USDA's Agricultural Marketing Service Programs

FSIS is responsible for ensuring that meat product labels are truthful, accurate, and not misleading, and for maintaining control of product identity throughout slaughter and preparation operations. AMS' Meat Grading and Certification Branch conducts voluntary programs that verify/certify that livestock were born, raised, slaughtered, and prepared in the United States and, therefore, qualify to bear FSIS approved labeling statements that reflect this fact. No additional labeling is necessary.

One of these programs is AMS' Domestic Origin Verification Program. The primary purpose of this program is to ensure that all raw materials used to produce meat and meat products purchased by USDA for federally funded food assistance programs (e.g., the National School Lunch Program operated by USDA's Food and Nutrition Service) are derived from U. S. produced animals, i.e., animals not imported for direct slaughter. Cattle born in another country (Mexico) but fed in the United States are eligible. The Domestic Origin Verification Program requires that slaughterers and processors identify themselves as ''domestic only'' or ''segregation plan'' facilities. ''Domestic only'' suppliers receive a yearly audit of their procurement records to ensure that they comply with the U. S. produced provision. ''Segregation plan'' suppliers, after establishing identification and record quality control systems, receive quarterly audits that include interviews with plant management and FSIS officials to ensure compliance with U. S. produced provisions. Approximately 80 contractors and suppliers annually supply raw materials to the federally funded food assistance programs. AMS performs approximately 250 audits each year at an average cost of $450 per plant.

AMS also has a voluntary certification program. In 1998, AMS proposed program guidelines to certify that livestock, meat, and meat products are eligible to be labeled as ''U.S. Beef'' because they are derived from animals that were born, raised, slaughtered, and prepared in the United States. To certify U. S. origin, AMS would audit production and preparation records. As with other AMS certification programs, there would be a fee for this service, and the program is voluntary. However, the program was never implemented, and the guidelines were never finalized.

Industry Petition to AMS

In September 2000, the American Farm Bureau Federation, the National Cattlemen's Beef Association, the American Meat Institute, the National Meat Association, and the Food Marketing Institute petitioned AMS to create a voluntary process certification program and undertake rulemaking to create a process verification ''Beef: Made in the USA'' program. The organizations recommended that to qualify for the program, beef products must originate from cattle that are raised, fed a minimum of 100 days, and processed in the United States. AMS is responding to the petition in a separate action.

Request for Comments

FSIS is requesting comments from consumers, meat producers and processors, retail operators, food service managers, and other interested persons on how best to provide for the labeling of meat products derived from cattle that are U.S. products. The following questions are provided to facilitate public comment on this ANPR.

(1) Should cattle finished in the United States, but born and raised for a time in another country, be considered a product of the United States for USDA labeling purposes? What effects on the domestic and international markets would be imposed by defining which U.S. cattle and fresh beef products are products of the United States?

(2) What labeling terminology would be most accurate and appropriate in conveying the idea that the product is a product of the U.S.A.? Would terms such as ''U.S. Cattle'' and ''U.S. Fresh Beef Products'' or ''USA Beef'' and ''Fresh American Beef'' be more appropriate? Are there other terms that commenters would suggest that would appropriately convey that the cattle and beef products originate in the United States?

(3) What other kinds of verification programs does FSIS need to employ to ensure that the labeling terms are truthful, accurate and not misleading? What are the estimated costs (recordkeeping, inventory management, labeling, etc.) that are associated with such programs?

(4) How can industry and FSIS aid consumers in gaining a greater understanding of the suggested terms used to identify a product of the USA? What types of information would be useful to gauge consumer response to a particular term used to market U.S. products? What factors would be influential in a consumer's decision to purchase beef labeled as a product of the USA?

Information or data on related and relevant issues is welcome, and FSIS urges that such data and information be submitted as comments on this advance notice of proposed rulemaking.

Additional Public Notification

FSIS has considered the potential civil rights impact of this advance notice of proposed rulemaking on minorities, women, and persons with disabilities. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this rulemaking and request for further comments, and are informed about the mechanism for providing comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to more than 300

persons and organizations. In addition, the update is available on line through the FSIS web page at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/shareholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and others who have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office at (202) 720–5704.

Done in Washington, DC, on: August 2, 2001.

Thomas J. Billy,

Administrator.

[FR Doc. 01–19749 Filed 8–6–01; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL TRADE COMMISSION

16 CFR Part 314

RIN 3084 AA87

Standards for Safeguarding Customer Information

AGENCY: Federal Trade Commission.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is proposing certain standards relating to administrative, technical, and physical information safeguards for financial institutions subject to the Commission's jurisdiction. The Gramm-Leach-Bliley Act (''G–L–B Act'' or ''Act'') requires the Commission to issue these standards. They are intended to: insure the security and confidentiality of customer records and information; protect against any anticipated threats or hazards to the security or integrity of such records; and protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.

DATES: Comments must be received not later than October 9, 2001.

ADDRESSES: Written comments should be addressed to: Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission requests that commenters submit the original plus five copies, if feasible. All comments will be posted on the Commission's Web site: *www.ftc.gov.* To enable prompt review and public access, paper submissions should include a version on diskette in PDF, ASCII, WordPerfect or Microsoft Word format. Diskettes should be labeled with: (1) The name of the commenter and (2) the name and version of the word processing program used to create the document. Alternatively, documents may be submitted to the following email address: *GLB501Rule@ftc.gov.* Parties submitting comments via email should (1) confirm receipt by consulting the postings on the Commission's Web site, *www.ftc.gov;* and (2) indicate whether they are also providing their comments in other formats. Individual members of the public filing comments need not submit multiple copies or comments in electronic form. All submissions should be captioned ''Gramm-Leach-Bliley Act Privacy Safeguards Rule, 16 CFR Part 314—Comment.''

FOR FURTHER INFORMATION CONTACT: Laura D. Berger, Attorney, Division of Financial Practices, (202) 326–3224.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

A. Background
B. Overview of Comments Received
C. Section-by-Section Analysis
D. Paperwork Reduction Act
E. Regulatory Flexibility Act

A. Background

On November 12, 1999, President Clinton signed the G–L–B Act (Public Law 106–102) into law. The purpose of the Act was to reform and modernize the banking industry by eliminating existing barriers between banking and commerce. Under the Act, banks are now permitted to engage in a broad range of activities, including insurance and securities brokering, with new affiliated entities.

Title V of the Act, captioned ''Disclosure of Nonpublic Personal Information,'' addresses privacy and security issues raised by these new arrangements and covers a broad range of traditional and non-traditional financial institutions. Regarding privacy, the Act limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties; it also requires a financial institution to make certain disclosures concerning its privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties. *See* sections 502 and 503, respectively. On May 12, 2000, the Commission issued a final rule, Privacy of Consumer Financial Information, 16 CFR Part 313, which implemented Subtitle A as it relates to these requirements (hereinafter ''Privacy Rule'').[1] The Privacy Rule took effect on November 13, 2000, and full compliance is required on or before July 1, 2001.

Regarding the security of financial information, the Act requires the Commission and certain other federal agencies (''the Agencies'') to establish standards for financial institutions relating to administrative, technical, and physical information safeguards.[2] *See* 15 U.S.C. 6801(b), 6805(b)(2). As described in the Act, the objectives of these standards are to: (1) Insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer. *See* 15 U.S.C. 6801(b) (1)–(3). While the Act permits most of the Agencies to develop their safeguards standards by issuing guidelines, it requires the SEC and the Commission to proceed by rule.[3]

On September 7, 2000, the Commission published in the **Federal Register** a Notice and Request for Comment (''the Notice'') on the scope and potential requirements of a Safeguards Rule for the financial institutions subject to its jurisdiction. 65 FR 54186. The Comment period for the Notice ended on October 24, 2000, and the Commission received 30 comments

[1] The rule was published in the **Federal Register** at 65 FR 33646 (May 24, 2000).

[2] The other agencies responsible for establishing safeguards standards are: the Office of the Comptroller of the Currency (''OCC''); the Board of Governors of the Federal Reserve System (''Board''); the Federal Deposit Insurance Corporation (''FDIC''); the Office of Thrift Supervision (''OTS''); the National Credit Union Administration (''NCUA''); the Secretary of the Treasury (''Treasury''); and the Securities and Exchange Commission (''SEC''). In addition, on December 21, 2000, Congress amended the Commodity Exchange Act to add the Commodity Futures Trading Commission (''CFTC'') to the list of federal functional regulators.

[3] Although section 504 of the Act required the Agencies to work together to issue consistent and comparable rules to implement the Act's privacy provisions, the Act does not require the Agencies to coordinate in developing their safeguards standards. Where appropriate, however, the Commission has sought consistency with the other agencies' standards, particularly those issued by the banking agencies (see n.5, *infra*).

from a variety of interested parties.[4] The Commission has considered those comments, as well as the standards adopted by the other Agencies, in formulating its proposed rule.[5] The Commission also has considered the Final Report that was issued by the Federal Trade Commission Advisory Committee on Online Access and Security on May 15, 2000 (hereinafter ''Advisory Committee's Report'' or ''ACR'').[6] While the Advisory Committee's Report addressed security only in the online context, the Commission believes that its principles have general relevance to information safeguards. The Commission now offers for comment a proposed rule governing the safeguarding of customer records and information for the financial institutions subject to its jurisdiction.

B. Overview of Comments Received

As noted above, the Notice sought comment on the potential scope and requirements of a Commission rule, including the proper level of specificity of the rule's requirements,[7] and the extent to which the rule should resemble the other Agencies' standards. 65 FR at 54189. Of the 30 comments the Commission received,[8] three were from corporations or associations related to higher education or the funding of student loans; [9] seven were from corporations performing various financial or internet-related services; [10] two were from companies that provide information security services; [11] seven were from trade associations; [12] one was from a non-profit association of consumer groups; [13] three were from other governmental or non-profit professional associations; [14] and six were from individuals and other interested parties.[15] Virtually all of the comments urged that the standards for safeguarding information be flexible, and contain few, if any, specific requirements.[16] These comments pointed out that institutions need discretion to make decisions appropriate to their current operations and to adapt to changes in technology and their business environments,[17] and that implementation of the rule should not disrupt safeguards programs that entities have in place already.[18] In addition, many private companies praised the flexibility of the then-proposed guidelines issued by the banking agencies (''Banking Agency Guidelines''), and stated that conforming the Commission's rule to the Guidelines would minimize the burden of complying with the rule.[19]

These comments were instrumental in shaping the proposed rule. In particular, consistent with the majority of comments, the proposed rule follows the general approach of the Banking Agency Guidelines, and contains flexible requirements wherever feasible. To ensure flexibility, the proposed rule provides that each information security program should be appropriate to the size and complexity of the financial institution, the nature and scope of its activities, and the sensitivity of the customer information at issue.[20] At the same time, consistent with the Banking Agency Guidelines, the proposed rule requires that certain basic elements that the Commission believes are important to information security be included in each program. Thus, each financial institution must: (1) Designate an employee or employees to coordinate its program; (2) assess risks in each area of its operations; (3) design and implement an information security program to control these risks; (4) require service providers (by contract) to implement appropriate safeguards for the customer information at issue; and (5) adapt its program in light of material changes to its business that may affect its safeguards. These elements create a general procedural framework, so that each financial institution can develop, implement, and maintain appropriate safeguards even as its circumstances change over time.

Comments respecting the impact of the Safeguards Rule on small entities also were important in developing the proposed rule. Some commenters pointed out that making the rule's requirements flexible would enable smaller institutions to implement appropriate programs without setting too low a target for more sophisticated operations.[21] The proposed standard described above, which explicitly allows for flexibility according to the size and complexity of a financial institution and the nature and scope of its activities, should minimize the rule's burdens on small entities.

Additional comments, and the Commission's responses thereto, are discussed in the following Section-by-Section analysis.

C. Section-by-Section Analysis

The Commission proposes to issue the Safeguards Rule as a new Part 314 of 16 CFR, to be entitled ''Standards for Safeguarding Customer Information.'' This Part will follow the Privacy Rule, which is contained in Part 313 of 16 CFR. The following is a section-by-section analysis of the proposed rule.

[4] In response to a request from a commenter, the Commission added 14 days to the initial 30-day comment period. 65 FR 59766 (Oct. 6, 2000).

[5] Since publication of the Notice, the NCUA and the remaining banking agencies—the OCC, the Board, the FDIC, and OTS—have issued final guidelines. 66 FR 8152 (Jan. 30, 2001); 66 FR 8616 (Feb. 1, 2001). Earlier, on June 29, 2000, the SEC had adopted a final safeguards rule as part of its Privacy of Consumer Financial Information Final Rule (hereinafter ''SEC rule''). 65 FR 40334. On March 21, 2001, the CFTC issued a proposed rule that mirrors the SEC rule. *See* 66 FR 15550 at 15562, 15574. As with the Privacy Rule, Treasury will not be issuing a separate rule.

[6] The Advisory Committee was composed of 40 members (including representatives from industry, consumer groups, and academia) nominated through a public notice and comment process. *See* 64 FR 71457 (Dec. 21, 1999). One of its main purposes was to give advice and recommendations to the Commission regarding the implementation of adequate security for personal information collected from consumers online. ACR at 2. Its charter, membership, and Report are available on the Commission's website, at *www.ftc.gov.*

[7] Among other things, it asked whether the rule should set forth particular minimum procedures a financial institution must follow, or should rely on more general standards, such as ''reasonable policies and procedures'' to achieve the Act's purposes. 65 FR at 54188.

[8] These comments are available on the Commission's website, at *www.ftc.gov.*

[9] Iowa Student Loan Liquidity Corporation (''Iowa Student Loan''); Texas Guaranteed Student Loan Corp. (''TGSL''); United Student Aid Funds, Inc. (''USA Funds'').

[10] Household Finance Corporation (''Household''); Intuit; MasterCard International (''MasterCard''); Morgan Stanley Dean Witter Credit Corporation (''MSDWCC''); Plainview Financial Services, Ltd. (''Plainview''); Visa USA, Inc. (''Visa''); 724 Solutions, Inc. (''724 Solutions'').

[11] RSA Security, Inc.; Tiger Testing.

[12] American Collectors Ass'n, Inc. (''ACA''); America's Community Bankers (''ACB''); Credit Union Nat'l Ass'n (''CUNA''); Nat'l Ass'n of Indep. Insurers (''NAII''); Nat'l Indep. Automobile Dealers Ass'n (''NIADA''); Nat'l Council of Investigation and Security Services, Inc. (''NCISS''); Nat'l Retail Federation (''NRF'').

[13] Nat'l Ass'n of Consumer Agency Administrators (''NACAA'').

[14] Committee on Internet and Litigation of the Commercial and Federal Litigation Section, New York State Bar Ass'n (CI & L); Nat'l Ass'n of Attorneys General (''NAAG''); North American Securities Administrators Ass'n, Inc. (''NASAA'').

[15] Calvin Ashley (''Ashley''); Professor Mark Budnitz, Georgia State Univ. College of Law; Evan Hendricks, Editor/Publisher of *Privacy Times,* and Consultant to PrivaSys; John Merryman; Martin D. Rosenblatt, MD; Doug Scala.

[16] ACA at 5; ACB at 1; CI & L at 2; Household at 1; Intuit at 2, 4, 6; Iowa Student Loan at 1; MasterCard at 2, 3; NIADA at 1, 3; TGSL at 1; USA Funds at 3; Visa at 2.

[17] *See, e.g.,* Intuit at 2; NRF at 5; Visa at 2.

[18] *See, e.g.,* CI & L at 2; Intuit at 5–6; Iowa Student Loan at 1.

[19] *See, e.g.,* Intuit at 14; USA Funds at 6; Visa at 1–2, 4.

[20] This approach is also constituent with the Advisory Committee's finding, in the online context, that security is ''contextual'' and that a security program should have a ''continuous life cycle designed to meet the needs of the particular organization or industry.'' *See* ACR at 18.

[21] ACB at 4; *see also* ACA at 5; Plainview at 2.

Proposed section 314.1: Purpose and Scope

Paragraph 314.1(a) sets forth the general purpose of the proposed rule, which is to establish standards for financial institutions to develop, implement, and maintain administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information. This paragraph also states the statutory authority for the proposed rule.

Paragraph 314.1(b) sets forth the scope of the proposed rule, which applies to the handling of customer information by all financial institutions over which the FTC has jurisdiction. As noted in the Privacy Rule, covered financial institutions include: non-depository lenders, consumer reporting agencies, data processors, courier services, retailers that extend credit by issuing credit cards to consumers; personal property or real estate appraisers; check-cashing businesses; mortgage brokers, and other entities under the Commission's jurisdiction that are significantly engaged in financial activities.[22] As proposed, the rule covers the handling of customer information by all financial institutions under the Commission's jurisdiction, including not only financial institutions that collect information from their own customers, but also financial institutions that receive customer information from other financial institutions.[23] Although comments were mixed on this point,[24] the Commission believes that including recipient financial institutions within the rule will assure greater safeguards for customer information and is within the authority conferred by the Act. Nevertheless, the Commission requests comment on the benefits and burdens of this requirement and/or other issues or concerns that it raises.

Recipients of customer information that are not financial institutions are not directly subject to the proposed rule's requirements. However, as discussed in greater detail below, the proposed rule requires financial institutions to ensure that customer information remains protected when it is shared with their affiliates and service providers, some of which may not be financial institutions. *See* proposed paragraph 314.2 (b) (defining ''customer information'' to include information handled or maintained by or on behalf of affiliates); proposed paragraph 314.5(d) (requiring a financial institution to select and retain appropriate service providers, and to enter into contracts requiring them to maintain appropriate safeguards).[25] As discussed below, the Commission is seeking comment on the various issues raised by these proposed provisions.

A few commenters urged that compliance with alternative standards should constitute compliance with the Safeguards Rule. For example, one commenter urged that compliance with the SEC rule should constitute compliance with the FTC rule, so that state investment advisors covered by the FTC rule would be subject to the same standards as federal investment advisors, which are covered by the SEC rule.[26] Similarly, another commenter urged that compliance with the Family Educational Rights and Privacy Act (''FERPA'') should satisfy the Safeguards Rule, just as it satisfies the Privacy Rule.[27] The comment explained that FERPA protects the security and integrity of student records by a variety of requirements, including mandatory written student consent prior to the release of personally identifiable information.[28] The Commission requests additional comment on whether and how compliance with these and other laws and rules relating to information security—including the rules relating to medical information under the Health Insurance Portability and Accountability Act (''HIPAA'') of 1996—should be addressed in the proposed rule.

Proposed section 314.2: Definitions

This section defines terms for purposes of the proposed Safeguards Rule. Proposed paragraph (a) of this section makes clear that, unless otherwise stated, terms used in the Safeguards Rule bear the same meaning as in the Commission's Privacy Rule. Thus, for example, ''customer'' under the Safeguards Rule is the same as under the Privacy Rule: a consumer who has established a continuing relationship with an institution.[29] 16 CFR 313.3(h). Further, ''affiliate'' means ''any company that controls, is controlled by, or is under common control with another company.'' 16 CFR 313.3(a).[30] The proposed Safeguards Rule also defines the following new terms: ''customer information;'' ''information security program;'' and ''service provider.'' *See* paragraphs (b), (c), and (d), respectively, of proposed section 314.2.

Proposed paragraph (b) defines ''customer information'' as any record containing nonpublic personal information, as defined in paragraph 313.3(n) of the Privacy Rule, about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of a financial institution or its affiliates.[31] The Commission proposes to include information handled or maintained by or on behalf of affiliates in this definition to ensure that customer information does not lose its protections merely because it is shared with affiliates, which is freely allowed under the G–L–B Act and Privacy Rule.[32] Thus, to the extent that a financial institution shares customer information with its affiliates, the proposed rule would require it to ensure that the affiliates maintain appropriate safeguards for the customer information at issue.

[22] Under section 313.3(k)(1) of the Privacy Rule, ''financial institution'' means: ''any institution the business of which is engaging in financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). An institution that is significantly engaged in financial activities is a financial institution.'' Additional examples of financial institutions are provided in section 313.3(k)(2) of the Privacy Rule.

[23] Such recipient entities might include service providers or affiliates of financial institutions that are also financial institutions themselves. They might also include entities such as consumer reporting agencies that routinely receive customer information from other financial institutions.

[24] Some commenters stated that the rule should establish safeguards only for a financial institution's handling of information about its own customers, and not for such information in the hands of third-party financial institutions. *See, e.g.,* ACA at 4; MasterCard at 4. By contrast, others urged that, consistent with the way that the Privacy Rule's restrictions remain affixed to information when it is disclosed by a financial institution, safeguards should not be lost when information is transferred to another financial institution. NAAG at 2; *see also* Intuit at 3–4, 13; NIADA at 2; USA Funds at 1.

[25] Although the proposed rule does not impose duties on financial institutions with respect to other recipients of information, the Commission notes that financial institutions must also comply with the Privacy Rule, as well as section 5 of the FTC Act, which prohibits unfair or deceptive acts and practices. Therefore, financial institutions must ensure that any statements they make regarding the security of customer information or the manner in which it is handled by third parties must be accurate.

[26] NASAA at 2.

[27] ACE at 1–2.

[28] *Id.* at 2–3; *see also* USA Funds.

[29] By virtue of the Privacy Rule's definition of ''consumer,'' customer does not include a business. *See* sections 313.3(e) and (h) of the Privacy Rule (defining ''consumer'' and ''customer,'' respectively).

[30] Other relevant definitions from the Privacy Rule include: ''control,'' ''nonpublic personal information,'' and as discussed above, ''financial institution.'' *See* 16 CFR 313.3(g), (n), and (k), respectively.

[31] Section 501(b) of the Act refers to the protection of both customer ''records'' and ''information.'' However, for the sake of simplicity, the proposed rule (like the Banking Agency Guidelines) uses the term ''customer information'' to encompass both information and records.

[32] *See* section 502(a) (restricting disclosures only to nonaffiliated third parties).

The Commission recognizes that certain entities (*e.g.*, banks) that meet the proposed rule's definition of ''affiliate'' simultaneously may be covered by another agency's safeguards standards. In response, the Commission notes that it does not intend to duplicate existing requirements for affiliates that are financial institutions directly subject to safeguards standards. Instead, the proposed requirement is designed to ensure that safeguards are not lost in the event that customer information is disclosed to an affiliate that is not a financial institution, or that is not required to safeguard information about another financial institution's customers. The Commission requests comment on: (1) The benefits and burdens of this proposal, including any compliance burdens imposed on entities already covered by the safeguards standards of other Agencies; (2) whether any additional guidance is needed on what safeguards are appropriate for affiliates; and (3) other issues or concerns raised by this requirement. The Commission also requests comment on whether information shared with affiliates already is protected adequately by other provisions of the proposed rule.[33]

The proposed Safeguards Rule applies solely to ''customer information'' and not to information about other consumers who do not meet the definition of ''customer.'' This approach is consistent with the Banking Agency Guidelines, as well as the majority of comments that addressed this issue.[34] The commenters pointed out that the language of section 501 refers only to customers, and does not instruct or authorize the Commission to establish safeguards covering other information.[35] However, other commenters who favored requiring safeguards for all nonpublic personal information noted flaws in this approach, namely, that: (1) Financial institutions may be unable to distinguish accurately between customer and consumer information,[36] and (2) consumers may not understand the customer-consumer distinction, and may believe that their information is subject to safeguards that do not apply to them.[37]

While the Commission believes that limiting the rule to ''customer information'' is warranted by the plain language of section 501,[38] it shares some of the concerns raised by the commenters who favored broader protections. In response, the Commission notes that protecting information about consumers may be a part of providing reasonable safeguards to ''customer information'' where the two types of information cannot be segregated reliably. Further, consistent with its mandate under the Privacy Rule and section 5 of the FTC Act, the Commission expects that, as with customers, any information that a financial institution provides to a consumer will be accurate concerning the extent to which safeguards apply to them.

Finally, proposed paragraphs (c) and (d) contain definitions of ''information security program'' and ''service provider.'' ''Information security program'' is defined as ''the administrative, technical, or physical safeguards'' that a financial institution uses ''to access, collect, process, store, use, transmit, dispose of, or otherwise handle customer information.'' This definition is similar to the Banking Agency Guidelines' definition of ''customer information system.'' See Banking Agency Guidelines, section I.C.2.d. ''Service provider'' is defined as ''any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a financial institution that is subject to the rule.'' This definition is virtually identical to the definition of ''service provider'' in the Banking Agency Guidelines. *See* Banking Agency Guidelines, section I.C.2.e. The Commission requests comment on both of these proposed definitions.

Proposed section 314.3: Standards for Safeguarding Customer Information

This section sets forth the general standards that a financial institution must meet to comply with the rule, namely to ''develop, implement, and maintain a comprehensive written information security program that contains administrative, technical, and physical safeguards' that are appropriate to the size and complexity of the entity, the nature and scope of its activities, and the sensitivity of any customer information at issue. *See* proposed paragraph (a). This standard is highly flexible, consistent with the comments and the Banking Agency Guidelines. It is also consistent with the Advisory Committee's Report, which concluded that a business should develop ''a program that has a continuous life cycle designed to meet the needs of a particular organization or industry'' and that ''different types of data warrant different levels of protection.'' *See* ACR at 18. Paragraph (a) also requires that each information security program include the basic elements set forth in proposed section 314.4 of the rule, and be reasonably designed to meet the objectives set forth in section 314.3(b).

By requiring a written information security program, the Commission means to ensure a comprehensive, coordinated approach to security. As under the Banking Agency Guidelines, which also require a written program,[39] the program need not be set forth in a single document, as long as all parts of the program are coordinated and can be identified and accessed readily.[40] For this reason, and because of the general flexibility of the proposed rule's requirements, the Commission does not expect the preparation of a written program to be unduly burdensome. Nevertheless, the Commission requests comment on the benefits and burdens of this requirement and/or other issues or concerns that it raises; whether any burden is disproportionate for smaller entities; and how any burden can be lessened while still ensuring that each financial institution develops an effective program for which it is accountable.

Paragraph (b) of this section restates the objectives of section 501(b) of the Act and incorporates them as the objectives of the proposed rule.

Proposed Section 314.4: Elements

This section sets forth general elements that a financial institution should adopt as part of its information security program. The elements create a framework for developing, implementing, and maintaining the

[33] As noted above, the proposed rule would directly cover an affiliate that receives customer information from a financial institution and is itself a financial institution. Further, an affiliate that meets the definition of ''service provider'' in the proposed rule will be subject to contractural requirements to maintain safeguards. *See* proposed paragraph 314.5(d). Thus, other provisions of the proposed rule may already cover information handled or maintained by at least some affiliates.

[34] *See* Banking Agency Guidelines, section I.A.; see also ACA at 3–4; ACB at 3; Intuit at 3; MasterCard at 3; NCISS at 1; NRF at 2–3; NIADA at 1–2; TGSL at 2; Plainview at 1; Visa at 3; cf NAAG at 1–2 (supporting limitation, but urging that term ''customer information'' be broadly construed).

[35] *See, e.g.,* ACA at 3–4; TGSL at 2; Visa at 3.

[36] Ashley at 2; Intuit at 3; NAAG at 2; NACAA at 3.

[37] NACAA at 3.

[38] *See* section 501(a) & (b)(1)–(3). By contrast to section 501, the privacy provisions of the Act apply to both ''customers'' and ''consumers'' of financial institutions, but require greater disclosures to the former. *See* section 502(a) & (b) (consumers); section 503 (customers).

[39] *See* Banking Agency Guidelines, section II.A.

[40] *See* Preamble to the Banking Agency Guidelines, 66 FR 8619 (if the elements of the program ''are not maintained on a consolidated basis, management should have an ability to retrieve the current documents from those responsible for the overall coordination and ongoing reevaluation of the program.''

required safeguards, but leave each financial institution discretion to tailor its information security program to its own circumstances.[41]

Proposed paragraph (a) requires each financial institution to designate an employee or employees to coordinate its information security program in order to ensure accountability within each entity for achieving adequate safeguards. This requirement is similar to the Banking Agency Guidelines' requirements to involve and report to the Board of Directors. See Banking Agency Guidelines, Paragraphs III.A., and III.F., respectively. However, because many entities subject to the Commission's jurisdiction are not controlled by Boards of Directors, the rule permits a financial institution to designate any responsible employee or employees that it chooses. The Commission believes that this requirement will ensure accountability within a flexible framework.[42] The Commission seeks comment on the benefits and burdens of this paragraph and/or other issues or concerns that it raises, as well as whether there are effective alternative means to achieve accountability for compliance with the rule.

Proposed paragraph (b) requires each financial institution to ''identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.'' Because some of the comments sought further guidance on steps to take in conducting a risk assessment,[43] the proposed paragraph also requires financial institutions to consider such risks in each relevant area of their operations, including three areas of particular importance to information security: (1) Employee training and management; (2) information systems, including information processing, storage, transmission and disposal; and (3) prevention and response measures for attacks, intrusions, or other systems failures. This paragraph is similar to the Banking Agency Guidelines' requirement to assess risks,[44] but adds these core areas of operation in response to the comments. Beyond the three core areas of operation that a financial institution must consider, each entity would have discretion to determine what areas of its operation are relevant to risk assessment. The Commission seeks comment on the benefits and burdens of this paragraph and/or other issues or concerns that it raises; whether specifying certain areas of operation is helpful and appropriate; and/or whether additional guidance would be useful.[45]

Proposed paragraph (c) requires each financial institution to ''design and implement information safeguards to control the risks [identified] through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.'' As in paragraph (b), a financial institution must address each relevant area of its operations in developing its program.[46] The obligation to monitor (and, in paragraph (e), discussed below, to adjust in light of changes) the information security program is consistent with the Advisory Committee's findings that a security program should have ''a continuous life cycle'' and that companies should be prepared to ''revisit and revise [their security standards] on a constant basis.'' ACR at 18. It also is similar to the Banking Agency Guidelines' requirement to ''[r]egularly test the key controls, systems and procedures of the information security program.'' *See* Banking Agency Guidelines, paragraph III.C.3. Consistent with the commenters' support for the use of testing[47] but concern about the potential costs and effectiveness of such procedures,[48] the proposed rule does not require that particular audit procedures or tests be used. The Commission requests comment on the benefits and burdens of this paragraph and/or other issues or concerns that it raises.

Proposed paragraph (d) requires each financial institution to oversee its service providers. This obligation requires each financial institution to select and retain service providers ''that are capable of maintaining appropriate safeguards'' for the customer information at issue, and to require its service providers by contract to ''implement and maintain such safeguards.'' This provision, which is similar to a requirement in the Banking Agency Guidelines,[49] is intended to ensure that customer information will remain protected when it is shared with another entity to carry out processing, servicing, and similar functions on behalf of the financial institution. It also ensures that the obligation to safeguard information is not diminished simply because certain functions are outsourced rather than performed in-house. The Commission requests comment on the benefits and burdens of this requirement and/or other issues or concerns that it raises, including: (1) Whether additional guidance is needed on what safeguards are appropriate for service providers; (2) whether the contract requirement is necessary to ensure the protection of customer information or whether there is an equally protective alternative; (3) whether, for service providers that are themselves financial institutions or are subject to other safeguards standards, the rule should offer an exception to the contract requirement; and (4) whether the rule should apply to all service providers, given that the Privacy Rule does not require financial institutions to enter into confidentiality contracts with service providers that receive information under the general exceptions in sections 313.14 and 313.15 of that rule.

The Commission is aware that an entity providing services both to a financial institution subject to the Commission's rule and to one subject to the Banking Agency Guidelines could be subject to contractual obligations under both the proposed rule and the Guidelines, albeit for different sets of information. In some cases, a service

[41] Many of these procedures are similar to those identified by the Advisory Committee's Report as ''essential elements'' of an effective program. See ACR at 18 (assessment of risk, establishment and implementation of a plan based on the identified risks, and periodic reassessment of risks).

[42] This proposal responds to comments seeking flexibility in designating responsible employees. *See, e.g.,* Visa at 5 (suggesting the rule should allow financial institutions to designate either an individual, or a working group or committee); ACB at 4 (opposing idea of a single privacy officer); CUNA at 2 (same). *See also* NAAG at 2; MSDWCC at 3 (stating that designation of a privacy officer would ensure accountability).

[43] *See e.g.,* NIADA at; Intuit at 7–8.

[44] *See* Banking Agency Guidelines, Paragraph III. B.

[45] Consistent with the comments, the proposed rule does not require financial institutions to conduct risk assessment according to any predetermined schedule. See NIADA at 4; USA Funds at 3. However, as discussed below, proposed paragraph (e) requires that each financial institution adjust its program in light of any material changes to its business. The Commission envisions that the timeliness of such adjustments would be relevant to the adequacy of a financial institutions' safeguards under the rule.

[46] For example, in the area of employee training and management, an entity could implement a training program designed to combat the risk that unauthorized third parties could gain access to customer information. Or, with respect to its information systems, an entity could implement a particular protocol for disposing of customer information to control any risk that unauthorized parties could gain access to discarded information. Similarly, in the area of prevention and response measures for attacks and system failures, an entity could maintain appropriate controls or monitoring systems to deter and detect actual or attempted attacks or intrusions.

[47] *See, e.g.,* CUNA at 3; Intuit at 10; Tiger Testing 1–2.

[48] ACB at 5; USA Funds at 4.

[49] Banking Agency Guidelines, section III.D.

provider—such as a data processor—that is subject to such contractual obligations also would be a financial institution subject to the Commission's rule. The Commission believes, however, that the similarity of the proposed rule to the Banking Agency Guidelines, and the flexible standards of the proposed rule, should prevent any conflict. Nonetheless, comment is requested on any potential difficulty for service providers in complying simultaneously with these various requirements.

Proposed paragraph (e) requires each financial institution to ''evaluate and adjust [its] information security program'' in light of any material changes to its business that may affect its safeguards. This paragraph is similar to section III.E. of the Banking Agency Guidelines. Such material changes may include, for example, changes in technology; changes to its operations or business arrangements, such as mergers and acquisitions, alliances and joint ventures, outsourcing arrangements, or changes in the services provided; new or emerging internal or external threats to information security; or other circumstances that give it reason to know that its information security program is vulnerable to attack or compromise. The Commission seeks comment on the benefits and burdens of this requirement and/or other issues or concerns that it raises.

Proposed Section 314.5: Effective Date

Proposed section 314.5 requires each financial institution to implement an information security program not later than one year from the date on which a final rule is issued. The Commission requests comment on whether one year is an appropriate amount of time for covered entities to come into compliance with the rule. It also requests comment on whether the rule should contain a transition period to allow the continuation of existing contracts with service providers, even if they would not satisfy the rule's requirements. Such a provision could parallel section 313.18(c) of the Privacy Rule, which provides a two-year period for grandfathering existing contracts.

D. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. Chapter 35, requires federal agencies to seek and obtain Office of Management and Budget (''OMB'') approval before undertaking a collection of information directed to ten or more persons. 44 U.S.C. 3502(3)(a)(i). Under the PRA, a rule creates a ''collection of information'' when ten or more persons are asked to report, provide, disclose, or record information'' in response to ''identical questions.'' *See* 44 U.S.C. 3502(3)(A). Applying these standards, the Commission has determined that the proposed standards do not constitute a ''collection of information.'' The proposed rule calls upon affected entities to develop or strengthen their information security programs in order to provide reasonable safeguards. Each financial institution's means of complying with the rule will vary according to its size, complexity, the nature and scope of its activities, and the sensitivity of the information involved. Although these compliance efforts must be summarized in writing, the discretionary balancing of factors and circumstances that is involved here does not require entities to answer ''identical questions,'' and therefore does not trigger the PRA's requirements. *See* ''The Paperwork Reduction Act of 1995: Implementing Guidance for OMB Review of Agency Information Collection,'' Office of Information and Regulatory Affairs, OMB (August 16, 1999), at 20–21.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 604(a), requires an agency either to provide an Initial Regulatory Flexibility Analysis with a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The FTC does not expect that this rule, if adopted, would have the threshold impact on small entities. First, most of the burdens flow from the mandates of the Act, not from the specific provisions of the proposed rule. Second, the proposed rule imposes requirements that are scalable according to the size and complexity of each institution, the nature and scope of its activities, and the sensitivity of its information. Thus, the burden is likely to be less on small institutions, to the extent that their operations are smaller or less complex. Nonetheless, the Commission has determined that it is appropriate to publish an Initial Regulatory Flexibility Analysis (''IRFA'') in order to inquire into the impact of the proposed rule on small entities. The Commission invites comment on the burden on small entities that may result from this rulemaking, and has prepared the following analysis.

1. Reasons for the Proposed Rule

Section 501(b) of the G–L–B Act requires the FTC to establish standards for financial institutions subject to its jurisdiction relating to administrative, technical, and physical standards. According to section 501(b), these standards must: (1) Insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer. The requirements of the proposed rule are intended to fulfill the obligations imposed by section 501(b).

2. Statement of Objectives and Legal Basis

The objectives of the proposed rule are discussed above. The legal basis for the proposed rule is section 501(b) of the G–L–B Act.

3. Description of Small Entities to Which the Rule Will Apply

Determining a precise estimate of the number of small entities that are financial institutions subject to the proposed rule is not readily feasible. The definition of ''financial institution,'' as under the Privacy Rule, includes any institution the business of which is engaging in a financial activity, as described in section 4(k) of the Bank Holding Company Act, which incorporates by reference the activities listed in 12 CFR 225.28 and 12 CFR 211.5(d), consolidated in 12 CFR 225.86. *See* 65 FR 14433 (Mar. 17, 2000). The G–L–B Act does not specify the categories of financial institutions subject to the Commission's jurisdiction; rather, section 505(a)(5) vests the Commission with enforcement authority with respect to ''any other financial institution or other person that is not subject to the jurisdiction of any [other] agency or authority [charged with enforcing the statute].'' Financial institutions covered by the rule will include many of the same lenders, financial advisors, loan brokers and servicers, collection agencies, financial advisors, tax preparers, real estate settlement services, and others that are subject to the Privacy Rule. However, many of these financial institutions will not be subject to the Safeguards Rule to the extent that they do not have any ''customer information'' within the meaning of the Safeguards Rule.

4. Projected Reporting, Recordkeeping and Other Compliance Requirements

The proposed rule does not impose any reporting or any specific recordkeeping requirements within the meaning of the PRA, discussed above. The proposed rule requires each covered institution to develop a written

information security program covering customer information that is appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of the customer information at issue. In so doing, the institution must assure itself that any affiliate to which it discloses customer information maintains appropriate safeguards. In addition, each institution must designate an employee or employees to coordinate its safeguards; identify and assess foreseeable risks to customer information, and evaluate the effectiveness of any existing safeguards for controlling these risks; design and implement a safeguards program, and regularly monitor its effectiveness; require service providers (by contract) to implement appropriate safeguards for the customer information at issue; and evaluate and adjust its program to material changes that may affect its safeguards, such as new or emerging threats to information security. These requirements will apply to institutions of all sizes that are subject to the FTC's jurisdiction.

A few comments received in response to the Notice expressed concern about the burden on small businesses of maintaining information security. The Commission has attempted to address these concerns by making the requirements flexible so that each entity can simplify its information security program to the same extent that its overall operations are simplified. Nonetheless, the Commission is concerned about the potential impact of the proposed rule on small institutions, and invites comment on the costs of establishing and operating an information security program for such entities, particularly any costs stemming from the proposed requirements to: (1) Designate an employee or employees to coordinate safeguards; (2) regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures; (3) develop a comprehensive information security program in written form; and (4) ensure that affiliates with which the entities share information maintain adequate safeguards.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The FTC is unable to identify any statutes, rules, or policies that would conflict with the requirement to develop and implement an information security program. However, as discussed above, the Commission is requesting comment on the extent to which other federal standards involving privacy or security of information may duplicate and/or satisfy the proposed rule's requirements. In addition, the FTC seeks comment and information about any statutes or rules that may conflict with any of the proposed requirements, as well as any other state, local, or industry rules or policies that require a covered institution to implement business practices that comport with the requirements of the proposed rule.

6. Discussion of Significant Alternatives

The G–L–B Act requires the FTC to issue a rule that establishes standards for safeguarding customer information. In addition, the G–L–B Act requires that standards be developed for institutions of all sizes. Therefore, the proposed rule applies to entities with assets of $100 million or less. However, the standards in the proposed rule are flexible, so that each institution may develop an information security program that is appropriate to its size and the nature of its operations. The FTC welcomes comment on any significant alternatives, consistent with the G–L–B Act, that would minimize the impact on small entities.

Proposed Rule

List of Subjects for 16 CFR Part 314

Consumer protection, Credit, Data protection, Privacy, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend 16 CFR Ch. I, Subchapter C, by adding a new part 314 to read as follows:

PART 314—STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION

Sec. 314.1 Purpose and scope.
314.2 Definitions.
314.3 Standard for safeguarding customer information.
314.4 Elements.
314.5 Effective date.

Authority: 15 U.S.C. 6801(b), 6805(b)(2).

§ 314.1 Purpose and scope.

(a) *Purpose.* This part (''rule''), which implements sections 501 and 505(b)(2) of the Gramm-Leach-Bliley Act, sets forth standards for developing, implementing, and maintaining reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information.

(b) *Scope.* This rule applies to the handling of customer information by all financial institutions over which the Federal Trade Commission (''FTC'' or ''Commission'') has jurisdiction. This rule refers to such entities as ''you.'' The rule applies to all customer information in your possession, regardless of whether such information pertains to individuals with whom you have a customer relationship, or pertains to the customers of other financial institutions that have provided such information to you.

§ 314.2 Definitions.

(a) *In general.* Except as modified by this rule or unless the context otherwise requires, the terms used in this rule have the same meaning as set forth in the Commission's rule governing the Privacy of Consumer Financial Information, 16 CFR part 313.

(b) *''Customer information''* means any record containing nonpublic personal information, as defined in 16 CFR 313.3(n), about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of you or your affiliates.

(c) ''*Information security program*'' means the administrative, technical, or physical safeguards you use to access, collect, process, store, use, transmit, dispose of, or otherwise handle customer information.

(d) ''*Service provider*'' means any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a financial institution that is subject to the rule.

§ 314.3 Standards for safeguarding customer information.

(a) *Information security program.* You shall develop, implement, and maintain a comprehensive written information security program that contains administrative, technical, and physical safeguards that are appropriate to your size and complexity, the nature and scope of your activities, and the sensitivity of any customer information at issue. Such safeguards shall include the elements set forth in § 314.4 and shall be reasonably designed to achieve the objectives of this rule, as set forth in paragraph (b) of this section.

(b) *Objectives.* The objectives of section 501(b) of the Act, and of this rule, are to:

(1) Insure the security and confidentiality of customer information;

(2) Protect against any anticipated threats or hazards to the security or integrity of such information; and

(3) Protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

§ 314.4 Elements.

In order to develop, implement, and maintain your information security program, you shall:

(a) Designate an employee or employees to coordinate your information security program.

(b) Identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks. At a minimum, such risk assessment should include consideration of risks in each relevant area of your operations, including:

(1) employee training and management;

(2) information systems, including information processing, storage, transmission, and disposal; and

(3) prevention and response measures for attacks, intrusions, or other systems failures.

(c) For all relevant areas of your operations, including those set forth in paragraph (b) of this section, design and implement information safeguards to control the risks you identify through risk assessment, and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.

(d) Oversee service providers, by:

(1) selecting and retaining service providers that are capable of maintaining appropriate safeguards for the customer information at issue; and

(2) requiring your service providers by contract to implement and maintain such safeguards.

(e) Evaluate and adjust your information security program in light of any material changes to your business that may affect your safeguards.

§ 314.5 Effective date.

Each financial institution subject to the Commission's jurisdiction must implement an information security program pursuant to this rule not later than one year from the date on which a final rule is issued.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 01–19338 Filed 8–6–01; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–103735–00; REG–110311–98; REG–103736–00]

RIN 1545–AX81; 1545–AW26; 1545–AX79

Modification of Tax Shelter Rules II

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cross-reference notice of proposed rulemaking.

SUMMARY: These proposed rules provide the public with additional guidance needed to comply with the disclosure rules under section 6011(a), the registration requirement under section 6111(d), and the list maintenance requirement under section 6112 applicable to tax shelters. The proposed rules affect corporations participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and organizers of potentially abusive tax shelters. In the rules and regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations modifying the rules relating to the requirement that certain corporate taxpayers file a statement with their Federal corporate income tax returns under section 6011(a) and the registration of confidential corporate tax shelters under section 6111(d). The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by October 31. 2001.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–103735–00; REG–110311–98; REG–103736–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG–103735–00; REG–110311–98; REG–103736–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Danielle M. Grimm, (202) 622–3080; concerning submissions, Guy Traynor, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations amend the Income Tax Regulations (26 CFR part 1) regarding rules relating to the filing and records requirements for certain corporate taxpayers under section 6011. The temporary regulations also amend the temporary procedure and administration regulations (26 CFR part 301) regarding the registration of confidential corporate tax shelters under section 6111.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is 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. Because these regulations impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand.

All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Danielle M. Grimm, Office of the Associate Chief Counsel (Passthroughs and Special Industries).

However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301, which were proposed to be amended at 65 FR 49909 (August 16, 2000), are proposed to be further amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6011–4 as proposed at 65 FR 49909 (August 16, 2000) is amended as follows:

§ 1.6011–4 Requirement of statement disclosing participation in certain transactions by corporate taxpayers.

[The text of the amendments to this proposed section is the same as the text of the amendments to § 1.6011–4T published elsewhere in this issue of the **Federal Register**.]

PART 301— PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 301.6111–2 as proposed to be added at 65 FR 49909 (August 16, 2000) is amended as follows:

§ 301.6111–2 Confidential corporate tax shelters.

[The text of the amendments to this proposed section is the same as the text of the amendments to § 301.6111–2T published elsewhere in this issue of the **Federal Register**.]

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 01–19616 Filed 8–2–01; 2:50 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5c, 5f, 18, and 301

[REG–106917–99]

RIN 1545–AX15

Changes In Accounting Periods; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Wednesday, June 13, 2001 (66 FR 31850) relating to certain adoptions, changes, and retentions of annual accounting periods.

FOR FURTHER INFORMATION CONTACT: Roy A. Hirschhorn and Martin Scully, Jr. (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that are the subject of this correction are under sections 441, 442, 706, 898, and 1378 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–106917–99), that was the subject of FR Doc. 01–13536, is corrected as follows:

1. On page 31850, column 3, in the preamble under the caption **SUMMARY:**, line 3, the language ''441, 442, 706, and 1378 of the Internal'' is corrected to read ''441, 442, 706, 898, and 1378 of the Internal''.

2. On page 31851, column 2, in the preamble under the paragraph heading *''A. Overview''*, line 4, the language ''taxable income), and sections 442, 706,'' is corrected to read ''taxable income), and sections 442, 706, 898.''

3. On page 31851, column 3, in the preamble under the paragraph heading *''B. Section 441: Period for Computing Taxable Income,''* the last line of the first paragraph, the language ''514, 99th Cong., 2d Sess. 318 (1986).'' is corrected to read ''841, 99th Cong., 2d Sess., II–318 1986–3 (Vol. 4) C.B. 318.''

4. On page 31852, column 2, in the preamble under the paragraph heading *''3. 52–53-week Taxable Years.''*, line 8 from the top of the column, the language ''and Notice 2001–35 (IRB 2001–23). In'' is corrected to read ''and Notice 2001–35 (2001–23 I.R.B. 1314). In''.

5. On page 31852, column 2, in the preamble under the paragraph heading *''5. Personal Service Corporations.''*, paragraph 1, lines 3 and 4 from the bottom of the column, the language ''now contained in Notice 2001–35 (I.R.B. 2001–23). Similarly, the rules regarding'' is corrected to read ''now contained in Notice 2001–35 (2000–23 I.R.B. 1314). Similarly, the rules regarding''.

6. On page 31852, column 3, in the preamble under the paragraph heading *''5. Personal Service Corporations.''*, paragraph 1, the last line of the paragraph, the language ''and Notice 2001–34 (I.R.B. 2001–23).'' is corrected to read ''and Notice 2001–34 (2001–23 I.R.B. 1302).''.

§ 1.441–3 [Corrected]

7. On page 31859, column 3, § 1.441–3, in paragraph (a)(2), line 3, the language ''taxable year (i.e., a fiscal year) if elects'' is corrected to read ''taxable year (i.e., a fiscal year) if it elects''.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Income Tax and Accounting).

[FR Doc. 01–19788 Filed 8–6–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–077]

RIN 2115–AA97

Safety Zone; Long Island Sound, Thames River, Great South Bay, Shinnecock Bay, Connecticut River and the Atlantic Ocean Annual Fireworks Displays

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish 17 permanent safety zones for fireworks displays located on or in Long Island Sound, the Atlantic Ocean, the Thames River, Great South Bay, Shinnecock Bay and the Connecticut River. This action is necessary to provide for the safety of life on

navigable waters during the events. This action establishes permanent exclusion areas that are only active shortly prior to the start of the fireworks display until shortly after the fireworks display is completed, and it is intended to restrict vessel traffic in a small portion of the affected waterways.

DATES: Comments and related material must reach the Coast Guard on or before October 9, 2001.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Group/MSO Long Island Sound, 120 Woodward Ave, New Haven, Connecticut 06512. The Command Center maintains the public docket (CGD01–01–077) for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Command Center, Coast Guard Group/MSO Long Island Sound, between 7:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Chris Stubblefield, Marine Safety Office Supervisor, Coast Guard Group/MSO Long Island Sound, Connecticut (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–01–077), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for a meeting by writing to the U.S. Coast Guard Group/Marine Safety Office at the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish 17 permanent safety zones that will be activated for fireworks displays that normally occur on an annual basis and are normally held in one of the following 17 locations: on the Connecticut River off of Old Saybrook, CT; on the Connecticut River off Hartford, CT; in Greenwich Harbor on Long Island Sound, CT; in Long Island Sound off Madison, CT; in Long Island Sound off Rowayton, CT; in New Haven Harbor on Long Island Sound, CT; in Long Island Sound off Groton Long Point in Groton, CT; in Cold Springs Harbor on Long Island Sound, NY; in Shinnecock Bay off Southampton, NY; in Great South Bay off Davis Park, NY; in Great South Bay off Patchogue, NY; in Great South Bay off Cherry Cove, NY; and in the Atlantic Ocean off Sagaponack, NY. By establishing permanent safety zones, the Coast Guard will eliminate the need to establish temporary rules annually. The Coast Guard has promulgated safety zones for fireworks displays at all of these 17 areas in the past and has received no public comments or concerns on the impact to waterway traffic from these annually recurring zones.

While this proposed regulation would prevent vessels from transiting areas made hazardous from the launching of fireworks, the proposed safety zone would not prevent vessels from transiting effected bodies of waters by simply transiting around the proposed safety zones. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of any of the 17 proposed safety zones.

Discussion of Proposed Rule

The Coast Guard proposes to add a new section to 33 CFR part 165, which would include these 17 new safety zones for fireworks displays that occur on a regular basis in the same locations. The sizes of these safety zones were determined using Captain of the Port Long Island Sound local policy for each fireworks displays (100 feet distance per inch of diameter of the mortars), combined with the Coast Guard's knowledge of tide and current conditions in these areas. Proposed barge locations and mortar sizes were determined to ensure the proposed safety zone locations would not interfere with any known marinas or piers. The 17 proposed safety zones, divided into their respective bodies of water, are described below. All coordinates reference 1983 North American Datum (NAD 83).

Connecticut River

There are three proposed safety zones for the Connecticut River. The proposed safety zone for the annual Arnold L. Chase fireworks display encompasses all waters of the Connecticut River within a 600 foot radius of the fireworks barge in approximate position 41°15′56″N, 072°21′49″W, located off Fenwick Pier, Old Saybrook, CT. The proposed safety zone for the annual Saybrook Summer Pops fireworks display encompasses all waters of Connecticut River within a 600 foot radius of the fireworks barge located in approximate position 41°17′35″N, 072°21′20″W, located north of the dock on Saybrook Point, Old Saybrook, CT. The proposed safety zone for the annual Riverfest Fireworks display encompasses all waters of the Connecticut River within a 600 foot radius of the fireworks barge located in approximate position 41°45′34″N, 072°39′37″W, located in Hartford, CT.

Thames River

There are two proposed safety zones for the Thames River. The proposed zone for the annual Mashantucket Pequot fireworks display encompasses all waters of the Thames River within a 1200 foot radius of the fireworks barges located in approximate positions; barge one, 41°21′01″N, 072°05′25″W, barge two, 41°20′58″N, 072°05′23″W, barge three, 41°20′53″N, 072°05′21″W, located off New London, CT. The proposed safety zone for the annual Harbor Day Fireworks display encompasses all waters of the Thames River within a 600 foot radius of the fireworks barge in approximate position 41°31′14″N, 072°04′44″W, located off the marina at the American Warf, Norwich, CT.

Long Island Sound

There are seven proposed safety zones for Long Island Sound. The proposed safety zone for the annual Indian Harbor Yacht Club fireworks display encompasses all waters of Captains Harbor within an 800 foot radius of the fireworks barge located in approximate position 41°00′35″N, 073°37′05″W, located off of Greenwich, CT. The proposed safety zone for the annual Madison Cultural Arts fireworks display encompasses all waters of Long Island Sound off the city of Madison within an 800 foot radius of the fireworks barge in approximate position 41°16′10″N, 072°36′30″W. The proposed safety zone for the annual City of Rowayton fireworks display encompasses all waters of Sheffield Channel on Long Island Sound off Ballast Reef, CT, within a 1000 foot radius of the

fireworks barge in approximate position 41°03′11″N, 073°26′41″W. The proposed safety zone for the annual City of West Haven fireworks display encompasses all waters of New Haven Harbor in Long Island Sound off Bradley Point within a 1200 foot radius of the fireworks barge located in approximate position 41°15′07″N, 072°57′26″W. The proposed safety zone for the annual New Haven Festival fireworks display encompasses all waters of New Haven Harbor in Long Island Sound within a 1200 foot radius of the fireworks barge located in approximate position 40°17′31″N, 072°54′48″W.

The proposed safety zone for the annual Groton Long Point Yacht Club fireworks display encompasses all waters of Long Island Sound off of Groton Long Point in Groton, CT, within a 600 foot radius of the fireworks barge located in approximate position 41°18′05″N, 072°02′08″W. The proposed safety zone for the annual Yampol Family fireworks display encompasses all waters of Long Island Sound off Cove Neck, NY, within a 1200 foot radius of the fireworks barge located in approximate position 40°53′00″N, 073°29′13″W.

Shinnecock Bay (Off Southampton, NY)

The proposed safety zone for the annual Southampton Fresh Air Home fireworks display encompasses all waters of Shinnecock Bay off Southampton, NY within a 600 foot radius of the fireworks barge located in approximate position 40°51′48″N, 072°28′30″W.

Great South Bay (Off Long Island, NY)

The proposed safety zone for the annual T.E.L. Enterprises fireworks display encompasses all waters of Great South Bay off Davis Park, NY within a 600 foot radius of the fireworks barge located in approximate position 40°41′17″N, 073°00′20″W. The proposed safety zone for the annual Patchogue Chamber of Commerce fireworks display encompasses all waters of Great South Bay off Patchogue, NY within an 800 foot radius of the fireworks barge located in approximate position 40°44′38″N, 073°00′33″W.

The proposed safety zone for the annual Fire Island Tourist Bureau fireworks display encompasses all waters of Great South Bay off Cherry Grove, NY within a 600 foot radius of the fireworks barge located in approximate position 40°35′45″N, 073°05′23″W. *Atlantic Ocean* (Off Sagaponack, NY)

The proposed safety zone for the annual Treibeck's fireworks display encompasses all waters of the Atlantic Ocean off Sagaponack, NY within a 1200 foot radius of the fireworks barge located in approximate position 40°54′04″ N, 072°16′50″ W.

Schedule

The Coast Guard does not know the specific annually recurring dates of these fireworks display safety zones. Coast Guard Group/MSO Long Island Sound or Coast Guard Group Moriches will give notice of the activation of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners. Marine information and facsimile broadcasts may also be made for these events, beginning 12 to 24 hours before the event is scheduled to begin, to notify the public. The Coast Guard expects that this wide notice of the activation of each permanent safety zone detailed in this rulemaking will normally be made between 30 and 45 days before the zone is actually activated. Fireworks barges used in the locations stated in this rulemaking will also have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This will provide on-scene notice that the safety zone the fireworks barge is located in will be activated on that day. This sign will consist of 10'' high by 1.5'' wide red lettering on a white background. Displays launched from shore sites have a sign labeled ''FIREWORKS—STAY AWAY'' with the same size requirements. There will also be a Coast Guard patrol vessel, if deemed necessary by the Captain of the Port, on scene 30 minutes before the display is scheduled to start until 15 minutes after its completion to enforce each safety zone.

The effective period for each proposed safety zone is from 8 p.m. to 11 p.m. (e.s.t.). However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port Long Island Sound, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present. These proposed safety zones would not create a significant economic impact on marine traffic due to the following: the minimal time that vessels will be restricted from the zones, all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners, all of the displays take place at night, and the Coast Guard has promulgated safety zones for fireworks displays at all 17 areas in the past and we have not received notice of any negative impact caused by any of the safety zones. Additionally, marine traffic can plan transits through these areas around the time the safety zones are in effect.

This rule is being proposed to provide for the safety of life on navigable waters during the events and to facilitate the opportunity for the public to comment on the proposed zones, and to decrease the amount of required annual paperwork.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. 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 proposed 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 zones. Vessels may also still transit through these zones except for the 45 minute period that a Coast Guard Patrol vessel is present and all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners from the zones' activation. All of the displays take place late at night. The Coast Guard has promulgated safety zones for fireworks displays at all 17 areas in the past and we have not received notice of any negative impact caused by any of the safety zones. Additionally, marine traffic can plan their transits through these areas around the time the safety zones are in effect. Advance notifications will also be made to the local maritime community by the Local Notice to Mariners. Marine information and facsimile broadcasts may also 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 will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Connecticut River, Thames River, Shinnecock Bay, Great South Bay, Long Island Sound and the Atlantic Ocean during the times these zones are activated.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can transit around all 17 safety zones. Vessels will not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Before the effective period, we will issue maritime advisories widely available to users of Long Island Sound, the Connecticut and Thames River, Great South Bay, Shinnecock Bay, the Atlantic Ocean and of Connecticut/New York by local notice to mariners. Marine information and facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Chris Stubblefield, in the Command Center at Coast Guard Group/ Marine Safety Office Long Island Sound, CT, at (203) 468–4444.

Collection of Information

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

Federalism

We have analyzed this proposed 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 costs. This proposed rule will not impose an unfunded mandate.

Taking of Private Property

This proposed 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 proposed 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 proposed 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.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes 17 safety zones. 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 new § 165.151 to read as follows:

§ 165.151 Safety Zones; Long Island Sound, Thames River, Great South Bay, Shinnecock Bay, Connecticut River and the Atlantic Ocean Annual Fireworks Displays.

(a) *Safety zones.* The following areas are designated safety zones. All coordinates reference 1983 North American Datum (NAD83).

(1) *Indian Harbor Yacht Club Fireworks Safety Zone.*

All waters of Long Island Sound off Greenwich CT, within a 800 foot radius of the fireworks barge located in approximate position 41°00′35″ N, 073°37′05″ W.

(2) *City of Rowayton Fireworks Safety Zone.* All waters of Long Island Sound in Sheffield Channel off of Ballast Reef within a 1000 foot radius of the fireworks barge located in approximate position 41°03′11″ N, 073°26′41″ W.

(3) *The Yampol Family Fireworks Safety Zone.* All waters of Long Island Sound off Cold Springs Harbor, Cove

Neck New York within a 1200 foot radius of the fireworks barge located in approximate position 40°53′00″ N, 073°29′13″ W.

(4) *Groton Long Point Yacht Club Fireworks Safety Zone.* All waters of Long Island Sound off of Groton Long Point, Groton, CT, within a 600 foot radius of the fireworks barge in approximate position 41°18′05″ N, 072°02′08″ W.

(5) *City of West Haven Fireworks Safety Zone.* All waters of New Haven Harbor on Long Island Sound off Bradley Point within a 1200 foot radius of the fireworks barge in approximate position 41°15′07″ N, 072°57′26″ W.

(6) *New Haven Festival Fireworks Safety Zone.* All waters of New Haven Harbor on Long Island Sound within a 1200 foot radius of the fireworks barge in approximate position 40°17′31″ N, 072°54′48″ W.

(7) *Madison Cultural Arts Fireworks Safety Zone.* All the waters of Long Island Sound located off the City of Madison within an 800 foot radius of the fireworks barge in approximate position 41°16′10″ N, 072°36′30″ W.

(8) *Arnold L. Chase Fireworks Safety Zone.* All waters of Connecticut River within a 600 foot radius of the fireworks barge located in approximate position 41°15′56″ N, 072°21′49″ W, about 100 yards off Fenwick Pier.

(9) *Saybrook Summer Pops Fireworks Safety Zone.* All waters of Connecticut River within a 600 foot radius of the fireworks barge located in approximate position 41°17′35″ N, 072°21′20″ W.

(10) *Mashantucket Pequot Fireworks Safety Zone.* All waters of Thames River within a 1200 foot radius of the fireworks barges located in approximated positions: barge one, 41°21′01″ N, 072°05′25″ W, barge two, 41°20′58″ N, 072°05′23″ W, barge three, 41°20′53″ N, 072°05′21″ W, located off New London, CT.

(11) *Harbor Day Fireworks Safety Zone.* All waters of Thames River within a 600 foot radius of the fireworks barge located in approximate position 41°31′14″ N 072°04′44″ W , located off American Warf Marina, Norwich, CT.

(12) *Riverfest Fireworks Safety Zone.* All the waters of the Connecticut River within a 600 foot radius of the fireworks barge located in approximate position 41°45′34″ N, 072°39′37″ W.

(13) *Southampton Fresh Air Home Fireworks Safety Zone.* All the waters of Shinnecock Bay within a 600 foot radius of the fireworks barge located in approximate position 40°51′48″ N, 072°28′30″ W, off of Southampton, NY.

(14) *T.E.L. Enterprises Fireworks Safety Zone.* All the waters of Great South Bay within a 600 foot radius of the fireworks barge located in approximate position 40°41′17″ N, 073°00′20″ W, off of Davis Park, NY.

(15) *Patchogue Chamber of Commerce Fireworks Safety Zone.* All the waters of Great South Bay within an 800 foot radius of the fireworks barge located in approximate position 40°44′38″ N, 073°00′33″ W, off of Patchogue, NY.

(16) *Fire Island Tourist Bureau Fireworks Safety Zone.* All the waters of Great South Bay within a 600 foot radius of the fireworks barge located in approximate position 40°35′45″ N, 073°05′23″ W, off of Cherry Cove, NY.

(17) *Treibeck's Party Fireworks Safety Zone.* All the waters of the Atlantic Ocean within a 1200 foot radius of the fireworks barge located in approximate position 40°54′04″ N, 072°16′50″ W, off of Sagaponack, NY.

(b) *Notification.* Coast Guard Group/Marine Safety Office Long Island Sound and Coast Guard Group Moriches will cause notice of the activation of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the local notice to mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY'' with the same dimensions listed previously.

(c) *Enforcement period.* Specific zones in this section will be enforced from 8 p.m. to 11 p.m. (e.s.t.) each day a barge with a ''FIREWORKS—STAY AWAY'' sign is posted in that zone.

Vessels may not enter, remain in, or transit through these safety zones during this time frame unless authorized by the Captain of the Port Long Island Sound or designated Coast Guard patrol personnel on scene.

Dated: June 4, 2001.

David P. Pekoske,

Captain, U. S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 01–19726 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA249–0287; FRL–7026–6]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from mobile sources (Class 7 and 8 heavy duty vehicles, marine vessels, ocean-going marine vessel hotelling operations, truck and trailer refrigeration units), and area sources (agricultural pumps). We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATE: Any comments must arrive by October 9, 2001.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814

South Coast Air Quality Management District, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182

FOR FURTHER INFORMATION CONTACT: Lily Wong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1190.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by SCAQMD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Rule #	Rule title	Adopted	Submitted
1612.1	Mobile Source Credit Generation Pilot Program	03/16/01	05/08/01
1631	Pilot Credit Generation Program for Marine Vessels	05/11/01	05/31/01
1632	Pilot Credit Generation Program for Hotelling Operations	05/11/01	05/31/01
1633	Pilot Credit Generation Program for Truck/Trailer Refrigeration Units	05/11/01	05/31/01
2507	Pilot Credit Generation Program for Agricultural Pumps	05/11/01	05/31/01

On July 20, 2001, these rule submittals were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

There are no previous versions of Rules 1612.1, 1631, 1632, 1633 or 2507 in the SIP.

C. What Is the Purpose of the Submitted Rules?

SCAQMD's Regional Clean Air Incentive Market (RECLAIM) program (Regulation XX) establishes declining emission limits for medium and large stationary sources of NO_X in and around Los Angeles. RECLAIM sources can comply with the declining limits by reducing their emissions directly or by obtaining surplus emission reduction credits from other RECLAIM sources. The RECLAIM program at Rule 2008 also allows the use of mobile source emission reduction credits (MSERCs) by RECLAIM stationary sources. Rules 1612.1, 1631, 1632, 1633 and 2507 establish requirements for any person who voluntarily elects to generate NO_X MSERCs and NO_X area source credits (ASCs) for use in RECLAIM through the activities described below. The mobile and area sources subject to these rules must operate exclusively within the SCAQMD.

Rule 1612.1 applies to the replacement of diesel-fueled heavy-duty Class 7 or 8 vehicles (e.g. garbage trucks and delivery vehicles) or yard hostlers with ''clean technologies'' using compressed natural gas, liquefied natural gas, liquefied petroleum gas, electric power, or dual-fueled engines. Rule 1631 applies to the repowering of diesel-fueled marine vessel engines with cleaner diesel engines meeting specified emission standards. Applicable marine vessels include tug boats, supply boats, ferries, fishing boats and other vessels which stay within the SCAQMD area. Rule 1632 applies to the use of fuel cell technology in lieu of diesel-fueled auxiliary engines to provide electricity to ocean-going marine vessel hotelling operations. This includes operations that require electric energy when a marine vessel is docked or anchored, such as lights, ventilation, heating, and loading. Rule 1633 applies to the conversion or purchase of truck or trailer refrigeration units that are equipped with electric standby mode to use electric power instead of diesel-fueled auxiliary engines to operate the truck or trailer refrigeration unit at a distribution center. Rule 2507 applies to the replacement of an existing diesel-fueled engine used to power an agricultural pump with an electric motor. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), and must not relax existing requirements (see sections 110(l) and 193).

Guidance and policy documents that we used to define specific evaluation criteria include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Bluebook), notice of availability published in the May 25, 1988 **Federal Register**.

2. ''Improving Air Quality with Economic Incentive Programs,'' January 2001, Office of Air and Radiation, EPA–452/R–01–001. This guidance applies to discretionary economic incentive programs (EIPs) and represents the agency's interpretation of what EIPs should contain in order to meet the requirements of the CAA. Because this guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether approvability issues arise.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and EIPs. Several fundamental principles that apply to EIPs are: integrity (credits are based upon emission reductions which are surplus, enforceable, quantifiable, and permanent), equity, and environmental benefit. These rules meet the surplus criteria because the activities generating the emission reductions must not be required or relied upon by any local, state, or federal regulation, by the CAA, in an attainment demonstration, reasonable further progress demonstration, or emissions inventory. These rules meet the quantifiable criteria because they include conservative emissions quantification protocols to quantify emission reductions. The protocols are based on test data, certified emission standards, or other EPA studies on emission rates. These rules meet the enforceable criteria described in the Bluebook, and because the credit generator is liable for meeting the terms of its application. These rules meet the permanent criteria because credits are only issued for credit generating activity that occurs. The general equity element of the equity principle has been addressed by an initial analysis of the RECLAIM program during its development in 1993—which included an evaluation of potential geographic shifts in emissions and potential socio-economic impacts (e.g. job shifts). In addition to this initial analysis, there are ongoing periodic analyses that look at the same issues. Consequently, EPA concluded that the general equity element has been adequately addressed. These rules meet the environmental benefit principle because emission reduction credits are discounted prior to use to provide for environmental benefit. These rules provide for the generation of emission reduction credits and do not represent a SIP relaxation. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. While the public comment period for this type of action is normally 30 days, we are responding to a request for a longer comment period. We will accept comments from the public on this proposal for the next 60 days. Unless we receive convincing new information during the comment period,

we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

III. Background Information

A. Why Were These Rules Submitted?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) and Part D of the CAA require states to submit regulations that control NO_X emissions.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 24, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 01–19753 Filed 8–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Region II Docket No. NY50–224b; FRL–7024–8]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the State of New York. The negative declaration satisfies EPA's promulgated Emission Guidelines (EG) for existing commercial and industrial solid waste incinerator (CISWI) sources. In accordance with the EG, states are not required to submit a plan to implement and enforce the EG if there are no existing CISWI sources in the state and it submits a negative declaration letter in place of the State Plan.

DATES: Written comments must be received on or before September 6, 2001.

ADDRESSES: All comments should be addressed to:

Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, 290 Broadway, 25the Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233–3251.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3892.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules Section of this **Federal Register**.

The Environmental Protection Agency (EPA) is proposing to approve a negative declaration submitted by the State of New York on February 1, 2001. The negative declaration officially certifies to EPA that, to the best of the State's knowledge, there are no commercial and industrial solid waste incinerator sources in operation in the State of New York. This negative declaration concerns existing commercial and industrial solid waste incinerators throughout the State of New York. The negative declaration satisfies the federal Emission Guidelines (EG) requirements of EPA's promulgated regulation entitled ''Standards of Performance for New Stationary Sources and Emission

Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units'' (65 FR 75338, December 1, 2000; and corrected at 66 FR 16605, March 27, 2001).

Dated: July 26, 2001.

Kathleen C. Callahan,

Acting Regional Administrator, Region 2.

[FR Doc. 01–19559 Filed 8–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7026–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Shenandoah Stables site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 7 announces the intent to delete the Shenandoah Stables site (the site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Missouri Department of Natural Resources (MDNR) have determined that the remedial action for the site has been successfully executed.

DATES: Comments concerning the proposed deletion of this site from the NPL may be submitted on or before September 6, 2001.

ADDRESSES: Comments may be mailed to Robert Feild, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, SUPR, Kansas City, Kansas, 66101.

Informative Repositories: Comprehensive information on this site is available through the Region 7 public docket which is available for viewing by appointment only. Appointments for copies of the background information from the Regional public docket should be directed to the EPA Region 7 Docket office at the following address: Regional Records Center, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas, 66101.

The deletion docket is also available for viewing at the following location: City Hall, 500 Highway MM, Moscow Mills, Missouri 63362.

FOR FURTHER INFORMATION CONTACT: If additional information is needed, please contact Robert Feild at (913) 551–7697 or e-mail at *Feild,Robert@epa.gov.* The EPA Region 7 toll-free phone number is 1–800–223–0425.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The EPA Region 7 announces its intent to delete the Shenandoah Stables site in Lincoln County, Missouri, from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the NCP, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the MDNR have determined that the remedial action for the site has been successfully executed.

The EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in **Federal Register.**

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the Shenandoah Stables site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e)(1) of the NCP provides that releases may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL, without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site:

(1) All appropriate response under CERCLA has been implemented, and no further action by EPA is appropriate;

(2) The State of Missouri has concurred with the proposed deletion decision;

(3) A notice has been published in the local newspapers and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and

(4) All relevant documents have been made available in the local site information repository.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management. As mentioned in section II of this notice, Sec. 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions. For deletion of this site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register.** Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis of Intended Site Deletion

The following site summary provides the EPA's rationale for the proposal to delete this site from the NPL.

Site Background and History

The Shenandoah Stables facility is located in a rural area along highway US–61 near Moscow Mills, Lincoln County, Missouri, approximately 35 miles northwest of St. Louis, Missouri. The property lies on the upper flood plain terrace of Crooked Creek in a primarily agricultural area. There are a number of single family residences, a livestock operation and other small businesses on approximately 5- to 10-acre parcels around the facility. The predominant land use is pasture land which is primarily vegetated with fescue.

During the early 1970's, activities at Shenandoah Stables included the boarding, training and sale of horses, and the staging of horse shows. Children periodically played in the arena building. Historical records indicate that the indoor arena was sprayed with 1,500 gallons of dioxin-contaminated waste oil to control dust on May 26, 1971. Following the spraying of contaminated waste oil, a number of adverse effects were observed in horses, other animals, and in humans. In August of 1971, the facility owner reportedly removed 6 to 8 inches of the contaminated arena soil from the indoor arena. This material was used as fill for a portion of U.S. Highway 61 adjacent to the Shenandoah Stables property, which was under construction at the time. Potentially contaminated materials placed in the road embankment of U.S. Highway 61 comprise a separate site not included in the NPL site boundary [1]. Horses continued to die after this initial excavation. In March 1972, an additional 18 inches of materials were reportedly removed by the site owner from the arena area and buried in a slough area about 75 feet southeast of the arena structure.

Investigation into the disposal practices of a southwestern Missouri chemical manufacturing facility led EPA to the Bliss Waste Oil Company and subsequently to a number of sites that had potentially been sprayed with dioxin-contaminated waste oil for dust control, including the Shenandoah Stables site. Initial sampling of the site in May 1982 showed 2,3,7,8-tetrachlorodibenzo-p-dioxin (dioxin) levels as high as 1,750 parts per billion (ppb). In 1984, an article was published by a toxicologist with the Centers for Disease Control, Center for Environmental Health (CDC), recommending 1 ppb as a level of concern for dioxin in residential soils. In January 1987, EPA proposed clean-up levels to the CDC for the excavation of the eastern Missouri dioxin sites, including Shenandoah Stables. The CDC concurred with EPA's proposed clean-up levels.

The Shenandoah Stables Site was proposed for the NPL on December 30, 1982, and finalized on the NPL September 8, 1983.

Response Actions

A Record of Decision (ROD) for excavation and interim storage of contaminated soils at the Shenandoah Stables site was issued by EPA on July 28, 1988. Implementation of this remedial action was completed in May 1989. A total of 6,418 tons of dioxin-contaminated materials resulting from soil excavation and arena building decontamination were containerized in bulk solids storage sacks and placed inside wood-framed, steel sided storage structures constructed on site pending final management. Ambient air monitoring was performed during all phases of earth-disturbing activities to assure that implementation of the remedial action did not result in a further release of contaminated materials.

On August 24, 1990, the EPA released the *Proposed Plan for Final Management of Dioxin-Contaminated Soil, Shenandoah Stables, Moscow Mills, Missouri.* This Proposed Plan presented the EPA's preferred remedy involving transportation of dioxin-contaminated materials currently in storage at the Shenandoah Stables site to the Times Beach site for thermal treatment using the temporary thermal treatment unit, consistent with the September 29, 1988, Times Beach Record of Decision. A ROD was signed for the Shenandoah Stables site on September 28, 1990, that selected off-site thermal treatment of dioxin-contaminated materials at Times Beach as a component of the remedy.

On December 31, 1990, a Consent Decree was entered in the Eastern District of Missouri between EPA, the State, and the primary potentially responsible party (PRP) group. The Consent Decree provided for a mixed work settlement that required each party to undertake certain tasks. Generally, EPA was responsible for excavation and transportation of dioxin-contaminated soils from 26 other eastern Missouri dioxin sites, including Shenandoah Stables, to Times Beach for incineration. The settling defendants were responsible for construction of a temporary incinerator at Times Beach and incineration of dioxin-contaminated materials from the 27 sites (including Shenandoah Stables).

Implementation of activities at Times Beach, including mobilization and operation of the temporary incinerator, was performed by the settling defendants in accordance with the December 1990 Consent Decree. The settling defendants awarded a contract for the temporary incinerator in February 1992. Initial testing of the incinerator was performed in December 1995. Full-scale operation of the incinerator commenced on March 17, 1996, and was completed June 16, 1997. A total of 265,354 tons of dioxin-contaminated materials from the 27 eastern Missouri dioxin sites was treated and disposed at Times Beach. A Certification of Completion for the Shenandoah Stables site was issued to the settling defendants by EPA on August 15, 1997, in accordance with provisions of the 1990 Consent Decree.

Dioxin-contaminated materials from the Shenandoah Stables site were transported to Times Beach by an EPA contractor from August 26, 1996, through October 1, 1996. Additional soil sampling was performed at the Shenandoah Stables site concurrent with the final remedial action. As a result of this sampling, an additional 34 tons of contaminated soil were excavated and transported to Times Beach for treatment during the final remedial action. A total of 6,452 tons of dioxin-contaminated materials from the Shenandoah Stables site was transported to Times Beach for incineration. Ambient air monitoring was conducted during excavation and transportation activities.

Following removal of contaminated materials from interim storage, the three storage buildings were decontaminated by pressure washing and sampled. The storage structures were left on site and abandoned as excess government property. Site restoration at Shenandoah Stables was completed following decontamination of the storage structures in October 1996.

Clean-up Standards

The 1988 ROD for this site established criteria for the removal of soils and other materials contaminated with dioxin (2,3,7,8-tetrachlorodibenzo-p-dioxin) from this site. In areas outside the arena, excavation continued until a residual concentration of less than 1

[1] The Shenandoah Stables site, site/spill number 0740, CERCLIS ID number MOD980685838 identifies the site appearing on the National Priorities List. The Shenandoah Stables Highway 61 Fill Area, site/spill number 0741, CERCLIS ID number MOD980685846 is not included in the NPL listing.

ppb was reached in the upper 12 inches of soil, or until a residual level of less than 10 ppb was reached at a depth greater than 12 inches. In the arena and slough area, excavation continued until a residual concentration of less than 1 ppb was reached in the upper 2 feet of soil, or until a concentration of less than 10 ppb was reached at depths greater than 2 feet. The criteria also provided for a maximum depth of excavation of four feet, or upon encountering bedrock, although these criteria were never applied, since residual dioxin concentrations meeting the previous criteria were achieved prior to reaching this depth or bedrock. During this remedial action, decontamination of the arena building was performed to meet criteria of less than 0.4 pg/cm2 recommended by the Missouri Department of Health (MDOH) and the Agency for Toxic Substances and Disease Registry (ATSDR).

Operation and Maintenance

The remedial response at the site was successful in removing dioxin-contaminated materials exceeding health-based levels for unrestricted use within the boundaries of the NPL site. No operation and maintenance activities are necessary to maintain the continued effectiveness of the remedy.

Five-Year Review

Hazardous substances do not remain at the site above health-based levels following completion of the remedial action. Pursuant to CERCLA Section 121(c) and as provided in the Office of Solid Waste and Emergency Response (OSWER) Directive 9355.7–02, Structure and Components of Five-Year Reviews, May 23, 1991, and OSWER Directive 9355.702A, Supplemental Five-Year Review Guidance, July 26, 1994, EPA is not required to conduct a statutory five-year review for this site. No five-year reviews will be conducted.

Community Involvement

An opportunity for public comment was provided by EPA prior to the excavation and interim storage of dioxin-contaminated soils. A Proposed Plan was released for public comment from June 28, 1988, through July 11, 1988. The Proposed Plan, Operable Unit Feasibility Study, and other documents in the administrative record were made available for public viewing at a local document repository.

The public was first invited to comment on the concept of a comprehensive solution for all of the eastern Missouri dioxin sites at a September 5, 1986, public meeting for the Minker/Stout/Romaine Creek feasibility study. At that meeting, it was announced that the State of Missouri had recommended evaluation of Times Beach as a location for siting a temporary thermal treatment unit and that EPA was evaluating this possibility. At that meeting, EPA announced that a feasibility study would be prepared and released for public comment to evaluate Times Beach as a potential location for centralized thermal treatment of designated eastern Missouri dioxin sites.

The *Times Beach Feasibility Study* was released for public comment from December 29, 1986, through March 27, 1987. A public meeting was held on February 12, 1987, to discuss alternatives evaluated in the study and to present the Agency's proposed remedy.

The Proposed Plan for Times Beach and the Minker/Stout/Romaine Creek sites was released February 19, 1988. A public comment period was held from February 19 through March 18, 1988, and a public meeting was held in Eureka, Missouri, March 10, 1988. On September 29, 1988, a ROD was signed by the Assistant Administrator, OSWER, that provided for a temporary incinerator to be located at Times Beach for the treatment of dioxin-contaminated materials from the Times Beach and the Minker/Stout/Romaine Creek sites. The ROD further provided that the temporary incinerator would be available to treat dioxin-contaminated materials from the other eastern Missouri sites.

A public meeting to discuss the Shenandoah Stables Proposed Plan for final management of dioxin-contaminated materials was conducted on September 19, 1990, at the Moscow Mills Community Center. Public comments were accepted by the Agency through September 24, 1990. A Responsiveness Summary was prepared which addressed comments received concerning the Shenandoah Stables Proposed Plan.

Applicable Deletion Criteria

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). The EPA, with the concurrence of the State of Missouri through the MDNR, believes that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available from the docket.

State Concurrence

In a letter dated July 30, 2001, the MDNR concurs with the proposed deletion of the Shenandoah Stables Superfund site from the NPL.

Dated: July 30, 2001.

William W. Rice,

Acting Regional Administrator U.S. EPA Region 7.

[FR Doc. 01–19752 Filed 8–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7026–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Times Beach Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 7 announces the intent to delete the Times Beach site (the site) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. The EPA and the State of Missouri Department of Natural Resources (MDNR) have determined that the remedial action for the site has been successfully executed.

DATES: Comments concerning the proposed deletion of this site from the NPL may be submitted on or before September 6, 2001.

ADDRESSES: Comments may be mailed to Robert Feild, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, SUPR, Kansas City, Kansas, 66101.

Information Repositories: Comprehensive information on this site is available through the Region 7 public docket which is available for viewing by appointment only. Appointments for copies of the background information from the Regional public docket should be directed to the EPA Region 7 Docket office at the following address: Regional Records Center, U.S. Environmental

Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas, 66101.

The deletion docket is also available for viewing at the following location: Missouri Department of Natural Resources (MDNR), 97 North Outer Road at Lewis Road, Eureka, Missouri, 63025.

FOR FURTHER INFORMATION CONTACT: If additional information is needed, please contact Robert Feild at (913) 551–7697 or e-mail at *Feild.Robert@epa.gov.* The EPA Region 7 toll-free phone number is 1–800–223–0425.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion-Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 7 announces its intent to delete the Times Beach site in St. Louis County, Missouri, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. The EPA and the MDNR have determined that the remedial action for the site has been successfully executed.

The EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the Times Beach site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e)(1) of the NCP provides that releases may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a deleted site from the NPL, the site may be restored to the NPL, without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this site:

(1) All appropriate response under CERCLA has been implemented, and no further action by EPA is appropriate;

(2) The State of Missouri has concurred with the proposed deletion decision;

(3) A notice has been published in the local newspapers and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and

(4) All relevant documents have been made available in the local site information repository.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management. As mentioned in section II of this notice, Sec. 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions. For deletion of this site, EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the EPA will prepare a Responsiveness Summary to address any significant public comments received. A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

IV. Basis of Intended Site Deletion

The following site summary provides the EPA's rationale for the proposal to delete this site from the NPL.

Site Background and History

Times Beach was formerly an incorporated city in southwest St. Louis County, approximately 20 miles southwest of the City of St. Louis. The site encompasses approximately 0.8 square miles, bordered on the north and east by unincorporated areas of St. Louis County, on the south by unincorporated areas of Jefferson County, and on the west by the City of Eureka. The City of Times Beach was disincorporated in 1985.

On the north and east, the site is contiguous to the Meramec River, the dominant hydrological feature in the area. The site is bisected at the southern end by Interstate 44. Burlington Northern Railroad lines are adjacent to Times Beach to the west. Much of the site is located in the five-year flood plain, and the entire site is within the 25-year flood plain. The area's topography is level to slightly sloping, with an average slope of less than one percent. Residential development has historically constituted the major land use. Commercial land use has been minimal, and the city had no industrial development. The surrounding areas have a mixture of residential and agricultural uses.

The unpaved roadways of the former town of Times Beach, located in St. Louis County, Missouri, were sprayed for dust control in the early 1970s with dioxin-contaminated waste oil. Investigation into the disposal practices of a southwestern Missouri chemical manufacturing facility led EPA to the Bliss Waste Oil Company and subsequently to a number of sites that had potentially been sprayed with dioxin-contaminated waste oil for dust control, including the Times Beach site.

The Times Beach site was proposed for the NPL on March 4, 1983, and finalized on the NPL on September 8, 1983.

Response Actions

The presence of dioxin contamination at initial concentrations up to 127 parts per billion (ppb) was confirmed by EPA through sampling conducted in

November and December 1982. In response to discovery of dioxin contamination and a health advisory issued by the Centers for Disease Control, EPA announced the permanent relocation of nearly two thousand residents of Times Beach in February 1983. In June 1983, a permanent relocation contract was signed between the State of Missouri, St. Louis County, a trustee appointed for the City of Times Beach, and the Federal Emergency Management Agency. Funds were subsequently transferred from EPA to the Federal Emergency Management Agency (FEMA) for the buyout. In accordance with the contract, all of the former Times Beach properties were conveyed to the State of Missouri once the deeds were acquired by FEMA.

In 1984 an article was published by a toxicologist with the Centers for Disease Control, Center for Environmental Health (CDC), recommending 1 ppb as a level of concern for dioxin in residential soils. In January 1987, EPA proposed clean-up levels to the CDC for the excavation of the eastern Missouri dioxin sites, including a proposed 20 ppb clean-up level for the anticipated future recreational land use at Times Beach. Because of the location of Times Beach in the flood plain of the Meramec River, future residential use of the site following site restoration was deemed impracticable, and no institutional controls were considered necessary to control future land use. The CDC concurred with the Agency's proposed clean-up levels.

In 1984, The Regional Administrator signed a Record of Decision (ROD) for an Interim Central Storage Facility to temporarily store dioxin-contaminated materials from three nearby eastern Missouri sites at Times Beach until a final remedy was available. The temporary storage portion of this remedy was never implemented. A separate component of the selected remedy, however, was the construction of a series of spur levees at Times Beach to control the velocity of Meramec River flood water during flood events in order to minimize scour and erosion of contaminated soils. In 1987, EPA completed the construction of the three-phase spur levee project through an Interagency Agreement with the U.S. Army Corps of Engineers.

In September 1988, a ROD was signed by the Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER), that provided for a temporary incinerator to be located at Times Beach for the treatment of dioxin-contaminated materials from Times Beach and the Minker/Stout/Romaine Creek sites. The ROD further provided that the temporary incinerator would be available to treat dioxin-contaminated materials from the other eastern Missouri sites.

In December 1990, a Consent Decree was entered in the Eastern District of Missouri between EPA, the State, and the primary potentially responsible party (PRP) group. The Consent Decree provided for a mixed work settlement that required each party to undertake certain tasks. Generally, EPA was responsible for excavation and transportation of dioxin-contaminated soils from 26 eastern Missouri dioxin sites to Times Beach for incineration. The EPA also had responsibility for collecting and disposing of the household hazardous wastes at Times Beach prior to demolition of residences and other structures. The State was responsible for assuring a 10 percent cost share for remedial actions and for providing long-term management of the Times Beach site. The settling defendants were responsible for demolition and disposal of structures and debris remaining after the permanent relocation, construction of a ring levee to flood-protect an incinerator subsite, construction of a temporary incinerator, excavation of contaminated soils at Times Beach, incineration of dioxin-contaminated materials from the 27 sites (including Times Beach) and restoration of Times Beach upon completion of response actions.

The settling defendants awarded a contract for the temporary incinerator in February 1992. Demolition and disposal of structures and debris, excavation of dioxin-contaminated soils, construction of a ring levee, and mobilization of the temporary incinerator by the settling defendants were completed by November 1995. Initial testing of the incinerator was performed in December 1995. Full-scale operation of the incinerator commenced on March 17, 1996, and was completed June 16, 1997. A total of 265,354 tons of dioxin-contaminated materials from the 27 eastern Missouri dioxin sites was treated at Times Beach, including 37,234 tons of dioxin-contaminated materials excavated from the Times Beach site itself. Solid treatment residue from the incineration of these materials was land disposed on site after testing confirmed that required treatment levels had been achieved. Site restoration was completed by the settling defendants in accordance with a design approved by the State and EPA.

An ambient air monitoring network was operated throughout the incineration of dioxin-contaminated soils at Times Beach. The network included four on-site and two off-site monitoring stations incorporating 17 monitors measuring ambient dioxin and PM–10 levels. The air monitoring detected no discernible increase in airborne dioxin or PM–10 levels at Times Beach resulting from implementation of the remedial action.

In addition to the response work directed at dioxin contamination at Times Beach, a removal action was performed by EPA in June 1997, to excavate and dispose of soils in an area within the former Times Beach city park that had been contaminated by the dumping of bulk liquid wastes, unrelated to the contamination affecting roadways throughout the site. The hazardous substances present in the former city park were primarily toluene, ethyl benzene, and xylene. Traces of tetrachloroethylene and trichloroethylene were also present. No dioxin was detected in the former city park soils. The contaminated materials were characterized as a special waste by St. Louis County, and disposed of off site at a facility permitted to receive these materials.

Clean-up Standards

The 1988 ROD for this site established criteria for the removal of soils and other materials contaminated with dioxin (2,3,7,8-tetrachlorodibenzo-p-dioxin) from this site. This criteria was modified in an Explanation of Significant Differences issued July 18, 1990. The modified criteria required removal of dioxin-contaminated soils exceeding 10 ppb and placement of a one-foot vegetated clean soil cover over all areas with residual concentrations exceeding 1 ppb.

Operation and Maintenance

The remedial response at the site was successful in removing dioxin-contaminated materials exceeding health-based levels for unrestricted use within the boundaries of the NPL site. No operation and maintenance activities are necessary to maintain the continued effectiveness of the remedy.

Five-Year Review

Hazardous substances do not remain at the site above health-based levels following the completed response actions. Pursuant to CERCLA Section 121(c) and as provided in OSWER Directive 9355.7–02, Structure and Components of Five-Year Reviews, May 23, 1991, and OSWER Directive 9355.702A, Supplemental Five-Year Review Guidance, July 26, 1994, EPA is not required to conduct a five-year review for this site. No five-year reviews will be conducted.

Community Involvement

Public participation in the selection of a comprehensive final remedial action for the eastern Missouri dioxin sites, including the Times Beach site, began with the public release of the *Feasibility Study of Final Remedial Actions for the Minker/Stout/Romaine Creek Site* in July 1986. This study evaluated remedial alternatives for the dioxin-contaminated soil being temporarily stored at the Minker/Stout/Romaine Creek site, located approximately ten miles south of Times Beach. Remedial alternatives evaluated in this study included offsite centralized thermal treatment at a nearby facility within 50 miles of the Minker/Stout/Romaine Creek site.

A public comment period was held from August 8, 1986, through September 5, 1986, for the *Feasibility Study of Final Remedial Actions for the Minker/Stout/Romaine Creek Site.* A public meeting was held August 25, 1986. At that meeting, EPA announced that a feasibility study to evaluate Times Beach as a potential location for centralized thermal treatment would be completed and released for public comment.

The *Times Beach Feasibility Study* was released for public comment from December 29, 1986, through March 27, 1987. A public meeting was held on February 12, 1987, to discuss alternatives evaluated in the study and to present the Agency's proposed remedy.

The Times Beach and Minker/Stout/Romaine Creek Proposed Plan was released for public comment from February 19 through March 18, 1988, and a public meeting was held in Eureka, Missouri, on March 10, 1988. The proposed plan recommended centralized thermal treatment of contaminated soils at Times Beach and the Minker/Stout/Romaine Creek site at a temporary thermal treatment facility to be located at Times Beach. The proposed remedy was selected in a September 29, 1988, ROD, and Implemented through a December 31, 1990, Consent Decree. In 1990, an opportunity for public comment was provided for the Times Beach Consent Decree prior to entry.

During the numerous opportunities provided for public comment, the local community was primarily concerned that the thermal treatment unit would become permanent and that other types of wastes from throughout the country would be transported to Times Beach for treatment. In response to these concerns, EPA agreed to obtain an operating permit under the Resource Conservation and Recovery Act that would limit operation of the treatment unit. A public hearing for the draft operating permit was conducted on January 31, 1995. In addition, three public availability sessions were conducted near the site in January 1995 with representatives from EPA, the state, and local officials in attendance.

From July 1991 through the completion of the clean up of the site, EPA participated in regular meetings of the Times Beach Monitoring Committee, a group established by the St. Louis County Executive whose members included local residents and elected officials. This group served in an oversight role and provided information to the community regarding clean-up activities. In addition, EPA permanently staffed an on-site public information center at Times Beach during implementation of response activities.

Applicable Deletion Criteria

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of Missouri through the MDNR, believes that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this site from the NPL. Documents supporting this action are available from the docket.

State Concurrence

In a letter dated July 30, 2001, the MDNR concurs with the proposed deletion of the Times Beach Superfund site from the NPL.

Dated: July 30, 2001.

William W. Rice,

Acting Regional Administrator, U.S. EPA Region 7.

[FR Doc. 01–19751 Filed 8–6–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7418]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFE and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator, Federal Insurance and Mitigation Administration certifies that

this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding sources(s)	Location of referenced elevation	Elevation in feet * (NGVD)		Communities affected
		Effective	Modified	
NEW MEXICO Bernalillo County and Incorporated Areas				
Arroyo Del Pino	Near Marigold Drive	#1	#3	Bernalillo County (Uninc. Areas), City of Albuquerque.
North Arroyo De Domingo Baca.	At intersection of Interstate 25 and Corona Avenue	#3	#2	City of Albuquerque.
	At intersection of Anaheim Avenue and Louisiana Boulevard.	#1	None	
	Approximately 200 feet north of intersection of Lowell Street and Corona Avenue.	#2	None	
South Arroyo De Domingo Baca.	At intersection of Pino Avenue and Holbrook Street	#1	#3	Bernalillo County (Uninc. Areas), City of Albuquerque.
	Southwest of intersection of Palomas Avenue and Lowell Street.	*5,914	*5,913	
	Just downstream of Bobcat Boulevard	None	#2	
South Arroyo De Domingo Baca Tributary.	Approximately 800 feet downstream of Paseo Del Norte.	None	#2	Bernalillo County (Uninc. Areas).
	Approximately 200 feet upstream of Ridge Road	None	#2	
Middle Branch South Arroyo De Domingo Baca.	Approximately 500 feet downstream of Ridge Road	#1	#1	Bernalillo County (Uninc. Areas).
	Approximately 200 feet upstream of Ridge Road	#1	#1	
South Branch South Arroyo De Domingo Baca.	Approximately 600 feet downstream of Ridge Road	#1	#1	Bernalillo County (Uninc. Areas).
	Approximately 200 feet upstream of Ridge Road	#1	#1	
Tijeras Arroyo	Just upstream of Sandia Military Reservation	*5,385	*5,386	Bernalillo County (Uninc. Areas), City of Albuquerque.
	Approximately 500 feet west of Intersection of I–40 and Old Route 66.	None	*5,988	
Tributary A	Approximately 1,200 feet west of and parallel to Caballo De Fuenza Road.	None	#1	Bernalillo County (Uninc. Areas).
Tributary B	Approximately 1,200 feet east of and parallel to Caballo De Fuenza Road.	None	#1	Bernalillo County (Uninc. Areas).
Tributary C	North of Old Route 66 in T10N R4E Sec. 25	None	#2	Bernalillo County (Uninc. Areas).
Tributary D	North and south of Old Route 66 in T10N R5E Sec. 30.	None	#2	Bernalillo County (Uninc. Areas).
Tributary E	South of Coyote Springs Road in T10N R5E Sec. 30	None	#2	Bernalillo County (Uninc. Areas).
Tributary F	North of Old Route 66 in T10N R5E Sec. 19	None	#2	Bernalillo County (Uninc. Areas).

Depth in feet above ground

ADDRESSES

City of Albuquerque: Maps are available for inspection at the Public Works Department, Development and Building Services Division, 600 2nd Street NW, Albuquerque, New Mexico.

Send comments to The Honorable Jim Baca, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico, 87103.

Bernalillo County (Unincorporated Areas): Maps are available for inspection at 2400 Broadway, SE, Albuquerque, New Mexico.

Send comments to The Honorable Tom Rutherford, Chairman, Bernalillo County Board of Commissioners, 2400 Broadway, SE, Albuquerque, New Mexico 87102.

Flooding sources(s)	Location of referenced elevation	Elevation in feet * (NGVD)		Communities affected
		Effective	Modified	
TEXAS **Lubbock County and Incorporated Areas**				
Blackwater Draw	From just upstream of IH–27	*3,181	*3,182	City of Lubbock.
	To just downstream of Yucca Lane	*3,182	*3,183	
Playa System C1	At confluence with Yellowhouse Draw	None	*3,180	City of Lubbock
	Near intersection of Levelland Highway and Milwaukee Avenue (Playa 105).	*3,273	*3,272	
Playa System C2	Near intersection of Erskin Street and Knoxville Avenue (Playa 53).	*3,221	*3,221	City of Lubbock.
Playa System C3	At confluence with North Fork Double Mountain Fork of the Brazos River.	None	*3,146	City of Lubbock.
	Near intersection of Clovis Road and Baylor Street (at Playa System C1).	None	*3,211	
Playa System D1	At confluence with North Fork Double Mountain Fork of the Brazos River.	*3,128	*3,128	City of Lubbock.
	Near intersection of 25th Street and Geneva Avenue (Tech Terrace Playa).	*3,211	*3,212	
	Near intersection of Kewanee Avenue and 32nd Street (Playa 40).	*3,262	*3,261	
Playa System D2	At Maxey Park (Playa 43)	*3,226	*3,226	City of Lubbock.
	Near intersection of Levelland Highway and Utica Drive (Playa 45).	*3,242	*3,242	
Playa System D3	At confluence with North Fork Double Mountain Fork of the Brazos River.	None	*3,142	City of Lubbock.
	Near 26th Street and Globe Avenue (at Playa System D1).	None	*3,185	
Playa System E1	Just upstream of confluence with North Fork Double Mountain Fork of the Brazos River.	None	*3,094	Lubbock County (Uninc. Areas), City of Lubbock.
	Near intersection of Milwaukee Avenue and County Road 6900 (Playa 39).	*3,269	*3,269	
Playa System E2	Near intersection of Elgin Avenue and Loop 289 (at Playa System E1).	*3,222	*3,223	City of Lubbock.
	Northwest of intersection of 66th Street and Elgin Avenue.	*3,225	*3,224	
Playa System E3	Near Brownfield Highway and Highway 62/82 split (at Playa System E1 upper).	None	*3,276	City of Lubbock.
	Near intersection of 59th Street and Upland Avenue (Playa 101).	None	*3,281	
Playa System E4 (A, B, & C)	Just upstream of Route 327	None	*3,267	City of Lubbock.
	Northwest of the intersection of City of 82nd Street and Iola Avenue.	None	*3,283	
Playa System E5 & E7	Near intersection of Dowden Avenue and Brownfield Highway.	None	*3,289	Lubbock County (Uninc. Areas), Town of Wolfforth.
	Near intersection of 82nd Street and Hartland Avenue.	None	*3,307	
Playa System E1 Upper & E8	Northwest of intersection of Frankford Avenue and Highway 82/62 (Playa 37).	*3,266	*3,267	Lubbock County (Uninc. Areas), City of Lubbock.
	Southeast of intersection of 66th Street and Inler Avenue (Playa 138).	None	*3,302	
Playa System E9	Southwest of intersection of 66th Street and Quincy Avenue (at Playa System E4B).	None	*3,272	City of Lubbock.
	Near intersection of Homestead Avenue and 82nd Avenue (Playa 32).	None	*3,289	
Playa System E12 & E13 (Western Area).	Southeast of intersection of 34th Street and Hartland Avenue.	None	*3,317	Lubbock County (Uninc. Areas).
	Near intersection of Inler Avenue and 66th Street	None	*3,294	
Playa System F	Near intersection of 50th Street and Avenue A (Playa 16).	None	*3,182	City of Lubbock
	Near intersection of IH–27 and Highway 289	*3,185	*3,184	
	Approximately 1 mile south of Highway 289 on IH–27	None	*3,220	
Playa System G1, G2 G3, & G4.	Near intersection of 98th Street and University Avenue (Playa 85).	*3,204	*3,204	City of Lubbock.
	Near intersection of 73rd Street and Bangor Avenue (Playa 30).	None	*3,260	
Playa System G5	Near intersection of 98th Street and Milwaukee Avenue (Playa 94).	None	*3,261	Lubbock County (Uninc. Areas), City of Lubbock.
	Near intersection of 98th Street and Alcove Avenue (Playa 133).	None	*3,301	
Playa Lake 13 & 15	Near intersection of Slaton Road and Martin L. King Boulevard.	None	*3,166	City of Lubbock.

Flooding sources(s)	Location of referenced elevation	Elevation in feet * (NGVD)		Communities affected
		Effective	Modified	
	Near intersection of Slaton Road and Martin L. King Boulevard.	None	*3,171	
Playa Lake 89	Near intersection of 93rd Street and Memphis Avenue.	None	*3,219	City of Lubbock.
Ransom Canyon Lake	Near Lake Shore Drive	None	*2,957	Lubbock County (Uninc. Areas), Village of Lake Ransom Canyon, Village of Buffalo Springs.
Slaton Plaza System	Near intersection of Division Street and New Mexico Street (Twin Lakes Playa).	None	*3,072	City of Slaton.
	Near intersection of Dawson Street and Fisher Street (Compress Lake Playa).	None	*3,081	
Woodrow Playa System	Near intersection of University Avenue and Woodrow Road.	None	*3,194	Lubbock County (Uninc. Areas).
Yellowhouse Draw	At confluence with North Fork Double Mountain Fork of the Brazos River.	*3,156	*3,157	City of Lubbock.
	Just upstream of Atchison, Topeka and Santa Fe Railway.	*3,172	*3,173	
	Just upstream of University Avenue	*3,191	*3,192	
	Approximately 5,500 feet upstream of Loop 289 North Service Road.	*3,203	*3,200	

ADDRESSES

Village of Buffalo Springs: Maps are available for inspection at City Hall, #2 Marina Point, Pony Express Drive, Buffalo Springs, Texas.
Send comments to The Honorable Leland White, Mayor, Village of Buffalo Springs, Rural Route 10, Box 500, Buffalo Springs, Texas 79404.
Village of Lake Ransom Canyon: Maps are available for inspection at City Hall, 24 Lee Kitchens Drive, Ransom Canyon, Texas.
Send comments to The Honorable Leon Whetzel, Mayor, Village of Lake Ransom Canyon, 24 Lee Kitchens Drive, Ransom Canyon, Texas 79366.
Unincorporated Areas of Lubbock County: Maps are available for inspection at the Lubbock County Courthouse, 904 Broadway Street, Lubbock, Texas.
Send comments to The Honorable Thomas Head, Lubbock County Judge, P.O. Box 10536, Lubbock, Texas 79408.
City of Lubbock: Maps are available for inspection at City Hall, 1625 13th Street, Lubbock, Texas.
Send comments to The Honorable Windy Sitton, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, Texas 79457–2000.
City of Slaton: Maps are available for inspection at City Hall, 130 South 9th Street, Slaton, Texas.
Send comments to The Honorable Don Kendrick, Mayor, City of Slaton, 130 South 9th Street, Slaton, Texas 79364.
Town of Wolfforth: Maps are available for inspection at City Hall, 328 East Highway 62/82, Wolfforth, Texas.
Send comments to The Honorable Sylvia Preston, Mayor, Town of Wolfforth, P.O. Box 36, Wolfforth, Texas 79382.

TEXAS
Travis County and Incorporated Areas

Colorado River/Lake Travis	Portions of Colorado River/Lake Travis from approximately 4 miles upstream to approximately 21 miles upstream of Mansfield Dam.	*716	*716	Travis County (Uninc. Areas), City of Jonestown, City of Lago Vista, City of Lakeway.
Cow Creek	From confluence with Colorado River/Lake Travis to approximately 3 miles upstream.	*716	*716	Travis County (Uninc. Areas).
Flat Creek	From confluence with Colorado River/Lake to approximately 2,100 feet upstream.	*716	*716	Travis County (Uninc.Areas).

ADDRESSES

City of Jonestown: Maps are available for inspection at City Hall, 18649 FM 1431, Suite 4A, Jonestown, Texas.
Send comments to The Honorable Sam Billings, P.O. Box 5023, Jonestown, Texas 78645.
City of Lago Vista: Maps are available for inspection at City Hall, 5803 Thunderbird, Lago Vista, Texas.
Send comments to The Honorable Dennis Jones, P.O. Box 4727, Lago Vista, Texas 78645.
City of Lakeway: Maps are available for inspection at City Hall, 104 Cross Creek, Lakeway, Texas.
Send comments to The Honorable Charles Edwards, Mayor, City of Lakeway, 104 Cross Creek, Lakeway, Texas 78734.
Unincorporated Areas of Travis County: Maps are available for inspection at 411 West 13th Street, 8th Floor, Permit Office, Austin, Texas.
Send comments to The Honorable Samuel T. Biscoe, Travis County Judge, P.O. Box 1748, Austin, Texas 78767–1748.

WASHINGTON
Pend Oreille County and Incorporated Areas

Pend Oreille River	Approximately 19,600 feet downstream of Sullivan Lake Road.	None	*2,041	Pend Oreille County (Uninc. Areas), Towns of Metaline, Metaline Falls, Ione, Newport and Cusick.
	Just downstream of Usk Bridge	None	*2,054	
	Approximately 4,000 feet downstream of U.S. Route 2, Near Rat Island.	None	*2,056	

Flooding sources(s)	Location of referenced elevation	Elevation in feet * (NGVD)		Communities affected
		Effective	Modified	

ADDRESSES

Town of Cusick: Maps are available for inspection at the Town Hall, 105 First Street, Cusick, Washington.
Send comments to The Honorable Paul Haas, Mayor, Town of Cusick, P.O. Box 243, Cusick, Washington 99119.
Town of Ione: Maps are available for inspection at the Town Hall, 207 Houghton Street, Ione, Washington.
Send comments to The Honorable Arlen Baker, Mayor, Town of Ione, P.O. Box 498, Ione, Washington 99139.
Town of Metaline: Maps are available for inspection at the Town Hall, 101 Housing Drive, Metaline, Washington.
Send comments to The Honorable Walt Caravan, Mayor, Town of Metaline, 101 Housing Drive, Metaline, Washington 99152.
Town of Metaline Falls: Maps are available for inspection at the Town Hall, East 201 5th Avenue, Metaline Falls, Washington.
Send comments to The Honorable Jane E. Reed, Mayor, Town of Metaline Falls, P.O. Box 277, Metaline Falls, Washington 99153
City of Newport: Maps are available for inspection at the City Hall, South 200 Washington Avenue, Newport, Washington.
Send comments to The Honorable Dee Opp, Mayor, City of Newport, South 200 Washington Avenue, Newport, Washington 99156.
Unincorporated Areas of Pend Oreille County: Maps are available for inspection at the Planning Department, 625 West Fourth Street, Newport, Washington.
Send comments to The Honorable Mark Hansen, Chairman, Pend Oreille County Board of Commissioners, P.O. Box 5025, Newport, Washington 99156.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: July 31, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–19685 Filed 8–6–01; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–B–7417]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Acting Administrator, Federal Insurance and Mitigation Administration certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § *67.4*

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Arizona	La Paz County (Unincorporated Areas).	Bouse Wash	Approximately 5,700 feet downstream of Yellow Bird Drive.	None	*875
			Approximately 3,200 feet downstream of Plomosa Road.	None	*925
			Aproximately 3,500 feet upstream of Joshua Street.	None	*979
		Tributary Along East Side Railroad.	Approximately 3,700 feet downstream of Willamette Drive.	None	*876
			Approximately 3,000 feet upstream of Main Street.	None	*963
		Tributary B	At confluence with Bouse Wash	None	*889
			Approximately 800 feet upstream of the unnamed road stretching between Winema Drive and Cholla Drive.	None	*946
		Tributary C	At confluence with Bouse Wash	None	*898
			Approximately 800 feet upstream of Cholla Drive.	None	*925
		Tributary D	At confluence with Bouse Wash	None	*923
			Approximately 2,800 feet upstream of Black Mountain Drive.	None	*985
		Tributary D–1	At confluence with Tributary D	None	*932
			Approximately 800 feet upstream of Rayder Avenue.	None	*947
		Tributary E	At confluence with Bouse Wash	None	*948
			Approximately 700 feet upstream of Rayder Avenue.	None	*982
		Tributary F	At confluence of Bouse Wash	None	*876
			Approximately 3,550 feet upstream of La Posa Road.	None	*941
	La Paz County (Unicorporated Areas).	Tributary H	At confluence with Bouse Wash	None	*940
			Approximately 1,600 feet upstream of Plomosa Road.	None	*985
		Tributary I	At confluence with Bouse Wash	None	*944
			Just downstream of Plomosa	None	*1,005

Maps are available for inspection at the LaPaz County Development Department, 1112 Joshua Avenue, Suite 202, Parker, Arizona.

Send comments to The Honorable Cliff Edey, Chairperson, La Paz County Board of Supervisors, 1108 Joshua Avenue, Parker, Arizona 85334.

Colorado	Fremont County (Unincorporated Areas).	Oak Creek Right Overbank.	500 feet downstream of West Seventh Street.	None	*5,151
			Approximately 150 feet upstream of West Seventh Street.	None	*5,156
		Oak Creek	Approximately 1,200 feet upstream of confluence with Arkansas River.	*5,154	*5,158
			Just downstream at Atchison, Topeka & Sante Fe Railroad.	*5,245	*5,246

Maps are available for inspection at the County Courthouse, 615 Macon Avenue, Room B5, Canon City, Colorado.

Send comments to the Honorable Joe Rall, Fremont County Commissioner, 615 Macon Avenue, Canon City, Colorado, 81226.

Idaho	Ammon (City) Bonneville County.	Sand Creek Drainage	Approximately 850 feet upstream of Sunnyside Road.	*4,714	*4,718
			Approximately 85 feet upstream of Wanda Street.	#1	*4,724

Maps are available for inspection at the Ammon City Hall, c/o Ms. Aleen Jenson, 2135 South Ammon Road, Ammon, Idaho, 83406.

Send comments to The Honorable Bruce Ard, Mayor, City of Ammon, 2135 South Ammon Road, Ammon, Idaho.

Idaho	Bonner County (Unincorporated Areas).	Pend Oreille River	Approximately 4,000 feet downstream of U.S. Route 2.	None	*2,056
			Approximately 800 feet downstream of Alderni Falls Dam.	None	*2,057

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at the Bonner County Planning Department, 127 South First Avenue, Sandpoint, Idaho.					
Send comments to The Honorable Dale Van Stone, Chairman, Bonner County Board of Commissioners, 215 South First Avenue, Sandpoint, Idaho 83864.					
Idaho	Bonneville County (Unincorporated Areas).	Black Canyon Drainage	At Nielson Road	#3	*4,741
			Approximately 4,900 feet upstream of Nielson Road.	#1	*4,775
		Salt River	2,500 feet downstream of confluence of Miller Creek.	None	*5,677
		Sand Creek Drainage	Just downstream of First Street	#1	*4,744
			Just upstream of Sunnyside Road	*4,716	*4,716
Maps are available for inspection at the Bonneville County Courthouse, 605 North Capital Avenue, Idaho Falls, Idaho.					
Send comments to The Honorable Bill Shurtleff, Chairman, Bonneville County Board of Commissioners, 605 North Capital Avenue, Idaho Falls, Idaho 83402.					
Missouri	Pulaski County (Unincorporated Areas).	Roubidoux Creek	Approximately 4,800 feet upstream from confluence with Gasconade River.	None	*765
			Approximately 2,700 feet downstream of Historic Route 66.	*775	*777
			Approximately 2,600 feet upstream of Historic Route 66.	*781	*784
	Pulaski County (Unincorporated Areas).	Roubidoux Creek	Approximately 11,000 feet upstream of Interstate 44.	*796	*796
		Mitchell Creek	Just upstream of Interstate 44	None	*856
			Approximately 4,700 feet upstream of Highway H.	None	*908
		Pearson Hollow	Approximately 300 feet upstream of Glenn Road.	None	*892
			Approximately 1,100 feet upstream of Glenn Road.	None	*901
Maps are available for inspection at the Pulaski County Courthouse, 301 Historic Route 66 East, Waynesville, Missouri 65583.					
Send comments to The Honorable Harold York, Presiding County Commissioner, Pulaski County Courthouse, 301 Historic Route 66 East, Waynesville, Missouri 65583.					
Missouri	Steelville (City) Crawford County.	Whittenburg Creek	Approximately 600 feet downstream of County Road 545.	None	*726
			Just downstream of Highway 8	*731	*732
		Yadkin Creek	At confluence with Whittenburg Creek	None	*731
			Approximately 5,000 feet upstream of Spring Street.	*783	*785
Maps are available for inspection at City Hall, 103 Brickey Street, Steelville, Missouri.					
Send comments to The Honorable Terry Palmer, Mayor, City of Steelville, 103 Brickey Street, Steelville, Missouri 65565.					
North Dakota	Raymond (Township) Cass County.	Maple River	At middle of eastern edge of Section 30 in Township 140 North Range 50 West.	None	*903
			At southwestern corner of Section 30 in Township 140 North Range 50 West.	None	*904
Maps are available for inspection at the Office of the Zoning Administration, 16365 33rd Street, Southeast, Mapleton, North Dakota.					
Send comments to The Honorable Jim Hagenson, Chairman, Raymond Township Board, 16620 33rd Street, Southeast, Harwood, North Dakota 58042					
Oregon	Gresham (City) Multnomah County.	Kelly Creek	Approximately 130 feet downstream of Division Street.	*335	*335
			Approximately 400 feet upstream of NE Kane Road.	None	*353
			Approximately 410 feet downstream of SE El Camino Drive.	None	*355
			Approximately 430 feet upstream of Powell Valley Road.	None	*387
			Approximately 670 feet downstream of SE Ironwood Way.	None	*416

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
	.....	Approximately 630 feet upstream of 282nd Street.	None	*446	

Maps are available for inspection at the Community Map Repository, City of Gresham, Community & Economic Development Department, 1333 NW Eastman Parkway, Gresham, Oregon.

Send comments to The Honorable Charles Becker, Mayor, City of Gresham, 1333 NW Eastman Parkway, Gresham, Oregon 97030.

Oregon	Warm Springs Indian Reservation.	Warm Springs River	Approximately 500 feet downstream of Bia Route 13.	None	*1,408
			Approximately 650 feet upstream of Bia Route 3.	None	*1,471
		Shitike Creek	Approximately 100 feet upstream of the confluence with Deschutes River.	None	*1,372
			Approximately 5,850 feet upstream of confluence with Tenino Creek.	None	*1,534
		Tenino Creek	At confluence with Shitike Creek	None	*1,471
			Approximately 3,700 feet upstream of Bia Route 4.	None	*1,540

Maps are available for inspection at the Confederated Tribes of Warm Springs, 1233 Veterans Street, Warm Springs, Oregon.

Send comments to The Honorable Olney Platt Jr., Chairman, Confederated Tribes of Warm Springs Reservation, P.O. Box C, Warm Springs, Oregon 97761.

South Dakota	Hot Springs, (City) Fall River County.	Cold Brook Creek	At confluence with Hot Brook Creek and Fall River.	None	*3,475
			Approximately 300 feet upstream of Tillotson Street.	None	*3,502
		Fall River	Approximately 1,250 feet downstream of Joplin Avenue.	None	*3,375
			At confluence with Hot Brook Creek and Cold Brook Creek.	None	*3,475
		Unnamed Tributary to Fall River.	At confluence with Fall River	None	3,390
			Apprximately 700 feet upstream of River Street.	None	*3,408

Maps are available for inspection at City Hall, 303 North River Street, Hot Springs, South Dakota.

Send comments to The Honorable Karleen Kirchner, Mayor, City of Hot Springs, 303 North River Street, Hot Springs, South Dakota 57747.

Wyoming	Newcastle (City) Weston County.	Cambria Creek	Approximately 1930 feet downstream of Carter Avenue.	None	+4,248
			Approximately 2,100 feet upstream of North Summit Avenue.	None	+4,350
		Cambria Overflow	At convergence with Little Oil Creek	None	+4,188
			At divergence from Cambria Creek	None	+4,268
		Cave Spring Canyon	At confluence with Cambria Creek	None	+4,335
			Approximately 1,950 feet upstream of confluence with Cambria Creek.	None	+4,373
		Little Oil Creel	Approximately 1,900 feet downstream of Morrisey County Road.	None	+4,134
			At U.S. Highway 16 Bypass	None	+4,227
			At Stampede Street	None	+4,270

+NAVD of 1988

Maps are available for inspection at City Hall, 10 W. Warwick, Newcastle, Wyoming.

Send comments to The Honorable Mike Mills, Mayor, City of Newcastle, 10 W. Warwick, Newcastle, WY 82701.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: July 31, 2001.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 01–19684 Filed 8–6–01; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: 2001–001; Notice 01]

RIN 2127–AI07

Insurer Reporting Requirements; List of Insurers Required to File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Appendices A, B, and C of 49 CFR Part 544, insurer reporting requirements. The appendices list those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences. An insurer included in any of these appendices would be required to file three copies of its report for the 1998 calendar year before October 25, 2001. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25.

DATES: Comments must be submitted not later than October 9, 2001. Insurers listed in the appendices would be required to submit reports on or before October 25, 2001.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice and submit them to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590.

Ms. Spinner's telephone number is (202) 366–4802. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR Part 544, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and (3) rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term ''small insurer'' is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a ''small insurer,'' but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR Part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best, which A.M. Best publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to Part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from Automotive Fleet Magazine and Business Travel News.

C. When a Listed Insurer Must File a Report

Under Part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report by October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

Proposal

1. Insurers of Passenger Motor Vehicles

Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on August 14, 2000 (65 FR 49505). Based on the 1998 calendar year data market shares from A.M. Best, we propose to remove Prudential of America Group and Zurich Insurance Group-U.S. from Appendix A and to add CGU Group, SAFECO Insurance Companies, and St. Paul Companies to Appendix A.

Each of the 19 insurers listed in Appendix A is required to file a report before October 25, 2001, setting forth the information required by Part 544 for each State in which it did business in the 1998 calendar year. As long as these 19 insurers remain listed, they will be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 1998, because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. Based on the 1998 calendar year data for market shares from A.M. Best, we propose to remove Allmerica P & C Companies, Commercial Union Insurance Companies, and Nodak Mutual Insurance Company from Appendix B and to add New Jersey Manufacturers Group to Appendix B.

The nine insurers listed in Appendix B are required to report on their calendar year 1998 activities in every State where they had a 10 percent or greater market share. These reports must be filed by October 25, 2001, and set forth the information required by Part 544. As long as these nine insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in Automotive Fleet Magazine and Business Travel News for 1998, NHTSA proposes to remove Ford Rent-A-Car-System, Ryder System, Inc., and USL Capital Fleet Services from Appendix C and to add Consolidated Service Corporation to Appendix C. Each of the 17 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 1998 no later than October 25, 2001, and set forth the information required by Part 544. As long as those 17 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing Part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 2000, the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $86,100 for any insurer added to Appendix A, $34,440 for any insurer added to Appendix B, and $9,936 for any insurer added to Appendix C. If this proposed rule is made final, for Appendix A, the agency would remove two companies and add three companies; for Appendix B, the agency would remove three companies and add one company; and for Appendix C, the agency would remove two companies and add one company. The agency estimates that the net effect of this proposal, if made final, would be $7,284 to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW, Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 (''Insurer Reporting Requirements'') and approved for use through August 31, 2003, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. ''Small insurer'' is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all ''self insured rental and leasing companies'' that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that two copies of the comments be submitted. All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, two copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and one copy from which the purportedly confidential information has been deleted should be accompanied by cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration regarding the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal are available for inspection in the docket. NHTSA will continue to file relevant information, as it becomes available in the docket after the closing date. It is recommended that interested persons continue to examine the docket for new material.

Those persons wanting receipt of their comments in the rule docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 would continue to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 would be revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year 3 years previous to the year in which the report is filed (e.g., the report due by October 25, 2001 will contain the required information for the 1998 calendar year).

* * * * *

3. Appendix A to Part 544 would be revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American Financial Group
American International Group
California State Auto Association
CGU Group [1]
CNA Insurance Companies
Erie Insurance Group
Farmers Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Hartford Insurance Group
Liberty Mutual Insurance Companies
Nationwide Group
Progressive Group
SAFECO Insurance Companies [1]
St. Paul Companies [1]
State Farm Group
Travelers PC Group
USAA Group

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2001.

4. Appendix B to Part 544 would be revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Concord Group Insurance Companies (Vermont)
Kentucky Farm Bureau Group (Kentucky)
New Jersey Manufacturers Group (New Jersey) [1]
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2001.

5. Appendix C to Part 544 would be revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Rentals, Inc.)
Associates Leasing Inc.
A T & T Automotive Services, Inc.
Avis, Rent-A-Car, Inc.
Budget Rent-A-Car Corporation
Consolidated Service Corporation [1]
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of The Hertz Corporation)
Lease Plan USA, Inc.
National Car Rental System, Inc.
PHH Vehicle Management Services
U-Haul International, Inc. (Subsidiary of AMERCO)
Wheels Inc.

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2001.

Issued on: July 30, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety, Performance Standards.

[FR Doc. 01–19469 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 66, No. 152

Tuesday, August 7, 2001

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

Agricultural Marketing Service

[Docket Number LS–01–10]

Livestock Mandatory Reporting: Confidentiality Guideline

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of modification of confidentiality guideline.

SUMMARY: This notice announces that the Secretary of Agriculture is modifying the confidentiality guideline currently used under the Livestock Mandatory Reporting Act program to protect the identity of reporting firms and preserve the confidentiality of proprietary business transactions. This modification would continue to preserve confidentiality while enabling USDA to issue more frequent and more accurate reports on livestock and meat, and provide all segments of the livestock and meat industries with relevant information on which to base market decisions.

EFFECTIVE DATE: This notice is effective August 20, 2001.

ADDRESSES: Comments may be sent to John E. Van Dyke, Chief, Livestock and Grain Market News Branch, Livestock and Seed Program, Agricultural Marketing Service, USDA, 1400 Independence Avenue, SW, Room 2619–South Building, Stop 0252, Washington, DC 20250–0242; telephone (202) 720–6231, fax (202) 690–3732, E-mail *john.vandyke@usda.gov.* Comments received may be inspected at 1400 Independence Avenue, SW, Room 2619–South Building, Stop 0252, Washington, DC between 7:30 a.m. and 4 p.m. The comments will also be posted on the Livestock and Grain Market News Branch web site. The address is *www.ams.usda.gov/lsg/mncs/LS_MPR.htm.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the modification of the confidentiality guideline for livestock mandatory reporting, please contact John E. Van Dyke, Chief, Livestock and Grain Market News Branch at (202) 720–6231, facsimile (202) 690–3732, or E-mail at *john.vandyke@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Livestock Mandatory Reporting Act of 1999 (Act) (Pub. L. 106–78; 113 Stat. 1188; 7 U.S.C. 1635–1636(h)) as an amendment to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) was intended to enhance the transparency of market information in the livestock and meat industries by providing market participants with access to information on price trends, contracting arrangements and supply and demand conditions. As required by the Act, AMS publishes such information in a manner designed to protect the identity of reporting entities and preserve the confidentiality of transactions.

On April 2, 2001, AMS began the process of collecting and reporting mandatory data, as authorized by the Act. The reporting program differed from most other Federal data reporting programs with respect to the frequency of data collection (two to three times daily, within intervals as short as four hours) and reporting (one hour after receipt of data). As required by statute, a guideline was developed to protect the confidentiality of proprietary business information.

The confidentiality guideline adopted for the program, the so-called ''3/60'' guideline, was based on similar guidelines used throughout the Federal government. To satisfy the ''3/60'' confidentiality guideline, the following two conditions were required:

(1) At least three reporting entities must be reflected in each category of data being reported during an individual reporting period, and

(2) No single reporting entity could account for 60 percent or more of the total volume reported in any single data category during an individual reporting period.

Because much of the data required by the Act had not been available before implementation of the new program, AMS could not predict the level or pattern of market activity by reporting entities for each reporting period. AMS therefore chose to apply the confidentiality guideline in a very conservative manner. Essentially, the ''3/60'' guideline was applied to each data cell in each report that was to be released.

With several weeks of data collection now completed, a much clearer understanding has been developed regarding the purchasing patterns of entities required to provide data under the program. This database permits several observations about the unique nature of the data collection that takes place under the livestock mandatory reporting program. As already noted, this program differs significantly from most other Federal data reporting programs with respect to the frequency of data collection and reporting. Given the extremely short time horizon of most reporting periods, the level of market participation during an individual reporting period frequently does not meet the current confidentiality standard. The consequence of the current approach to protecting confidentiality has been to severely limit the extent to which collected data can be released. Nearly one-third of scheduled daily cattle and swine reports were withheld from publication between April 2 and June 14, 2001, for reasons of confidentiality, and many other reports were released with missing line items or sections.

In addition, the data now available show that for most reports the pattern of entities submitting data is random, even when fewer than three entities supply data for a morning or afternoon report. The data also indicate that, for most reports, no single entity provides the majority of collected data.

Upon review of the current program and the data that have been collected continuously since April 2, 2001, AMS has determined that the level of market participation is sufficiently diverse to permit the release of much of the data currently withheld from the public without compromising the confidentiality of business transactions. To maximize the availability of market information to the public while protecting the identity of individual market participants, AMS intends to extend the time frame over which the required level of market participation may be met, and establish an additional

safeguard during those instances when only one entity supplies data during individual reporting periods. By making these adjustments in the confidentiality guideline used in the livestock mandatory reporting program, AMS anticipates a significant improvement in the percentage of market information that can be released to the public without jeopardizing the confidentiality of proprietary transactions.

AMS will continue the practice of withholding the number and identity of entities providing data for an individual report. In addition, given the frequency of data collection, the following guideline elements will be adopted:

(1) At least three entities must provide data at least 50 percent of the time over the most recent 60-day time period;

(2) No one entity may provide more than 70 percent of the data for a report over the most recent 60-day time period—to ensure that no single entity is providing such a large proportion of the data that its identity might be revealed; and

(3) No one entity may provide data more than 20 percent of the time, as the only entity, over the most recent 60-day time period—to protect the identity of an entity when it is the only plant providing data.

To determine levels of market participation over the most recent 60-day time period, the computer program currently used to collect and publish mandatory data from reporting entities—known as the Mandatory Price Reporting (MPR) system—will be modified to develop a daily computer-generated log detailing application of a ''3/70/20'' confidentiality guideline over the most recent 60-day period for all reports generated by the MPR system. The 60-day time period evaluated in this process will consist of both required reporting days and any Federal or State government holidays that have fallen on a weekday. The computer-generated log will be reviewed to determine whether reports and/or data items have failed to meet the ''3/70/20'' guideline, and identify possible aberrations in market activity that could have caused such a problem. Importantly, the computer-generated log will be reviewed to identify any trends in levels or patterns of market participation by reporting entities in current reporting areas. This latter review should prove helpful in anticipating situations where changing market participation could create confidentiality concerns.

AMS anticipates that this modification in the confidentiality guideline for livestock mandatory reporting will result in a significant improvement in the percentage of market reports made available to the public while continuing to maintain confidentiality. For example, under the current ''3/60'' confidentiality guideline, approximately 30 percent of all scheduled daily cattle and swine reports (703 out of 2,376) were withheld from publication between April 2 and June 14, 2001. Using the newly developed confidentiality guideline, fewer than 2 percent of these same reports would have been withheld from publication.

The software changes necessary to provide the daily computer-generated logs for review of the ''3/70/20'' confidentiality guideline over the most recent 60-day time period will require approximately 12 weeks to implement. In the interim, AMS will ensure adherence to the ''3/70/20'' confidentiality guideline by conducting bi-weekly reviews of all reports and individual data items, using individual queries to examine collected data and determine whether required levels of market participation and diversity are being met.

Authority: 7 U.S.C. 1621 et seq.

Dated: August 3, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–19876 Filed 8–3–01; 2:48 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 01–064–1]

Animal Disease Risk Assessment, Prevention, and Control Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: We are seeking comments and suggestions regarding the development of a report required by the Animal Disease Risk Assessment, Prevention, and Control Act of 2001. The report will discuss the economic impacts that would be associated with the potential introduction of foot-and-mouth disease, bovine spongiform encephalopathy, and related diseases into the United States; the potential risks posed by those diseases to public and animal health; and recommendations to protect the health of animal herds and U.S. citizens from those risks. We will use the information gathered through this notice and a public meeting to assist us in developing this report.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by September 6, 2001. We will also consider comments made at a public meeting that will be held on August 24, 2001 from 9:00 a.m. to 12:00 p.m.

ADDRESSES: Please send your postal comment and three copies to: Docket No. 01–064–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238 We will also accept comments electronically via the Animal Disease Risk Assessment, Prevention and Control website at *http://comments.aphis.usda.gov.* Please state that your comment refers to Docket No. 01–064–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

The public meeting will be held at the Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD, Conference Rooms C and D.

FOR FURTHER INFORMATION CONTACT: Mr. William O. Macheel, Policy and Program Development, APHIS, 4700 River Road Unit 120, Riverdale, MD 20737–1236; (301) 734–4420.

SUPPLEMENTARY INFORMATION:

Background

Foot-and-Mouth Disease

Foot-and-mouth disease (FMD) is a severe and highly contagious viral infection affecting cattle, deer, goats, sheep swine, and other animals. The most effective means of eradicating FMD is by the slaughter of affected animals. Although FMD was eradicated in the United States in 1929, the virus could be reintroduced by a single infected animal, animal product, or person carrying the virus. Once introduced, FMD can spread quickly through exposure to aerosols from infected animals, direct contact with

infected animals, contact with contaminated feed or equipment, or contact with humans harboring the virus or carrying the virus on their clothing. FMD is endemic to more than two-thirds of the world and is considered to be widespread in parts of Africa, Asia, Europe, and South America. FMD virus occurs in at least 7 different serotypes and over 60 subtypes. As FMD outbreaks have occurred, the United States has banned the importation of live ruminants and swine as well as many animal products, from countries affected by FMD. Recently, the United States implemented bans in response to outbreaks in Argentina, the European Union, and Taiwan.

It appears that FMD is primarily spread among livestock through aerosol, direct contact, and ingestion of animal products including milk products. FMD could be introduced into the United States if animal products carrying the FMD virus that have not been properly processed are imported into the United States from regions where FMD exists and are ingested by ruminants or other livestock in the United States. Current outbreaks in a number of formerly FMD-free regions have demonstrated both the speed with which an FMD outbreak can spread and the magnitude of its consequences.

An FMD outbreak in the United States could be devastating, given the Nation's extensive livestock holdings. Besides the direct economic effects on ruminant and swine producers, consequences of the disease would ripple through the economy, causing indirect costs in sectors beyond agriculture. International movement of many commodities would be disrupted by restrictions imposed by trading partners. Preliminary results of an APHIS simulation model indicate that costs of an FMD outbreak to the national economy could range from several hundred million dollars to billions of dollars.

Bovine Spongiform Encephalopathy

Bovine spongiform encephalopathy (BSE) is a neurological disease of bovine animals and possibly other ruminants and is not known to exist in the United States. It appears that BSE is primarily spread though the use of ruminant feed containing certain protein products from ruminants infected with BSE. Currently, the U.S. Food and Drug Administration (FDA) regulations at 21 CFR 589.2000 prohibit the feeding of protein products that contain or may contain certain protein derived from mammalian tissues to cattle and other ruminants. However, BSE could be introduced into the United States if foreign-source protein materials carrying the BSE agent, such as meat, animal products, animal byproducts, and related materials are imported into the United States from regions where BSE exists, or from regions that present an undue risk of introducing BSE into the United States, and are ingested by cattle or other ruminants in the United States. BSE could also be introduced into the United States if ruminants from regions where BSE exists, or ruminants from regions that present an undue risk of introducing BSE into the United States, are imported into the United States.

A ban on the feeding of ruminant products to other ruminants was enacted in the United Kingdom in 1988 and in certain other European countries in the early 1990's. A ban on the feeding of all mammalian products to ruminants was enacted in the European Union (EU) in 1994. However, several EU countries have identified cases of BSE in animals born after these bans were imposed. This has led to the conclusion among experts studying these cases that feed that was not prohibited by the bans was cross-contaminated by feed of ruminant origin. It appears likely that such cross-contamination occurred at facilities that process both prohibited and nonprohibited products.

Opinions issued in July and November 2000 by the European Commission's (EC's) Scientific Steering Committee stated that such cross-contamination has prolonged the BSE epidemic in Europe. In December 2000, the EC announced a temporary prohibition on the feeding of processed animal protein to all farmed animals. This prohibition became effective on January 1, 2001.

The Animal Disease Risk Assessment, Prevention, and Control Act

The Animal Disease Risk Assessment, Prevention, and Control Act of 2001 (Pub. L. 107–9 referred to below as the Act) directs the Secretary of Agriculture to provide the people of the United States and Congress with information concerning actions by Federal agencies to prevent FMD, BSE, and related diseases in the United States; the sufficiency of legislative authority to prevent or control FMD, BSE, and related diseases in the United States; the economic impacts that would be associated with the potential introduction of FMD, BSE, and related diseases into the United States; and the risks to public health from possible links between BSE and other spongiform encephalopathies to human illness.

The Act requires the Secretary of Agriculture, after consultation with other Federal agencies, to submit to the committees and subcommittees designated by the Act a preliminary report concerning coordinated interagency activities to assess, prevent, and control the spread of FMD and BSE in the United States; sources of information from the Federal government available to the public on FMD and BSE; and any immediate needs for additional legislative authority, appropriations, or product bans to prevent the introduction of FMD or BSE into the United States. The preliminary report has been prepared and will be submitted to Congress in the near future. The committees and subcommittees designated by the Act to receive the report are the Committee on Agriculture of the House of Representatives; the Committee on Agriculture, Nutrition, and Forestry of the Senate; the Subcommittee on Agriculture, Rural Development, and Related Agencies of the Committee on Appropriations of the Senate; and the Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies of the Committee on Appropriations of the House of Representatives.

The Act also requires the Secretary of Agriculture to submit to the same committees and subcommittees of Congress a final report that discusses the economic impacts that would be associated with the potential introduction of FMD, BSE, and related diseases in the United States; the potential risks to public and animal health from FMD, BSE, and related diseases; and recommendations to protect the health of animal herds and citizens of the United States from those risks, including, if necessary, recommendations for additional legislation, appropriations, or product bans.

The Act requires the Secretary, in preparing the final report, to consult with other Federal agencies; private and nonprofit sector experts in infectious disease research, prevention, and control; international, State, and local governmental animal health officials; private, nonprofit, and public sector livestock experts; representatives of blood collection and distribution entities; representatives of consumer and patient organizations; and other interested members of the public.

Content of Final Report

The Act provides that the final report shall contain:

- An assessment of the risks to the public presented by the potential

presence of FMD, BSE, and related diseases in domestic and imported livestock, livestock and animal products, wildlife, and blood products;

• Recommendations to reduce and manage the risks of FMD, BSE, and related diseases;

• Any plans of the Secretary to identify, prevent, and control FMD, BSE, and related diseases in domestic and imported livestock, livestock products, wildlife, and blood products;

• A description of the incidence and prevalence of FMD, BSE, variant Creutzfeldt-Jakob (vCJD) disease and related diseases in other countries;

A description and an analysis of the effectiveness of the measures taken to assess, prevent, and control the risks of FMD, BSE, vCJD, and related diseases in other countries;

• A description and an analysis of the effectiveness of the measures that the public, private, and nonprofit sectors have taken to assess, prevent, and control the risk of FMD, BSE, and related diseases in the United States, including controls of ports of entry and conveyances;

• A description of the measures taken to prevent and control the risk of BSE and vCJD transmission through blood collection and transfusion; and

• A description of any measures (including any planning or managerial initiatives such as interagency, intergovernmental, international, and public-private sector partnerships) that any Federal agency plans to initiate or continue to assess, prevent, and control the spread of FMD, BSE, vCJD, and related diseases in the United states and other countries.

The final report shall also provide plans and recommendations in the following areas:

• Plans by Federal agencies (including the Centers for Disease Control and Prevention) to monitor the incidence and prevalence of the transmission of FMD, BSE, vCJD, and related diseases in the United States and to assess the effectiveness of efforts to prevent and control the spread of FMD, BSE, vCJD, and related diseases in the United States;

• Plans by Federal agencies (including the Agricultural Research Service, the Cooperative State Research, Education, and Extension Service, and the National Institutes of Health) to carry out, in partnership with the private sector, research programs into the causes and mechanism of transmission of FMD and BSE and diagnostic tools and preventative and therapeutic agents for FMD, BSE, vCJD, and related diseases; and

• Plans for providing appropriate compensation for affected animals in the event of the introduction of FMD, BSE, or related diseases into the United States.

Provisions for the final report also include recommendations to Congress for legislation that will improve efforts to assess, prevent, or control the transmission of FMD, BSE, vCJD, and related diseases in the United States and in other countries.

We welcome all comments on the issues discussed above and encourage the submission of ideas on any associated topics or other suggestions for the evaluation of disease risk assessment, prevention, and control processes. We will use the information gathered through this notice and the public meeting to assist us in developing the report to Congress.

You may submit your postal or electronic comments to the addresses provided at the beginning of this notice under the heading **ADDRESSES**. In addition, we will be hosting a public meeting to provide interested persons a full opportunity to orally present any data, views, suggestions, and questions. The public meeting will be held on Friday August 24, 2001, at the Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD, Conference Rooms C and D, from 9:00 a.m. to 12:00 p.m.

A representative of APHIS will preside at the public meeting. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the meeting record. Persons who wish to speak at the meeting will be asked to provide their name and organization. We ask that anyone who reads a statement or submits a written statement provide two copies to the presiding officer at the meeting.

If you wish to speak at the meeting, please register in advance by sending an e-mail message to William.O.Macheel@aphis.usda.gov or by calling Mr. Macheel (see **FOR FURTHER INFORMATION CONTACT**). The message should contain your name, telephone number, organization, if any, and an estimate of the time you need to speak.

On-site registration for the public meeting will take place outside the meeting room from 8:30 a.m. to 9:00 a.m. The public meeting will begin at 9:00 a.m. and is scheduled to end at 12:00 p.m., local time. However, the meeting may be terminated at any time after it begins if all persons desiring to speak have been heard. If the number of speakers at a meeting warrants it, the presiding officer may limit the time for presentations so that everyone wishing to speak has the opportunity.

Parking and Security Procedures

Please note that a fee of $2 is required to enter the parking lot at the USDA Center. The machine accepts $1 bills or quarters.

Upon entering the building, visitors should inform security personnel that they are attending the Animal Disease Risk Assessment, Prevention, and Control public meeting. Identification is required. Security personnel will direct visitors to the registration tables located outside of Conference Rooms C and D. Registration upon arrival is necessary for all participants.

Done in Washington, DC, this 2nd day of August 2001.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 01–19825 Filed 8–6–01; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of Cougar Bar Purchase Unit, Nez Perce County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: On February 27, 2001, the Acting Deputy Under Secretary for Natural Resources and Environment, Department of Agriculture, created the Cougar Bar Purchase Unit. This purchase unit comprises 363.40 acres, more or less, within Nez Perce County, Idaho. A copy of the establishment document, which includes the legal description of the lands within the purchase unit, appears at the end of this notice.

EFFECTIVE DATE: Establishment of this purchase unit was effective February 27, 2001.

ADDRESSES: A copy of the map showing the purchase unit is on file and available for public inspection in the Office of the Director, Lands Staff, 4th Floor-South, Sidney R. Yates Federal Building, Forest Service, USDA, 201 14th Street, SW., Washington, DC 20250, between the hours of 8:30 a.m. and 4:30 p.m. on business days. Those wishing to inspect the map are encouraged to call ahead to (202) 205–1248 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jack Craven, Director, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, telephone: (202) 205–1248.

Dated: July 30, 2001.
Hilda Diaz-Soltero,
Associate Chief for Natural Resources.

BILLING CODE 3410–11–P

ESTABLISHMENT OF THE COUGAR BAR PURCHASE UNIT NEZ PERCE COUNTY, STATE OF IDAHO

The following described lands lying adjacent to the Hells Canyon National Recreation Area and the Wallowa-Whitman National Forest are determined to be suitable for the protection of the watersheds of navigable streams and for other purposes in accordance with section 6 of the Weeks Act of 1911 (16 U.S.C. 515). Therefore, in furtherance of the authority of the Secretary of Agriculture pursuant to the Weeks Act of 1911, as amended, including section 17 of the National Forest Management Act of 1976 (Pub. L. 94-588; 90 Stat. 2961), these lands are hereby designated and established as the Cougar Bar Purchase Unit:

Boise Meridian

T. 30 N., R. 4 W.

Sec. 6, lots 2, 3, 7, 8, 11, 12, 17, N1/2SE1/4, and E1/2SE1/4SE1/4,

Sec. 7, E1/2NE1/4NE1/4.

Containing 363.40 acres, more or less.

Executed in Washington, D.C., this 27th day of FEBRUARY, 2001.

/s/ David P. Tenny
David P. Tenny
Acting Deputy Under Secretary

[FR Doc. 01–19801 Filed 8–6–01; 8:45 am]
BILLING CODE 3410–11–C

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, New Mexico, West Texas, and West Oklahoma Amendment of Land and Resource Management Plans in the Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Southwestern Region of the Forest Service is planning to prepare an environmental impact statement on a proposal to amend National Forest land and resource management plans to modify standards and guidelines for Mexican spotted owl and northern goshawk within wildland-urban interface areas and to emphasize the management of wildland-urban interface areas throughout the southwest. The amendment would modify applicable standards and

guidelines to place emphasis on, and describe direction for the management of wildland-urban areas in the southwestern region. The amendment would apply to all subsequent project-level resource management decisions that will involve site-specific environmental analysis and appropriate public involvement.

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis should be received in writing to the address listed below.

ADDRESSES: Send written comments to USDA Forest Service, 333 Broadway SE, Albuquerque, New Mexico 87102–3498, ATTN: Director Ecosystem Analysis and Planning.

Responsible Official: The Regional Forester, Southwestern Region, will be the responsible official and will decide on amendments to land and resource management plans to incorporate standards and guidelines as described above.

FOR FURTHER INFORMATION CONTACT: Director of Ecosystem Analysis and Planning, 333 Broadway SE, Albuquerque, New Mexico 87102–3498, (505) 842–3210.

SUPPLEMENTARY INFORMATION: The following describes the proposed amendment for the land and resource management plans to reflect management emphasis in wildland-urban interface areas and to modify certain standards and guidelines to complement that management emphasis. The current land and resource management plans in the Southwestern Region contain no specific description or management direction for wildland-urban interface areas. Current standards and guidelines for Mexican spotted owl and northern goshawk habitat management may conflict with wildland-urban interface management. The language for the proposed amendment to modify forest-wide standards and guidelines follows. The proposed text will read:

Wildland-Urban Interface

All Forests

Wildland-urban interface includes those areas of resident populations at imminent risk from wildfire, and human developments having special significance. These areas encompass not only the sites themselves, but also the continuous slopes and fuels that lead directly to the sites, regardless of the distance involved. Reference Forest Service Manual 5140, R–3 Supplement for a complete definition of wildland-urban interface. Management activities in wildland-urban interface should be designed to keep fire on the ground, or in a worst-case scenario, transform a running crown fire back to a ground fire, so that suppression efforts can be more effective. The objective of fuels management in areas of wildland-urban interface is to reduce potential wildland fire intensity to a level where fire suppression forces can safely remain on site during a wildland fire. This includes fires originating on other ownerships that may encroach upon national forest lands, or wildland fires originating on national forest lands that may encroach on other ownerships.

Mexican Spotted Owl

Applicability

The Mexican spotted owl standards and guidelines apply to forest and woodland communities, with the exception of wildland-urban interface areas within ½ mile of the forest boundary. Within this ½-mile area, wildland-urban interface fuel management objectives take precedence over Mexican spotted owl standards and guidelines. Wildland-urban interface areas beyond the ½-mile limit are subject to Mexican spotted owl standards and guidelines if they are within forest and woodland communities. Mexican spotted owl standards and standards and guidelines should be followed with ½ mile of a wildland-urban interface boundary to the extent they can be implemented and still achieve wildland-urban interface fuel management objectives.

Ecosystem Management in Northern Goshawk Habitats

Applicability

The northern goshawk standards and guidelines apply to forest and woodland communities that are outside of the Mexican spotted owl protected and restricted areas, with the exception of areas within ½ mile of wildland-urban interface.

Wildland-urban interface borders those areas of human populations at imminent risk from wildfire, and human developments having special significance. See Forest Service Manual 5140, R–3 Supplement, for a complete definition of wildland-urban interface.

Within this ½-mile area, wildland-urban interface fuel management objectives take precedence over northern goshawk standards and guidelines if they are within forest and woodland communities. Northern goshawk standards and guidelines should be followed within ½ mile of a wildland-urban interface boundary to the extent they can be implemented and still achieve wildland-urban interface objectives.

Within Mexican spotted owl protected and restricted areas outside of the ½-mile zone described above, the Mexican spotted owl standards and guidelines take precedence over the northern goshawk standards and guidelines. Outside of the ½-mile zone, one or the other (owl or goshawk) set of standards and guidelines applies to forest and woodland communities, but the Mexican spotted owl standards and guidelines always take precedence in areas of overlap.

Comments concerning the proposed action were solicited from over 900 potentially affected and interested people, agencies, and organizations in June and July 2001. These comments will assist us in preparing a draft environmental impact statement.

A draft environmental impact statement is expected to be available for public review and comment by October 2001, and a final environmental impact statement by March 2002.

The comment period on the draft environmental impact statement will run for 45 days following the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the environmental impact statement.

To assist the Forest Service in identifying and considering issues, and concerns on the proposed action, comments on the draft environmental

impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

Dated: July 31, 2001.

Eleanor S. Towns,

Regional Forester.

[FR Doc. 01–19688 Filed 8–6–01; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) submitted to the Office of Management and Budget (OMB) for clearance the following collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This request has been submitted under the emergency processing provisions of the Paperwork Reduction Act.

Agency: Technology Administration.

Title: Review of Public and Private High-tech Workforce Training Programs.

Agency Form Numbers(s): None.

OMB Approval Number: None.

Type of Request: Emergency submission.

Burden Hours: 750 hours.

Number of Respondents: 420.

Average Hour Per Response: 1 to 2 hours depending on the requirement.

Needs and Uses: This information collection is needed to fulfill the Secretary of Commerce's responsibilities mandated in Public Law 106–313. Section 115 (a) and (b) directs the Secretary of Commerce to conduct a review of existing public and private high-tech workforce training programs in the United States, and submit a report to Congress on the study findings no later than 18 months from the bill's enactment. This information is needed to analyze how high-tech workers obtain their training, and how well the skills provided by various high-tech training models meet employer needs. An analysis of what is learned from this information collection will be contained in the report to Congress. Comparable information is not available on a standardized basis.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, Federal, state, local or tribal government.

Frequency: One-Time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via Internet at *mclayton@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Dave Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 1, 2001.

Gwellnar Banks,

Management Analyst, Office of the Chief Financial Officer.

[FR Doc. 01–19676 Filed 8–6–01; 8:45 am]

BILLING CODE 3510–18–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Survey of Business Owners and Self-Employed Persons (SBO) Pretest

ACTION: Proposed collection, comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to (Valerie Strang, Bureau of the Census, CSD, Room 1183–3, Washington, DC 20233–6400, (301) 457–3316).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to conduct a pretest of the 2002 Survey of Business Owners and Self-Employed Persons (SBO), previously known as the Survey of Minority-Owned Business Enterprises and the Survey of Women-Owned Business Enterprises (SMOBE/SWOBE). In the SBO, businesses are asked several questions about their business as well as several questions about the gender, race, and ethnicity of the owner(s). This survey provides the only comprehensive, regularly collected source of information on business owners' race, ethnicity, and gender. The survey is conducted as part of the economic census program which is required by law to be taken every 5 years under Title 13 of the United States Code, sections 131, 193, and 224.

Businesses which reported any business activity on any one of the following Internal Revenue Service tax forms: 1040 (Schedule C), ''Profit or Loss from Business'' (Sole Proprietorship); 1065, ''U.S. Partnership Return of Income''; or any one of the 1120 corporate tax forms will be eligible for the pretest.

The pretest is needed to test several significant changes to the questionnaire since previously conducted and the impact these changes will have on the estimates. These changes include the following:

The questions about race and ethnicity have been modified to meet OMB guidelines to allow respondents the opportunity to select more than one

race. Also, per the OMB guidelines, the Hispanic origin question is placed before the race question. Although these questions are patterned after the race/ethnicity questions used on the 2000 Decennial Census, significant background research has suggested alternative question formats or instructions that have not previously been tested. We will test two alternatives in the 2002 SBO Pretest.

The survey adopts person-level reporting for a variety of characteristics for up to three individual owners, because background research suggested difficulty with aggregate reporting of race and ethnicity combinations for multiple owners. Summaries from the 1997 SMOBE/SWOBE showed that 75 percent of businesses surveyed had three or fewer owners. Therefore we decided to capture information for, at most, three owners.

Some questions have been modified to alleviate reporting problems encountered on the 1997 SMOBE/SWOBE.

Several new questions have been borrowed from the former Characteristics of Business Owners survey, which has not been funded for the upcoming economic census. These items will fill the void for many data users, including the Small Business Administration and other interested associations. Some of these new questions have been incorporated into the individual owner questions, while others are asked about the entire business.

A few new questions have been added to increase our understanding of businesses' use of alternative employment arrangements, as well as their use of various e-business processes.

II. Method of Collection

The Census Bureau will use a mailout/mailback survey form to collect the data. The questionnaires will be mailed from our National Processing Center in Jeffersonville, Indiana. A mail follow-up will be conducted at approximately a one-month interval. Upon closeout of the survey, the response data will be edited and reviewed.

III. Data

OMB Number: Not available.

Form Number: Two alternate versions of the SBO–1, ''Survey of Business Owners and Self-Employed Persons'' will be tested.

Type of Review: Regular review.

Affected Public: Large and small businesses, other for-profit and nonprofit organizations, and publicly held corporations.

Estimated Number of Respondents: 10,000.

Estimated Time Per Response: The average for all respondents is 15 minutes or less.

Estimated Total Annual Burden Hours: 2,500 hours.

Estimated Total Annual Cost: The total cost to the respondnet is estimated to be $49,150 based on the hourly salary of $19.16 for entry level accountants and auditors multiplied by the annual burden hours (2,500). (Occupational Employment Statistics—Bureau of Labor Statistics 1999 National Occupational Employment and Wage Estimates for Professional, Paraprofessional, and Technical Occupations).

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, sections 131, 182, and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 2, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–19677 Filed 8–6–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Program Dynamics—2002

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 9, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Michael McMahon, Census Bureau, FOB 3, Room 3375, Washington, DC 20233–0001, (301) 457–1616.

SUPPLEMENTARY INFORMATION

I. Abstract

The Survey of Program Dynamics (SPD) is a household-based survey designed as a data collection vehicle that can provide the basis for an overall evaluation of how well welfare reforms are achieving the aims of the Administration and the Congress and meeting the needs of the American people.

The SPD is a large, longitudinal, nationally-representative study that measures participation in welfare programs, including both programs that are being reformed and those that remain unchanged. The SPD measures other important social, economic, demographic, and family changes that will allow analysis of the effectiveness of the welfare reforms.

With the August 22, 1996, signing of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193), the Census Bureau is required to conduct the SPD, using as the sample the households from the 1992 and 1993 Survey of Income and Program Participation (SIPP). The information we obtain will be used to evaluate the impact of this law on a sample of previous welfare recipients and future recipients of assistance under new state programs funded under this law as well as assess the impact on other low-income families. Issues of particular attention include welfare dependency, the length of welfare spells, the causes of repeat welfare spells, educational enrollment and work training, health care utilization, out-of-wedlock births, and the status of children.

The 2002 SPD is the fifth year of data collection using the same SPD core questions. The effect of welfare changes on children's behaviors and outcomes is a great concern to those evaluating welfare reform. Therefore, the 2002 data collection will include additional questions on the extended measures of child well-being, last asked during the 1999 data collection. The extended measures of child well-being questions cover parent/child interactions; frequency of specific cognitively-stimulating children activities; establishment of family routines; family conflict; behavior problems; and school engagement and attendance.

The history of SPD is as follows:

- During the 1997 SPD, we collected data using the Current Population Survey (CPS) March questionnaire. The CPS March questionnaire provided baseline income, work experience, and program participation (''core data'') data for the period prior to the implementation of welfare reforms in1996.
- During the 1998 and 2001 SPD, we collected the core data plus data from adolescents on their homelife, school, peers, and potential risk behaviors.
- During the 1999 SPD, we collected core data plus extended measures of child well-being. We will collect extended measures of child well-being data again in 2002.
- During the 2000 SPD, we collected core data plus a one-time topical module which collected the residential histories of children.

II. Method of Collection

The SPD is a longitudinal study of welfare-related activities with the sample respondents originally selected from 1992 and 1993 SIPP panels. We conducted interviews in 1997, 1998, 1999, 2000, and 2001. We collect data from a nationally representative sample of the noninstitutionalized resident population living in the United States for all individuals, families, and households using a computer-assisted interviewing (CAI) instrument. Individuals who are at least 15 years of age at the time of the interview will be eligible to be in the survey.

We have scheduled a small sample of households for reinterview. The reinterview process assures that all households were properly contacted and that the data are valid.

III. Data

OMB Number: 0607–0838.

Form Number: CAI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 52,000 respondents, 1,500 reinterview respondents.

Estimated Time Per Response: 36 minutes per respondent, 10 minutes per reinterview.

Estimated Total Annual Burden Hours: 31,450.

Estimated Total Annual Cost: No costs to the respondents other than their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182; and Title 42, United States Code, Section 614 (Public Law 104–193, Section 414, signed August 22, 1996).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice are summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 2, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–19678 Filed 8–6–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below. Recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

(1) E-Learning, Higher Education and Vocational Training Trade Mission to Southeast Asia, Bangkok, Thailand and Kuala Lumpur, Malaysia, October 15–19, 2001, Recruitment closes on September 20, 2001. For further information contact: Ms. Danielle Moser, U.S. Department of Commerce. Telephone 410–962–4539; or e-Mail: *danielle.moser@mail.doc.gov.*

(2) Aerospace Executive Service Mission at Asian Aerospace 2002—Singapore, February 25–26, 2002, Recruitment closes on December 31, 2001. For further information contact: Mr. Eric Nielsen, U.S. Department of Commerce, Telephone 520–670–5540; or e-Mail: *enielsen@mail.doc.gov.*

For further information contact Mr. Thomas Nisbet, U.S. Department of Commerce. Telephone 202–482–5657, or e-Mail *Tom_Nisbet@ita.doc.gov.*

Dated: August 1, 2001.

Thomas H. Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 01–19747 Filed 8–6–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000724217–1193–03]

RIN 0640–ZA08

Solicitation of Applications for the Minority Business Development Center (MBDC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) is soliciting competitive applications, under its Minority Business Development Center (MBDC) Program, from organizations to operate MBDCs in Miami, Florida, Oklahoma City, Oklahoma, and Honolulu, Hawaii. The prior solicitation for these three geographic service areas was unsuccessful. The intent of this solicitation is to provide business assistance to minority-owned companies in these three areas.

DATES: The closing date for applications for each MBDC is September 21, 2001.

Anticipated time for processing of applications is 120 days. MBDA anticipates that awards for the MBDC program will be made with a start date of January 1, 2002. Completed applications for the MBDC program must be (1) mailed (USPS postmark) to the MBDC Program Office (see: **ADDRESSES**); or (2) received by MBDA (see: **ADDRESSES**) no later than 5 p.m. Eastern Daylight Time.

ADDRESSES: If the applicant or its representative mails the application, it must be mailed to: Minority Business Development Center Program Office, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

If the application is hand-delivered by the applicant or its representative, the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW., between Pennsylvania and Constitution Avenues.

To submit an application electronically (see: **SUPPLEMENTARY INFORMATION**), you must go to www.mbda.gov/egrants.

FOR FURTHER INFORMATION CONTACT: For further information, contact the MBDA Regional Office (see: Geographic Service Areas) in which the project will be located.

Pre-Application Conference: A pre-application conference will be held for each MBDC solicitation. Contact the MBDA Regional Office (see: Geographic Service Areas) in which the project will be located to receive further information. Proper identification is required for entrance into any Federal building.

SUPPLEMENTARY INFORMATION: The prior solicitation for operators for MBDCs in Miami, Florida, Oklahoma City, Oklahoma, and Honolulu, Hawaii, published in the **Federal Register** on August 28, 2000 (65 FR 52069), was unsuccessful. MBDA has elected to re-compete these service areas. The requirements and procedures contained in the August 28, 2000 solicitation are applicable to this solicitation. For a copy of the August 28, 2000 solicitation, please go to *www.mbda.gov*.

Applications postmarked later than the closing date or received after the closing date and time will not be considered.

Applicants must submit one signed original plus two (2) copies of the application.

Applicants are encouraged to submit their proposal electronically via the World Wide Web. However, the following paper forms must be submitted with original signatures in conjunction with any electronic submissions by the closing date and time stated above: (1) SF–424, Application for Federal Assistance; (2) the SF–424B, Assurances-Non-Construction Programs; (3) the SF–LLL (Rev. 7–97) (if applicable), Disclosure of Lobbying Activities; (4) Department of Commerce Form CD–346 (if applicable), Applicant for Funding Assistance; and (5) the CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. MBDA's web site address to submit an application on-line is www.mbda.gov/egrants. All required forms are located at this web address.

Failure to submit a signed, original SF–424 with the application, or separately in conjunction with submitting a proposal electronically, by the deadline will result in the application being rejected and returned to the applicant. Failure to sign and submit with the application, or separately in conjunction with submitting a proposal electronically, the other forms identified above by the deadline will automatically cause an application to lose two (2) points. Failure to submit other documents or information may adversely affect an applicant's overall score. MBDA shall not accept any changes, additions, revisions or deletions to competitive applications after the closing date for receiving applications, except through a formal negotiation process.

Authority: Executive Order 11625 and 15 U.S.C. 1512.

Catalog of Federal Domestic Assistance (CFDA)

11.800 Minority Business Development Center Program.

Funding Availability

MBDA anticipates that a total of approximately $800K will be available in FY 2002 for Federal assistance under this program. Applicants are hereby given notice that funds have not yet been appropriated for this program. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is canceled because of other agency priorities.

Financial assistance awards under this program may range from $155,000 to $338,750 in Federal funding per year based upon minority population, the size of the market and its need for MBDA resources. Applicants must submit project plans and budgets for three years. The annual awards must have Scopes of Work that are clearly severable and can be easily separated into annual increments of meaningful work that will produce measurable programmatic objectives. Maintaining the severability of each annual funding request is necessary to ensure the orderly management and closure of a project in the event funding is not available for the second or third year continuation of the project. Projects will be funded for no more than one year at a time. Funding for subsequent years will be at the sole discretion of the Department of Commerce (DoC) and will depend on satisfactory performance by the recipient and the availability of funds to support the continuation of the project.

Geographic Service Areas

An operator must provide services to eligible clients within its specified geographic service area. MBDA has defined the service area for each award below. To determine its geographic service areas, MBDA uses states, counties, Metropolitan Areas (MA), which comprise metropolitan statistical areas (MSA), consolidated metropolitan statistical areas (CMSA), and primary metropolitan statistical areas (PMSA) as defined by the OMB Committee on MAs (see: attachment to OMB Bulletin 99–04, Revised Statistical Definitions of Metropolitan Areas (MAs) and Guidance on Uses of MA Definitions (June 30, 1999), found at http://www.whitehouse.gov/OMB/inforeg/index.html) and other demographic boundaries as specified herein. Services to eligible clients outside of an operator's specified service area may be requested, on a case-by-case basis, through the appropriate MBDA Regional Director and granted by the Grants Officer.

1. MBDC Application: Miami/Ft. Lauderdale

Geographic Service Area: Miami—Fort Lauderdale, Florida MAs.

Award Number: 04–10–02001–01.

The recipient is required to maintain a satellite office in Fort Lauderdale, to service the Fort Lauderdale MA, while maintaining the MBDC principle office in the Miami MA. Contingent upon the availability of Federal funds, the cost of performance for each of the three 12-month funding periods from January 1, 2002 to December 31, 2004, is estimated at $398,529. The total Federal amount is $338,750. The application must include a minimum cost share of 15% or $59,779 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Completed Work Products: 188.

Dollar Value of Transactions: $21,176,471.

Number of New Clients: 221.

Number of Client Service Hours: 3,750.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta Regional Office at (404) 730–3300.

For Further Information and a copy of the application kit contact Robert Henderson, Regional Director.

2. MBDC Application: Oklahoma City

Geographic Service Area: Oklahoma City, Oklahoma MA.

Award Number: 06–10–02001–01.

Contingent upon the availability of Federal funds, the cost of performance for each of the three 12-month funding periods from January 1, 2002 to December 31, 2004, is estimated at $182,353. The total Federal amount is $155,000. The application must include a minimum cost share of 15% or $27,353 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Completed Work Products: 106.

Dollar Value of Transactions: $12,000,000.

Number of New Clients: 125.

Number of Client Service Hours: 2,125.

Pre-Application Conference: For the exact date, time and place, contact the Dallas Regional Office at (214) 767–8001.

For Further Information and a copy of the application kit, contact John Iglehart, Regional Director.

3. MBDC Application: Honolulu

Geographic Service Area: Honolulu, Hawaii MA.

Award Number: 09–10–02001–01.

Contingent upon the availability of Federal funds, the cost of performance for each of the three 12-month funding periods from January 1, 2002 to December 31, 2004, is estimated at $288,235. The total Federal amount is $245,000. The application must include a minimum cost share of 15% or $43,235 in non-Federal contributions.

The minimum goals for the MBDC are:

Completed Work Products: 162.

Dollar Value of Transactions: $18,352,941.

Number of New Clients: 191.

Number of Client Service Hours: 3,250.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco Regional Office at (415) 744–3001.

For Further Information and a copy of the application kit contact: Melda Cabrera, Regional Director.

Executive Order 12866: This Notice was determined to be not significant for purposes of Executive Order 12866.

Dated: July 26, 2001.

Ronald N. Langston,

Director, Minority Business Development Agency.

[FR Doc. 01–19554 Filed 8–6–01; 8:45 am]

BILLING CODE 3510–21–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Grants to Support the Martin Luther King, Jr. Service Day Initiative

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (the Corporation), invites applications for grants to pay for the federal share of the cost of planning and carrying out service opportunities in conjunction with the federal legal holiday honoring the birthday of Martin Luther King, Jr. on January 21, 2002.

The purpose of the grants is to mobilize more Americans to observe the Martin Luther King, Jr. federal holiday as a day of service in communities and to bring people together around the common focus of service to others. To achieve this, depending upon appropriations provided by the Congress for the Corporation and previous allocations of funding for this activity, we will make approximately $500,000 in grant funds available to support approved service opportunities. Eligible organizations may apply for a grant to support national service and community volunteering projects. Grant awards may range from $2,500 up to $7,500. Proposals must be cost effective based on the number of people serving and being served.

DATES: The deadline for submission of applications is September 13, 2001, no later than 5 p.m. local time.

ADDRESSES: Obtain applications from and return them to the Corporation state office in your state unless otherwise noted. See Supplementary Information section for Corporation state office addresses. Address the application to: Martin Luther King, Jr. Day of Service, Corporation for National Service (Appropriate State Address).

FOR FURTHER INFORMATION CONTACT: For further information, contact the person listed for the Corporation office in your state, unless otherwise noted. You may request this notice in an alternative format for the visually impaired by calling (202) 606–5000, ext. 278. The Corporation's T.D.D. number is (202) 565–2799 and is operational between the hours of 9 a.m. and 5 p.m. Eastern Daylight Time.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation, established by Congress in the 1993 amendments to the National and Community Service Act of 1990 (the Act) that engages Americans of all ages and backgrounds in service to communities. This service addresses the nation's education, public safety, environmental, or other human needs to achieve direct and demonstrable results with special consideration to service that affects the needs of children. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunity for those who make a substantial commitment to service. The Corporation supports a range of national service programs including AmeriCorps, Learn and Serve America, and the National Senior Service Corps. The King Center for Nonviolent Social Change, Inc. also supports activities in honor of Dr. King's birth through the ''Beloved Community.'' The ''Beloved Community'' is a network of partners, organizations and entities that promote the King Holiday or work of Dr. King by disseminating his philosophy, providing direct service, nonviolence training, education or programs ensuring the continuance of Dr. King's work. For more information about the Corporation and the programs it supports, go to http://www.nationalservice.org. For more information about the King Center, go to http://www.thekingcenter.org.

Section 12653(s) of the Act, as amended in 1994, authorizes the Corporation to make grants to share the cost of planning and carrying out service opportunities in conjunction with the federal legal holiday honoring the birthday of Martin Luther King, Jr. We will fund grants to support activities that will (1) get necessary things done in communities, (2) strengthen the communities engaged in the service activity, (3) reflect the life and teaching of Martin Luther King, Jr., (4) respond to one or more of the goals set forth at the Presidents' Summit for America's Future and include young people as service providers, not just recipients of service, and (5) begin or occur in

significant part on the federal legal holiday (January 21, 2002).

Getting things done means that projects funded under the Martin Luther King Jr. holiday grant will help communities meet education, public safety, environmental, or other human needs through direct service and effective citizen action. Accordingly, we expect well designed activities that meet compelling community needs and lead to measurable outcomes and impact.

Strengthening communities means bringing people together in pursuit of a common objective that is of value to the community. Projects should seek to engage a wide range of local partners in the communities served. You should design, implement, and evaluate projects with partners, including local and state King Holiday Commissions; the King Center's Beloved Community network; national service programs (AmeriCorps, Learn and Serve America, and the National Senior Service Corps); state and local organizations affiliated with the campaign for children and youth launched at the Presidents' Summit for America's Future and carried forward by America's Promise—the Alliance for Youth; community-based agencies; schools and school districts; Volunteer Centers of the Points of Light Foundation and other volunteer organizations; local United Ways, non-profit organizations meeting urgent community needs, particularly those serving young people; communities of faith; businesses; foundations; state and local governments; labor organizations; and colleges and universities.

Reflecting the life and teaching of Martin Luther King, Jr. means demonstrating his proposition that, ''Everybody can be great because everybody can serve.'' Dr. King's concept of greatness, when expressed through acts of service, offers everyone an opportunity to experience a sense of worth and dignity. His example encourages all ages, races, colors, ethnic groups, genders, nationalities, and abilities to respond to those in need. We are challenged to adopt his philosophy in addressing the evils of discrimination, poverty and violence. Dr. King's abiding faith and earnest belief in the ''American Dream'' is exemplified by his commitment to justice and his willingness to serve unselfishly as is evident by his statement, ''I can never be what I ought to be until you are what you ought to be.'' Dr. King's strategies and determination to use nonviolence as a means to transform the hearts of millions should be used as a rousing force to encourage others in their desire to be socially responsible through nonviolent direct actions—direct service. You should consider service opportunities for this program that foster cooperation and understanding among racial and ethnic groups, nonviolent conflict resolution, equal economic and educational opportunities, and social justice.

Respond to one or more of the goals of the Presidents' Summit and include young people as service providers, not just recipients of service means that service projects should be designed to help achieve the five basic promises for all children and youth declared at the Presidents' Summit for America's Future and carried forward by America's Promise '' the Alliance for Youth. Those five ''promises'' for young people are: an ongoing relationship with a caring adult '' mentor, tutor, coach; safe spaces and structured activities during non-school hours; a healthy start; an effective education that equips with marketable skills; and an opportunity to give back to their communities through their own service. Particularly important is the fifth goal: To challenge and inspire young people to give back to their communities through service. All young people must see themselves '' and be seen by others '' as resources and leaders. Therefore, you should include young people as service providers and resources in project planning, not just as the recipients of service.

Begin or occur in significant part on the federal legal holiday means that a significant portion of the community service activities supported by the grant should occur on the holiday itself to strengthen the link between the observance of Martin Luther King, Jr.''s birthday, the federal legal holiday (January 21, 2002), and service that reflects his life and teaching.

The *direct service* you will do on and in connection with the King holiday may include, but is not limited to, the following types of activities: tutoring children or adults, training tutors, feeding the hungry, packing lunches, delivering meals, stocking a food or clothing pantry, repairing a school and adding to its resources, translating books and documents into other languages, recording books for the visually impaired, restoring a public space, organizing a blood drive, registering bone marrow and organ donors, renovating low-income or senior housing, building a playground, removing graffiti and painting a mural, renovating or creating safe spaces for children who are out of school and whose parents are working, collecting oral histories of elders, running health fairs that provide health screenings, distributing immunization and health insurance information, gleaning and distributing fruits and vegetables, etc. Since involving young people in service is a priority of the Corporation for National Service, you might consider challenging each young person serving to pledge to give back 100 hours of service in the next year, therefore qualifying for a President's Student Service Award.

Although celebrations, parades, and recognition ceremonies may be a part of the activities that you plan on the holiday and lead to or celebrate a commitment to service, these activities do not constitute direct service under this grant and the grant will not fund such activities.

Other service activities we will consider in grant applications include, but are not limited to, the following: A day-of-service you design to produce a sustained long-term service commitment; community-wide servathons that bring a broad cross-section of people together in a burst of energy on one day of service, including schools or school districts that seek to involve all students and teachers in joint service; service-learning projects that link student service in schools and universities with community-based organizations; faith-based service collaborations that bring together communities of faith and secular human service programs (subject to the limitations listed below); and service projects that include a pledge or commitment for continued service throughout the year.

Grant funding will be available on a one-time, non-renewable basis for a budget period not to exceed seven months, beginning no sooner than November 1, 2001 and ending no later than June 30, 2002. By statute, the grants we provide for this program, together with all other federal funds you use to plan or carry out the service opportunity, may not exceed 30 percent of the total cost.

For example, if you request $2,500 in federal dollars you must have a non-federal match of at least 5833 (cash and/or in-kind contributions) and a total projected cost of at least $8333. If you request $7,500 in federal dollars you must have a non-federal match of at least $17,500 (cash and/or in-kind contributions) and a total projected cost of at least $25,000. In other words the total project cost multiplied by .30 is the maximum amount of money you can request from the federal government. (Total project cost minus federal dollars requested equals the required match). It may assist in the calculation to apply the formula as follows:

Total Project Cost × .30 = Maximum Federal Contribution.
Total Project Cost − Federal Dollars Requested = Non-Federal Match.

The non-federal match may include cash and in-kind contributions (including, but not limited to, supplies, staff time, trainers, food, transportation, facilities, equipment, and services) necessary to plan and carry out the service opportunity. Grants under this program constitute federal assistance and therefore may not be used primarily to inhibit or advance religion in a material way. You may not use any part of an award from the Corporation to fund religious instruction, worship or proselytization. You may not use any part of an award to pay honoraria or fees for speakers. You may not use any part of an award to support a celebration banquet or other activity that is not connected to the actual service.

The total amount of grant funds we will provide under this Notice will depend on the quality of applications and the availability of appropriated funds for this purpose.

Eligible Applicants

By law, any entity otherwise eligible for assistance under the national service laws is eligible to receive a grant under this announcement. The applicable laws include the National and Community Service Act of 1990, as amended, and the Domestic Volunteer Service Act of 1973, as amended.

Eligible applicants include, but are not limited to: nonprofit organizations, state commissions on service, volunteer centers, institutions of higher education, local education agencies, educational institutions, faith-based institutions, local or state governments, and private organizations that intend to utilize volunteers in carrying out the purposes of this program.

We especially invite applications from organizations with experience in—and commitment to—fostering service on Martin Luther King, Jr. Day, including state and local Martin Luther King, Jr. Commissions, the King Center's Beloved Community network, local education agencies, faith-based partnerships, Volunteer Centers of the Points of Light Foundation, United Ways, Boys and Girls Clubs, Campfire Boys and Girls and other community-based agencies.

Any grant recipient from the 1997, 1998, 1999, 2000, and 2001 Martin Luther King, Jr., Day of Service Initiatives will be ineligible if it has been determined to be non-compliant with the terms of those grant awards.

Pursuant to the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible.

Overview of Application Requirements

Applicants should submit the following standard components for federal grants:

1. An Application for Federal Assistance, Standard Form 424.
2. A Project Narrative describing:
   a. The types of service activities (that lead to measurable outcomes) that you plan in observance of Martin Luther King, Jr. Day, which must take place significantly on the legal federal holiday (January 21, 2002), but which may extend for the budget period (November 1, 2001 through June 30, 2002);
   b. Partnerships in the local community, city, state or region that you are engaging in support of the service activities;
   c. Your organization's background and capacity to carry out this program; and
   d. How you propose to staff the activity.

The project narrative portion of the application may be no longer than 10 single-sided pages. You must type double-spaced in a font no smaller than 12 point and number each page.

3. A Budget Narrative (specific instructions are provided in the application materials).
4. Budget Information—Non-Construction Programs (SF 424A) form in the application package.
5. A signed Assurances—Non-Construction Programs (SF 424B) form incorporating conditions attendant to the receipt of federal funding.
6. Three complete copies (one signed original and two copies) of the application.

We must receive all applications by 5 p.m. local time, September 13, 2001 at the Corporation office in your state, unless otherwise noted, addressed as follows:

Martin Luther King, Jr. Day of Service, Corporation for National Service (appropriate state office address; see list of addresses provided below). You may not submit an application by facsimile.

To ensure fairness to all applicants, we reserve the right to take action, up to and including disqualification, in the event that your application fails to comply with the requirements relating to page limits, line-spacing, font size, and application deadlines.

Budget

Detailed instructions about the budget information you must provide are in the application materials.

Selection Process and Criteria

We will review the applications initially to confirm that you are an eligible recipient and to ensure that your application contains the information we require and otherwise complies with the requirements of this notice. We will assess the quality of applications' responsiveness to the objectives included in this announcement based on the following criteria listed below:

1. *Program Design (60%)* The proposal must demonstrate your ability to get necessary things done, strengthen communities, reflect the life and teaching of Martin Luther King Jr., respond to one or more of the goals set forth at the Presidents' Summit for America's Future and include young people as service providers, not just recipients of service, and begin or occur in significant part on the federal legal holiday, January 21, 2002.
2. *Organizational Capacity (25%)* Your application must demonstrate your organization's ability to carry out the activities described in the proposal, including the use of highly qualified staff.
3. *Budget/Cost Effectiveness (15%)* You must demonstrate how you will use this grant effectively, including the sources and uses of matching support. Estimates on the numbers of people serving and to be served must be included.

After evaluating the overall quality of proposals and their responsiveness to the criteria noted above, we will seek to ensure that applications we select represent a portfolio that is: (1) Geographically diverse, including projects throughout the five geographical clusters as designated by the Corporation; (2) representative of different population tracts, i.e. rural, urban, suburban; (3) representative of a range of models of service projects.

Awards

We anticipate making selections under this announcement no later than November 1, 2001.

CORPORATION FOR NATIONAL SERVICE STATE OFFICES

State	Name	Address	Phone
AK	Billie Caldwell	Jackson Federal Building, 915 Second Avenue, Suite 3190, Seattle, WA 98174–1103.	(206) 220–7736
AL	Al Johnson	Medical Forum, 950 22nd St., N., Suite 428, Birmingham, AL 35203.	(205) 731–0027
AR	Opal Sims	Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201.	(501) 324–5234
AZ	Richard Persely	522 North Central Room 205A, Phoenix, AZ 85004–2190	(602) 379–4825
CA	Amy Dailey	11150 W. Olympic Blvd., Suite 670, Los Angeles, CA 90064	(310) 235–7421
CO	Bruce Cline	999 Eighteenth Street, Suite 1440 South, Denver, CO 80202	(303) 312–7950
CT	Romero Cherry	1 Commercial Plaza, 21st Floor, Hartford, CT 06103–3510	(860) 240–3237
DC	Rosetta Freeman-Busby	1201 New York Ave., NW., Suite 9107, Washington, DC 20525	(202) 606–5000, x485
DE	Jerry Yates	Fallon Federal Bldg., 31 Hopkins Plaza, Suite 400–B, Baltimore, MD 21201.	(410) 962–4443
FL	Warren Smith	3165 McCrory Street, Suite 115, Orlando, FL 32803–3750	(407) 648–6117
GA	Daryl James	75 Piedmont Avenue, N.E., Room 902, Atlanta, GA 30303–2587.	(404) 331–4646
HI	Lynn Dunn	300 Ala Moana Blvd., Room 6213, Honolulu, HI 96850–0001	(808) 541–2832
IA	Joel Weinstein	Federal Building, Room 917, 210 Walnut Street, Des Moines, IA 50309–2195.	(515) 284–4816
ID	V. Kent Griffitts	304 North 8th Street, Room 344, Boise, ID 83702–5835.	
IL	Timothy Krieger	77 West Jackson Boulevard, Suite 442, Chicago, IL 60604–3511.	(312) 353–3622
IN	Thomas Haskett	46 East Ohio Street, Room 226, Indianapolis, IN 46204–4317	(317) 226–6724
KS	Bruce Cline	444 S.E. Quincy, Room 260, Topeka, KS 66683–3572	(785) 295–2540
KY	Betsy Wells	600 Martin L. King Place, Room 372–D, Louisville, KY 40202–2230.	(502) 582–6384
LA	Willard Labrie	707 Florida Street, Suite 316, Baton Rouge, LA 70801	(225) 389–0473
MA	Malcolm Coles	10 Causeway Street, Room 473, Boston, MA 02222–1038	(617) 565–7001
MD	Jerry Yates	Fallon Federal Bldg., 31 Hopkins Plaza, Suite 400–B, Baltimore, MD 21201.	(410) 962–4443
ME	Shireen Tilley	1 Pillsbury Street, Suite 201, Concord, NH 03301–3556	(603) 225–1450
MI	Mary Pfeiler	211 West Fort Street, Suite 1408, Detroit, MI 48226–2799	(313) 226–7848
MN	Robert Jackson	431 South 7th Street, Room 2480, Minneapolis, MN 55415–1854.	(612) 334–4083
MO	John McDonald	801 Walnut Street, Suite 504, Kansas City, MO 64106	(816) 374–6300
MS	R Abdul-Azeez	100 West Capitol Street, Room 1005A, Jackson, MS 39269–1092.	(601) 965–5664
MT	John Allen	208 North Montana Avenue, Suite 206, Helena, MT 59601–3837.	(406) 449–5404
NC	Robert Winston	300 Fayetteville Street Mall, Room 131, Raleigh, NC 27601–1739.	(605) 224–5996
ND	John Pohlman	225 S. Pierre Street, Room 225, Pierre, SD 57501–2452	(605) 224–5996
NE	Anne Johnson	Federal Building, Room 156, 100 Centennial Mall North, Lincoln, NE 68508–3896.	(402) 437–5493
NH	Shireen Tilley	1 Pillsbury Street, Suite 201, Concord, NH 03301–3556	(603) 225–1450
NJ	Stanley Gorland	Scotch Plaza, 1239 Parkway Ave., Ewing Township, NJ 08628	(609) 989–2243
NM	Ernesto Ramos	120 S. Federal Place, Room 315, Sante Fe, NM 87501–2026	(505) 988–6577
NV	Craig Warner	4600 Kietzke Lane, Suite E–141, Reno, NV 89502–5033	(775) 784–5314
NY	Donna Smith	Leo O'Brien Federal Bldg., 1 Clinton Square, Suite 900, Albany, NY 12207.	(518) 431–4150
OH	Paul Schrader	51 North High Street, Suite 451, Columbus, OH 43215	(614) 469–7441
OK	Zeke Rodriguez	215 Dean A. McGee, Suite 324, Oklahoma City, OK 73102	(405) 231–5201
OR	Robin Sutherland	2010 Lloyd Center, Portland, OR 97232	(503) 231–2103
PA	Jorina Ahmed	Robert N.C. Nix Federal Bldg., 900 Market St., Rm 229, P.O. Box 04121, Philadelphia, PA 19107.	(215) 597–2806
PR	Loretta Cordova	150 Carlos Chardon Ave., Suite 662, San Juan, PR 00918–1737.	(787) 766–5314
RI	Vincent Marzullo	400 Westminster Street, Room 203, Providence, RI 02903	(401) 528–5426
SC	Jerome Davis	1835 Assembly Street, Suite 872, Columbia, SC 29201–2430	(803) 765–5771
SD	John Pohlman	225 S. Pierre Street, Room 225, Pierre, SD 57501–2452	(605) 224–5996
TN	Jerry Herman	233 Cumberland Bend Dr., Suite 112, Nashville, TN 37228–1806.	(615) 736–5561
TX	Jerry Thompson	300 East 8th Street, Suite G–100, Austin, TX 78701	(512) 916–5671
UT	Rick Crawford	350 S. Main Street, Room 504, Salt Lake City, UT 84101–2198	(801) 524–5411
VA	Thomas Harmon	400 North 8th Street, Suite 446, P.O. Box 10066, Richmond, VA 23240–1832.	(804) 771–2197
VI	Loretta Cordova	150 Carlos Chardon Ave., Suite 662, San Juan, PR 00918–1137.	(787) 766–5314
VT	Shireen Tilley	1 Pillsbury Street, Suite 201, Concord, NH 03301–3556	(603) 225–1450
WA	John Miller	Jackson Federal Bldg., Suite 3190, 915 Second Ave., Seattle, WA 98174–1103.	(206) 220–7745
WI	Linda Sunde	310 W. Wisconsin Ave., Room 1240, Milwaukee, WI 53203	(414) 297–1118

CORPORATION FOR NATIONAL SERVICE STATE OFFICES—Continued

State	Name	Address	Phone
WV	Judith Russell	10 Hale Street, Suite 203, Charleston, WV 25301–1409	(304) 347–5246
WY	Patrick Gallizzi	308 West 21st Street, Room 206, Cheyenne, WY 82001–3663	(307) 772–2385

Gary Kowalczyk,

Coordinator of National Service Programs, Corporation for National and Community Service.

[FR Doc. 01–19682 Filed 8–6–01; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–0102]

Federal Acquisition Regulation; Submission for OMB Review; Prompt Payment

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 (9000–0102).

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 to a currently approved information collection requirement concerning prompt payment. A request for public comments was published at 66 FR 22219, May 3, 2001. 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: Submit comments on or before September 6, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 32 of the FAR and the clause at FAR 52.232–5, Payments Under Fixed-Price Construction Contracts, require that contractors under fixed-price construction contracts certify, for every progress payment request, that payments to subcontractors/suppliers have been made from previous payments received under the contract and timely payments will be made from the proceeds of the payment covered by the certification, and that this payment request does not include any amount which the contractor intends to withhold from a subcontractor/supplier. Part 32 of the FAR and the clause at 52.232–27, Prompt Payment for Construction Contracts, further require that contractors on construction contracts—

(a) Notify subcontractors/suppliers of any amounts to be withheld and furnish a copy of the notification to the contracting officer;

(b) Pay interest to subcontractors/suppliers if payment is not made by 7 days after receipt of payment from the Government, or within 7 days after correction of previously identified deficiencies;

(c) Pay interest to the Government if amounts are withheld from subcontractors/suppliers after the Government has paid the contractor the amounts subsequently withheld, or if the Government has inadvertently paid the contractor for nonconforming performance; and

(d) Include a payment clause in each subcontract which obligates the contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days after such amounts are paid to the contractor, include an interest penalty clause which obligates the contractor to pay the subcontractor an interest penalty if payments are not made in a timely manner, and include a clause requiring each subcontractor to include these clauses in each of its subcontractors and to require each of its subcontractors to include similar clauses in their subcontracts.

These requirements are imposed by Public Law 100–496, the Prompt Payment Act Amendments of 1988.

Contracting officers will be notified if the contractor withholds amounts from subcontractors/suppliers after the Government has already paid the contractor the amounts withheld. The contracting officer must then charge the contractor interest on the amounts withheld from subcontractors/suppliers. Federal agencies could not comply with the requirements of the law if this information were not collected.

B. Annual Reporting Burden

Respondents: 38,194.

Responses Per Respondent: 11.

Total Responses: 420,134.

Hours Per Response: .11.

Total Burden Hours: 46,215.

C. Annual Recordkeeping Burden

Recordkeepers: 34,722.

Hours Per Recordkeeper: 18.

Total Recordkeeping Burden Hours: 624,996.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0102, Prompt Payment, in all correspondence.

Dated: July 31, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–19662 Filed 8–6–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0088]

Federal Acquisition Regulation; Submission for OMB Review; Travel Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0088).

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 travel costs. A request for public comments was published at 66 FR 22220, May 3, 2001. 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: Submit comments on or before September 6, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jerry Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 31.205–46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel as set forth in the Federal Travel Regulations for travel in the conterminous 48 United States, the Joint Travel Regulations, Volume 2, Appendix A, for travel is Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, and the Department of State Standardized Regulations, section 925, ''Maximum Travel Per Diem Allowances for Foreign Areas.'' The burden generated by this coverage is in the form of the contractor preparing a jurstification whenever a higher actual expense reimbursement method is used.

B. Annual Reporting Burden

Respondents: 5,800.
Responses Per Respondent: 10.
Total Responses: 58,000.
Hours Per Response: .25.
Total Burden hours: 14,500.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0088, Travel Costs, in all correspondence.

Dated: July 31, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–19663 Filed 8–6–01; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0077]

Federal Acquisition Regulation; Submission for OMB Review; Quality Assurance Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0077).

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 quality assurance requirements. A request for public comments was published at 66 FR 22218, May 3, 2001. 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: Submit comments on or before September 5, 2001.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Acquisition Policy Division, GSA (202) 208–6750.

SUPPLEMENTARY INFORMATION:

A. Purpose

Supplies and services acquired under Government contracts must conform to the contract's quality and quantity requirements. FAR Part 46 prescribes inspection, acceptance, warranty, and other measures associated with quality requirements. Standard clauses related to inspection require the contractor to provide and maintain an inspection system that is acceptable to the Government; give the Government the right to make inspections and test while work is in process; and require the contractor to keep complete, and make available to the Government, records of its inspection work.

B. Annual Reporting Burden

Respondents: 950.

Responses Per Respondent: 1.
Total Responses: 950.
Hours Per Response: .25.
Total Burden hours: 237.5 (238).

C. Annual Recordkeeping Burden

Recordkeepers: 58,060.
Hours Per Recordkeeper: .68.
Total Burden Hours: 39,481.
Total Annual Burden: 238 + 39,481 = 39,719.

Obtaining Copies of Proposals:

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0077, Quality Assurance Requirements, in all correspondence.

Dated: July 31, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–19664 Filed 8–6–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB); Notice of Meeting

AGENCY: Office of The Surgeon General, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB meeting. This Board will meet from 0730–1645 on Tuesday, 18 September 2001, and 0730–1530 on Wednesday, 19 September 2001. The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and conduct an executive working session. The meeting location will be at the Armed Forces Radiobiology Research Institute (AFRRI), Bethesda, Maryland.

This meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Lt Col James R. Riddle, Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: None.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–19760 Filed 8–6–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Scientific Advisory Board

AGENCY: Armed Forces Institute of Pathology (AFIP), DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10 (a)(2) of the Federal Advisory Committee Act, Public Law (92–463) announcement is made of the following open meeting:

Name of Committee: Scientific Advisory Board (SAB).

Dates of Meeting: 8–9 November 2001.

Place: The Armed Forces Institute of Pathology, Building 54, 14th St. & Alaska Ave., NW., Washington, DC 20306–6000 (on 1 June 2001).

Time: 8 a.m.—5 p.m. (8 November 2001) 8:30 a.m.—12 p.m. (9 November 2001).

FOR FURTHER INFORMATION CONTACT: Mr. Ridgely Rabold, Center for Advanced Pathology (CAP), AFIP, Building 54, Washington, DC 20306–6000, phone (202) 782–2553.

SUPPLEMENTARY INFORMATION: *General function of the board:* The Scientific Advisory Board provides scientific and professional advice and guidance on programs, policies and procedures of the AFIP.

Agenda: The Board will hear status reports from the AFIP Director, the Director of the Center for Advanced Pathology, the Director of the National Museum of Health and Medicine, and each of the pathology sub-specialty departments which the Board members will visit during the meeting.

Open board discussions: Reports will be presented on all visited departments. The reports will consist of findings, recommended areas of further research, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–19762 Filed 8–6–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concern Antifungal and Antiparasitic Compounds

AGENCY: U.S. Army Medical Research and Material Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application Serial No. 09/382.128 entitled ''Antifungal and Antiparasitic Compounds'' and filed August 24, 1999. This patent application has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Material Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Novel antiparasitic and antifungal compositions are disclosed. The antiparasitic and antifungal compositions are useful for human and veterinary therapy for the treatment and/or prevention of parasitic infection. Also disclosed are novel mechanisms of identifying antifungal and antiparasitic compositions by their biochemical action on lipid synethsis and/or metabolism and/or excretion.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–19763 Filed 8–6–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Live Attenuated Venezuelan Equine Encephalitis

AGENCY: Army Medical Research and Materiel Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent Application No. 09/454,721 entitled ''Live Attenuated Venezuelan Equine Encephalitis'' filed December 7, 1999. Foreign rights are also available (PCT/US99/29041). This patent has been assigned to the United States Government as represented by the Secretary of the Army.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, Maryland 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. Both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: A live attenuated Venezuelan equine encephalitis virus (VEE) is described which comprises a viral gene rearrangement. This rearranged attenuated virus is useful as vaccine for protection against infection with VEE. Methods of preparing the virus and methods of using the virus are described.

Elizabeth Arwine,

Patent Attorney.

[FR Doc. 01–19764 Filed 8–6–01; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement (DEIS) as Part of a Section 404 of the Clean Water Act, Permit Application Evaluation for the Proposed South Lawrence Trafficway/K–10 Highway Extension Project, in and near the City of Lawrence, in Douglas County, Kansas

AGENCY: U.S. Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Kansas City District, U.S. Army Corps of Engineers (Corps) intends to prepare an Environmental Impact Statement (EIS) to address social, economic, and environmental impacts of the proposed South Lawrence Trafficway/K–10 Highway Extension Project located in Douglas County Kansas. The Corps is evaluating a permit application or the proposed work under the authority of Section 404 of the Clean Water Act (33 USC 1344). The EIS will be used as a basis for the permit decision and to ensure compliance with the National Environmental Policy Act (NEPA). The permit applicant is the Kansas Department of Transportation.

ADDRESSES: U.S. Army Corps of Engineers, Kansas City District, Operations Division, Regulatory Branch, OD–R, 700 Federal Building, 601 E. 12th Street, Kansas City, Missouri, 64106–2896.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Smith, Regulatory Project Manager, (816) 983–3635 or mail to: robert.j.smith@usace.army.mil.

SUPPLEMENTARY INFORMATION:

1. The U.S. Army Corps of Engineers, Kansas City District will serve as the lead Federal agency and prepare a Draft Environmental Impact Statement (DEIS) on the proposed South Lawrence Trafficway/K–10 Highway Extension Project located in Douglas County, Kansas. The proposed highway project would extend from a western terminus at an interchange with U.S. 59 (Iowa Street), to an eastern terminus a new interchange with existing K–10, for an approximate distance of six miles. The Corps will be evaluating a permit application for the work under the authority of Section 404 of the Clean Water Act (33 USC 1344). The EIS will be used as a basis for the permit decision and to ensure compliance with the National Environmental Policy Act (NEPA). The permit applicant is the Kansas Department of Transportation (KDOT). A similar project proposed by Douglas County, Kansas, commonly known as the South Lawrence Trafficway, where the Federal Highway Administration (FHWA) was the lead Federal agency, had an EIS and supplemental EIS prepared and evaluated over approximately a ten-year period. The Final Supplemental EIS resulted in the No Build alternative being selected in the Record of Decision (ROD), dated July 5, 2000. The FHWA is not involved in the new proposed project. The new proposed project will involve KDOT as the sole applicant. Additional alternatives and a revised project purpose and need, will be part of the project.

2. The Corps study will evaluate the ''No Action'' alternative as well as a system traffic management alternative and various alignments under the highway construction alternative. Alternative alignments currently identified under the highway construction alternative included: (1) 31st Street, (2) 32nd Street, (3) 35th Street, (4) 38th Street and, (5) 42nd Street. All of the alignments under the highway construction alternative would involve the placement of fill material in the waters of the United States and would therefore require prior authorization, by the Corps, under Section 404 of the Clean Water Act. In addition, all but one of these alignments could potentially affect the Haskell Indian Nations University and/or the Baker Wetlands.

3. *Scoping Process.*

a. A formal public scoping meeting will be held for the project in Lawrence, Kansas on August 30, 2001. The exact time and location of the scoping meeting will be announced when the details are finalized. Additional information meetings and workshops have and will continue be held in the study area to engage the local and regional community in the decision-making process, to obtain public input and to keep the public informed. Coordination meetings will be held as needed with affect/concerned local, State, Tribal, and Federal government entities. These meetings and workshops, as well as any meetings which were previously held regarding this project, will serve as the collective scoping process for preparation of the DEIS. Draft documents forthcoming from the study will be distributed by the Corps to Federal, Tribal, State and local governments/agencies as well as interested members of the general public for review and comment. Public notices, meeting announcements and NEPA/Section 04 decision documents will also be available on the Kansas City District's Regulatory homepage at *http://www.nwk.usace.army.mil/regulatory/regulatory.htm.*

b. The DEIS will analyze the potential social, economic, and environmental impacts to the project are resulting from the proposed highway transportation project. Specifically, the following significant issues will be analyzed in depth in the DEIS: impacts to the aquatic ecosystem; impacts to cultural resources; Native American and Tribal interests; impact to fish and wildlife resources; impacts to flood control and floodplain values; impacts to transportation systems, impacts to recreation; environmental justice; secondary and cumulative impacts; and socioeconomoics.

c. Environmental consultation and review will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as per regulations of the Council on Environmental Quality (Code of Federal Regulations parts 40 CFR 1500–1508), and other applicable laws, regulations, and guidelines.

4. It is anticipated that the DEIS will be made available for public review in January of 2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–19759 Filed 8–6–01; 8:45 am]

BILLING CODE 3710–KN–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (EIS) for the Mississippi River-Gulf Outlet (MR–GO), Louisiana, Reevaluation Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Mississippi River-Gulf Outlet (MR–GO) is a deep-draft navigation channel built to provide the tidewater dock facilities of the Port of New Orleans, Louisiana, with direct access to the Gulf of Mexico. Construction of the channel began in 1958 and an interim channel was opened in 1963. The channel was completed to authorized dimensions of 36 feet deep by 500 feet wide in 1968. The channel is currently used by container and bulk cargo ships, as well as other deep-draft vessels that utilize the docks along the Inner Harbor Navigation Canal and MR–GO in New Orleans. Many shallow-draft vessels also use the channel. The Corps of Engineers is evaluating modifications to the MR–GO project, with a focus on alternatives that would reduce channel dimensions. Improvements and relocations planned and currently occurring in the Port of New Orleans may reduce the need for the deep draft channel. Some environmental groups and segments of the public want the MR–GO closed or reduced in size for environmental reasons and to lessen the risk of flooding from hurricane storm surge.

FOR FURTHER INFORMATION CONTACT: Questions concerning the EIS should be addressed to Mr. Richard Boe at (504) 862–1505. Mr. Boe may also be reached at FAX number (504) 682–2572 or by E-mail at richard.e.boe@mvn02.usace.army.mil. Mr. Boe's address is U.S. Army Corps of Engineers, PM–RS, P.O. Box 60267, New Orleans, Louisiana 70160–0267.

SUPPLEMENTARY INFORMATION:

1. *Authority.* The MR–GO was authorized by the River and Harbor Act of 1956 (P.L. 84–455). The USACE has the authority to conduct reevaluation studies of authorized projects if a significant period of time has elapsed or conditions have changed significantly since a feasibility study was completed. Construction authorities imply the authority to undertake reevaluation studies.

2. *Proposed Action.* The proposed action is to reduce the controlling depth of the MR–GO. Economic analyses will be performed to determine the current and future needs for the channel by various draft vessels, and the costs and benefits of maintaining channels of various sizes.

3. *Alternatives.* Channel depths of 12, 16, and 20 feet will be investigated. The current authorization provides for a 36-foot deep channel. Alternatives to be investigated include abandonment of channel dredging until a minimal controlling channel dimension is reached, whereupon channel maintenance would resume to maintain the new channel size. Also, structural features will be investigated to quickly reduce the controlling depth of the channel. These structures will be evaluated for their effectiveness in producing desirable effects on salinity levels and fish and wildlife habitats, especially tidal wetlands. The structures will also be evaluated for their effectiveness in reducing hurricane storm surge.

4. *Scoping.* Scoping is the process for determining the scope of alternatives and significant issues to be addressed in the EIS. For this study, a letter will be sent to all parties believes to have an interest in the study, requesting their input on alternatives and issues to be evaluated. The letter will also notify interested parties of a public scoping meeting that will be held in the local area. Notices will also be sent to local news media. All interested parties are invited to comment at this time, and anyone interested in this study should request to be included in the study mailing list.

A public scoping meeting will be held on August 30, 2001, at 7 pm. The meeting will be held in the St. Bernard Parish Council Meeting Room of the St. Bernard Parish Government Complex located at 8201 West Judge Perez Drive in Chalmette, Louisiana.

5. *Significant Issues.* The tentative list of resources and issues to be evaluated in the EIS includes tidal wetlands (marshes and swamps), aquatic resources, wildlife resources, essential fish habitat, water quality, air quality, threatened and endangered species, recreation resources, and cultural resources. Socioeconomic items to be evaluated in the EIS include navigation, flood protection, business and industrial activity, employment, land use, properly values, public/community facilities and services, tax revenues, population, community and regional growth, vehicular transportation, housing, community cohesion, and noise.

6. *Environmental Consultation and Review.* The U.S. Fish and Wildlife Service (USFWS) will be assisting in the documenting of existing conditions and assessment of effects of project alternatives through Fish and Wildlife Coordination Act consultation procedures. The USFWS will also provide a Fish and Wildlife Coordination Act report. Consultation will also be accomplished with the USFWS and the National Marine Fisheries Service concerning threatened and endangered species. The draft EIS or a notice of its availability will be distributed to all interested agencies, organizations, and individuals.

7. *Estimated Date of Availability.* Funding levels will dictate the date when the draft EIS is available. The earliest that the draft EIS may be expected to be available is mid-2002.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–19761 Filed 8–6–01; 8:45 am]

BILLING CODE 3710–84–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Joint Supplemental Environmental Impact Statement (SEIS)/Supplemental Environmental Impact Report (SEIR) for the Llagas Creek Flood Control Project

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers San Francisco District (Corps) in coordination with the Santa Clara Valley Water District (SCVWD) is preparing a joint Supplemental Environmental Impact Statement (SEIS)/Supplemental Environmental Impact Report (SEIR) for the Llagas Creek Flood Control Project. This project will provide flood protection for residential, commercial, and agricultural developments in southern Santa Clara County, to protect and improve water quality in the watershed and to preserve and enhance the rivers's habitat, fisheries, and wildlife.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher K. Eng either by telephone at (415) 977–8543, by fax at (415) 977–

8695, by e-mail: *ceng@spd.usace.army.mil,* or by mail at the address below.

SUPPLEMENTARY INFORMATION: The SEIS/SEIR will supplement the original Llagas Creek Watershed Final EIS/EIR that was released in 1982 by the NRCS (Natural Resources Conservation Service formerly the Soil Conservations Service) and the SCVWD to examine the potential environmental impacts of the original Llagas Creek Flood Control Project. The original Llagas Creek Project was implemented in 1969 by the United States Department of Agriculture (USDA) pursuant to the Watershed Protection and Flood Prevention Act of 1954 (Pub. L. 83–566). To date, the NRCS has completed about half of the authorized project on the lower Reaches of Llagas Creek. Congress, in the House Report to the 1998 Energy and Water Development Appropriations Act (HR 105–190, July 1997), urged the Corps to develop plans and specifications of the authorized Llagas Creek project, in anticipation of the Corps assuming the construction of the remaining project elements. The Water Resources and Development Act (WRDA) of 1999 (Pub. L. 106–53) authorized the Corps to complete the remaining upper reaches of the project ''substantially in accordance with the NRCS watershed plan for the Llagas Creek.'' The SEIS/SEIR will address the environmental impacts of two alternatives, those being the proposed action and the no action (or no project) alternative, and will focus on changes to environmental setting and conditions, regulatory context and/or new information that has become available since release of the final SEIS/EIR. The project area extends approximately 12.3 miles along the upper reaches of Llagas Creek from the Pajaro River south of Bloomfield Road upstream to just beyond Wright Avenue. The proposed alternative would provide a 100-year level of flood protection in the urban areas of Morgan Hill and Gilroy, and an approximately 10-year level of flood protection in the agricultural areas. In addition, the proposed alternative would provide channel stabilization measures, thus reducing erosion and sedimentation. Structural measures would include the replacement of more than 35 bridges and culverts at road crossings. Potential impacts of the proposed action and no action alternatives that may be examined by the SEIS/SEIR include impacts to water resources, geology and soils, biological resources, environmental justice and socioeconomics.

Scoping: Federal, state and local agencies, and interested individuals are encouraged to participate in the SEIS/SEIR scoping process to assist the Corps and SCVWD in determining the range of issues and alternatives to be addressed. Public meetings and workshops will be held in Morgan Hill, CA. Dates, times and locations will be published in the newspaper and provide by mail to all those requesting notification. At these meetings, Corps and SCVWD representatives will briefly summarize the description of the proposed project, the environmental impact assessment process, and will then solicit public comments. Attendees will be invited to submit written comments about the proposed alternatives and ''no project'' alternative either at the meeting, or following the meeting by fax, e-mail or by mail. The Draft SEIS/SEIR is expected to be published in early September 2002, and a public hearing to receive comments on the Draft SEIS/SEIR will be held after it is published. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Draft SEIS/SEIR, should be sent to Mr. Christopher K. Eng, U.S. Army Corps of Engineers, San Francisco District, 333 Market Street, 7th floor (CESPN–ET–PP), San Francisco, California, 94105–2197.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 01–19758 Filed 8–6–01; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Secretary of the Navy's Advisory Subcommittee on Naval History

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Secretary of the Navy's Advisory Subcommittee on Naval History, a subcommittee of the Department of Defense Historical Advisory Committee will meet to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History, which was conducted on September 21, and September 22, 2000 and to make comments and recommendations on these activities to the Secretary of the Navy. The meetings will be open to the public.

DATES: The meetings will be held on Thursday, September 20, 2001, from 8:00 a.m. to 4:00 p.m. and Friday, September 21, 2001, from 8:00 a.m. to 4:00 p.m.

ADDRESSES: The meetings will be held at the Navy Museum of The Naval Historical Center, 805 Kidder Breese Street, SE, Building 76, Washington Navy Yard, DC.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Dudley, Director of Naval History, 805 Kidder Breese Street, SE, Bldg. 57, Washington Navy Yard, DC 20374–5060, telephone (202) 433–2210.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of these meetings is to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History and to make comments and recommendations on these activities to the Secretary of the Navy.

Dated: July 24, 2001.

T. J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 01–19773 Filed 8–6–01; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Request

AGENCY: Department of Education

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 9, 2001.

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 Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type

of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. 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: August 1, 2001.

John Tressler,

Leader Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: New.

Title: Federal Direct Loan Program and Federal Family Education Loan Program Teacher Loan Forgiveness Forms.

Frequency: One time for the application and Annually for the forbearance.

Affected Public:

Businesses or other for-profit; Individuals or household; Not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 21,425; Burden Hours: 6,929.

Abstract: Borrowers who received loans from the William D. Ford Federal Direct Loan Program and/or the Federal Family Education Loan Program and who teach in low-income areas for five complete consecutive years, and who meet other requirements will use this application to receive up to $5,000 of their subsidized Federal Stafford Loans, unsubsidized Federal Stafford Loans, Direct Subsidize Loans, and/or Direct Unsubsidized loans forgiven. The information on the forbearance form will be used to determine whether borrowers with low balances are eligible for forbearance while they are performing qualifying teaching service.

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 Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@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. 01–19657 Filed 8–6–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On July 31, 2001, a 60-day notice inviting comment from the public was published for the Revision of Consolidated Annual Performance and Financial Reports for the Carl D. Perkins Vocational and Technical Education Act in the **Federal Register** (Volume 66, Number 147) dated July 31, 2001. However, the title of the collection should be Vocational Technical Education Annual Performance and Financial Reports. The Leader, Regulatory Information Management, Office of the Chief Information Officer, hereby issues a correction notice on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 1, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address LAUREN_WITTENBERG @OMB.EOP.GOV.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651 or should be electronically mailed to the internet address OCIO_IMB_Issues@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Sheila Carey at her internet address Sheila.Carey@ed.gov.

Dated: August 1, 2001.

John Tressler,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 01–19658 Filed 8–6–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 6, 2001.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address Lauren_Wittenberg@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision,

extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 1, 2001.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: New.

Title: Loan Discharge Application: Unpaid Refund.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 600.

Burden Hours: 300.

Abstract: If a school fails to make a refund, a borrower uses this form to apply for a corresponding discharge of all or a portion of his or her Federal Family Education Program loan or William D. Ford Federal Direct Loan Program loan.

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 Joseph Schubart at (202) 708–9266 or via his internet address Joe.Schubart@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. 01–19659 Filed 8–6–01; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Thursday, September 6, 2001, 9:00 a.m.–5:00 p.m.; Friday, September 7, 2001, 8:30 a.m.–3:30 p.m.

ADDRESSES: Radisson Hotel Seattle Airport, 17001 Pacific Highway South, Seattle, WA 98188 (206–244–6000).

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday morning, September 6, 2001

- Semi-Annual Tri-Party Agreement Status Overview with Senior Tri-Party Agreement Managers (DOE–Richland Operations Office, DOE–Office of River Protection, U.S. Environmental Protection Agency, and Washington State Department of Ecology) may be introduced.
- WA State Department of Ecology—Enforcement Perspective.
- Review of Agency Responses to Hanford Advisory Board Advice.

Thursday afternoon, September 6, 2001

- Introduction of Draft Advice on Tri-Party Agreement Community Relations Plan.
- Discussion on re-issuance of draft advice to Environmental Management Assistant Secretary of Energy on Field Office Decision Authority.

Friday morning, September 7, 2001

- Action on Draft Advice on Tri-Party Agreement Community Relations Plan.
- Action on re-issuance of draft advice on Field Office Decision Authority.
- Board Discussion on Major Policy Issues for FY 2002.

Friday afternoon, September 7, 2001

- Updates.
- Inspector General Report on Off-Site Waste Funding Options.
- Hanford Draft Institutional Control Plan.
- Central Plateau—Issue Manager and Agency Update.
- K–Basin Spent Fuel Rebaselining and Progress.
- Overview of DOE–Richland and DOE–Office of River Protection Baseline Activities.
- Groundwater Roadmap Roundtable.

Public Participation

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operation Office, PO Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC on August 2, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–19718 Filed 8–6–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, September 12, 2001, 6 p.m.–9:30 p.m.

ADDRESSES: Garden Plaza Hotel, 215 South Illinois Avenue, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator/Ex-Officio, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Activities of the Community Reuse Organization of East Tennessee at the East Tennessee Technology Park presented by Susan Cange, Project Manager, DOE/ORO.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes

Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on August 2, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–19719 Filed 8–6–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho; Meeting

AGENCY: Department of Energy

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Tuesday, September 18, 2001, 8 a.m.–6 p.m.; Wednesday, September 19, 2001, 8 a.m.–5 p.m.

Public participation sessions will be held on: Tuesday, September 18, 2001, 12:15–12:30 p.m., 5:45–6 p.m.; Wednesday, September 19, 2001, 11:45–12 noon, 3:30–3:45 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Coeur d'Alene Inn, Coeur d'Alene, Idaho.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda

Agenda topics may change up to the day of the meeting. Please contract Jason Associates for the most current agenda or visit the CAB's Internet site at *www.ida.net/users/cab/.*

Objectives of the meeting will be:

- To receive a presentation on groundwater contamination at the INEEL in preparation to participate in the upcoming Site Specific Advisory Board Groundwater Workshop
- To discuss parameters for what is acceptable in technology alternatives to incineration, concerns with incineration that apply to other alternatives, and the relative importance of this evaluation in relation to other environmental research needs
- To clarify DOE's expectations of the INEEL CAB and discuss the utility of the CAB to DOE
- To receive presentations on the General Accounting Office's report and the House Appropriations Committee's request for a review of on-site versus off-site disposal costs and then discuss whether the INEEL CERCLA Disposal Facility is still acceptable to the INEEL CAB
- To discuss parameters for acceptability of site missions and research for use in institutional planning and budget allocation
- To receive a presentation on and discuss the ''Top-Down Review''
- To receive a status report on the INEEL Workforce Restructuring
- To receive a presentation on and discuss a recommendation addressing the Draft Environmental Assessment for Deactivation, Decommissioning, and Dismantlement of Building 603

Public Participation

This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m. Monday through Friday except Federal holidays. Minuted will also be available by writing to Ms. Wendy Lowe, INEEL CAB Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402 or by calling (208) 522–1662.

Issued at Washington, DC on August 2, 2001.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–19720 Filed 8–6–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Worker Advocacy Advisory Committee Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Worker Advocacy Advisory Committee.

The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of this meeting be published in the **Federal Register**.

DATES: Tuesday, August 28, 2001, 5 p.m. to 8 p.m.; Wednesday, August 29, 2001, 8 a.m. to 3:15 p.m.

ADDRESSES: Double Tree Hotel, 8773 Yates Drive, Westminster, Colorado.

FOR FURTHER INFORMATION CONTACT: Judy Keating, Executive Administrator, Worker Advocacy Advisory Committee, U.S. Department of Energy, EH–8, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone Number 202–586–7551, E-mail: judy.keating@eh.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

To provide advice to the Acting Director of the Office of Worker Advocacy of the Department of Energy on implementation of the program to assist workers who have been diagnosed with work-related illnesses. The meeting will open on Tuesday, August 28, with an extended public comment period, in order to provide the Committee with testimony from DOE workers, their families, survivors of DOE workers, as well as union representatives, and others who can provide information on the implementation of the Energy Employees Occupational Illness Compensation Program. The timing of this comment period, at the beginning of the committee meeting, is designed to provide the Committee with information on the program implementation, to be factored into its deliberations during the Committee meeting the following day.

Tentative Agenda of the Committee Meeting

Tuesday, August 28

Extended Public Comment Period

Wednesday, August 29

Reports from Agency Representatives (Department of Labor, Department of Justice, Department of Health and Human Services, Department of Energy)

Invited Presentations/Reports

WAAC Discussion of Issues

Public Comment Period

Next Steps/Path Forward

Public Participation

This meeting is open to the public on a first-come, first-serve basis because of limited seating. Members of the public who would like to make statements during the comment periods may sign up in advance by contacting Judy Keating at the address or telephone listed above, or may sign up at the meeting room between 4:30 p.m. and 7:30 p.m. on August 28. Members of the public who wish to make statements during August 29 comment period may make advance arrangements as stated or may sign up at the meeting room prior to 1:00 p.m. on August 29. Written statements may be filed with the committee before or after the meeting by contacting Judy Keating at the address or telephone listed above. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

The minutes of the meeting will be available for public review and copying at the Freedom of Information Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9 a.m. and 4 p.m., Monday through Friday, except holidays and will also be made available on the following Internet address: www.eh.doe.gov/advocacy.

Issued in Washington, D.C. on August 1, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–19721 Filed 8–6–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC01–1–000, FERC Form 1]

Proposed Information Collection and Request for Comments

August 1, 2001.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before October 9, 2001.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)208–1415, by fax at (202)208–2425, and by e-mail at *mike.miller@ferc.fed.us.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form 1 ''Annual Report for Major Electric Utilities, Licensees and Others'' (OMB No. 1902–0021) is used by the Commission to implement the statutory provisions of the Federal Power Act (FPA) 16 U.S.C. 791a–825r. The Commission is authorized and empowered to make investigations, collect and record data, prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for administering the FPA. The Commission may prescribe a system of accounts for jurisdictional companies and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited. The FERC Form No. 1 is a financial and operating report for electric rate regulation. ''Major'' is defined as (1) one million Megawatt hours or more of total sales; (2) 100 megawatt-hours of sales for resale; (3) 500 megawatt-hours of power exchanges delivered; or (4) 500 megawatt-hours of wheeling for others (deliveries plus losses).

FERC staff use the data in the continuous review of the financial condition of regulated companies, in various rate proceedings and supply programs and in the Commission's audit program. The annual financial information filed with the Commission is a mandatory requirement submitted in a prescribed format which is filed electronically via the Internet. The Commission implements these filing

requirements in the Code of Federal Regulations(CFR) under 18 CFR Parts 41, 101, 141.1 and 385.2011.

*Action:*The Commission is requesting a three-year extension of the current expiration date, and proposing certain changes to the existing collection of data. Based on a review of the FERC's requirements for Form 1 data and requests from respondents for reductions in the information collection, the Commission recommends the elimination of the Form 1 schedules listed below:

- Security Holders and Voting Powers (106–107)
- Construction Overheads—electric (217)
- General Description of Construction Overhead Procedure (218)
- Nonutility Property (221)
- Capital Stock Sub, Cap Stock Liability for Con, Prem. Cap Stock, & Inst Received (252)
- Discount on Capital Stock (254)
- Number of Electric Department Employees (323)
- Particulars Concerning Certain Income Deduction and Interest Charges (340)
- Electric Distribution Meters and Line Transformers (429)
- Environmental Protection Facilities (430)
- Environmental Protection Expenses (431)

In addition, the Commission is eliminating the requirement for paper copies of the Form 1. *Burden Statement:* Public reporting burden for this collection will be reduced by the elimination of several schedules and the paper filing format requirement. The burden is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
210	1	1,050	220,500

Estimated cost burden to respondents: 220,500 hours/2,080 hours per year × $117,041 per year = $12,407,470. The cost per respondent is equal to $59,083.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond.

David P. Boergers,

Secretary.

[FR Doc. 01–19717 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–1758–000]

Altorfer Inc.; Notice of Issuance of Order

August 1, 2001.

Altorfer Inc.(Altorfer) submitted for filing a rate schedule under which Altorfer will engage in wholesale electric power and energy transactions at market-based rates. Altorfer also requested waiver of various Commission regulations. In particular, Altorfer requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Altorfer.

On June 8, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Altorfer should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Altorfer is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Altorfer and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Altorfer's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 31, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19709 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–1784–000]

Fountain Valley Power, L.L.C.; Notice of Issuance of Order

August 1, 2001.

Fountain Valley Power, L.L.C. (Fountain Valley) submitted for filing a rate schedule under which Fountain Valley will engage in wholesale electric power and energy transactions at market-based rates. Fountain Valley also requested waiver of various Commission regulations. In particular, Fountain Valley requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Fountain Valley.

On June 11, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Fountain Valley should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Fountain Valley is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Fountain Valley and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Fountain Valley's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 31, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19711 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–1760–000]

Haleywest L.L.C.; Notice of Issuance of Order

August 1, 2001.

Haleywest L.L.C. (Haleywest) submitted for filing a rate schedule under which Haleywest will engage in wholesale electric power and energy transactions at market-based rates. Haleywest also requested waiver of various Commission regulations. In particular, Haleywest requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Haleywest.

On June 8, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Haleywest should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Haleywest is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Haleywest and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Haleywest's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 31, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19710 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–1800–000]

Pierce Power LLC; Notice of Issuance of Order

August 1, 2001.

Pierce Power LLC (Pierce) submitted for filing a rate schedule under which Pierce will engage in wholesale electric power and energy transactions at market-based rates. Pierce also requested waiver of various Commission regulations. In particular, Pierce requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Pierce.

On June 8, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard

or to protest the blanket approval of issuances of securities or assumptions of liability by Pierce should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Pierce is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Pierce and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Pierce's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 31, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19712 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–2217–000]

Sunrise Power Company, LLC; Notice of Issuance of Order

August 1, 2001.

Sunrise Power Company, LLC (Sunrise) submitted for filing a rate schedule under which Sunrise will engage in wholesale electric power and energy transactions at market-based rates. Sunrise also requested waiver of various Commission regulations. In particular, Sunrise requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Sunrise.

On July 25, 2001, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Sunrise should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Sunrise is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Sunrise and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Sunrise's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 24, 2001.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19713 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–417–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

August 1, 2001.

Take notice that on July 27, 2001, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, pursuant to Sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's (the Commission) Regulations under the Natural Gas Act (NGA), as amended, and blanket certificate authority granted in Docket No. CP82–426–000, filed in Docket No. CP01–417–00 a request for authorization to modify all of its existing reciprocating engines at Compressor Station No. 170 in Appomattox County, Virginia in order to comply with the state of Virginia plan to implement the Clean Air Act Amendments of 1990 (Station 170 has 11 reciprocating/ compressor units), all as more fully set forth in the request, which is on file with the Commission, and open for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' from the RIMS Menu and follow the instructions (please call 202–208–2222 for assistance).

Transco states that it plans to install turbochargers and associated equipment on 7 of the 11 reciprocating engines in order to reduce NO_X emissions. These engines currently do not have turbochargers on them. It is stated that Transco plans to modify the existing turbochargers at the other 4 reciprocating units to increase their capacity and install associated equipment in order to reduce NO_X emissions. At all 11 engines, emissions will be reduced by achieving a true lean air-fuel ratio, injecting high-pressure fuel directly into the power cylinders and making other engine adjustments. The injection of high-pressure fuel directly into the power cylinders significantly improves the combustion process by producing a more homogeneous mixture of air and fuel within the power cylinder. The true lean air-fuel ratio coupled with the high-pressure fuel injection works by promoting stable combustion characteristics and thus reduces the formation of NO_X.

Transco further states that the 7 engines which will have turbochargers installed will have the potential to

perform above their current operating horsepower. However, it is stated that, since Station 170 is automated, Transco has the ability to shut down certain engines or reduce their load to ensure that the station will not operate above the station's total certificated horsepower. Since Transco will install these turbochargers at Station 170 solely to achieve an environmental improvement, i.e., lower NO_X emissions, it is stated that Transco has no intent or need to operate the station above its certificated horsepower. Therefore, when Transco installs these turbochargers at Station 170 it will adjust the automation program at the station so that it will not operate above its certificated horsepower.

Transco states that at the other 4 engines, modification of the existing turbochargers to increase their capacity will not create the potential of these engines performing above their current operating horsepower because the engines are already operating at maximum horsepower and cannot operate at a higher horsepower output. Accordingly, there will be an increase in the capacity in Transco's system in the vicinity of the station as a result of installing the 7 new turbochargers and modifying the 4 existing turbochargers.

Transco states that installation of new turbochargers and modifications to existing ones at Station 170 will require some work to be done outside of the compressor building. A fuel gas header designed to bring high-pressure fuel gas to each individual reciprocating unit will extend from the yard to the building with a supply to each unit. A new power supply building with approximate dimensions of 13 feet by 45 feet will be installed in the yard to supply uninterrupted power to the new equipment and unit control panels. New fin-fan coolers will be installed in the yard to satisfy the additional cooling requirements of the new turbochargers. Modifications of the type proposed may require the installation of a new utility system which would be built within existing buildings, but may require expanding out from them. All of the proposed work described above will be built within 50 feet of existing station facilities and will be done within the confines of previously disturbed areas. Approximately 0.2 acres of previously disturbed ground will be affected by the proposed project. Restoration of this area will be conducted according to the Commission's Upland Erosion Control, Revegetation, and Maintenance Plan.

Transco states that the above-referenced modifications are estimated to cost $18.7 million.

Transco further states that the construction and operation of the proposed facilities will have no significant impact on the quality of human health or the environment other than the *positive* impact of reducing NO_X emissions. The proposed facilities will be installed either entirely within existing buildings or within 50 feet of existing station facilities (and within the confines of previously disturbed areas). Transco states that the proposed facilities will be designed, constructed, operated and maintained in accordance with all applicable safety standards and plans for maintenance and inspection.

Accordingly, Transco submits that this project will serve the public convenience and necessity because it will (1) reduce NO_X emissions at Station 170, and (2) enable Transco to comply with the Clean Air Act Amendments of 1990 and the state implementation plan pursuant thereto.

Transco states that it needs to commence the work at Station 170 on September 24, 2001 in order to complete the work on a timely basis with respect to the requirements of the Clean Air Act Amendments of 1990 and the state implementation plan, while at the same time accommodating the operational needs of its pipeline system and ensuring that Transco's gas service obligations are met. Transco states that a state air permit will be negotiated.

Any questions regarding this filing should be directed to Alfred E. White, Jr., Senior Attorney, call (713) 215–2323 or Tom Messick, call (713) 215–2772, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251.

Any person or the Commission's staff may, within 45 day after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the link to the User's Guide. If you have not yet established an account, you will need to create a new account by clicking on ''Login to File'' and then ''New User Account''.

David P. Boergers,

Secretary.

[FR Doc. 01–19708 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–414–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

August 1, 2001.

Take notice that on July 25, 2001, Williams Gas Pipelines Central, Inc. (Williams), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP01–414–000 a request pursuant to Sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (18 CFR Sections 157.205, 157.208) for authorization to increase the Maximum Allowable Operating Pressure (MAOP) of approximately 5.28 miles of the Neosho 6-inch-diameter lateral pipeline HQ–14 downstream of regulator setting #12278, including segments HQ–38 and HQ–35, located in Newton County, Missouri, under Williams' blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance).

Williams proposes to increase the MAOP of the Neosho 6-inch-diameter lateral line from 150 psig to 226 psig. Williams states that it will perform the pressure test required for the proposed increase in MAOP using procedures in accordance with applicable Department of Transportation safety standards contained in Part 192 of Title 45 of the Code of Federal Regulations. Williams further states that all affected landowners will be notified of the proposed procedure by first class mail, and that there should be no adverse impact on the environment since the pressure test will be performed using natural gas. Williams estimates that the

proposed testing will cost approximately $50,000.

Any questions regarding the application may be directed to David N. Roberts, Manager of Certificates and Tariffs, Williams Gas Pipelines Central, Inc., P.O. Box 20008, Owensboro, Kentucky 42304, or telephone (270) 688–6712.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19707 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3096–007, et al.]

Pepco Energy Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 31, 2001.

Take notice that the following filings have been made with the Commission:

1. Pepco Energy Services, Inc.

[Docket No. ER98–3096–007]

Take notice that on July 25, 2001 Pepco Energy Services, Inc. filed an updated market power analysis in Support of Its Authority to Sell Electricity at Market-Based Rates.

Comment date: August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Kentucky Utilities Company

[Docket No. ER01–1288–001]

Take notice that on July 26, 2001, Kentucky Utilities Company (KU), tendered for filing, in compliance with delegated Order dated March 22, 2001, its Interconnection Agreement with East Kentucky Power Cooperative, Inc.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Company and Florida Power Corporation

[Docket No. ER01–1807–003]

Take notice that Carolina Power & Light Company and Florida Power Corporation, on July 25, 2001, tendered for filing revised tariff sheets under their FERC Electric Tariffs, Third Revised Volume No. 3 and Second Revised Volume No. 6, respectively, in compliance with the Commission's order issued on June 25, 2001, Carolina Power & Light Co. and Florida Power Corp., 95 FERC ¶ 61,429 (2001). Consistent with the Commission's order, the revisions in this filing will become effective on June 15, 2001.

Copies of the filing were served upon the public utility's jurisdictional customers and the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Florida Public Service Commission.

Comment date: August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Energy, Inc.

[Docket No. ER01–2461–001]

Take notice that on July 23, 2001, Midwest Energy, Inc. (Midwest) tendered for filing with the Federal Energy Regulatory Commission the Transaction Service Agreement entered into between Midwest and City of Colby, Kansas.

Midwest states that it is serving copies of the instant filing on the Kansas Corporation Commission.

Comment date: August 13, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. New York Independent System Operator, Inc.

[Docket No. ER01–2495–001]

Take notice that on July 25, 2001, Niagara Mohawk Power Corporation tendered for filing an amended service agreement, i.e. an Interconnection Agreement between Niagara Mohawk Power Corporation and Allegany Limited Partnership for a 2 MW internal combustion generating facility located in the Town of Carrollton, Cattaraugus County, New York, dated as of June 29, 2001, (Agreement). The amended filing reflects the filing of the Agreement as a service agreement filed by Niagara Mohawk under the NYISO Open Access Transmission Tariff. The filing has been designated by the New York Independent System Operator as Service Agreement No. 311.

Comment date: August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Mexico

[Docket No. ER01–2566–001]

Take notice that on July 26, 2001, Public Service Company of New Mexico (PNM) submitted for filing an amendment to the July 11, 2001 filing of the Wholesale Requirements Power Sale and Services Agreement (Agreement) dated June 29, 2001 between PNM and Texas-New Mexico Power Company (TNMP), filed as Service Agreement No. 28 under PNM's FERC Electric Tariff, First Revised Volume No. 3 (Power and Energy Sales Tariff). The amendment includes revised versions of Exhibit 2, Operating Procedure No. 1 and Operating Procedure No. 3 to the Agreement, certain pages of which were inadvertently omitted from the original filing. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of this filing have been served upon TNMP and the New Mexico Public Regulation Commission.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Central Power and Light Company

[Docket No. ER01–2575–001]

Take notice that on July 25, 2001, Central Power and Light Company (CPL) resubmitted for filing an Interconnection Agreement, dated September 2, 1998, between CPL and South Texas Electric Cooperative, Inc. (STEC) amended to include four additional points of interconnection between the parties.

CPL seeks to correct clerical omissions contained in its previous filing of the amendments to this agreement on July 11, 2001. This filing now contains inadvertently omitted Facility Schedules Nos. 7 through 15 that were previously accepted by the Commission in Docket No. ER99–4502–000 and page format changes in the filing that are necessary to bring that filing into compliance with the Commission's Rules of Practice and Procedure and Order No. 614. No changes have been made to the

Interconnection Agreement nor the amendments to that agreement since the time they were executed by CPL and STEC. CPL seeks no change in the waivers of notice requirements requested in that filing.

CPL served copies of the filing on South Texas Electric Cooperative, Inc. and the Public Utility Commission of Texas.

Comment date: August 15, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Avista Corp.

[Docket No. ER01–2682–000]

Take notice that on July 26, 2001, Avista Corporation (AVA) tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm and Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with Sempra Energy Trading Corp. AVA requests the Service Agreements be given an effective date of July 5, 2001.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

9. Indianapolis Power & Light Company

[Docket No. ER01–2683–000]

Take notice that on July 26, 2001, Indianapolis Power & Light Company filed a Service Agreement for Non-Firm Point-to-Point Transmission Service between Indianapolis Power & Light Company and Dayton Power & Light Company, under its open access transmission tariff in the above-captioned proceeding.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER01–2684–000]

Take notice that on July 26, 2001, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Dynegy Power Marketing, Inc.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp Power Marketing, Inc.

[Docket No.ER01–2685–000]

Take notice that on July 26, 2001, PacifiCorp Power Marketing, Inc. filed with the Federal Energy Regulatory Commission a Ten-Year Power Purchase Agreement between PacifiCorp Power Marketing, Inc. and The California Department of Water Resources.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

12. American Transmission Systems, Inc.

[Docket No. ER01–2686–000]

Take notice that on July 26, 2001, American Transmission Systems, Inc. filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Mirant Americas Energy Marketing, LP, the Transmission Customer. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000. The proposed effective date under the Service Agreement is July 25, 2001 for the above mentioned Service Agreement in this filing.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

13. American Transmission Systems, Inc.

[Docket No. ER01–2687–000]

Take notice that on July 26, 2001, American Transmission Systems, Inc. filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Mirant Americas Energy Marketing, LP, the Transmission Customer. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000. The proposed effective date under the Service Agreement is July 25, 2001 for the above mentioned Service Agreement in this filing.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

14. Gilroy Energy Center, LLC

[Docket No. ER01–2688–000]

Take notice that on July 26, 2001, Gilroy Energy Center, LLC, (the Applicant) tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own or lease and operate five 45-megawatt simple-cycle, natural gas-fired combustion turbine peaking facilities to be located in Gilroy, California.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

15. King City Energy Center, LLC

[Docket No. ER01–2689–000]

Take notice that on July 26, 2001, King City Energy Center, LLC, (the Applicant) tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own or lease and operate one 45-megawatt simple-cycle, natural gas-fired combustion turbine peaking facilities to be located in King City, California.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

16. California Electric Marketing, LLC

[Docket No. ER01–2690–000]

Take notice that on July 26, 2001, California Electric Marketing, LLC, 1044 North 115 Street, Suite 400, Omaha, Nebraska 68154 (CalEM) submitted for filing with the Federal Energy Regulatory Commission an application for blanket authorization and certain waivers under regulations of the Commission, and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective the earlier of September 24, 2001, or the date of a Commission order granting approval of this Rate Schedule.

CalEM intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where CalEM purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, CalEM will be functioning as a marketer. In CalEM's marketing transactions, CalEM proposes to charge rates mutually agreed upon by the parties.

In transactions where CalEM does not take title to electric power and/or energy, CalEM will be limited to the role of a broker and will charge a fee for its services. CalEM is not in the business of producing electric power nor does it contemplate acquiring title to any electric power transmission facilities.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

17. Avista Corp.

[Docket No.ER01–2691–000]

Take notice that on July 26, 2001 Avista Corporation (AVA) tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm and Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with Calpine Energy Services, L.P. AVA requests the Service Agreements be given an effective date of June 26, 2001.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

18. Canastota Windpower LLC

[Docket No. ER01–2692–000]

Canastota Windpower LLC (Canastota) petitioned the Commission on July 26, 2001, for authority to sell electricity at market-based rates under Section 205(a) of the Federal Power Act, for granting of certain blanket approvals and for the waiver of certain Commission regulations. Canastota is a limited liability company that proposes to engage in the wholesale sale of electric power in the state of New York.

Comment date: August 6, 2001, in accordance with Standard Paragraph E at the end of this notice.

19. IDACORP Energy L.P.

[Docket No. ER01–2693–000]

Take notice that on July 26, 2001, IDACORP Energy L.P. (IDACORP Energy) tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under IDACORP Energy FERC Electric Tariff No. 1, Market Rate Power Sales Tariff, between IDACORP Energy and Overton Power District.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

20. The Energy Group of America, Inc.

[Docket No. ER01–2694–000]

Take notice that on July 26, 2001, The Energy Group of America, Inc. tendered for filing a Notice of Succession pursuant to 18 C.F.R. § 35.16 of the Commission's regulations in order to reflect its name change from Energy 2000, Inc.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

21. The Dayton Power and Light Company

[Docket No. ER01–2695–000]

Take notice that on July 26, 2001 The Dayton Power and Light Company (Dayton) submitted a service agreement establishing Axia Energy, L.P. as a customer under the terms of Dayton's FERC Electric Tariff, Original Volume No. 10.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements. Copies of this filing were served upon Axia Energy, L.P. and the Public Utilities Commission of Ohio.

Comment date: August 16, 2001, in accordance with Standard Paragraph E at the end of this notice.

22. Southwest Transmission Cooperative, Inc.

[Docket No. NJ01–5–001]

Take notice that on July 26, 2001, Southwest Transmission Cooperative, Inc., submitted for filing its revised Standards of Conduct in compliance with the Commission's letter order of June 28, 2001, in NJ01–5–000.

Comment date: August 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–19705 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–412–000]

Cross Bay Pipeline Company, L.L.C. and Transcontinental Gas Pipe Line Corporation; Notice of Availability of the Environmental Assessment for the Proposed Cross Bay Project

August 1, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Cross Bay Pipeline Company, L.L.C. (Cross Bay) and Transcontinental Gas Pipe Line Corporation (Transco) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the proposed project which includes the transfer of ownership, construction, and operation of natural gas pipeline facilities. Cross Bay proposes to expand the capacity of facilities in New Jersey and New York to transport an additional 125,000 dekatherms per day of natural gas to KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island. Cross Bay proposes to:

- Acquire, hydrostatically test, and replace sections of 3.27 miles of Transco's 42-inch-diameter Cross Bay Extension in Middlesex County, New Jersey;
- Acquire and uprate by hydrostatic testing 33.66 miles of Transco's 26-inch-diameter Cross Bay Extension crossing Middlesex and Monmouth Counties, New Jersey and Queens and Nassau Counties, New York;
- Acquire Transco's Morgan and Long Beach Meter Stations in Middlesex County, New Jersey and Nassau County, New York, respectively; and
- Construct and operate a 16,000-horsepower Cross Bay Compressor Station and Cross Bay Meter Station at

the same location in Middlesex County, New Jersey.

The applicants also request the abandonment of certain Transco pipeline facilities by transfer to Cross Bay.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Group 1;
- Reference Docket No. CP00–412–000; and
- Mail your comments so that they will be received in Washington, DC on or before August 30, 2001.

Comments, protests and interventions may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214)[1]. Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.gov) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 01–19706 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

August 1, 2001.

Take notice the following Settlement Agreement has been filed with the Commission and is available for public inspection:

a. *Type of application:* Settlement on New Major License Application

b. *Project No.* 2142–031

Project Name: Indian Pond

Applicant: FPL Energy Maine Hydro, LLC

c. *Date Settlement Agreement filed:* July 26, 2001

d. *Location:* On the Kennebec River, near the town of The Forks, Somerset and Piscataquis counties, Maine. The project would not utilize federal lands.

e. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

f. *Applicant Contact:* Robert C. Richter III, Senior Environmental Coordinator; FPL Energy Maine Hydro, LLC; 100 Middle Street; Portland, ME 04101; (207) 771–3536.

g. *FERC Contact:* Kevin Whalen (202) 219–2790.

h. *Deadline dates:* Comments due: 30 days from the issuance date of this notice. Reply comments due: 45 days from the issuance date of this notice.

i. *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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

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. A Settlement Agreement was filed with the Commission on July 26, 2001. The agreement is the final, executed Indian Pond Hydroelectric Project Settlement Agreement for Project No. 2142. The Settlement Agreement is comprehensive resolving issues among the signatory parties related to project operations, minimum flow, fisheries enhancement, wildlife and wetlands, recreation, and land-use, as well as other resolved subjects. Comments and reply comments on the Settlement Agreement are due as indicated in item h. above.

l. Copies of the Settlement Agreement are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. The Settlement Agreement may also be viewed on the web at http://www.ferc.gov using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy of the Settlement Agreement is also available for inspection and reproduction at the address in item f. above.

David P. Boergers,

Secretary.

[FR Doc. 01–19714 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

August 1, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.:* 12073–000.

c. *Date filed:* July 13, 2001

d. *Applicant*: Mark R. Frederick

e. *Name of Project*: Wise Powerhouse Outlet Power Project

f. *Location:* Would utilize outflow into the Auburn Ravine from the existing Wise Powerhouse of Pacific Gas & Electric Company's Drum-Spaulding Project No. 2310, in Placer County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact*: Mr. Mark R. Frederick, 17825 Crother Hills Road, Meadow Vista, CA 95722, (530) 887–1984.

i. *FERC Contact*: James Hunter, (202) 219–2839.

j. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. Please include the project number (P–12073–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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.

k. *Description of Project:* The proposed project, using outflow from Pacific Gas & Electric Company's existing Wise Powerhouse, would consist of: (1) a proposed gated intake attached to the existing outfall from the powerhouse, (2) a proposed 30-foot-long, 3-foot-diameter penstock, (3) a proposed powerhouse containing a 250-kilowatt generating unit and emptying into the Ravine, (4) a proposed 50-foot-long transmission line, and (5) appurtenant facilities. The project would have an annual generation of 2.2 GWh that would be sold to Pacific Gas & Electric Company or a power distributor.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. 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.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number 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 regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or 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. 01–19715 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

August 1, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit

b. *Project No.*: 12085–000

c. *Date filed*: July 13, 2001

d. *Applicant*: Mark R. Frederick

e. *Name of Project*: Halsey Afterbay Outlet Power Project

f. *Location*: Would utilize outflow from the existing afterbay of the Halsey Powerhouse of Pacific Gas & Electric Company's Drum-Spaulding Project No. 2310, in Placer County, California.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact*: Mr. Mark R. Frederick, 17825 Crother Hills Road, Meadow Vista, CA 95722, (530) 887–1984.

i. *FERC Contact*: James Hunter, (202) 219–2839.

j. *Deadline for filing motions to intervene, protests, and comments*: 60 days from the issuance date of this notice.

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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. Please include the project number (P–12085–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener 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.

k. *Description of Project*: The proposed project, using outflow from Pacific Gas & Electric Company's existing Halsey Afterbay, would consist of: (1) a proposed 300-kilowatt generating unit placed in the existing outfall conduit from the Afterbay, (2) a proposed 4-foot-diameter draft tube emptying into the Wise Canal, (3) a proposed 50-foot-long transmission line, and (4) appurtenant facilities. The project would have an annual generation of 2.6 GWh that would be sold to Pacific Gas & Electric Company or a power distributor.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. 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.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number 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 regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. 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. 01–19716 Filed 8–6–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7025–7]

Federal NO_X Budget Trading Program: Applicability Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of applicability determination under Federal NO_X Budget Trading Program.

SUMMARY: EPA established 40 CFR part 97, the Federal NO_X Budget Trading Program (''the Program''), to reduce interstate transport of ozone under section 126 of the Clean Air Act (''section 126''). The Program applies to existing or new large electric generating units (''EGU's'') and large non-EGU's in states subject to section 126. EPA finds, in an applicability determination dated August 1, 2001, that Point 004 at International Paper's Plant 0006 in Virginia is not subject to the Program because, as a unit that commenced operation before January 1, 1996, it is not ''fossil-fuel fired'' as defined at 40 CFR 97.2, since fossil fuel did not comprise more than 50% (47.84%) of Point 004's total annual heat input for 1995. Since Point 004 is not subject to the Program, NO_X allowances will not be allocated for this unit in EPA's NO_X Allowance Tracking System.

DATES: Any comments regarding this applicability determination must be submitted in writing to EPA at the address below no later than August 31, 2001.

ADDRESSES: U.S. EPA, Clean Air Markets Division (6204N), 1200 Pennsylvania Avenue, NW., Washington DC, 20460.

FOR FURTHER INFORMATION CONTACT: Robert Miller, U.S. EPA Headquarters, Clean Air Markets Division, (202) 564–9077.

Dated: July 31, 2001.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 01–19750 Filed 8–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7025–6]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Research Strategies Advisory Committee (RSAC) of the US EPA Science Advisory Board (SAB), will meet on Wednesday, August 29, 2001 in the Oklahoma Room at the Environmental Protection Agency's Region 6 Office which is located at 1445 Ross Avenue, Dallas, Texas 75202. The meeting will begin by 8:30 a.m. and adjourn no later than 5 p.m. Central Time. The meeting is open to the public, however, seating is limited and available on a first come basis.

Purpose of the Meeting—The RSAC plans to hold a consultation with the Office of the Inspector General's Office to explore how science might be better used to inform Agency decisions.

Charge to the Committee—Conduct a consultation with the Office of Inspector General's Office about how science might be better used to inform Agency decisions.

For Further Information—Any member of the public wishing further information concerning this meeting should contact Dr. John ''Jack'' R. Fowle III, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4547; FAX (202) 501–0323; or via e-mail at *fowle.jack@epa.gov.* For a copy of the draft meeting agenda, please contact Ms. Wanda Fields, Management Assistant at (202) 564–4539 or by FAX at (202) 501–0582 or via e-mail at *fields.wanda@epa.gov.*

Materials that are the subject of this review are available from Dr. Jay Messer of the U.S Environmental Protection Agency at (919) 541–1425 or by e-mail at *messer.jay@epa.gov.*

Providing Oral or Written Comments—Members of the public who wish to make a brief oral presentation (10 minutes or less) to the Committee must contact Dr. Fowle *in writing* (by letter or by fax—see contact information above) no later than 12 noon Eastern Time, Wednesday, August 22, 2001 in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself. Written comments will be accepted until close of business August 29, 2001. See below for more information on providing written or oral comments.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY2000 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Dr.

Fowle at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 23, 2001.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 01–19754 Filed 8–6–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51974; FRL–6792–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 18, 2001 to July 6, 2001, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket control number OPPTS–51974 and the specific PMN number, must be received on or before September 6, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51974 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'','' Regulations and Proposed Rules, and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51974. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51974 and the specific PMN number in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically*. You may submit your comments electronically by e-mail to: ''oppt.ncic@epa.gov,'' or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51974 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 18, 2001 to July 6, 2001, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The ''S'' and ''G'' that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 37 PREMANUFACTURE NOTICES RECEIVED FROM: 06/18/01 TO 07/06/01

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0681	06/18/01	09/16/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0682	06/18/01	09/16/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated intermediate
P–01–0685	06/18/01	09/16/01	The Dow Chemical Company	(G) Manufacture of polyalkoxylate, alkylamine initiated	(G) Alkylamine, alkoxylated
P–01–0686	06/18/01	09/16/01	The Dow Chemical Company	(G) Polyurethane foam	(G) Alkylamine initiated, alkylene oxide polymer
P–01–0687	06/19/01	09/17/01	King Industries, Inc.	(S) Catalyst for polymer crosslinking;corrosion inhibitor and demulsifier additive;catalyst for coatings; metal chelating agent	(G) Alkyl aryl sulfonic acid
P–01–0688	06/19/01	09/17/01	King Industries, Inc.	(S) Rust and corrosion inhibitor for industrial lubricants;rust and corrosion inhibitor for coatings; additive for coatings	(G) Alkyl aryl sulfonate, calcium salt
P–01–0689	06/19/01	09/17/01	BASF Corporation	(S) Uv-printing inks; optical film coating	(G) Substituted alkyl ester acid
P–01–0690	06/19/01	09/17/01	CBI	(G) Multipurpose adhesive, open, nondispersive use; laminating adhesive, open, nondispersive use	(G) Polyurethane prepolymer;polyurethane adhesive
P–01–0691	06/19/01	09/17/01	CIBA Specialty Chem. Corp., Colors Division	(G) Textile dye	(G) 2-anthracenesulfonic acid, 4-[[3-(acetylamino)phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-, compd. with substituted amine polymer
P–01–0692	06/19/01	09/17/01	CBI	(G) Industrial intermediate which is compounded with pigments and binders before being coated onto paper for carbonless copy paper applications	(G) Metal salicylate
P–01–0693	06/21/01	09/19/01	CBI	(G) Resin coating	(G) Polyester resin
P–01–0694	06/26/01	09/24/01	CBI	(S) Uv absorber for textile fibers	(G) Bis(substituted)-1,3-benzenediamine
P–01–0695	06/26/01	09/24/01	CBI	(G) Cleaner additive	(G) Acrylic polymer
P–01–0696	06/27/01	09/25/01	CBI	(G) Non-dispersive use	(G) Blocked aromatic isocyanate
P–01–0697	06/28/01	09/26/01	CBI	(G) Wood coating	(G) Acrylic copolymer

I. 37 PREMANUFACTURE NOTICES RECEIVED FROM: 06/18/01 TO 07/06/01—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–01–0698	06/29/01	09/27/01	CBI	(G) The notified substance will be used as an ashless inhibitor in formulations for internal combustion engine lubrication	(G) Alkene adduct, alkenoic acid ester, sulfurized
P–01–0699	06/29/01	09/27/01	CBI	(G) The notified substance will be used as a detergent/inhibitor in formulations for internal combustion engine lubrication	(G) Alkene adduct, calcium phenate, sulfurized
P–01–0700	06/29/01	09/27/01	CBI	(G) Lubricant	(G) Salt of a phosphate ester
P–01–0701	06/29/01	09/27/01	Cognis corporation	(G) Surfactant, solubilizer, emulsifier, defoamer	(S) Alcohols, C_{14-18} and C_{16-18}-unsatd., propoxylated
P–01–0702	07/02/01	09/30/01	CBI	(G) Open, non-dispersive use as an emulsifying agent	(S) Poly(oxy-1,2-ethanediyl), alpha-(2-ethylhexyl)-omega-hydroxy-, 2-hydroxy-1,2,3-propanetricarboxylate
P–01–0703	07/02/01	09/30/01	CBI	(G) Open, non-dispersive use as an emulsifying agent	(S) Poly(oxy-1,2-ethanediyl), alpha-hydro-omega-hydroxy-, mono-C_{10-16}-alkyl esters, citrates
P–01–0704	07/02/01	09/30/01	CBI	(G) Open, non-dispersive use as an emulsifying agent	(S) Poly(oxy-1,2-ethanediyl), alpha-hydro-omega-hydroxy-, mono-C_{10-18}-alkyl esters, citrates
P–01–0705	07/02/01	09/30/01	CBI	(S) Prepolymer for polyurethane elastomer	(G) Aliphatic polyester polybutadiene polyurethane
P–01–0706	07/03/01	10/01/01	CBI	(G) Energy curable compounds	(S) Fatty acids, C_{18}-unsatd., dimers, polymers with acrylic acid and 1,3,5-tris(2-hydroxyethyl)-1,3,5-triazine-2,4,6(1*h*,3*h*,5*h*)-trione
P–01–0707	07/03/01	10/01/01	CBI	(G) Energy curable compounds	(S) Fatty acids, C_{18}-unsatd., dimers, hydrogenated, polymers with acrylic acid and 1,3,5-tris(2-hydroxyethyl)-1,3,5-triazine-2,4,6(1*h,3h*,5*h*)-trione
P–01–0708	07/03/01	10/01/01	CBI	(G) Chemical intermediate	(G) Polyalkoxylated aromatic amine
P–01–0709	07/03/01	10/01/01	CBI	(G) Polymer-bound chromophore	(G) Polyalkoxylated aromatic chromophore
P–01–0710	07/03/01	10/01/01	CBI	(G) Polymeric colorant	(G) Chromophore substituted polyoxyalkylene
P–01–0711	07/03/01	10/01/01	CBI	(G) Polymeric colorant	(G) Chromophore substituted polyoxyalkylene
P–01–0712	07/03/01	10/01/01	CBI	(G) Polymeric colorant	(G) Chromophore substituted polyoxyalkylene tint
P–01–0713	07/03/01	10/01/01	CBI	(G) Polymeric colorant	(G) Chromophore substituted polyoxyalkylene tint
P–01–0714	07/03/01	10/01/01	BASF Corporation	(S) Stabilizing agent for manufacturing expandable polymer beads	(S) Diphodphoric acid, magnesium salt (1:2)
P–01–0715	07/03/01	10/01/01	CBI	(G) Component of coatings, inks, adhesives etc.	(G) Polyurethane
P–01–0716	07/03/01	10/01/01	CBI	(G) Lubricationg grease	(G) Polyurea
P–01–0717	07/05/01	10/03/01	Bimax, Inc.	(G) Monomer (macromer) for use in the manufacture of copolymers to be used in water treatment	(S) Poly(oxy-1,2-ethanediyl), alpha-sulfo-omega-(2-propenyloxy)-, ammonium salt
P–01–0718	07/05/01	10/03/01	CBI	(G) Binder of pigment	(G) Rosin modified phenolic resin
P–01–0719	07/05/01	10/03/01	Eastman Chemical Company	(G) Flotation aid, chemical intermediate, fuel additive, inhibitor	(S) Benzene, 1,4-bis(1-methylethyl)-, oxidized, hydrolyzed, by-products from

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 45 NOTICES OF COMMENCEMENT FROM: 06/18/01 TO 07/06/01

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0017	06/29/01	06/11/01	(S) Cyclopentene, polymer with 1,3-butadiene, 1-butene, (2*e*)-2-butene, (2*z*)-2-butene, 2-methyl-1-propene and 1,3-pentadiene
P–00–0368	06/19/01	06/07/01	(G) Benzenesulfonamide derivative
P–00–0507	06/22/01	06/06/01	(S) Oxirane, methyl-, polymer with oxirane and [(2-propenyloxy)methyl]oxirane

II. 45 NOTICES OF COMMENCEMENT FROM: 06/18/01 TO 07/06/01—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0693	06/29/01	06/05/01	(G) Epoxy -nitrile rubber adduct
P–00–0749	06/26/01	05/31/01	(G) Polycarboxylic acid, zirconium salt
P–00–0753	06/29/01	06/18/01	(G) Azo maroon pigment
P–00–0891	06/25/01	06/11/01	(G) Polyester resin
P–00–0898	06/29/01	06/13/01	(G) Amine salt
P–00–0950	06/18/01	06/06/01	(S) 2-propenoic acid, polymer with ethenylphosphonic acid
P–00–0979	07/03/01	06/08/01	(G) Urethane acrylate
P–00–0980	07/03/01	06/08/01	(G) Urethane acrylate
P–00–1009	06/25/01	06/17/01	(G) Quarternary ammonium salt polymer
P–00–1038	06/26/01	06/11/01	(G) Magnesium phenate
P–00–1054	07/06/01	06/29/01	(S) 3-butn-1-ol
P–00–1111	07/03/01	06/20/01	(G) Unsaturated urethane acrylate resin
P–00–1120	06/25/01	06/11/01	(G) Polyester resin
P–00–1135	07/03/01	06/04/01	(G) Acrylic polymer on the basis of n-hexyl methacrylate
P–00–1137	06/26/01	05/25/01	(G) Polyurethane dispersion
P–00–1182	07/03/01	05/18/01	(G) Propanoic acid, compds. with bisphenol a-an epoxy resin-epichlorohydrin-ethylenediamine-polyethylene glycol polymer-glycidyl o-tolyl ether reaction products
P–01–0042	07/03/01	06/20/01	(G) Polyether epoxy polyurethane
P–01–0061	07/03/01	05/18/01	(G) Reaction products of polypropylene glycol diamine with an epoxide
P–01–0066	07/03/01	05/18/01	(G) Propanenitrile, 3-[[6-amino-2,2,4(or 2,4,4)-trimethylhexyl]amino]-, polymers with 5-amino-1,3,3-trimethylcyclohexanemethanamine, bisphenol a, bisphenol a-epichlorohydrin polymer-2,2,4(or 2,4,4)-trimethyl-1,6-hexanediamine reaction products, with glycidyl o-tolyl ether and an epoxide
P–01–0107	07/02/01	06/08/01	(G) Modified aliphatic isocyanate
P–01–0131	06/18/01	04/01/01	(G) Fatty acid esters of hydroxy functional carboxylic acid
P–01–0152	06/19/01	06/14/01	(G) 4-alkoxy-alkyl-substituted-diphenylamine
P–01–0205	06/29/01	05/14/01	(S) Formaldehyde. polymer with 1,3,5-trimethylbenzene
P–01–0223	07/02/01	05/31/01	(G) Xanthylium, 3,6-bis(methylamino)-9-(2-sulfophenyl)-, *n,n′*-bis(mixed 2-substituted phenyl) derivs., inner salts
P–01–0227	06/18/01	05/29/01	(G) Decyl 4-nitrobenzene derivative
P–01–0237	06/25/01	06/05/01	(G) Acrylic polymer salt
P–01–0239	06/19/01	06/13/01	(G) Part acrylated epoxy cresol novolac acrylate
P–01–0240	06/19/01	06/13/01	(G) Carboxylated epoxy cresol novolac acrylate
P–01–0271	06/26/01	06/08/01	(G) Modified melamine formaldehyde resin
P–01–0311	06/19/01	06/13/01	(S) Hexanoic acid, 3,5,5-trimethyl-, compd. with 2-(2-aminoethoxy)ethanol (1:1)
P–01–0338	06/27/01	06/07/01	(G) Styrene/acrylic copolymer
P–01–0355	06/18/01	06/05/01	(G) *N,N′* substituted aniline sulfonic acid, sodium salt
P–01–0358	06/25/01	05/25/01	(G) Polyether polyurethane methacrylic graft copolymer
P–01–0363	07/06/01	06/03/01	(G) Polycarbonate
P–01–0377	06/29/01	06/21/01	(G) Carbodiimide crosslinker
P–01–0403	07/02/01	06/25/01	(G) Aceto acetate functional epoxy
P–01–0426	06/25/01	06/18/01	(G) Acrylic-modified polyurethane
P–01–0427	06/25/01	06/14/01	(S) Acetic acid ethenyl ester, polymer with ethenol, cyclic acetal with benzaldehyde
P–92–0793	06/21/01	06/15/01	(G) Modified acrylic polymer
P–95–1958	06/19/01	05/31/01	(G) Cyclic amine-ketone adduct, reduced
P–98–1011	06/25/01	05/24/01	(G) Acrylic acid based polymer
P–99–0902	07/03/01	06/27/01	(G) Dialkyldiallylammonium halide with unsaturated phosphonic acid, acrylamido alkyl propane sulfonic acid ammonium salt, and two acrylic monomers

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: July 30, 2001.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 01–19757 Filed 8–6–01; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; regular meeting.

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 9, 2001, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the

accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

1. *Approval of Minutes*—July 12, 2001 (Open)
2. *Report*—Report on Corporate Approvals
3. *New Business*
   A. *Regulation*—Loans to Designated Parties (Proposed Rule)
   B. *Other*
   —Restructuring Request from North Florida, ACA
   —Restructuring Request from Palmetto, ACA

Closed Session [1]

4. *Reports*—OSMO Report

Dated: August 3, 2001.

Jeanette C. Brinkley,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 01–19919 Filed 8–3–01; 2:44 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 01–1842]

The Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Notice; comments requested.

SUMMARY: This document seeks comment on Guam Cellular and Paging, Inc. d/b/a Guamcell Communications (Guamcell) petition seeking designation of eligibility to receive universal service support for service offered in Guam.

DATES: Comments are due on or before September 6, 2001. Reply comments are due on or before September 21, 2001.

ADDRESSES: See Supplementary Information section for where and how to file comments.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: On July 26, 2001, Guamcell filed with the Commission a petition under section 214(e)(6) seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in Guam. Specifically, Guamcell contends that: (1) The Public Utilities Commission of Guam (Guam Commission) has provided an affirmative statement that it does not regulate commercial mobile radio service (CMRS) carriers, (2) Guamcell meets all the statutory and regulatory prerequisites for ETC designation, and (3) designating Guamcell as an ETC will serve the public interest.

The petitioner must provide copies of its petitions to the Guam Commission at the time of filing with the Commission. The Commission will also send a copy of this Public Notice to the Guam Commission by overnight express mail to ensure that the Guam Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments as follows: comments are due September 6, 2001, and reply comments are due September 21, 2001. Comments may be filed using the Commision'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. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www/fcc/gov/e-file/eefs.html.* Generally, only one copy of the electronic submission must be filed. 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 receive 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 message, ''get form [your e-mail address].'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12 Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street SW., Room 5–A422, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc. 1231 20th Street, NW., Washington, DC 20037.

Pursuant to § 1.1206 of the Commission's Rules, this proceeding will continue to be conducted as a permit-but-disclose proceeding in which *ex-parte* communications are permitted subject to disclosure.

Federal Communications Commission.

Katherine L. Schroder,

Division Chief, Accounting Policy Division.

[FR Doc. 01–19680 Filed 8–6–01; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Thursday, August 9, 2001

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, August 9, 2001, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington DC.

Item No.	Bureau	Subject
1	Common Carrier	Title: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996 (CC Docket No. 98–146). Summary: The Commission will consider a Third Notice of Inquiry concerning the availability of advanced services in preparation for its Third Report on the Deployment of Advanced Telecommunications Capability to all Americans.

[1] Session closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Item No.	Bureau	Subject
2	Wireless Telecommunications and Office of Engineering and Technology.	Title: Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems (ET Docket No. 00–258); Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service (ET Docket No. 95–18); The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band (IB Docket No. 99–81); Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service (RM–9498); and Petition for Rule Making of UTStarcom, Inc., Concerning the Unlicensed Personal Communications Service (RM–10024). Summary: The Commission will consider a Memorandum Opinion and Order and Further Notice of Proposed Rule Making exploring additional frequency bands below 3 GHz to support the introduction of advanced wireless service, resolving in part petitions for reconsideration of 2 GHz MSS band arrangements, and addressing petitions for rulemaking concerning the 2 GHz MSS and Unlicensed PCS bands.
3	International and Office of Engineering and Technology.	Title: Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L–Band, and the 1.6/2.4 GHz Band; and Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service (ET Docket No. 95–18). Summary: The Commission will consider a Notice of Proposed Rule Making concerning proposals to permit mobile satellite service operators, or other entities, to implement terrestrial operations in the 2 GHz band, the L-band, and the 1.6/2.4 GHz band.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its *inc@ix.netcom.com.* Their Internet address is *http://www.itsdocs.com/.*

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at *http://www.fcc.gov/realaudio/.* The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–19908 Filed 8–3–01; 2:43 pm]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1379–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1379–DR), dated June 9, 2001, and related determinations.

EFFECTIVE DATE: July 20, 2001.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 9, 2001:

Waller County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 01–19686 Filed 8–6–01; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Radiological Preparedness Coordinating Committee: Guidance for Developing State, Tribal, and Local Radiological Emergency Response Planning and Preparedness for Transportation Accidents

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability.

SUMMARY: FEMA, on behalf of the Federal Radiological Preparedness Coordinating Committee, announces the availability of the final ''Guidance for Developing State, Tribal, and Local Radiological Emergency Response Planning and Preparedness for Transportation Accidents,'' FEMA–REP–5, Revision 2, dated November 2000.

FOR FURTHER INFORMATION CONTACT: William F. McNutt, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2857, (facsimile) (202) 646–3508, (e-mail) william.mcnutt@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Radiological Preparedness Coordinating Committee (FRPCC) is charged under 44 CFR 351.11 with

assisting FEMA in providing policy direction for the program of Federal assistance to State and local governments in their radiological emergency preparedness and planning activities. The Transportation Accidents Subcommittee of the FRPCC prepared FEMA–REP–5, Revision 2.

FEMA REP–5, Revision 2 guides State, Tribal and local government officials who prepare or revise emergency response plans for transportation accidents involving radioactive materials. Although use of the guidance is not mandatory, FEMA and the other members of the FRPCC recommend it for use in developing hazard specific plans as part of all-hazards emergency response plans at all levels of government. REP–5 was first published in March 1983. Revision 1 was published in June 1992. Its availability was noticed in 57 FR 33094 (July 24, 1992). A draft version of REP–5 Revision 2 was circulated for public comment on August 5, 1999. 64 FR 42697 (August 5, 1999). The final version of REP–5, Revision 2, which is the subject of this notice, incorporates comments submitted in response to the August 5, 1999 **Federal Register** notice, as appropriate, and supersedes all previous versions.

To Order Documents: FEMA has mailed 10 copies to each State; 5 of which were sent to the radiological health agency and the to the emergency management agency. Tribal governments, local governments and other interested parties may obtain copies by written request addressed to: Federal Emergency Management Agency, P.O. Box 70274, Washington, DC 20024, or by telephoning the FEMA Distribution Center at 1–800–480–2520. Please refer to FEMA–REP–5, Revision 2 dated November 2000 when requesting this document.

Dated: July 30, 2001.

Russell Salter,

Director, Technological Hazards Division, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Chair, Federal Radiological Preparedness Coordinating Committee.

[FR Doc. 01–19687 Filed 8–6–01; 8:45 am]

BILLING CODE 6178–06–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 August 31, 2001

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. West 12 Bancorporation, Inc., Danvers, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Danvers, Danvers, Minnesota.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. DNB Bancshares, Inc., Dallas, Texas, and DNB Delaware Financial Corporation, Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Dallas National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, August 1, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–19655 Filed 8–6–01; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION, 07/09/2001–07/18/2001

Transaction	Acquiring person	Acquired person	Acquired entities
Transactions Granted Early Termination—07/09/2001			
20011959	Electronic Data Systems Corporation.	Structural Dynamics Research Corporation.	Structural Dynamics Research Corporation.
20011965	American Italian Pasta Company	Whitehall Associates, L.P	BFC Investments, L.P., BF Foods International Corporation. Borden Foods Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION, 07/09/2001–07/18/2001—Continued

Transaction	Acquiring person	Acquired person	Acquired entities
20011978	Mme Ginette Dalloz	Engineering Henri Bacou S.A	Engineering Henri Bacou S.A.
20012057	Cendant Corporation	Galileo International, Inc	Galileo International, Inc.
Transactions Early Termination—07/10/2001			
20012000	Pride International, Inc	Marine Drilling Companies, Inc	Marine Drilling Companies, Inc.
20012050	Limestone Electron Trust	Energy Investors Fund, L.P	Cambria CoGen Company.
20012070	Houchens Industries, Inc. Employee Stock Ownership Plan and.	Mr. Brad Kelley	Commonwealth Brands, Inc.
20012072	Ultraframe Plc	Joseph Eposito	C&J Realty Co. Fisher Skylights, Inc. Four Seasons Holbrook, Inc. Four Seasons Marketing Corp. Four Seasons Solar Products Corp.
20012073	Ultraframe Plc	Christopher Esposito	C&J Realty Co. Fisher Skylights, Inc. Four Seasons Holbrook, Inc. Four Seasons Marketing Corp. Four Seasons Solar Products Corp.
20012087	WideOpenWest Holdings, LLC	SBC Communications Inc	Ameritech New Media, Inc.
20012090	Mellon Financial Corporation	SAW Trust	Pilgrim Escrow Company, LLC. Standish, Ayer & Wood Inc.
20012124	Radio One, Inc	U.S. Broadcasting Limited Partnership.	U.S. Broadcasting Limited Partnership.
Transactions Granted Early Termination—07/11/2001			
20011970	AOL Time Warner, Inc	Future Network plc	Future Network plc.
20012084	Perot Systems Corporation	Advanced Receivables Strategy, Inc.	Advanced Receivables Strategy, Inc.
20012094	Tangua Charitable Trust	Heartland Steel, Inc., Debtor-in-Possession.	Heartland Steel, Inc.
20012117	Tweeter Home Entertainment Group, Inc.	Sound Advice, Inc	Sound Advice, Inc.
20012120	Berkshire Hathaway Inc	FINOVA Group Inc. (The)	FINOVA Group Inc. (The).
Transactions Granted Early Termination—07/12/2001			
20012015	Maytag Corporation	Amana Appliance Company, L.P	Amana Appliance Company, L.P.
20012026	First Data Corporation	NYCE Corporation	NYCE Corporation.
20012083	Wicks Communications & Media Partners, L.P.	Torstar Corporation	Cambridge Physics Outlet, Inc. Delta Education, Inc.
20012112	BCE Inc	Wildblue Communications, Inc	Wildblue Communications, Inc .
20012129	Misys plc	Sidney A. Goldblatt, MD	Sunquest Information Systems, Inc.
Transactions Granted Early Termination—07/13/2001			
20012014	Pulte Homes, Inc	Del Webb Corporation	Del Webb Corporation.
20012041	Automatic Data Processing, Inc	Avert, Inc	Avert, Inc.
20012066	Marubeni Corporation	Marubeni-Itochu Steel, Inc	Marubeni-Itochu Steel, Inc.
20012067	ITOCHU Corporation	Marubeni-Itochu Steel, Inc	Marubeni-Itochu Steel, Inc.
20012075	Vishay Intertechnology, Inc	Siemens Aktiengesellschaft	Infineon Technologies AG.
20012079	Johnson & Johnson	Inverness Medical Technology, Inc.	Inverness Medical Technology, Inc.
20012085	Medtronic, Inc	MiniMed Inc	MiniMed Inc.
20012086	Medtronic, Inc	Medical Research Group, Inc	Medical Research Group, Inc.
20012092	AT&T Corp	Sprint Corporation	Sprint Corporation.
20012093	Spring Corporation	AT&T Corp	AT&T Corp.
20012107	TD Capital Canadian Private Equity Partners (QLP) L.P.	Harrowston Inc	Harrowston Inc.
20012111	AOL Time Warner Inc	AOL Time Warner Inc	TWI Cable Inc.
20012115	Cascades Inc	Plainwell Shasta Holdings Inc	Plainwell Inc.
Transactions Granted Early Termination—07/16/2001			
20012077	EQT Northern Europe AG	AB Electrolux	White Consolidated Industreis, Inc.
20012103	e-MedSoft.com	Thor Capital Holdings, LLC	Chartwell Diversified Services, Inc.
20012122	Lawrence L. Garlcik	Peregrine Systems, Inc	Peregrine Systems, Inc.
20012131	Kelso Investment Associates VI, L.P	CPI Development Corporation	Carter-Wallance, Inc.
20012133	CSL Limited, an Australian Capital Territory Corporation.	Nabi, a Delaware Corporation	Nabi, a Delaware Corporation.
20012137	Protective Life Corporation	Irish Life Permanent plc	First Variable Life Insurance Company.

TRANSACTIONS GRANTED EARLY TERMINATION, 07/09/2001–07/18/2001—Continued

Transaction	Acquiring person	Acquired person	Acquired entities
			Inter-State Assurance Company.
Transactions Granted Early Termination—07/17/2001			
20012132	AK Steel Holding Corporation	Acme Metals Incorporated	Alpha Tube Corporation.
Transactions Granted Early Termination—07/18/2001			
20012028	UMC Health System	Children's Hospital of Pittsburgh	Children's Community Care.
20012042	Peregrine Systems, Inc	Remedy Corporation	Remedy Corporation.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 01–19725 Filed 8–6–01; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Docket No. 9294]

Natural Organics, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint previously issued and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 30, 2001.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Gold or Kerry O'Brien, Federal Trade Commission, Western Region—San Francisco Office, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 848–5176 or 848–5189.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 31, 2001), on the World Wide Web, at ''http://www.ftc.gov/os/2001/07/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½-inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order with Natural Organics, Inc. and Gerald A. Kessler, the principal who controlled this corporation (referred to collectively as ''Respondents''). The agreement would settle a complain by the Federal Trade Commission that Respondents engaged in unfair or deceptive acts or practices in violation of sections 5 and 12 of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising representations made about Pedi-Active A.D.D., a dietary supplement. The administrative complain alleged that Respondents violated the FTC Act by disseminating advertisements that made unsubstantiated efficacy claims about the ability of Pedi-Active A.D.D. to treat Attention Deficit Hyperactivity Disorder (''ADHD'') or certain symptoms of that disorder. Specifically, the complaint alleged that Respondents made unsubstantiated claims that Pedi-Active A.D.D. will: (1) Improve the attention span of children who have difficulty focusing on school work; (2) improve the scholastic performance of children who have difficulty focusing on school work; (3) improve the attention span of children who suffer from ADHD; (4) improve the scholastic performance of children who suffer from ADHD; and (5) treat or mitigate ADHD or its symptoms.

The proposed consent order contains provisions designed to prevent Respondents from engaging in acts and practices similar to those alleged in the complain in the future. Part I of the proposed consent order prohibits Respondents from claiming that Pedi-Active A.D.D. or any other food, drug, or dietary supplement (1) will improve the attention span of children who have difficulty focusing on school work, (2) will improve the scholastic performance of children who have difficulty focusing on school work, (30 will improve the attention span of children who suffer from ADHD, (4) will improve the scholastic performance of children who suffer from ADHD, or (5) can treat or mitigate ADHD in children, unless they posses competent and reliable scientific evidence substantiating the claim. In addition, Part II of the proposed consent order requires Respondents to possess competent and reliable scientific

evidence before they market a product for children using the name ''A.D.D.'' or any other name that represents that the product can treat or mitigate ADHD. Finally, Part III of the proposed order prohibits Respondents from making any representation about the ability of any food, drug or dietary supplement marketed for children to treat or cure any disease or mental disorder, unless they possess competent and reliable scientific evidence.

Part IV of the proposed order states that Respondents will be permitted to make claims that the FDA has approved pursuant to the Nutrition Labeling and Education Act of 1990, or pursuant to sections 303–304 of the Food and Drug Administration Modernization Act of 1997.

Part V of the proposed order states that nothing in the order constitutes a waiver of Respondents' First Amendment rights.

As set out in Part VI of the proposed order, the proposed consent order will not apply to any product sold or distributed to consumers by third parties under private labeling agreements with Respondents, provided Respondents do not participate in any manner in the funding, preparation or dissemination of the product's advertising.

The remainder of the proposed consent order contains provisions regarding distribution of the order, record-keeping, notification of changes in corporate status or employment, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 01–19724 Filed 8–6–01; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 001 0231]

Warner Communications Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 30, 2001.

ADDRESSES: Comments should be directed to FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Joseph Simons or Geoffrey Green, FTC/H–374, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3667 or 326–2641.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 31, 2001), on the World Wide Web, at ''http://www.ftc.gov/os/2001/07/index.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order from Warner Communications Inc. (''Warner''). Warner is a subsidiary of AOL Time Warner Inc., and has its principal place of business in New York, New York.

The proposed Consent Order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

The Commission has not held an evidentiary hearing concerning the complaint. By accepting this agreement, the Commission is affirming only that it has reason to believe that the allegations in the complaint are well-founded.

The Commission's complaint charges that Warner has violated section 5 of the Federal Trade Commission Act by agreeing with certain subsidiaries of Vivendi Universal S.A. (the ''Universal Respondents'') to fix prices and to forgo advertising. According to the Commission's complaint, the Universal Respondents are the successor firms to PolyGram Music Group.[1] The Universal Respondents have not signed an agreement containing a proposed consent order, and hence the Commission's antitrust claims against the Universal Respondents will be addressed in an administrative trial.

The alleged conspiracy involves audio and video products featuring the renowned opera singers Luciano Pavarotti, Placido Domingo, and Jose Carreras—known collectively as The Three Tenors. Beginning in 1990, The Three Tenors have come together every four years at the site of the World Cup soccer finals for a combination live concert and recording session. According to the complaint, prior to each performance, the concert promoter selects one (or more) of the major music/video distribution companies to distribute compact discs, cassettes, videocassettes, and videodiscs derived from the master recordings.[2] Distribution rights to the original 1990 Three Tenors performance, entitled The Three Tenors, were acquired by PolyGram Music Group. Distribution rights to the follow-up performance, the Three Tenors in Concert 1994, were acquired by Warner Music Group.

The complaint alleges that in 1997, Warner Music Group and PolyGram Music Group agreed to collaborate in the distribution of audio and video

[1] PolyGram N.V. was acquired by The Seagram Company Ltd. in 1998. Two years later, The Seagram Company Ltd. merged with Vivendi S.A. and Canal Plus S.A. to form Vivendi Universal S.A.

[2] The concert promoter is responsible for producing the master recordings.

products derived from the next Three Tenors World Cup concert, scheduled for Paris on July 10, 1998. The parties agreed that Warner Music Group would distribute the 1998 releases in the United States; that PolyGram Music Group would distribute the 1998 releases outside of the United States; and that the firms would share all costs, profits, and losses on a 50/50 basis. The complaint does not challenge the formation or basic structure of the Warner/PolyGram joint venture.

According to the complaint, as the concert approached, Warner Music Group and PolyGram Music Group became concerned that the audio and video products that would be derived from the Paris concert would not be as original or as commercially appealing as the earlier Three Tenors releases. In order to reduce competition from these earlier releases, Warner Music Group and PolyGram Music Group adopted what they called a ''moratorium'' agreement. PolyGram Music Group agreed not to discount and not to advertise the 1990 Three Tenors album and video during a designated time period (from August 1, 1998 through October 15, 1998). In return, Warner Music Group agreed not to discount and not to advertise the 1994 Three Tenors album and video during the same interval.

According to the complaint, the third Three Tenors album and video, both entitled The Three Tenors—Paris 1998, were released on August 18, 1998, and were distributed in the United States by Warner Music Group. During the moratorium period, PolyGram Music Group refrained from discounting or advertising the 1990 Three Tenors album and video. During this period, Warner Music Group likewise refrained from discounting or advertising the 1994 Three Tenors album and video.

Finally, the complaint alleges that the moratorium agreement was not reasonably necessary to the formation or to the efficient operation of the joint venture between Warner Music Group and PolyGram Music Group. Rather, the effect of the moratorium agreement was to restrain competition unreasonably, to increase prices, and to injure consumers.

Warner has signed a consent agreement containing the proposed Consent Order. The proposed Consent Order would prohibit Warner from: (i) Agreeing with a competitor to fix, raise, or stabilize prices for any audio product, or (ii) agreeing with a competitor to prohibit, restrict, or limit truthful, non-deceptive advertising and promotion for any audio product.[3]

The Federal Trade Commission is aware that there is a great deal of collaborative activity among companies in the music industry (*e.g.,* joint ventures, intellectual property licenses, sharing of artist rights and compositions). The proposed Consent Order re-affirms the Commission's view that participation in a joint venture is often pro-competitive, but that it is not a blanket excuse for price fixing or other serious restraints on competition. In this regard, The Antitrust Guidelines for Collaborations Among Competitors, issued by the Federal Trade Commission and the U.S. Department of Justice in April 2000, should not be read to suggest that all agreements ''related to'' a joint venture will be analyzed under the full rule of reason.

There are, however, situations in which horizontal restraints on price competition and advertising are permissible. Thus, the proposed Consent Order contains exceptions to the above-described prohibitions that are intended to permit Warner to engage in certain lawful and procompetitive conduct. First, when Warner and a competing seller jointly produce a new audio product, the Order does not bar the firms from jointly setting the selling price and jointly directing the advertising campaign for that product. See *Broadcast Music, Inc.* v. *CBS,* 441 U.S. 1 (1979).[4] Second, when Warner and a competing seller enter into a legitimate joint venture agreement, the order does not bar the firms from entering into ancillary restraints both reasonably related to the venture and reasonably necessary to achieve the pro-competitive benefits of the venture. See *NCAA* v. *Board of Regents,* 468 U.S. 85 (1984); *Massachusetts Board of Registration in Optometry,* 110 F.T.C. 549 (1988).

The Commission's complaint alleges that the Warner/PolyGram moratorium agreement was not a lawful restraint on competition. Of critical importance is the allegation that the parties' restrictions on competitive activity were not limited to jointly produced products. Instead, the complaint charges that Warner Music Group and PolyGram Music Group agreed to fix the prices of the pre-existing Three Tenors releases—products that were separately produced and separately distributed. Restraints that operate on products outside of a joint venture will be scrutinized by the Commission with great care,[5] particularly if the restraints are directed at price. Here the Commission has reason to believe that the alleged agreement between Warner and PolyGram is not reasonably related to the joint venture or reasonably necessary to achieve procompetitive benefits of the joint venture and is therefore per se unlawful.

One specific question involved in this proceeding is whether the moratorium agreement was reasonably necessary in order to address a free-rider problem.[6] Suppose, hypothetically, that Warner Music Group's investment in advertising the 1998 Three Tenors album in the United States brings consumers into the record stores. Suppose further that many such consumers then opt to purchase, at a lower price, the 1990 album distributed by PolyGram Music Group. The result may be that Polygram Music Group benefits from Warner Music Group's investment, leaving Warner Music Group (arguably) with less incentive to invest resources in promoting the 1998 Three Tenors album.[7]

The Commission has reason to believe that this hypothetical scenario does not justify the restraints on competition alleged in the complaint. According to the compliant, Warner Music Group and PolyGram Music Group agreed to share the cost of advertising the 1998 Three Tenors album. It follows that, with regard to such advertising, PolyGram Music Group need not be characterized as a free rider. In the words of Judge Easterbrook: ''Free-riding is the diversion of value from a business

[3] These Order provisions would also apply to video products that feature the Three Tenors. The proposed Order generally does not cover vertical restraints.

[4] In order to fall within this proviso, the collaborating parties must each contribute significant assets toward production of the audio product so as to achieve pro-competitive benefits. Sham collaborations will not shield an agreement on price. Cf. *Palmer* v. *BRG of Georgia, Inc.,* 498 U.S. 46 (1990).

[5] *See General Motors Corp.,* 103 F.T.C. 374 (1984) (consent order) (manufacturing joint venture between General Motors and Toyota approved by the Commission, subject to conditions aimed at reducing the likelihood of collusion between the competitors with regard to both joint venture products and products outside the joint venture).

[6] *See Chicago Pro. Sports Ltd. Partnership* v. *NBA,* 961 F.2d 667, 674 (7th Cir.), cert. denied, 506 U.S. 954 (1992):

It costs money to make a product attractive against other contenders for consumers' favor. Firms that take advantage of costly efforts without paying for them, that reap where they have not sown, reduce the payoff that the firms making the investment receive. This makes investments in design and distribution of products less attractive, to the ultimate detriment of consumers. Control of free-riding is accordingly an accepted justification for cooperation.

[7] Note that this is a hypothetical example. It is not apparent, *inter alia,* that an advertising campaign promoting the 1998 Three Tenors album would necessarily lead a significant number of consumers to purchase the 1990 Three Tenors album.

rival's efforts without payment * * *. When payment is possible, free-riding is not a problem because the 'ride' is not free.'' *Chicago Pro. Sports Ltd. Partnership* v. *NBA,* 961 F.2d 667, 675 (7th Cir.), cert. denied, 506 U.S. 954 (1992).[8] More generally, when faced with a potential free-rider problem, firms should consider whether there are practical, less-restrictive alternatives than price-fixing.

The proposed Consent Order includes a third proviso that is designed to ensure that the Order does not impede Warner's ability to participate in industry efforts to discourage the promotion of violent or otherwise inappropriate audio and video products to children. Although Warner is generally prohibited from agreeing with a competitor to restrict truthful and non-deceptive advertising, Warner is expressly permitted under the Order to join with other sellers to prevent the advertising, marketing or sale to children of audio products or video products labeled or rated with a parental advisory or cautionary statement as to content.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way its terms.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

Statement of Commissioner Mozelle W. Thompson

Warner Communications Inc. File No. 001–0231

As I said in my statement[1] following the issuance of the Antitrust Guidelines for Collaborations Among Competitors,[2] I believe that joint ventures can enable companies to expand into foreign markets, fund expensive innovation and research efforts, and lower costs to the benefit of industry and consumers alike. But an otherwise legitimate joint venture may not shield price fixing or any other form of anticompetitive restraint if the restraint is not both reasonably related to the venture and reasonably necessary to achieve the venture's procompetitive objectives. The Commission's complaint against Warner Communications and the accompanying consent order that we accepted for public comment today underscore this important principle of joint venture law.

[FR Doc. 01–19723 Filed 8–6–01; 8:45 am]

BILLING CODE 6750–01–M

[8] *Accord High Technology Careers* v. *San Jose Mercury News,* 996 F.2d 987, 992 (9th Cir. 1993); Toys R Us, Inc. _ F.T.C. _ (1998), 1998 FTC LEXIS 119, 131–35 (1998), aff'd, 221 F.3d 928, 938 (7th Cir. 2000); H. Hovenkamp, XIII Antitrust Law at 334 ¶ 2223b (1999) (''[F]ree rider defenses should be rejected when the firm that controls the input is able to sell, rather than give away, the good or service that is subject to the free ride.'').

[1] http://www.ftc.gov/os/2000/04/antitrustguidethompson.htm

[2] The Federal Trade Commission and the U.S. Department of Justice issued the Guidelines in April 2000. http://www.ftc.gov/bc/guidelin.htm

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13¼ percent for the quarter ended June 30, 2001. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: July 26, 2001.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 01–19651 Filed 8–6–01; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Times and Dates: 9:00 a.m. to 5:00 p.m., August 20, 2001; and 8:30 a.m. to 12:00 noon, August 21, 2001.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC.

Status: Open.

Purpose: At this working session, the Subcommittee on Standards and Security will obtain public input into the Committee process for uniform patient medical record information from a panel of invited speakers.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from J. Michael Fitzmaurice, Ph.D., Senior Science Advisor for Information Technology, Agency for Health Care Research and Quality, 2101 East Jefferson Street, #600, Rockville, MD 20852, phone: (301) 594–3938; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: July 31, 2001.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 01–19649 Filed 8–6–01; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee, Workgroup on Health Statistics for the 21st Century, Subcommittee on Populations.

Times and Dates: 8:30 a.m to 5:30 p.m., August 14, 2001; and 8:30 a.m. to 3:45 p.m., August 15, 2001.

Place: The Westin O'Hare, 6100 River Road, Rosemont, IL 60018, (847) 698–6000.

Status: Open.

Purpose: The Executive Subcommittee will use the first day as a retreat for Committee planning purposes. The Subcommittee will plan future Committee meetings and review work plans for 2001 and early 2002. Strategic planning will include organizing and integrating agenda issues across priorities, reviewing the efficiency and effectiveness of the current Committee structure and meeting schedule, and positioning the Committee to address new and emerging topics.

In the morning on the second day, the Workgroup on Health Statistics for the 21st Century will meet to discuss their draft report ''Shaping a Vision for 21st Century Health Statistics.'' The Workgroup will also discuss plans to get feedback on related issues and plan its next steps. The Subcommittee on Populations will meet in the afternoon of the second day to discuss future directions for further work in the area of the implementation of OMB standards for the collection and reporting of data on race and ethnicity. Other issues to be discussed are the structure and future directions for the Subcommittee.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Center for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: July 31, 2001.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 01–19650 Filed 8–6–01; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP regarding ''Patient Safety Research Coordinating Center''. The RFP was published in the Commerce Business Daily on May 31,2001.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision and procurement rules that protect the free exchange of candid views and facilitate Department and Committee operations.

Name of TRC: The Agency for Healthcare Research and Quality—''Patient Safety Research Coordinating Center''.

Date: August 1, 2001 (Closed to the public).

Place: Agency for Healthcare Research & Quality, 6010 Executive Blvd, 4th Floor, Conference Room D, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Marge Keyes, Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality, 6011 Executive Blvd, Suite 200, Rockville, Maryland, 20852, 301–594–1824.

Dated: August 1, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–19792 Filed 8–6–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding ''Developing Tools to Enhance Quality and Patient Safety Through Informatics'', issued on June 8, 2001. The contract will constitute AHRQ's participation in the Small Business Innovation Research program.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision and procurement rules that protect the free exchange of candid views and facilitate Department and Committee operations.

Name of TRC: The Agency for Healthcare Research and Quality—''Developing Tools to Enhance Quality and Patient Safety Through Informatics''

Date: August 10, 2001, (Closed to the public).

Place: Agency for Healthcare Research & Quality, 6010 Executive Blvd, 4th Floor Conference Center, Conference Room B, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Eduardo Ortiz, Center for Primary Care Research, Agency for Healthcare Research and Quality, 6010 Executive Blvd, Suite 201, Rockville, Maryland, 20852, 301–594–6236.

Dated: July 30, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–19793 Filed 8–6–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–170]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from April through June 2001. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the

Federal Register on May 4, 2001 [66 FR 22577]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assesssments Completed or Issued

Between April 1 and June 30, 2001, public health assessments were issued for the sites listed below:

NPL Sites

California

Lava Cap Mine—Nevada City—(PB2001–103971)

Florida

Alaric Incorporated—Tampa—(PD2001–105121)
Callaway and Son Drum Service (a/k/a Calloway and Son Drum Service)—Lake Alfred—(PB2001–105375)
Solitron Devices, Incorporated—West Palm Beach—(PB2001–105948)
Southern Solvents, Incorporated (a/k/a Southern Solvents, Incorporated Site)—Tampa—(PB2001–105374)
Trans Circuits, Incorporated—Lake Park—(PB2001–103980)

Louisiana

D. L. Mud, Incorporated—Abbevillie—(PB2001–104785)Madisonville Creosote Works—Madisonville—(PB2001–105112)

Maryland

Brandywine Defense Reutilization and Marketing Office—Andrews—(PB2001–103970)

Michigan

Wurtsmith Air Force Base—Oscoda—(PB2001–103974)

New Hampshire

Gendron Junkyard—Pelham—(PB2001–103975)

New Jersey

Franklin Burn—Franklin Township—(PB2001–105947)

Non NPL Petitioned Sites

California

McFarland Study Area—McFarland—(PB2001–104612)

Note: Georgia-Pacific Corporation Hardwood Sawmill, Plymouth, Washington County, North Carolina was erroneously placed under the NPL site listing in the **Federal Register** (Vol. 66, No. 87) Friday, May 4, 2001.

Dated: August 1, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–19690 Filed 8–6–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Public Meeting of the Inter-Tribal Council on Hanford Health Projects (ICHHP) in Association With the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

Name: Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Time and Date: 9 a.m.–4:30 p.m., August 28, 2001.

Place: Tamastslikt Cultural Institute, 72789 Highway 331, Pendleton, OR. Telephone: (541) 276–2323.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford, Washington site.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, and agency updates.

Matters to be Discussed: Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include presentations and discussions on each tribal members respective environmental health activities, and agency updates. Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Dean Seneca, Executive Secretary, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–54 Atlanta, Georgia 30333, telephone 1–888–42–ATSDR (28737), fax 404/498–1744.

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: August 1, 2001.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–19692 Filed 8–6–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 7:00 p.m.–9:00 p.m., August 28, 2001; 8:30 a.m.–5:30 p.m., August 29, 2001; 8:30 a.m.–3:30 p.m., August 30, 2001.

Place: Tamastslikt Cultural Institute, 72789 Highway 331, Pendleton, OR 97801. Telephone: (541) 276–2323.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 150 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on Hanford Health Projects; to review and approve the Minutes of the previous meeting; to receive updates from ATSDR, CDC/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and the Studies Workgroups; and to address other issues and topics, as necessary.

Matters to be Discussed: Agenda items include a presentation and discussion on Combined Doses, discussion on recommendations from the national evaluation for the health effects subcommittees', Epidemiology 101 workshop, update on the Hanford Community Health Project, and agency updates. Agenda items are subject to change as priorities dictate.

Contact Persons For More Information: French Bell, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/498–1744.

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: August 1, 2001.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–19691 Filed 8–6–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–171]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of three new draft toxicological profiles, comprising the second set developed for the Department of Energy, prepared by ATSDR for review and comment.

DATES: To ensure consideration, comments on these draft toxicological profiles must be received on or before October 31, 2001. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft toxicological profiles or comments regarding the draft toxicological profiles should be sent to the attention of Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Requests for the draft toxicological profiles must be in writing, and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide only one copy of each profile requested, free of charge. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–171. Send one copy of all comments and three copies of all supporting documents to the Division of Toxicology at the above address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection after the profile is published in final, no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry,

Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 1–(888) 422–8737 or (404) 498–0720.

SUPPLEMENTARY INFORMATION: These toxicological profiles were developed by ATSDR for hazardous substances at Department of Energy (DOE) waste sites under Section 104(i)(3) and (5) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund). This public law directed ATSDR to prepare toxicological profiles for hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL) and that pose the most significant potential threat to human health, as determined by ATSDR and the U.S. Environmental Protection Agency (EPA). The current ATSDR priority list of hazardous substances at DOE NPL sites was announced in the **Federal Register** on July 24, 1996 (61 FR 38451).

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about August 7, 2001.

Document	Hazardous substance	CAS No.
1	Americium	7440–35–9
2	Cesium	7440–46–2
	Cesium Chloride	7647–17–8
	Cesium–134	13967–70–9
	Cesium–137	010045–97–3
3	Strontium	7440–35–9

All profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances.

We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as a means to best serve public health and our clients.

Dated: August 1, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–19689 Filed 8–6–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–01–55]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Evaluating the Impact of Lymphedema and a Lymphedema Management Intervention for Women with Lymphatic Filariasis: Understanding Issues Related to Quality of Life—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). Lymphatic filariasis, a mosquito-transmitted parasitic disease affecting over 120 million people, is the second leading cause of permanent disability worldwide. Globally, lymphatic filariasis causes debilitating genital disease in an estimated 25 million men and lymphedema or elephantiasis of the leg in 15 million people, mostly women in poverty stricken countries. The World Health Organization (WHO) recently identified community management of chronic lymphedema as one of the top twenty lymphatic filariasis research priorities. Recent advances in the management of chronic lymphedema include a prescribed hygiene and wound care intervention. This intervention has shown promising results in preventing bacterial infections thus reducing acute attacks, and anecdotally improving overall quality of life, alleviating pain and preventing further suffering.

This pilot study will provide a micro-level perspective of women's own experiences of living with lymphedema and others responses to it, illuminating the nature of the disease, the vulnerability of those disabled by the disease, and the impact of an intervention to influence the consequences of having the disease. This study will provide a better understanding, through a combination of qualitative and quantitative methods, the influence of lymphadema as well as the efficacy of a lymphedema management intervention in reducing episodes of bacterial infections and improving quality of life in women with lymphedema in two developing countries.

Women will be queried through in-depth interviews, focus groups, and questionnaire surveys as to the influence of lymphadema on their lives. Quality of life domains that will be explored include physical health, psychological health, social relationships, economic productivity, spiritual health, stigma, and environment. Recommendations will be derived from this study for the global community of lymphatic filariasis researchers in developing countries initiating national and local programs for the management of chronic lymphedema. There are no costs to respondents.

Women respondents	Number of respondents	Number of responses per respondents	Average burden per response (in hours)	Total burden (in hours)
Qualitative interviews in site A and site B	50	1	30/60	25

Women respondents	Number of respondents	Number of responses per respondents	Average burden per response (in hours)	Total burden (in hours)
Quantitative Survey in site A and site B	200	1	1	200
Total	250			225

Dated: July 30, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 01–19656 Filed 8–6–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 01196]

Evaluation of Breast Cancer Incidence; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant program for an Evaluation of Breast Cancer Incidence in DuPage County, Illinois. This program addresses the ''Healthy People 2010'' focus areas of Cancer and Environmental Health.

The purpose of the program is to conduct an analysis of data routinely collected by health service organizations on breast cancer morbidity and mortality in DuPage County, Illinois. Through this program, the DuPage County Health Department will be able to determine the incidence of breast cancer in the county and to outline a plan to address the programmatic and health issues identified.

No human subjects research will be supported under this program announcement.

B. Eligible Applicant

Assistance will be provided only to the DuPage County Health Department in Wheaton, Illinois. No other applications are solicited. Eligibility is limited to the DuPage County Health Department because Fiscal Year 2001 federal appropriations specifically direct the Centers for Disease Control and Prevention to award funds to evaluate the high incidence of breast cancer in DuPage County, Illinois.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $92,000 is available in FY 2001 to fund this award. It is expected that the award will begin on or about September 30, 2001, and will be made for a one year project period. Funding estimates may change.

D. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on ''Funding'' then ''Grants and Cooperative Agreements.''

To obtain business management technical assistance, contact: Sharron Orum, 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) 488–2716, Email address: spo2@cdc.gov

For program technical assistance, contact: Ronney Lindsey, Deputy Director, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop E19, Atlanta, GA 30341, Telephone number: (404) 498–1308, Email address: rll3@cdc.gov

Dated: August 1, 2001.

John L. Williams,

Director, Procurement and Grants Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–19693 Filed 8–6–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0319]

Agency Information Collection Activities; Proposed Collection; Comment Request; Health and Diet Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a voluntary consumer survey about knowledge, perceptions, attitudes, and practices related to dietary supplements and food.

DATES: Submit written or electronic comments on the collection of information by October 9, 2001.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor.

''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Health and Diet Survey

The authority for FDA to collect the information derives from the authority of the Commissioner of Food and Drugs, as specified in section 903(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)). The Health and Diet Survey will provide FDA information about consumers' knowledge, perceptions, attitudes, and practices related to dietary supplements and food. A nationally representative sample of 2,000 adults in the 48 contiguous States and the District of Columbia will be selected at random and interviewed by telephone. Participation will be voluntary. The survey will collect information about: (1) Prevalence, experience, and purposes of use of dietary supplements; (2) knowledge of health benefits, health risks, and regulation of dietary supplements; (3) sources of dietary supplement information; (4) perceptions of dietary supplement labels; (5) replacement and combination use of supplements and drugs; (6) adverse experience with dietary supplements; (7) children's and teenagers' use of dietary supplements; (8) knowledge of diet-health relationships; (9) dietary management practices; and (10) use of food labels.

Some of the questions to be asked (items 8 through 10 listed in the previous paragraph) replicate the ones asked in the 1995 Health and Diet Survey. Responses to these questions will help FDA identify and measure any changes in consumer knowledge, perceptions, attitudes, and practices with regard to diet, health, and use of food labels. The information will also help the agency evaluate the effectiveness of the Nutrition Labeling and Education Act of 1990 in promoting the public health.

The agency will use the other questions in the proposed survey to enhance its understanding of consumer knowledge, perceptions, attitudes, and practices regarding dietary supplements. Subsequent to the enactment of the Dietary Supplement Health and Education Act of 1994, the consumption of dietary supplements in the United States has been increasing. FDA needs current, timely, and policy-relevant consumer information to help it identify needs for and develop consumer education programs and regulatory policies to ensure safe and appropriately labeled supplement products. The survey will help the agency measure prevalence and distribution of consumer knowledge, perceptions, attitudes, and practices. This information can be used to understand and describe the consumer environment that is the intended target of labeling and education initiatives.

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

TABLE1.— ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Cognitive interview	9	1	9	1.5	13.5
Pretest	9	1	9	0.5	4.5
Screener	4,200	1	4,200	0.02	84
Survey	2,000	1	2,000	0.5	1,000
Total					1,102

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

These estimates are based on FDA's experience with previous consumer surveys. Prior to the administration of the survey, the agency plans to conduct a series of nine cognitive interviews and a series of nine pretests to ensure the quality of the survey. Cognitive interviews will help the agency understand respondent comprehension of the meanings of questions and words, and how respondents answer questions. Pretests will help the agency examine and reduce problems in the administration of the final questionnaire. The agency will use a screener to select an eligible adult respondent in each household to participate in the survey.

Dated: August 1, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–19626 Filed 8–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 10, 2001, from 8:30 a.m. to 5:30 p.m., and September 11, 2001, from 8 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: SomersK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 10, 2001, the committee will discuss: (1) Clinical trial designs for first-line hormonal treatment of metastatic breast cancer; and (2) new drug application (NDA) 21–236, IntraDose® (cisplatin/epinephrine) Injectable Gel, Matrix Pharmaceutical, Inc., indicated for the treatment of recurrent or refractory squamous cell carcinoma of the head and neck in patients who are not considered curable with surgery or radiotherapy. On September 11, 2001, the committee will discuss: (1) Biologics license application (BLA) 125019, Zevalin™ (ibritumomab tiuxetan), IDEC Pharmaceuticals Corp., indicated for the treatment of patients with relapsed or refractory low grade, follicular or CD20+ transformed B cell non-Hodgkins lymphoma (NHL) and rituximab refractory follicular NHL; and (2) supplemental NDA 20–637/S016, Gliadel® Wafer (carmustine), Guilford Pharmaceuticals, Inc., indicated for use as a treatment to significantly prolong survival and maintain overall function (as measured by preservation of Karnovsky Perfomance Status) and neurological function in patients with malignant glioma undergoing primary and/or recurrent surgical resection.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 31, 2001. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m., and 1:30 p.m. and 1:45 p.m. on September 10, 2001, and between approximately 8:15 a.m. and 8:45 a.m., and 1 p.m. and 1:15 p.m. on September 11, 2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentation should notify the contact person before August 31, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and address of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session may be conducted for interested persons who have submitted their request to speak by August 31, 2001, to address issues specific to the topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 31, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–19625 Filed 8–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5046]

''Guidance for Industry: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture'' dated July 2001. The guidance document provides information about reporting changes to licensed biological products including labeling, production processes, quality controls, equipment, and facilities that have been documented in approved license applications. The guidance document is intended to assist biological product manufacturers in identifying the kinds of changes to be reported, the category into which the change is to be placed, and the time to report the change to FDA.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Changes to an Approved Application: Biological Products: Human Blood and Blood Components Intended for Transfusion or for Further Manufacture'' dated July 2001. CBER developed the guidance in response to public comments on the ''Guidance for Industry: Changes to an Approved Application: Biological Products'' dated July 1997 and public comments on the CBER Biologics Workshop on the Biologics License Application (BLA), December 2, 1997. The guidance applies to the manufacture of all licensed Whole Blood, blood components, Source Plasma, and Source Leukocytes. The guidance is intended to assist biological product manufacturers in identifying the kinds of changes to be reported, the category into which the change is to be placed, and the time to report the change to FDA.

This guidance replaces the recommendations for the products mentioned above in the ''Guidance for Industry: Changes to an Approved Application: Biological Products'' dated July 1997 and revises and finalizes the draft guidance entitled ''Guidance for Industry: Changes to an Approved Application: Biological Products:

Human Blood and Blood Components Intended for Transfusion or for Further Manufacture'' dated January 2000 that was announced in the **Federal Register** of January 3, 2000 (65 FR 134).

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115; 65 FR 56468, September 19, 2000). This guidance document represents the agency's current thinking on reporting changes to an approved application for human blood and blood components that are intended for transfusion or for further manufacture. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Comments

Interested persons may, at any time, submit written or electronic comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: June 29, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–19683 Filed 8–6–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Healthy Schools, Healthy Communities User/Visit Surveys

The Bureau of Primary Health Care of HRSA is planning to conduct User/Visit Surveys of the Healthy Schools, Healthy Communities (HSHC) Program. The purpose of these surveys is to obtain nationally representative data about the patients of HSHC health centers and the services provided to them. The study consists of two parts. One is the User Survey, which involves interviewing HSHC patients or their parents about the patients' health and health care. The second is the Visit Survey, in which patient visit data will be collected from medical records in order to find out what health services are being used by patients. The data collected will provide policymakers with a better understanding of the services students are receiving at HSHC health centers and how well these centers are meeting the needs of students. The surveys will provide new information about health care received in HSHC settings.

Data from the surveys will provide quantitative information on the population served by the HSHC program, specifically: (a) Sociodemographic characteristics, (b) health care access and utilization, (c) health status and morbidity, (d) health care experiences and risk behaviors, (e) content of medical encounters, (f) preventive care (g) and patient satisfaction. These surveys will provide data useful to the program and will enable HRSA to provide data required by Congress under the Government Performance and Results Act of 1993.

The estimated burden on respondents is as follows:

Respondents	Number of Respondents	Hours per Respondent	Total Hour Burden
Adolescent Users of HSHC Clinics	750	.5	375
Guardians (Proxies) of Users of HSHC Clinics	750	.5	375
Medical Records Copied by Health Center Personnel	* 1500	.25	385
Total	1500		1,135

* Medical records.

Send comments to Susan Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 31, 2001.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 01–19627 Filed 8–6–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (HRSA) as last amended at (60 FR 56605, November 6, 1995 and most recently amended at 66 FR 35981, July 10, 2001).

This notice is to amend the functional statements for the Bureau of Health Professions and the Bureau of Primary Health Care. Specifically, this notice will move the functions of the Division of National Health Service Corps (RC5), the Division of Scholarships and Loan Repayment (RC6) and the Division of Shortage Designation (RC8) in the Bureau of Primary Health Care and place them in the Bureau of Health Professions. A statement outlining HRSA's reorganization aims is set forth at the end of this notice.

Section RP Function

A. Revise the functional statement for the Bureau of Health Professions (RP) as follows:

Bureau of Health Professions (RP)

Provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health personnel. Specifically: (1) Assesses the Nation's health personnel supply and requirements and forecasts supply and requirements for future time periods under a variety of health resources utilization assumptions; (2) collects and analyzes data and disseminates information on the characteristics and capacities of the Nation's health personnel production systems; (3) proposes new or modifications to existing Departmental legislation, policies, and programs related to health personnel development and utilization; (4) develops, tests and demonstrates new and improved approaches to the development and utilization of health personnel within various patterns of health care delivery and financing systems; (5) provides financial support to institutions and individuals for health professions education programs; (6) administers Federal programs for targeted health personnel development and utilization; (7) provides leadership for promoting equity and diversity in access to health services and health careers for under-represented minority groups; (8) provides technical assistance, consultation, and special financial assistance to national, State, and local agencies, organizations, and institutions for the development, production, utilization, and evaluation of health personnel; (9) provides linkage between Bureau headquarters and HRSA Field Office activities related to health professions education and utilization by providing training, technical assistance, and consultation to Field Office staff; (10) coordinates with the programs of other agencies within the Department, and in other Federal Departments and agencies concerned with health personnel development and health care services; (11) provides liaison and coordinates with non-Federal organizations and agencies concerned with health personnel development and utilization; (12) in coordination with the Office of the Administrator, Health Resources and Services Administration, serves as a focus for technical assistance activities in the international aspects of health personnel development, including the conduct of special international projects relevant to domestic health personnel problems; (13) administers the National Vaccine Injury Compensation Program; (14) administers the National Practitioner Data Bank Program; (15) administers the Healthcare Integrity and Protection Data Bank Program; (16) administers the Ricky Ray Hemophilia Relief Fund Program; (17) administers the Children's Hospitals Graduate Medical Education (CHGME) Payment Program; (18) administers the National Health Service Corps Program which assures accessibility of health care in under-served areas; (19) plans the activities of the National Health Service Corps Advisory Council; (20) administers the Public Health Service Scholarship Training Program and the National Health Service Corps Scholarship Loan Repayment Program; and (21) administers the designation of health professional shortage areas and medically under-served populations.

B. Revise the functional statements for the Bureau of Primary Health Care (RC) as follows:

Bureau of Primary Health Care (RC)

Provides national leadership in developing, coordinating, evaluating, and assuring access to comprehensive preventive and primary health care services and improving the health status of the Nation's under-served and vulnerable populations. Specifically: (1) Assesses the Nation's health care needs of under-served populations; (2) assists communities in providing quality health care services, demonstrating new and improved approaches for providing access to health care and improved health care delivery, and creating new access through community development, expansion and partnerships; (3) administers the Consolidated Health Center Program; (4) develops comprehensive integrated systems of care for under-served communities and populations; (5) decreases health disparities through the targeting of resources to those populations at increased risk of negative health outcomes; (6) promotes the integration of primary care services with mental health, counseling and dental health services; (7) develops innovative strategies for serving special populations and difficult to serve sub-populations; (8) provides leadership for promoting equity, diversity, and cultural competency in access to health care services for under-served populations; (9) coordinates with other Federal agencies and various other organizations involved in health care access and utilization, integrated systems of care, and improvement of health status for under-served populations; (10) supports national, State, local, community, voluntary, public and private entities to help primary health care and health-related organizations meet the needs of vulnerable, under-served, and special populations; (11) provides policy leadership, programmatic direction and consultation for HRSA Field Office staff on activities related to community-based primary health care; (12) administers the Black Lung Clinics Program and the Native Hawaiian Health Systems Program; (13) provides leadership and direction for the National Hansen's Disease Program; (14) administers a national health care program in support of the Immigration and Naturalization Service; and (15) administers the Section 340B Drug Pricing Program.

C. Delete the Division of National Health Service Corps (RC5) in the Bureau of Primary Health Care and place the function in the Bureau of Health Professions

D. Delete the Division of Scholarship and Loan Repayment (RC6) in the Bureau of Primary Health Care and place the function in the Bureau of Health Professions

E. Delete the Division of Shortage Designation (RC8) in the Bureau of Primary Health Care and place the function in the Bureau of Health Professions

F. Establish the Division of National Health Service Corps (RPH) in the Bureau of Health Professions (RP)

Division of National Health Service Corps (RPH)

Provides (1) strategic planning and overall policy guidance, and program oversight to the National Health Service Corps (NHSC); (2) initiates national program and policy changes, including regulatory and statutory amendments, as necessary, to ensure NHSC consistency with evolving national health care policy; (3) supports the NHSC National Advisory Council (NAC), which advises the Secretary, DHHS, on national-health-care policy, particularly as it affects health-manpower issues and the NHSC; (4) works with the Office of the Administrator and the Office of the Secretary to ensure that the NAC member are nationally recognized leaders in national health-care-policy issues, and in their respective primary-health-care disciplines; (5) provides national NHSC leadership, integration and coordination with HRSA and other Departmental programs serving or impacting the Nation's under-served communities and populations; (6) works directly with Bureau, Agency, intra-Agency, Departmental, and inter-Departmental organizations and staffs, as appropriate, on national policies and strategies affecting underserved populations and the development and distribution of primary care clinical personnel; (7) speaks for NHSC with national, regional, State, and local public and private health-care-professional associations, universities and other health-professions training institutions and other groups whose public policy interests relate to primary-health-care manpower and access issues; (8) articulates NHSC policy interests and issues to a variety of national forums, including universities, foundations, think tanks, and other organizations whose interests in primary and other health-care public policy issues have potential for affecting the NHSC; (9) provides policy guidance and support to HRSA field offices; and (10) coordinates NHSC policy on primary and other health care manpower issues, and works with a wide variety of national, regional, State and local constituencies in ensuring their effective implementation.

G. Establish the Division of Scholarships and Loan Repayments (RPI) in the Bureau of Health Professions (RP)

Division of Scholarships and Loan Repayments (RPI)

Responsible for the administration of the Public Health Service Scholarship Training Program and the National Health Service Corps (NHSC) Scholarship Program. Specifically: (1) directs and administers these programs, including the recruitment, application, selection and awarding of scholarship funds and deferment and service monitoring systems in close coordination with the NHSC; (2) develops and implements program plans and policies and operating and evaluation plans and procedures; (3) monitors obligatory service requirements and conditions of deferment for compliance; (4) provides guidance and technical assistance for field office and educational institutions on the NHSC scholarship program; (5) maintains liaison with, and provides assistance to, program-related public and private professional organizations and institutions; (6) maintains liaison with the Office of the General Counsel and the Office of the Inspector General, DHHS; (7) coordinates financial aspects of programs with educational institutions; (8) develops program data needs, formats and reporting requirements including collection, collation, analysis and dissemination of data; and (9) participates in the development of forward plans, legislative proposals and budgets.

H. Establish the Division of Shortage Designation (RPJ) in the Bureau of Health Professions (RP)

Division of Shortage Designation (RPJ)

The Office of the Director, provides national and Division-wide direction, leadership, and perspective in the effective management of the designation of health professional shortage areas and medically-under-served populations. Specifically: (1) Maintains and enhances the Agency's critical role in the Nation's efforts to address equitable health-professional distribution and access to health care for under-served populations; (2) encourages and fosters an ongoing, positive working relationship with other Federal, State and private sector partners; (3) approves designation requests performed by the Training and Community Support Branch (TACSB), finalizing designation policies and procedures for both current and proposed designation criteria; and (4) negotiates and approves State designation agreements (e.g., use of databases, population estimates, Statewide Rational Service Areas, etc.).

Section RF–30 Delegation of Authority

All delegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further re-delegation. I hereby ratify and affirm all actions taken by any DHHS official which involved the exercise of these authorities prior to the effective date of this delegation.

This reorganization is effective upon the date of signature.

Dated: July 31, 2001.

Elizabeth M. Duke,

Acting Administrator.

HRSA Reorganization Aims at Better Coordination for Health Professions Programs, Improved Support for Multi-Year Expansion of Community Health Centers

Overview: The Health Resources and Services Administration (HRSA) has announced reorganization of some functions in order to improve its ability to deliver quality primary and preventive health care to needy Americans, through better coordination of its health professions programs, and through increased focus and resources for Community Health Centers.

HRSA Mission

The U.S. Department of Health and Human Services' Health Resources and Services Administration (HRSA) supports a community-based network of quality primary and preventive health care services that form the foundation of the nation's health care safety net. Currently, millions of Americans lack quality health care because they have no insurance or cannot afford the care they require. HRSA's mission is to expand the nation's capacity to provide access to health care for all Americans.

To fulfill this mission, HRSA supports some 3,200 Community Health Centers and affiliated clinics nationwide and oversees their operation. President Bush has proposed to expand this function significantly over the next five years. HRSA also helps educate sufficient numbers of health care professionals and places them where the need for their services is greatest.

HRSA's *Bureau of Primary Health Care* is responsible for funding and oversight of the community health center network, while the *Bureau of Health Professions* is responsible for programs that attract, prepare, fund, distribute and retain a diverse health professions workforce in medically underserved areas.

Current Structure

Under HRSA's current structure, the Bureau of Primary Health Care has included three divisions that deal with issues, which actually fall within the Bureau of Health Professions' normal range of responsibilities:

- Division of the National Health Service Corps, which recruits health professionals into the National Health Service Corps and matches them with communities in Health Professional Shortage Areas;
- Division of Scholarships and Loan Repayments, which manages the National Health Service Corps' scholarship and loan repayments programs; and the
- Division of Shortage Designation, which reviews applications received from states for Health Professional Shortage Areas and Medically Underserved Areas/Populations and designates communities that meet program criteria.

Reorganization

HRSA's reorganization plan will transfer these three divisions from the Bureau of Primary Health Care to the Bureau of Health Professions. This will allow HRSA to streamline and rationalize its organization by placing within a single bureau the entire spectrum of recruitment, training, loan, scholarship and placement programs for health professionals.

At the same time, the reorganization will enable the Bureau of Primary Health Care to focus on the proposed rapid expansion of direct health care services for Americans without access to care. President Bush's proposed increases in Community Health Centers would double the number of persons served by the centers.

- The consolidation of HRSA's health professions programs within the Bureau of Health Professions will increase the internal coordination needed to ensure that the right number of health care professionals serve in the right communities. It will allow the bureau to offer a ''menu of options'' for health professionals' development through both the National Health Service Corps and the Public Health Service Act's Title VII and VIII programs.
- The restructuring also will give the Bureau of Health Professions responsibility for President Bush's proposed National Health Service Corps Presidential Management Reform Initiative. Designed to improve the Corps' service to America's neediest communities, the reform initiative will examine several issues, including the ratio of scholarships to loan repayments and other set-asides, and will consider amending the Health Professional Shortage Area definition to include non-physician providers and J–1 and H–1C visa providers practicing in communities. These efforts will enable the NHSC to more accurately define shortage areas and target placements to areas of greatest need.
- The reorganization will allow the Bureau of Primary Health Care to focus its staff and resources on its core responsibility—the Community Health Centers program. This increased focus is essential because President Bush's proposed Health Centers Presidential Initiative intends to increase the number of Community Health Center access sites over the next five years by 1,200—from 3,200 to 4,400. This planned increase will allow HRSA-funded centers and clinics to double the number of people they serve annually to 22 million. Most of these people have no health insurance.

[FR Doc. 01–19628 Filed 8–6–01; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; National Institutes of Health Construction Grants

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: National Institutes of Health Construction Grants—42 CFR part 52b (Final Rule). *Type of Information Collection Request:* REVISION of No. 0925–0424, expiration date 11/30/2001. *Need and Use of the Information Collection:* This request is for OMB review and approval of a revision of the information collection and recordkeeping requirements contained in the regulation codified at 42 CFR part 52b. The purpose of the regulation is to govern the awarding and administration of grants awarded by NIH and its components for construction of new buildings and the alteration, renovation, remodeling, improvement, expansion, and repair of existing buildings, including the provision of equipment necessary to make the buildings (or applicable part of the buildings) suitable for the purpose for which it was constructed. The NIH is revising the estimated annual reporting and recordkeeping burden previously approved by OMB is to reflect the increase in the number of construction grants being awarded and administered by NIH. In terms of reporting requirements:

Section 52b.9(b) of the regulation requires the transferor of a facility which is sold or transferred, or owner of a facility, the use of which has changed, to provide written notice of the sale, transfer or change within 30 days. Section 5b10(f) requires a grantee to submit an approved copy of the construction schedule prior to the start of construction. Section 52b.10(g) requires a grantee to provide daily construction logs and monthly status reports upon request at the job site. Section 52b.11(b) requires applicants for a project involving the acquisition of existing facilities to provide the estimated cost of the project, cost of the acquisition of existing facilities, and cost of remodeling, renovating, or altering facilities to serve the purposes for which they are acquired.

In terms of recordkeeping requirements: Section 52b.10(g) requires grantees to maintain daily construction logs and monthly status reports at the job site. *Frequency of Response: On occasion. Affected Public:* Non-profit organizations and Federal agencies. *Type of respondents:* Grantees. The estimated respondent burden is as follows:

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

	Estimated annual number of respondents	Estimated number of responses per response	Average burden hours per response	Estimated total annual burden hours requested
Reporting:				
Section 52b.9(b)	1	1	.50	.50
Section 52b.10(f)	60	1	1	60
Section 52b.10(g)	60	12	1	720
Section 52b.11(b)	100	1	1	100
Recordkeeping:				
Section 52b.10(g)	60	260	1	15,600
Total	381			16,480.5

The annualized cost to the public, based on an average of 60 active grants in the construction phase, is estimated at: $576,818. There are no Capital Costs to report. There are no operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information and recordkeeping are necessary for the proper performance of the function 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 and recordkeeping, including the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected and the recordkeeping information to be maintained; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection and recordkeeping techniques of other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Contact Jerry Moore, NIH Regulations Officer, Office of Management Assessment, Division of Management Support, National Institutes of Health, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, Maryland 20852; call 301–496–4607 (this is not a toll-free number) or Email your request to jm40z@nih.gov.

Comments Due Date: Comments regarding this information collection and recordkeeping are best assured of having full effect if received on or before October 9, 2001.

Dated: July 30, 2001.

Jerry Moore,

Regulations Officer, National Institutes of Health.

[FR Doc. 01–19639 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK): Opportunity for Cooperative Research and Development Agreements (CRADAs) to Implement a Multicenter, Clinical Trial to Study Viral Resistance to Pegylated Interferon Therapy in Combination with Ribavirin in Patients Who Have Chronic Hepatitis C, Genotype 1, Specifically Focusing Upon African Americans

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) of the National Institutes of Health (NIH) is seeking proposals in the form of capability statements from companies for a Cooperative Research and Development Agreement (CRADA) to provide active agent(s) to study important issues surrounding viral resistance to interferon in hepatitis C, particularly in African Americans.

Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a Cooperative Research and Development Agreement (CRADA) with a pharmaceutical or biotechnology company to provide active agent(s) to study important issues surrounding viral resistance to interferon in hepatitis C. The potential Collaborator(s) capability statement should provide proof of expertise in the design and implementation of pegylated interferon and ribavirin therapies for hepatitis C and should include the scientific rationale for the study proposed, proposed dosing regimes, possible strategies for assessing compliance, proposed methods for assessing interferon levels, pharmacokinetics, and drug distribution methodology.

DATES: Only written CRADA capability statements received by the NIDDK on or before August 24, 2001 will be considered. Applicants meeting the criteria as set forth in this announcement will be invited to discuss their plans, capabilities, and research findings pertinent to pegylated interferon and ribavirin with the study's Steering Committee on September 23–24, 2001. This will be at the Collaborator's expense. The Institute may issue an additional notice of CRADA opportunity. This notice is directed toward companies with resources to support collaborations.

FOR ADDITIONAL INFORMATION AND QUESTIONS: Capability statements should be submitted to Dr. Michael W. Edwards, Office of Technology Development, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, BSA Building, Suite 350 MSC 2690, 9190 Rockville Pike, Bethesda, MD 20814–3800; Tel: 301/496–7778, Fax: 301/402–0535; Email: mels@nih.gov.

SUPPLEMENTARY INFORMATION: A CRADA is an agreement designed to enable certain collaborations between Government laboratories and non-Government laboratories. It is not a grant, and is not a contract for the

procurement of goods/services. The NIDDK is prohibited from transferring funds to a CRADA collaborator. Under a CRADA, NIDDK can contribute facilities, staff, materials, and expertise to the effort. The collaborator typically contributes facilities, staff, materials, expertise, and funding to the collaboration. The CRADA collaborator receives an exclusive option to negotiate an exclusive or non-exclusive license to Government intellectual property rights arising under the CRADA in a pre-determined field of use and may qualify as a co-inventor of new technology developed under the CRADA.

Study Goal: The goal of this study is to plan and implement a multicenter clinical investigation into combination antiviral therapy of patients with chronic hepatitis C infected with HCV genotype 1.

Applicants must include a description of investigators and staff with experience and expertise to collaborate in multicenter clinical studies to assess combination antiviral therapy of patients with chronic hepatitis C infected with HCV genotype 1. Applicants must give evidence of their ability and experience to conduct multicenter clinical trials, with patients with chronic hepatitis C. If applicants have particular expertise and accomplishments in recruiting individuals from minority groups, these should be described.

Applicants should provide a detailed description of the pharmacokinetics of the proposed drugs to be used including how and when the drugs should be taken. The process for biologic sample collection, storage and handling needs must be included. A description of the laboratory tests that are needed including assays to determine interferon levels along with appropriate methods for performing them should be provided, as well as other core facilities and interactions with core facilities that are needed. Also included should be the methods that would be used to assure privacy and maintain confidentiality of data. How the drug will be sent to each participating center as well as packaging, storing, and accountability issues must be presented.

Capability Statements: A Selection Committee will utilize the information provided in the ''Collaborator Capability Statements'' received in response to this announcement to help in its deliberations. It is the intention of the NIDDK that all qualified Collaborators have the opportunity to provide information to the Selection Committee through their capability statements. The Capability Statement should not exceed 10 pages and should address the following selection criteria:

1. The statement should provide specific details of the methods to be utilized in the investigation of combination antiviral therapy of patients with chronic hepatitis C infected with HCV genotype 1 and clearly describe important issues surrounding viral resistance to interferon in hepatitis C.

2. The statement should include a detailed plan demonstrating the ability to provide sufficient quantities of the therapeutic medication agents in a timely manner for the duration of the study.

3. The statement should may include outcome measures of interest to the Collaborator. The specifics of the proposed outcome measures and the proposed support should include but not be limited to viral resistance to interferon in hepatitis C, specific funding commitment to support the advancement of scientific research, personnel, services, facilities, equipment, or other resources that would contribute to the conduct of the commercial development.

4. The statement must address willingness to promptly publish research results and ability to be bound by PHS intellectual property policies (see CRADA: *http://ott.od.nih.gov/newpages/crada.pdf).*

Dated: July 27, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer Office of Technology Transfer.

[FR Doc. 01–19640 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Matthew Kiser at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7735 ext. 224; fax: 301/402–0220; e-mail: *kiserm@od.nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Anticancer Effects of Novel Vitamin D Receptor Antagonists

Julianna Barsony (NIDDK); DHHS Reference No. E–213–01/0 filed 20 Jun 2001

The present invention relates to cancer therapeutics. Specifically, this invention relates to novel selective vitamin D receptor modulators (SEDM), also known as vitamin D receptor antagonists. Methods of treatment resulting in inhibition of cell growth, inducement of cell differentiation, inhibition of breast cancer growth, and inhibition of parathyroid hormone secretion in mice are disclosed.

Vitamin D does not have significant biological activity. Rather, it must be metabolized within the body to its hormonally active form, calcitriol. Calcitriol acts through the vitamin D receptor (VDR) to regulate important functions, such as calcium homeostasis, cell proliferation and differentiation, and immune functions. Many cancers contain VDR and, therefore respond to calcitriol. In such cancers, low concentrations of calcitriol stimulate growth and high concentrations inhibit growth. High doses of calcitriol and calcitriol analogues, however, cause hypercalcemia, limiting the use of this hormone for cancer treatment.

The present invention relates to derivatives of calcitriol that have been synthesized in a manner similar to the principles developed to create estrogen receptor modulators (SERM). These vitamin D receptor modulators bind well to VDR, inhibit their ability to stimulate cancer cell growth and increase their ability to induce cell differentiation. In mice, SEDM inhibited human breast cancer growth without causing hypercalcemia. The technology disclosed herein may also be used for the prevention of breast cancer, treatment and/or prevention of other types of conditions or diseases, such as, but not limited to, prostate, colorectal, and lung cancers, leukemia, primary or metastatic melanoma, glyoma, and parathyroid diseases.

Method of Treating Cutaneous T-Cell Lymphoma by Administering a Histone Deacetylase Inhibitor

Susan Bates, Tito A. Fojo, Richard Piekarz (NCI), DHHS Reference No. E–123–00/0 filed 18 Aug 2000

The subject invention provides a method of treating cutaneous T-cell lymphoma and peripheral T cell lymphoma in a mammal. The method comprises administering to the mammal an effective amount of a histone deacetylase inhibitor. Preferably, the histone deacetylase inhibitor is a depsipeptide, in particular the depsipeptide known as NSC 630176. The method can further comprise (i) administering a steroid, a P-glycoprotein multiple drug resistance (MDR) antagonist, an antibody to a T-cell receptor and/or a retinoid, or any IL2 receptor targeted therapy, (ii) the use of chemotherapy, and/or (iii) the use of photochemotherapy.

Dated: July 30, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–19641 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Amine Modified Random Primers for Microarray Detection

Dr. Charles Xiang and Dr. Michael J. Brownstein (NIMH), DHHS Reference No. E–098–01/0 filed 11 Apr 2001

Licensing Contact: Uri Reichman; 301/496–7736 ext. 240; e-mail: reichmau@od.nih.gov.

DNA Microarray technology has become one of the most important tools for high throughput studies in medical research, with applications in the areas of gene discovery, gene expression and mapping, and drug discovery. The technology requires the use of detection probes (cDNA probes, usually fluorescent) which are commonly made from single nucleotides using a template polynucleotide, such as mRNA. The standard methods of making cDNA probes suffer from problems related to reproducibility, and they generally result in poor incorporation of the fluorescent dye and in low sensitivity. The present invention relates to a new method for preparing cDNA probes. The new method overcomes the common problems exhibited by existing methods. The method utilizes amine modified random primers rather than single nucleotides, and results in highly efficient incorporation of the fluorescent dye in multiple sites in the probe. Coupling of the fluorescent dye to the amine residues is performed after the synthesis of the cDNA by reverse transcription. This novel procedure requires significantly less RNA than standard techniques. Licensees of the invention will be provided with primers and other reagents required to practice the invention.

Net-Trials—Clinical Trials Information System

Douglas Hageman, Dianne M. Reeves (NCI), DHHS Reference No. E–164–01/0

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: berkleyd@od.nih.gov.

The invention is a software-based application that supports data collection, reporting, validation and quality assurance for clinical data, where the data comprise clinical observations, patient histories, physical examinations and laboratory tests and procedures. This software is a Java based application with accompanying database that could be offered via an Internet browser to registered users. The invention is intended to offer health care sites and centers that are conducting clinical research an integrated software application for patient, protocol, and research data management in a single application.

Method to Fabricate Continuous Lengths of Helical Coiled Shape Memory Wire

Theodor Kolobow (NHLBI), DHHS Reference No. E–105–00/0 filed 29 Sep 2000

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: berkleyd@od.nih.gov.

The invention is a method and apparatus for fabricating and storing continuous lengths of helical coil shaped memory wire for use in springs, endotracheal tubes, medical stents and as reinforcement for medical tubing (e.g. catheters). The helically coiled wire is continuously formed from a special nickel-titanium wire and spooled for storage in a straightened form. When the wire is later unspooled, it will snap back into the desired helical coil form.

In one method of the invention, Nitinol wire is passed through a spring forming unit to curve the wire. The so formed coil is then loosely guided along a cylindrical mandrel, passed through a high temperature oven so that the helical coil shape will be memorized, and then uncoiled and stored in a straightened form. The method provides a very thin wire with great strength and integrity of shape that resists kinking or collapse in most medical applications.

Dated: July 27, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–19642 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.
Date: August 17, 2001.
Time: 12 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: 6120 Executive Blvd., Suite 350, Rockville, MD 20892.
Contact Person: Andrew P. Mariani, PhD, Chief, Scientific Review Branch, 6120 Executive Blvd., Suite 350, Rockville, MD 20892, 301/496–5561.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: July 26, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–19638 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel. Review of Application for Supplement to Population Models of Factors Affecting Health Trends Program Panel.
Date: August 13, 2001.
Time: 1:30 pm to 2:30 pm.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin, Suite 502C, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Ann Guadagno, PHD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 31, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–19629 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of 'Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.
Date: September 10–11, 2001.
Open: September 10, 2001, 8:30 am to 4:15 pm.
Agenda: Discussion of program policies and issues.
Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.
Open: September 11, 2001, 8:30 am to 10:10 am.
Agenda: Discussion of program policies and issues.
Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.
Closed: September 11, 2001, 10:15 am to adjournment.
Agenda: To review and evaluate grant applications.
Place: NIEHS, Rodbell Auditorium, Building 101, 111 Alexander Drive, Research Triangle Park, NC 27709.
Contact Person: Anne P Sassaman, PHD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723

Information is also available on the Institute's/Center's home page: www.niehs.nih.gov/dert/c-agenda.htm, where an agenda and any additional information for the meeting will be posed when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health HHS)

Dated: July 31, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–19631 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is here given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.
Date: August 24, 2001.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PHD, Associated Director for Staff Development, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm., 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institute of Health, HHS)

Dated: July 31, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–19632 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Genetic and Environmental Influence on Behavioral Affects.

Date: August 13, 2001.

Time: 11:00 am to 12:00 pm.

Agenda: To review and evaluate grant application.

Place: 6100 Executive Bld., Room 5E01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Norman Chang, PHD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blve., Room 5E03, Bethesda, MD 20892 (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209. Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 31, 2001.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–19636 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: August 7, 2001.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, Phd, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: July 31, 2001.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–19637 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: August 1, 2001.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894, (Telephone Conference Call).

Contact Person: Merlyn M. Rodrigues, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 31, 2001.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–19634 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel.

Date: August 9, 2001.

Time: 3:00 pm to 4:00 pm.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894, (Telephone Conference Call).

Contact Person: Merlyn M Rodrigues, MD, PHD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 31, 2001.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–19635 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is here given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 2, 2001.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 6, 2001.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 7, 2001.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 7, 2001.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0695.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 9, 2001.

Time: 2 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, 301–435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 20, 2001.

Time: 3:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC, Bethesda, MD 20892, 301–435–0902, *mkrause@mail.nih.gov.*.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 29, 2001.

Time: 2:30 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, 301–435–4514.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 31, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–19630 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 3, 2001.
Time: 1:00 pm to 2:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890, 301–435–1159, ameros@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 10, 2001.
Time: 11:30 am to 2:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *richard.marcus@nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 13, 2001.
Time: 1:00 pm to 2:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, Genetic Sciences Integrated Review Group, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC7890, Bethesda, MD 20892–7890, 301–435–1159, *ameros@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 13, 2001.
Time: 2:00 pm to 4:30 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 13, 2001.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, 7842, Bethesda, MD 20892, (301) 435–1741.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 14, 2001.
Time: 1:30 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 14, 2001.
Time: 2:00 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 14, 2001.
Time: 3:30 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781. th88q@nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: August 15, 2001.
Time: 1:00 p.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 31, 2001.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–19633 Filed 8–6–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–55]

Notice of Proposed Information Collection: Comment Request; HUD Alternative for SF 424 Forms, Application for Federal Assistance and Attendant Forms

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

soliciting public comments on the subject proposal.

DATES: *Comments due:* October 9, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department or Housing and Urban Development, 451 7th Street, SW, L'Enfant Plaza Building, Room 800a, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development,451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HUD Alternative for SF 424 Forms, Application for Federal Assistance and Attendant Forms.

OMB Control Number, if applicable: 2501–0017.

Description of the need for the information and proposed use: HUD-alternative to the SF 424, Application for Federal Assistance, and directly related forms intended to offer consolidated and streamlined grant application processes in accordance with the provisions of Public Law 106–107, the Federal Financial Assistance Improvement Act of 1999.

Agency form numbers, if applicable: HUD–424, HUD–424–B, HUD–424–C.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total number of hours needed to prepare the forms for each grant application is 1, however, the burden will be assessed against each individual grant program submission under the Paperwork Reduction Act; number of respondents is 9,091; frequency of response is on the occasion of application for benefits.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 27, 2001.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–19654 Filed 8–6–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 4696–N–01]

Delegation of Authority From the Secretary of Housing and Urban Development to the Assistant Secretary for Housing—Federal Housing Commissioner to Serve on the Federal Housing Finance Board

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Authority from the Secretary of Housing and Urban Development to the Assistant Secretary for Housing—Federal Housing Commissioner to serve on the Federal Housing Finance Board.

SUMMARY: The Secretary of Housing and Urban Development is delegating to the Assistant Secretary for Housing—Federal Housing Commissioner all of the Secretary's functions, powers, and duties as a director of the Federal Housing Finance Board.

EFFECTIVE DATE: August 1, 2001.

FOR FURTHER INFORMATION CONTACT: John P. Kennedy, Associate General Counsel for Finance and Regulatory Enforcement, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2203. This is not a toll-free number. This number may be accessed via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 2A(b)(1)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1422a(d)(2)) as amended by Section 702(a) of Title VII of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, provides that the Secretary of Housing and Urban Development shall serve as a director of the Federal Housing Finance Board. Under section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), the Secretary of Housing and Urban Development may delegate any of the Secretary's functions, powers and duties to such officers and employees of the Department as the Secretary may designate. In the delegation of authority issued today, the Secretary is delegating to the Assistant Secretary for Housing—Federal Housing Commissioner all of the Secretary's functions, powers and duties as a director of the Federal Housing Finance Board.

Accordingly, the Secretary delegates as follows:

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Housing—Federal Housing Commissioner all of the Secretary's functions, powers and duties as a director of the Federal Housing Finance Board, under section 2A(b)(1)(A) of the Federal Home Loan Bank Act (12 U.S.C. 1422a(d)(2)) as amended by section 702(a) of Title VII of the Financial Institutions Reform, Recovery and Enforcement Act of 1989.

Section B. No Further Redelegation of Authority

The Assistant Secretary for Housing—Federal Housing Commissioner may not redelegate the authority delegated in Section A to any other official or employee of the Department of Housing and Urban Development.

Section C. Delegations of Authority Superseded

This Delegation of Authority supersedes all delegations of authority concerning this function prior to August 1, 2001, including the delegation of authority dated May 25, 1993 (58 FR 45910).

Authority: Sec. 2A(b)(1)(A), Federal Home Loan Bank Act (12 U.S.C. 1422a(d)(2)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 1, 2001.

Mel Martinez,

Secretary.

[FR Doc. 01–19653 Filed 8–6–01; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice.

Applicant: Brookfield Zoo/Chicago Zoological Park, Chicago, Illinois, PRT–046073

The applicant requests a permit to import eighteen (18) Goeldi's monkies (*Callimico goeldii*) from Switzerland for the purpose of the purposes of enhancement of the survival of the species through propagation.

Applicant: Kris J. Rusak, Shelby Township, MI, PRT–045853

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kevin M. Budney, Berlin, CT, PRT–045852

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Dale F. James, Bedminster, PA, PRT–045928

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Roger Blum, Detroit, MI, PRT–045927

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Johnnie Ray Bryan, Jacksonville, FL, PRT–046027

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Carlos E. Diez, San Juan, Dept. Recursos Naturales Y Ambientales, Puerto Rico, PRT–045380

The applicant requests a permit to export wild-collected Hawksbill sea turtle (*Eretmochelys imbricata*) eggs from Puerto Rico to the University of Toronto, Ontario, Canada, for the purpose of scientific research. This notification covers activities conducted by the applicant over a five year period.

Applicant: Peter Meylan, Eckered College, St. Petersburg, FL, PRT–030276

The applicant requests the re-issuance of his permit to import tissue and blood samples obtained from wild Hawksbill sea turtle (*Eretmochelys imbricata*), from the Cayman Island Department of Environment, for the purpose of scientific research. This notification covers activities conducted by the applicant over a five year period.

Applicant: White Oak Conservation Center, Yulee, FL, PRT–046070

The applicant requests a permit to import from the Philipines blood serum samples collected from 10 live captive-held and/or captive-born Visayan deer (*Cervus alfredi*) for testing at the Foreign Animal Disease Diagnostic Laboratory in Plum Island, NY, as required by the U.S. Department of Agriculture. The import of these samples will enable the applicant to proceed with the import of the 10 Visayan deer previously authorized under permit MA843877–1 for the purpose of enhancing the survival of the species through captive propagation.

Applicant: White Oak Conservation Center, Yulee, FL, PRT–046071

The applicant requests a permit to import from Switzerland blood serum samples collected from 10 live captive-held and/or captive-born Visayan deer (*Cervus alfredi*) for testing at the Foreign Animal Disease Diagnostic Laboratory in Plum Island, NY, as required by the U.S. Department of Agriculture. The import of these samples will enable the applicant to proceed with the import of the 10 Visayan deer previously authorized under permit MA843877–1 for the purpose of enhancing the survival of the species through captive propagation.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Written data, comments, or requests for copies of these complete applications or requests for a public hearing on these applications should be submitted to the Director (address below) and must be received within 30 days of the date of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Terrie M. Williams, University of California, Santa Cruz, PRT–045447

Permit Type: Take for scientific research

Name and Number of Animals: Southern sea otters (*Enhydra lutris nereis*), 12 per year

Summary of Activity to be Authorized: The applicant requests a permit to transport animals undergoing rehabilitation to UCSC Long Marine Lab, to California Department of Fish and Game, Marine Wildlife Veterinary Care and Research Center, or to open-water pens in order to conduct research studies on sea otters' ability to thermo-regulate and energy expenditure while diving.

Source of Marine Mammals: animals originally from the wild (Central California coast) undergoing rehabilitation at Monterey Bay Aquarium

Period of Activity: Up to 5 years, if issued.

Applicant: United States Fish and Wildlife Service/Marine Mammal Management, Anchorage, AK, PRT–046081

Permit Type: Take for scientific research

Name and Number of Animals: Polar bear (*Ursus maritimus*), Variable

Summary of Activity to be Authorized: The applicant requests a permit to conduct aerial fly overs of polar bears for the purpose of conducting population surveys of the Alaska polar bear stocks.

Source of Marine Mammals: Free ranging

Period of Activity: Up to 5 years, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Ernest J. Meinhardt, Anchorage, AK, PRT–045925

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358-2281.

Dated: July 27, 2001.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–19771 Filed 8–6–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application (Reames) for Incidental Take of the Houston Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Hal Reames (Applicant) has applied for an incidental take permit (TE–042731–0) pursuant to section 10(a) of the Endangered Species Act (Act). The requested permit would authorize the incidental take of the endangered Houston toad. The proposed take would occur as a result of the construction and operation of a single-family residence on approximately 0.5 acres of a 20.0-acre property on Southshore Road, Bastrop County, Texas.

DATES: Written comments on the application should be received on or before September 6, 2001.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103.

Persons wishing to review the EA/HCP may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–042731–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Clayton Napier at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicant: Hal Reames plans to construct a single-family residence, within 8 years, on approximately 0.5 acres of a 20.0-acre property on Southshore Road, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The Applicant proposes to compensate for this incidental take of the Houston toad by providing $2,000.00 to the Houston Toad Conservation Fund at the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat.

Bryan Arroyo,

Acting Regional Director, Region 2.

[FR Doc. 01–19694 Filed 8–6–01; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application (Raz) for Incidental Take of the Houston Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Martin Raz (Applicant) has applied for an incidental take permit (TE–042729–0) pursuant to section 10(a) of the Endangered Species Act (Act). The requested permit would authorize the incidental take of the endangered Houston toad. The proposed take would occur as a result of the construction and occupation of a single-family residence on approximately 0.5 acres of a 10.0-acre property on Old Potato Road, Bastrop County, Texas.

DATES: Written comments on the application should be received on or before September 6, 2001.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103.

Persons wishing to review the EA/HCP may obtain a copy by contacting Clayton Napier, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–042729–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Clayton Napier at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Houston toad. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take endangered wildlife species

incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicant: Martin Raz plans to construct a single-family residence, within 5 years, on approximately 0.5 acres of a 10.0-acre property on Old Potato Road, Bastrop County, Texas. This action will eliminate 0.5 acres or less of Houston toad habitat and result in indirect impacts within the lot. The Applicant proposes to compensate for this incidental take of the Houston toad by providing $2,000.00 to the Houston Toad Conservation Fund at the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat.

Bryan Arroyo,

Acting Regional Director, Region 2.

[FR Doc. 01–19695 Filed 8–6–01; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Permit Application (Scarpato) for Incidental Take of the Golden-Cheeked Warbler

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Thomas V. Scarpato and Janet E. Neyland-Scarpato (Applicants) have applied for an incidental take permit (TE–042733–0) pursuant to section 10(a) of the Endangered Species Act (Act). The requested permit would authorize the incidental take of the endangered golden-cheeked warbler. The proposed take would occur as the result of the construction of one single family residence on Lot 11, Two Coves Drive, Austin, Travis County, Texas.

DATES: Written comments on the application should be received on or before September 6, 2001.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico, 87103.

Persons wishing to review the EA/HCP may obtain a copy by contacting Scott Rowin, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas, 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas, at the above address. Please refer to permit number TE–042733–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Scott Rowin at the above U.S. Fish and Wildlife Service, Austin Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler. However, the Fish and Wildlife Service (Service), under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

Applicants: Thomas V. Scarpato and Janet E. Neyland-Scarpato plan to construct a single family residence, within 10 years, on Lot 11, 8110 Two Coves Drive, Austin, Travis County, Texas. This action will eliminate less than one acre of habitat and indirectly impact less than four additional acres of golden-cheeked warbler habitat. The applicants propose to compensate for this incidental take of golden-cheeked warbler habitat by donating $1,500 into the Balcones Canyonlands Preserve to acquire/manage lands for the conservation of the golden-cheeked warbler.

Bryan Arroyo,

Regional Director, Region 2.

[FR Doc. 01–19696 Filed 8–6–01; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Permit for Marine Mammals

On, May 22, 2001, a notice was published in the **Federal Register** (volume #66 FR page 1# 28196), that an application had been filed with the Fish and Wildlife Service by Daniel Welch for a permit (PRT–042573) to import one polar bear (*Ursus maritimus*) trophy taken from the Northern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on July 9, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On, May 22, 2001, a notice was published in the **Federal Register** (volume #66 FR page #28196), that an application had been filed with the Fish and Wildlife Service by William Cunningham for a permit (PRT–042218) to import one polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Canada for personal use.

Notice is hereby given that on July 9, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On, May 22, 2001, a notice was published in the **Federal Register** (volume #66 FR page #28196), that an application had been filed with the Fish and Wildlife Service by Gary Sorensen for a permit (PRT–042199) to import one polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Canada for personal use.

Notice is hereby given that on July 10, 2001, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for those applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone (703) 358–2104 or fax (703) 358–2281.

Dated: July 27, 2001.

Anna Barry,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 01–19772 Filed 8–6–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–01–1320-EL; COC 62920]

Notice of Coal Lease Offering by Sealed Bid; COC 62920

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in La Plata County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 11 a.m., Tuesday, September 11, 2001. Sealed bids must be submitted no later than 10 a.m., Tuesday, September 11, 2001.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at 303-239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered is limited to coal recoverable by underground mining methods on the East Alkali Tract in the following lands:

T. 35 N., R. 11 W., N.M.P.M.
Sec. 19, lots 4, 5, E½SW¼, and SE¼.
T. 35 N., R. 12 W., N.M.P.M.
Sec. 24, lots 1, 2, and SW¼SE¼;
Sec. 25, lots 1, 2, W½NE¼, and W½;
Sec. 26, SE¼NE¼, E½SE¼, and SW¼SE¼;
Sec. 35, NE¼, and N½SE¼.
containing 1,304.51 acres.

Total recoverable reserves are estimated to be 7,049,000 tons. The underground minable coal is ranked as high volatile B bituminous coal. The estimated coal quality on an as-received basis is as follows:

Btu: 12,769 Btu/lb.
Moisture: 5.60%
Sulfur Content: 0.68%
Ash Content: 7.78%

Rental and Royalty: The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability: Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

July 25, 2001.

Karen A. Purvis,

Solid Minerals Staff, Resource Services.

[FR Doc. 01–19671 Filed 8–6–01; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–090–1610–DG]

Environmental Statements; Notice of Intent

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Intent to prepare (1) a Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for the Snake River Birds of Prey National Conservation Area (NCA) and (2) a RMP and EIS for the Bruneau planning area of the Owyhee Field Office in southwestern Idaho.

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA) and section 102 (2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM), Lower Snake River District will prepare a RMP and EIS for the Snake River Birds of Prey NCA and a separate RMP and EIS for the Bruneau planning area in southwestern Idaho. These land use plans will guide resource management in these areas in the foreseeable future. These RMPs will be prepared under guidance provided through 43 CFR part 1600 (BLM Planning Regulations).

DATES: Public meetings pursuant to 43 CFR 1610.2 (BLM Planning Regulations) and 40 CFR 1501.7 (NEPA Regulations) to help identify the range of issues to be addressed in each RMP and the scope of each EIS will be announced through the local media and direct mailings at a later date once specific dates and locations for public participation are determined. Throughout the planning process, the public will be given opportunities to participate through workshops and open house meetings. These workshops will provide the public an opportunity to work with BLM in identifying the full range of issues to be addressed in the RMPs/EISs and developing the alternatives to be analyzed in the EISs.

ADDRESSES: Comments should be sent to: Bureau of Land Management, SRBOPNCA–RMP, 3948 Development Avenue, Boise, Idaho 83705, for the Snake River Birds of Prey NCA RMP, and Owyhee Field Office, 3948 Development Avenue, Boise Idaho 83705, for the Bruneau RMP. Comments, including names and street addresses of respondents, will be available for public review at the above address during regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: John Sullivan, NCA Manager, 3948 Development Avenue, Boise, Idaho

83705 for the Snake River Birds of Prey NCA RMP; and Jenna Whitlock, Field Manager, Owyhee Field Office, 3948 Development Ave., Boise, Idaho 83705 for the Bruneau RMP; phone for either manager (208) 384–3300. Existing documents concerning these planning areas can be seen at the above addresses.

SUPPLEMENTARY INFORMATION: The planning process for these two RMPs will utilize an open collaborative approach allowing the public, Tribes, State and Federal agencies, local elected officials, and BLM subject matter specialists to fully develop and analyze the alternatives for management of the public lands. To facilitate public comment, promote efficiency, and avoid confusion between the two planning efforts, it is anticipated that joint scoping meetings will be conducted. Beyond the scoping process, each planning effort will develop its own public involvement process to be responsive to the issues and concerns unique to the planning effort. The plans are expected to be completed in 2004.

Snake River Birds of Prey NCA RMP

The NCA encompasses 485,000 acres of public land along 81 miles of the Snake River. It is located in Ada, Canyon, Elmore, and Owyhee Counties and is within a 30 minute drive of Boise in southwestern Idaho. The NCA was established on August 4, 1993 by Public Law 103–64 for the conservation, protection and enhancement of raptor populations and habitats and the natural and environmental resources and values associated with the area. The current NCA management plan is an activity level plan that conforms with, and is used in conjunction with five land use plans. The NCA RMP will replace management decisions made in the existing five land use plans.

In order to address issues and meet Bureau requirements for determining appropriate public land uses, decisions may be made on the following: air resources, soil resources, water resources, vegetation (including invasive species and noxious weeds), riparian areas, wildlife habitat, fishery habitat, special status species (including threatened and endangered species), range management, fire management, lands (including tenure adjustments, rights-of-way, and NCA boundary adjustments), military training, mineral materials, recreation, visual resources, cultural resources, geological and paleontological resources, areas of critical environmental concern, and hazardous materials.

The preliminary issues have been identified, based on the NCA legislative mandate, and staff knowledge. These preliminary issues will be expanded during public scoping and refined throughout the planning process. The following issues, at a minimum, will be addressed in the RMP: National Guard military training compatibility with NCA purposes; management and protection of raptors and scientific research on their decline; habitat restoration, including needs as a result of wildfire and other disturbances; fire and fuels management strategies to protect at risk communities and habitats, especially shrub sites; rangeland health assessments and livestock grazing compatibility determinations as required by the enabling legislation; special status species management (including threatened and endangered species); public access and transportation within the NCA that balances public access and resource protection; visitor use and environmental education; protection and management of significant cultural sites; land tenure adjustments and urban interface considerations; and possible withdrawal of an unexploded ordnance area. All issues will be considered in the context of compatibility with NCA purposes as described in the enabling legislation, the Snake River Birds of Prey Act of 1996 (Public Law 103–64). Disciplines corresponding to these issue areas will be represented and used during the planning process.

Bruneau Planning Area

The Bruneau planning area encompasses approximately 1.4 million acres of public land administered by the BLM Owyhee Field Office in southwestern Idaho. This area is currently managed in compliance with the Bruneau Management Framework Plan (MFP) approved in 1983. Reorganization of the Lower Snake River District resulted in incorporation of the Bruneau planning area into the Owyhee Field Office. In December of 1999, the Owyhee RMP was approved on 1.3 million acres. When completed, the Bruneau RMP will be used in conjunction with the Owyhee RMP to manage approximately 2.7 million acres administered by the Owyhee Field Office.

In order to address issues and meet BLM planning requirements for determining public land uses, decisions may be made for air, soil, and water resources; vegetation (including noxious weeds); riparian areas; forestry management (including juniper woodlands); wildlife and fishery habitat; special status species (including threatened, endangered, candidate, and BLM sensitive species); range management; fire and fuels management; lands (including tenure adjustments and rights-of-way); locatable, leasable, and salable minerals; recreation (including wild and scenic rivers); wilderness; visual resources; cultural resources; hazardous materials; and areas of critical environmental concern.

The anticipated issues identified are preliminary and are based on staff knowledge. The issues will be expanded during public scoping and refined throughout the planning process. As a minimum the following issues will be addressed in the RMP: range management including compliance with Idaho standards for rangeland health and guidelines; public access and transportation to balance access and resource protection; recreation; identification of conservation measures for special status species; wilderness study area management; management of river segments eligible for the wild and scenic river system; protection and management of cultural resources; management of riparian and wetland habitats; fire and fuel management, including protection of low elevation shrub communities from unnatural wildfire; and consideration of local community needs, including consideration of the socio-economic effects of changes in public land management. Disciplines corresponding to the issue areas indicated will be represented and used during the planning process.

Dated: July 16, 2001.

Katherine Kitchell,

Lower Snake River District Manager.

[FR Doc. 01–19674 Filed 8–6–01; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–73872]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

July 25, 2001.

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–73872 for lands in Emery County, Utah, was timely filed and required rentals accruing from April 1, 2001, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessee has

reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–73872, effective April 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rate cited above.

Robert Lopez.

Chief, Branch of Minerals Adjudication.

[FR Doc. 01–19670 Filed 8–6–01; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–EU]

Notice of Realty Action: Competitive Sale of Public Lands in Clark County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: The following lands have been designated for disposal under Public Law 105–263, the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343); they will be sold competitively in accordance with section 203 and section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713,1719, and 1740) at not less than the appraised fair market value (FMV).

Mount Diablo Meridian, Nevada

T. 20 S., R. 59 E.,
Sec. 1,E½SW¼SW¼NW¼, W½SW¼SW¼SE¼;
Sec. 12, SE¼SE¼NW¼.
T. 19 S., R. 60 E.,
Sec. 18, E½NW¼SE¼NE¼, W½SE¼SE¼NE¼;
Sec. 19, W½SW¼SW¼NE¼, E½SW¼SW¼NE¼.
T. 20 S., R. 60 E.,
Sec. 5, NW¼SE¼NW¼SE¼;
T. 21 S., R. 60 E.,
Sec. 18, NE¼SW¼SW¼SE¼, W½SW¼SW¼SE¼, SE¼SW¼SW¼SE¼.
T. 22 S., R. 60 E.,
Sec. 13, E½SE¼NW¼SW¼SW¼;
Sec. 14, E½SW¼NE¼NW¼, W½NE¼SE¼NW¼, W½SW¼SE¼NW¼;
Sec. 36, NW¼NW¼SW¼NW¼.
T. 22 S., R. 61 E.,
Sec. 14, E½SE¼NE¼SW¼SE¼;
Sec. 29, W½SE¼NW¼NE¼, E½NE¼NW¼SW¼NE¼, E½NE¼SW¼SW¼NE¼, SE¼SE¼SW¼NE¼, SW¼ NE¼ NW¼ SE¼,E½ SE¼ NW¼ NW¼ SE¼,E½ NE¼ SW¼ NW¼ SE¼,NE¼ SE¼ SW¼ SE¼,W½ NE¼ SW¼ SE¼,E½ NE¼ NW¼ SW¼,SE¼.

In addition to the lands described herein, parcels that have been published in a previous Notice of Realty Action (NORA), and were previously offered but did not sell, may be re-offered at this sale.

When the land is sold, conveyance of the locatable mineral interests will occur simultaneously with the sale of the land. The locatable mineral interests being offered have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the locatable mineral interests.

The terms and conditions applicable to the sale are as follows:

All Parcels Subject to the Following:

1. All leaseable and saleable mineral deposits are reserved on land sold; permittees, licensees, and lessees retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All land parcels are subject to all valid and existing rights. Parcels may also be subject to applications received prior to publication of this Notice if processing the application would have no adverse affect on the appraised FMV. Encumbrances of record are available for review during business hours, 7:30 AM to 4:15 PM, Monday through Friday, at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada.

4. All land parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgements of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) judgements, claims or demands of any kind assessed against the United States; (3) costs, expenses, or damages of any kind incurred by the United States; (4) other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Maps delineating the individual sale parcels will be available for public review at the BLM Las Vegas Field Office on or about August 13, 2001. Appraisals for each parcel will be available for public review at the Las Vegas Field Office on or about September 15, 2001.

Each parcel will be offered by sealed bid, and at oral auction. All sealed bids must be received in the BLM Las Vegas Field Office (LVFO), 4765 Vegas Drive, Las Vegas, NV 89108, no later than 4:15 pm, PST, October 30, 2001. Sealed bid envelopes must be marked on the lower front left corner with the parcel number and sale date. Bids must be for not less than the appraised FMV and a separate bid must be submitted for each parcel.

Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent of the amount bid.

The highest qualified sealed bid for each parcel will become the starting bid for oral bidding. If no sealed bids are received, oral bidding will begin at the appraised FMV.

All parcels will be offered for competitive sale by oral auction beginning at 10:00 am PST, November 1, 2001, at the Clark County Commission Chambers, Clark County Government Center, 500 S. Grand Central Parkway, Las Vegas, Nevada. Registration for oral bidding will begin at 8:30 am the day of sale and will continue throughout the auction. All oral bidders are required to register.

The highest qualifying bid for any parcel, whether sealed or oral, will be declared the high bid. The apparent high bidder, if an oral bidder, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid.

The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the sale date. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM. Unsold parcels may be offered on the Internet beginning on or about November 20, 2001. Internet auction procedures will also be available at www.auctionrp.com at that time. If unsold on the Internet, parcels may be offered at future auctions without additional legal notice. Upon publication of this notice and until the completion of the sale, the BLM is no longer accepting land use applications affecting any parcel being offered for sale, including parcels being offered for sale that have been published in a previous Notice of Realty Action. However, land use applications may be considered after the completion of the sale within parcels that are not sold through sealed, oral, or on-line Internet auction procedures.

Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit.

In order to determine the fair market value of the subject public lands through appraisal, certain assumptions have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale, and conveyance of the subject lands will not be on a contingency basis. It is the buyers' responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyers' responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, planning and environmental documents is available for review at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108, or by calling (702) 647–5114. Much of this information will also be available on the Internet at http://www.nv.blm.gov. Click on Land Sales.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined to not be in the public's interest. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish your name and/or address be made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: July 20, 2001.

Mark T. Morse,

Field Manager.

[FR Doc. 01–19673 Filed 8–6–01; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–092–01–1430–EU: GP01–0246; OR 55430]

Realty Action; Direct Sale of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Direct Sale of Public Lands in Lane County, Oregon.

SUMMARY: The following land is suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1713 and 1719), at no less than the appraised fair market value of $1500.00. The land will not be offered for sale until at least 60 days after publication of this notice:

Willamette Meridian, Oregon

T. 21 S., R. 3 W.
Sec. 2: Lots 5 and 8
Containing 1.72 acres

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute, for 270 days from the date of publication of this notice in the **Federal Register** or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

The land is being offered to Amvesco, Inc., dba Western Pioneer Title Co., using the direct sale procedures authorized under 43 CFR 2711.3–3. Direct sale is appropriate since the land is part of a survey hiatus identified by cadastral survey in 1999 and has been inadvertently occupied and utilized for many years as a county road and portions of five residential yards pursuant to private deeds. Direct sale will resolve the title conflicts and unauthorized use while preserving the occupants' equity in the property.

The terms, conditions, and reservations applicable to the sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. The mineral interests being offered for conveyance have no known mineral value. The acceptance of a direct sale offer will constitute an application for conveyance of the mineral estate in accordance with section 209 of the Federal Land Policy and Management Act. Direct purchasers must submit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate upon request by the Bureau of Land Management.

3. Patent will be issued subject to all valid existing rights and reservations of record.

4. The sale will be subject to:

a. Such rights for public road purposes as Lane County, Oregon, or its successors in interest may have pursuant to right-of-way OR 55407. Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

b. A requirement that the purchaser, at closing, grant an easement to the U.S. Department of Energy, Bonneville Power Administration, for an existing electric transmission line.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, South Valley Resource Area, Bureau of Land Management, at the address below. Objections will be reviewed by the Eugene District Manager who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior

ADDRESSES: Detailed information concerning the sale, including the reservations, sale procedures and conditions, form of the easement to be granted to the Bonneville Power Administration and planning and environmental documents, is available at the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Ronald Wold, Realty Specialist, Eugene District Office, at (541) 683–6403.

Dated: July 11, 2001.

Steven Calish,

Field Manager, South Valley Resource Area.

[FR Doc. 01–19672 Filed 8–6–01; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA) of 1992 and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria). Fresno Irrigation District has developed a Water Management Plan (Plan), which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice to allow the public to comment on the preliminary determinations. Public comment on Reclamation's preliminary (i.e., draft) determination of Fresno Irrigation District's Plan is invited at this time.

DATES: All public comments must be received by September 6, 2001.

ADDRESSES: Please mail comments to Bryce White, Bureau of Reclamation, 2800 Cottage Way, Sacramento California, 95825, or e-mail them to bwhite@mp.usbr.gov.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Bryce White at the e-mail address above, or by telephone at (916) 978–5208 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (i.e., draft) determination of the adequacy of Fresno Irrigation District's Plan. Section 3405(e) of the CVPIA (Title 34 Public Law 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982. ''Also, according to Section 3405(e)(1), these criteria must be developed * * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

These Criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. Best Management Practices (BMPs) for Agricultural Contractors
4. BMP's for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. Five Year Revisions

Reclamation will evaluate Fresno Irrigation District's Plan based on these Criteria. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

A copy of the Plan will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California, and MP's South-Central California Area Office located in Fresno, California. If you wish to review a copy of the Plan, please contact Mr. White to find the office nearest you.

Dated: July 17, 2001.

John F. Davis,

Regional Resources Manager.

[FR Doc. 01–19697 Filed 8–6–01; 8:45 am]

BILLING CODE 4210–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–461]

In the Matter of Certain Clay Target Throwing Machines and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 2, 2001, under section 337 of the Tariff Act of 1930 as amended, 19 U.S.C. 1337, on behalf of Stuart Patenaude of Henniker, New Hampshire. A supplement to the complaint was filed on July 18, 2001. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain clay target throwing machines and components thereof by reason of infringement of claims 1 and 6 of U.S. Letters Patent 5,249,563 and claims 1, 9, 10, 15, and 16 of U.S. Letters Patent 6,176,229. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *http:www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: Benjamin D. M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2000).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 31, 2001, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain clay target throwing machines and components thereof by reason of infringement of claims 1 or 6 of U.S. Letters Patent 5,249,563 or claims 1, 9, 10, 15 or 16 of U.S. Letters Patent 6,176,229, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Stuart Patenaude, 16 Colby Hill Road, Henniker, NH 03242.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Gösta Gustafssons mekaniska verkistad AB, Norra Agatan, Box 256, 73224 Arboga Sweden

GMV Superstar AB, Norra Agatan, Box 256, 73224 Arboga Sweden

Gert Holmqvist Enterprises, Ltd., 223 Hodson Place, Okotoks, Alberta, TOL 1T0 Canada

(c) Benjamin D. M. Wood, Esq. Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: August 1, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–19785 Filed 8–6–01; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Probable Effect of Certain Modifications to the North American Free Trade Agreement Rules of Origin

AGENCY: United States International Trade Commission.

ACTION: Request for written submissions.

EFFECTIVE DATE: August 2, 2001.

SUMMARY: The Commission received a request from the United States Trade Representative (USTR) on August 1, 2001, to provide advice on the probable effect on U.S. trade under the North American Free Trade Agreement (NAFTA) and on domestic industries on certain modifications to the rules of origin in NAFTA Annex 401.

FOR FURTHER INFORMATION: Information may be obtained from David Lundy, Office of Industries (202–205–3439, or lundy@usitc.gov); and on legal aspects, from William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Margaret

O'Laughlin, Office of Public Affairs (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal (202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at http://dockets.usitc.gov/eol/public.

Background: According to the USTR's letter, U.S. negotiators have recently reached agreement in principle with representatives of the governments of Canada and Mexico on proposed modifications to Annex 401 of the NAFTA. Chapter 4 and Annexes 401 and 403 of the NAFTA contain the rules of origin for application of the tariff provisions of the NAFTA to trade in goods. Section 202(q) of the North American Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules as may from time to time be agreed to by the NAFTA countries. One of the requirements set out in section 103 of the Act is that the President obtain advice from the United States International Trade Commission.

The USTR requested that the Commission provide advice on the probable effect on U.S. trade under NAFTA and domestic industries as a result of five groups of proposed modifications to Annex 401. A list of the proposed modifications is available from the Office of the Secretary to the Commission or by accessing the electronic version of this notice at the Commission's Internet site (http://www.usitc.gov). The current U.S. rules of origin can be found in general note 12 of the 2001 U.S. Harmonized Tariff Schedule (see ''General Notes'' link at http://dataweb.usitc.gov/scripts/tariff/toc.html). As requested, the Commission will forward its confidential advice to the USTR by September 14, 2001.

Written Submissions: No public hearing is being scheduled in connection with preparing this advice. However, interested parties are invited to submit written statements (original and 14 copies) concerning any economic effects of the modifications. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. To be ensured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and must be received no later than the close of business on August 30, 2001. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. 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.

Issued: August 2, 2001.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 01–19786 Filed 8–6–01; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 3, 2001.

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 contact Darrin King at (200) 693–4129 or E-Mail: king-darring@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, 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.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Agency (ESA).

Title: Employer's First Report of Injury or Occupational Disease (LS–202); Physician's Report on Impairment of Vision (LS–205); Employer's Supplementary Report of Accident or Occupational Illness (LS–210).

OMB Number: 1215–0031.

Affected Public: Business or other for-profit; and Not-for-profit institutions.

Frequency: On occasion.

Form	Number of respondents	Annual responses	Hours per response	Burden hours
LS–202	24,000	24,000	0.25	6,000
LS–205	80	80	.75	60
LS–210	2,580	2,580	.25	645
Total	* 24,080	26,660		6,705

* The number of respondents equals 24,000 plus 80. The respondents for the LS–202 and LS–210 are the same individuals.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $11,100.

Descriptions: These forms are used to report injuries, periods of disability, and medical treatment under the Longshore and Harbor Workers' Compensation Act.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Agency (ESA).

Title: Notice of Law Enforcement Officer's Injury or Occupational Disease (CA–721); Notice of Law Enforcement Officer's Death (CA–722).

OMB Number: 1215–0116.

Affected Public: Individuals or households; Business or other for-profit; and State, Local, or Tribal Government.

Frequency: On occasion.

Form	Number of respondents	Annual responses	Hours per response	Burden hours
CA–721	8	8	1.0	8
CA–722	15	15	1.5	23
Total	23	23	.....	31

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $8.51.

Descriptions: These forms are used for filing claims for compensation for injury and death to non-Federal law enforcement officers under the provisions of 5 U.S.C. 8191 et seq. The forms provide the basic information needed to process the claims made for injury or death.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Agency (ESA).

Title: Labor Standards for Federal Service Contracts—29 CFR Part 4.

OMB Number: 1215–0150.

Affected Public: Business or other for-profit and Federal Government.

Frequency: On occasion.

Report	Number of respondents	Annual responses	Hours per response	Burden hours
Vacation Benefit Seniority List	62,332	62,332	1	62,332
Conformance Report	194	194	.5	97
Collective Bargaining Agreement (CBA)	1,500	1,500	.8	125
Total	64,026	64,026	.....	62,554

Total Annualized Capital/Startup Costs: $0.

Total Annualized costs (operating/maintaining systems or purchasing services): $0.

Description: The information submitted on Vacation Benefit Seniority List is used by Federal contractors to determine vacation fringe benefit entitlements earned and accrued by service employees who were employed by predecessor contractors.

The Conformance Record is reviewed by Wage and Hour Division staff in determining the appropriateness of the conformance and compliance with requirements of the Service Contract Act of 1965 as Amended, 41 U.S.C. 351 *et seq.*

CBAs are submitted by the contracting agency to the Wage and Hour Division where they are used in the issuance of wage determinations for successor contracts subject to section 2(a) and 4(c) of the Service Contract Act of 1965 as Amended, 41 U.S.C. 351 *et seq.*

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 01–19681 Filed 8–6–01; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used to obtain information from private foundations or other entities in order to design, construct and equip Presidential libraries. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this

notice, NARA is soliciting comments concerning the following information collection:

Title: Presidential Library Facilities.

OMB number: 3095–0036.

Agency form number: None.

Type of review: Regular.

Affected public: Presidential library foundations or other entities proposing to transfer a Presidential library facility to NARA.

Estimated number of respondents: 1.

Estimated time per response: 31 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 31 hours.

Abstract: The information collection is required for NARA to meet its obligations under 44 U.S.C. 2112(a)(3) to submit a report to Congress before accepting a new Presidential library facility. The report contains information that can be furnished only by the foundation or other entity responsible for building the facility and establishing the library endowment.

Dated: July 31, 2001.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 01–19675 Filed 8–6–01; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following new information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until September 6, 2001.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. C. Keith Morton, (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–518–6433, E-mail: *ckmorton@ncua.gov.*

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, C. Keith Morton, (703) 518–6411. It is also available on the following website: *www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0101.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection.

Title: 12 CFR Parts 723.5—Develop written loan policies—and 723.11—Provide waiver requests.

Description: The general purpose of the requirements imposed by the rule is to ensure that loans are made, documented, and accounted for properly and for the ultimate protection of the National Credit Union Share Insurance Fund.

Respondents: Federally insured credit unions that make member business loans.

Estimated No. of Respondents/Record keepers: 1,500.

Estimated Burden Hours Per Response: 4 hours.

Frequency of Response: Other. Information disclosures required are made on an on-going basis.

Estimated Total Annual Burden Hours: 6,000.

Estimated Total Annual Cost: $150.000.

By the National Credit Union Administration Board on August 1, 2001.

Becky Baker,

Secretary of the Board.

[FR Doc. 01–19648 Filed 8–6–01; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by September 5, 2001. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant:* Victoria Underwood-Wheatley, Abercrombie & Kent, Inc./Explorer Shipping Corp., 10601 Tierrasanta Blvd., #316, San Diego, CA 92124.

[Permit Application No. 2002–004]

Activity for Which Permit is Requested: Take. The application proposes to opportunistically salvage up to two penguin carcasses (Adelie, gentoo, or chinstrap) for educational purposes for anatomical analyses and physiological studies. The carcasses will be collected during the M/S Explorer's January 4–19, 2002 voyage to the Antarctic Peninsula. Onboard will be high school students and adult escorts and teachers from two elite preparatory schools: the Hotchkiss School in Connecticut, and the Foxcroft School in Virginia. The study of the carcasses will be a unique and highly educational opportunity for the students. The carcasses will remain in the Antarctic Treaty Area.

Location: Antarctic Penninsula Area.

Dates: January 4–19, 2002.

2. *Applicant:* Gary D. Miller, Biology Department, University of New Mexico, Albuquerque, New Mexico 87131–0001.

[Permit Application No. 2002–005]

Activity for Which Permit is Requested: Take and Import into the U.S. The applicant proposes continue the analysis of phylogenetic relationships, population genetics, and disease of Antarctic seabirds. The applicant proposes to collect blood and tissue samples from up to 400 Adelie and up to 200 Chinstrap, Gentoo, Macaroni, and Emperor penguins, South Polar and Antarctic skuas, Kelp gulls and Snowy Sheathbills each over the next two years. In addition, the applicant plans to attach up to 10 conventional VHF transmitters and not more than 3 satellite transmitters on skuas each year to determine the dynamics of movement around the breeding area and then to determine the greater distance traveled during migration. This will address the ability of skuas to become infected and subsequently pass on avian diseases.

The applicant will conduct most of his sampling in collaboration with Australian scientists at Davis Station in East Antarctica. Other samples will be taken on an opportunistic basis while serving as a lecturer onboard cruise ships operating in the Peninsula Area during the austral summer. Samples collected will be returned to the United States for analysis.

Location: Antarctic Peninsula and associated islands, East Antarctica and the Ross Sea region.

Dates: November 1, 2001 to April 1, 2003.

3. *Applicant*: Ruldolf S. Scheltema, Biology Department, Woods Hole Oceanographic Institution, Woods Hole, MA 02543.

[Permit Application No. 2002–006]

Activity for Which Permit is Requested: Introduce into Antarctica. The applicant proposes to use *Thalassiosera pseudonana, Isochryois galbana,* and *Dunaliella teriolecta* cultures of unicellur algae in rearing zooplankton organisms. Indigenous zooplankton will be collected in antarctic waters and reared in the laboratory onboard ship, using the above named unicellular algae as food. The study will deal with the history of antarctic organisms, in particular with the larvae of benthic organisms. The larval life history is especially important in understanding the demography of bottom organisms. At the completion of the study, the algal cultures will be disposed of by heat sterilization.

Location: Onboard the R/V LAURENCE M. GOULD in the region of the South Shetland Islands, Antarctic Peninsula region.

Dates: November 30, 2001 to December 31, 2001.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 01–19800 Filed 8–6–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of August 6, 13, 20, 27, September 3, 10, 2001.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters To Be Considered

Week of August 6, 2001

There are no meetings scheduled for the Week of August 6, 2001.

Week of August 13, 2001—Tentative

Tuesday, August 14, 2001

9:30 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Elizabeth Doroshuk, 301–415–2775)

Wednesday, August 15, 2001

9:30 a.m. Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

1:25 p.m. Affirmation Session (Public Meeting) (If needed)

1:30 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–1277)

Week of August 20, 2001—Tentative

There are no meetings scheduled for the Week of August 20, 2001.

Week of August 27, 2001—Tentative

There are no meetings scheduled for the Week of August 27, 2001.

Week of September 3, 2001—Tentative

There are no meetings scheduled for the Week of September 3, 2001.

Week of September 10, 2001—Tentative

There are no meetings scheduled for the Week of September 10, 2001.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(303) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

By a vote of 4–0 on July 30, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of International Uranium (USA) Corporation (Source Material License Amendment, License No. SUA–1358) Docket No. 40–8681–MLA–8; Review of LBP–01–08'' be held on July 30, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/SECY/smi/schedule.htm*

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 2, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–19874 Filed 8–3–01; 12:49 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25098; 812–12168]

Sage Life Assurance of America, Inc. et al.; Notice of Application

August 1, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of Application

Applicants request an order that would permit them to implement a ''fund of funds'' arrangement. The fund of funds would invest in other funds that are part of the same group of investment companies and in funds that are not part of the same group of investment companies in reliance on section 12(d)(1)(F) of the Act.

Applicants: Sage Life Assurance of American, Inc. (''Sage Life''), Sage Life Assurance Co. of New York (''Sage Life/NY''), Sage Advisors, Inc. (''SAI''), Sage Distributors, Inc. (''SDI''), and Sage Life Investment Trust (the ''Trust'').

Filing Dates: The application was filed on July 7, 2000 and was amended on June 19, 2001.

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 August 27, 2001, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applications, c/o James E. Bronsdon, Esq., Sage Life Assurance of America, Inc., 300 Atlantic Street, 3rd Floor, Stamford, CT 06901.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527 (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 (telephone (202) 942–8090.

Applicant's Representations

1. Sage Life is a stock life insurance company organized and existing under the laws of the state of Delaware. Sage Life/NY is a stock insurance corporation organized in 1998 existing under the laws of the State of New York. Sage Group Limited is a South African corporation.

2. The Trust is a Delaware business trust registered under the Act as an open-end management investment company. The Trust currently consists of five series (each a ''Series''). SAI is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Trust. Sage Distributors, Inc. (''SDI'') is a registered broker-dealer and a member firm of the National Association of Securities Dealers, Inc. (''NASD''). SDI is the principal underwriter of the Trust.

3. Applicants request relief to permit the Series and any other registered open-end management investment company or series thereof that is part of the ''same group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act) as the Trust (collectively, the ''Asset Allocation Funds'') to purchase shares of a Series of the Trust and other registered open-end management investment companies or their series, now existing or created in the future, that are part of the same ''group of investment companies'' as the Asset Allocation Funds (the ''Underlying Funds'').[1] The Asset Allocation Funds also would invest in shares of other registered open-end management investment companies that are not part of the same ''group of investment companies'' as the Trust (the ''Other Funds'') in reliance on section 12(d)(1)(F) of the Act. In addition to investing in the Underlying Funds and the Other Funds, the Asset Allocation Funds also may invest in a limited array of fixed income securities.

4. Shares of the Trust are currently, and shares of the Asset Allocation Funds will be, offered to variable contract separate accounts of Sage. Applicants state that the Asset Allocation Funds will be specifically designed to provide asset allocation for variable contract owners. In the future, shares of the Trust and shares of the Asset Allocation Funds may be offered to separate accounts of insurers not affiliated with Sage to fund variable contracts issued by such insurance companies. Shares of the Trust may also be offered in the future directly to qualified plans.

Applicants' Legal Analysis

Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the acquired company's outstanding total voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other investment companies, represent more than 10% of the acquired company's total assets. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) shall not apply to the securities of a registered open-end investment company acquired by a registered open-end investment company if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)(1)(G) are met. Applicants state that they may not rely on section 23(d)(1)(G) because an Asset Allocation Fund will invest in shares of both the Underlying Funds and the Other Funds as well as fixed-income securities.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) of the Act to permit the Asset Allocation Funds to invest in the Underlying Funds and to permit an Underlying Fund to sell shares to an Asset Allocation Fund beyond the limits in sections 12(d)(1)(A) and 12(d)(1)(B). The Asset Allocation Funds will purchase shares of the Other Funds in reliance on section 12(d)(1)(F) of the Act.

4. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which includes concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Because the Asset Allocation Funds and the Underlying Funds are part of the same group of investment companies, Applicants submit that there is little risk for SAI to exercise inappropriate control over the Underlying Funds.

5. Applicants further state that the proposed conditions would appropriately address any concerns about the layering of advisory fees, sales charges, and other fees. Applicants state that the arrangements would not become overly complex because the Underlying Funds and Other Funds will not invest in other investment companies in excess of the limits of section 12(d)(1)(A).

[1] The existing registered open-end management investment company that currently intends to rely on the order is named as an applicant. Any registered open-end management investment company that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and an affiliated person of a registered investment company or an affiliated person of such person acting as principal. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person that directly or indirectly owns, controls, or holds with a power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Asset Allocation Funds and the Underlying Funds may be deemed to be affiliated persons of one another by virtue of being under the common control of SAI. Applicants also state that an Asset Allocation Fund and an Underlying Fund might be deemed affiliated persons if the Asset Allocation Fund acquires more than 5% of the Underlying Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from an Asset Allocation Fund.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistently with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the proposed transactions are fair and do not involve overreaching. Applicants note that the consideration paid for the sale and redemption of shares of the Underlying Funds will be based on net asset values of the Underlying Funds. Applicants also state that the proposed arrangement will be consistent with the policies of each Asset Allocation Fund and the general purposes of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. All underlying Funds and the Asset Allocation Funds will be part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act.

2. No Underlying Fund or Other Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund or Other Fund(a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund or Other Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

3. With respect to separate accounts that invest in an Asset Allocation Fund, no sales load will be charged at the Asset Allocation Fund level or at the Underlying Fund/Other Fund level. Sales charges and service fees (as defined in rule 2830(d) of the Conduct Rules of the NASD), if any, will only be charged at the Asset Allocation Fund or at the Underlying Fund/Other Fund level, not both. With respect to other investments in an Asset Allocation Fund, any sales charges and or service fees (as those terms are defined in rule 2830(d) of the Conduct Rules of the NASD) charged with respect to shares of an Asset Allocation Fund will not exceed the limits set forth in rule 2830 applicable to a fund of funds (as defined in NASD Conduct rule 2830).

4. Before approving any advisory contract under section 15 of the Act, the board of trustees of an Asset Allocation Fund, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, will find that the advisory fees charged under the Asset Allocation Fund's contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract of any Underlying Fund or Other Fund. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Asset Allocation Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19698 Filed 8–6–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25096; File No. 812–12206]

Nations Separate Account Trust, et al.

July 31, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') for exemptions from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application

Applicants seek an order to permit shares of Nations Separate Account Trust (the ''Trust'') [1] and shares of any other investment company or portfolio that is designed to fund insurance products and for which Banc of America Advisors, LLC (''BA Advisors'') or any of its affiliates may serve in the future as investment adviser, manager, principal underwriter, sponsor, or administrator (''Future Trusts'') (the Trust together with Future Trusts are the ''Trusts'') to be sold to and held by: (a) Separate accounts funding variable annuity and variable life insurance contracts (collectively referred to herein as ''Variable Contracts'') issued by both affiliated and unaffiliated life insurance companies; (b) qualified pension and retirement plans (''Qualified Plans'') outside of the separate account context; (c) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (d) BA Advisors or its affiliates (collectively, ''BA Advisors''); and (e) the general account of any life insurance company, or certain related corporations, whose separate accounts hold, or will hold,

[1] Prior to May 1, 2001, the Trust was known as Nations Annuity Trust.

shares of the Trusts (''General Accounts'').

Applicants: The Trust and Banc of America Advisors, LLC.

Filing Date: The application was filed on August 4, 2000 and amended on July 30, 2001.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Commission's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on August 23, 2001, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Robert B. Carroll, Esq., Bank of America Corporation, One Bank of America Plaza NC1–002–33–31, 101 South Tryon Street, Charlotte, North Carolina 28255.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or Keith E. Carpenter, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 [tel. (202) 942–8090].

Applicants' Representations

1. The Trust is registered with the Commission as an open-end management investment company and is organized as a Delaware business trust. BA Advisors is registered with the Commission as an investment adviser under the Investment Advisers Act of 1940, as amended, and serves as the investment adviser to the Trust. The Trust currently consists of eleven investment portfolios: Nations Value Portfolio, Nations Marsico 21st Century Portfolio, Nations Marsico Focused Equities Portfolio, Nations Marsico Growth & Income Portfolio, Nations Marsico International Opportunities Portfolio, Nations Capital Growth Portfolio, Nations Small Company Portfolio, Nations Asset Allocation Portfolio, Nations International Value Portfolio, Nations High Yield Bond Portfolio and Nations MidCap Growth Portfolio (each, a ''Portfolio,'' and collectively the ''Portfolios''). The Trust or any Future Trusts may offer one or more additional investment portfolios in the future (also referred to as ''Portfolios'').

2. Currently shares of the Portfolios are offered to separate accounts funding variable annuity contracts issued by The Hartford Life Insurance Company. Shares of the Portfolios will be offered to separate accounts of affiliated and unaffiliated insurance companies (each, a ''Participating Insurance Company'') to serve as investment vehicles to fund Variable Contracts. These accounts either will be registered as investment companies under the 1940 Act or will be exempt from such registration (''Separate Account(s)''). Shares of the Portfolios will also be offered to Qualified Plans.

3. The Participating Insurance Companies at the time of their investment in the Trusts either have or will establish their own Separate Accounts and design their own Variable Contracts. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both state and federal law. Each participating Insurance Company, on behalf of its Separate Accounts, has or will enter into an agreement with the Trusts concerning such Participating Insurance Company's participation in the Portfolios. The role of the Trusts under this agreement, insofar as the federal securities laws are applicable, will consist of, among other things, offering shares of the Portfolios to the participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested herein.

4. To the extent permitted by the Treasury Department Regulations (Treas. Reg. 1.817–5(f)(3)(i), (ii)), shares of each Portfolio may be sold to General Accounts and BA Advisors. The Regulations permit such sales as long as the return on shares held by the General Accounts or BA Advisors is computed in the same manner as for shares held by a Separate Account, and the General Accounts or BA Advisors do not intend to sell shares of the Portfolio held by it to the public. An additional restriction is imposed by the Regulations on sales to advisers, who may hold shares only in connection with the creation or management of the Portfolio. Applicants anticipate that sales in reliance on these provisions of the Regulations generally will be made to BA Advisors and generally for purposes of providing necessary capital required by section 14(a) of the 1940 Act. Any shares of a Portfolio purchased by BA Advisors will be automatically redeemed if and when BA Advisors' advisory agreement terminates, to the extent required by applicable Treasury Regulations.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust (''UIT'') under the 1940 Act 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. Rule 6e–2(b)(15) provides these exemptions only where all of the assets of the UIT are shares of management investment companies ''which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company.'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account or flexible premium variable life insurance separate account of the same company or any other affiliated insurance company. The use of a common management investment company as the underlying investment vehicle for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to as ''mixed funding.''

2. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment vehicle for variable annuity and/or variable life insurance separate accounts of unaffiliated life insurance companies is referred to as ''shared funding.''

3. Because the relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company, additional exemptive relief is necessary if the shares of the Portfolios are also to be sold to Qualified Plans or other eligible holders of shares, as described above. The use of a common management investment company as the underlying investment vehicle for

variable annuity and variable life separate of affiliated and unaffiliated insurance companies, and for Qualified Plans, is referred to as ''extended mixed and shared funding.''

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies which offer to sell their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' Therefore, Rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding.

5. The relief under Rule 6e–3(T) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance companies. Additional exemptive relief is necessary if the shares of the Portfolios are also to be sold to Qualified Plans or other eligible holders of shares, as described above.

6. Applicants maintain that there is no policy reason for the sale of the Portfolios' shares to Qualified Plans to result in a prohibition against, or otherwise limit a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). However, because the relief under Rules 6e–2(b)(15) and 6e–3T(b)(15) is available only when shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Portfolios are also to be sold to Qualified Plans, BA Advisors or General Accounts. Applicants note that if the Portfolios' shares were to be sold only to Qualified Plans, BA Advisors, General Accounts and/or separate accounts funding variable annuity contracts, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would be unnecessary. The relief provided for under Rule 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans, BA Advisors, or General Accounts, or to a registered investment company's ability to sell its shares to such purchasers.

7. Applicants note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations that made it possible for shares of an investment company portfolio to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company portfolio also to be held by the separate accounts of insurance companies in connection with their Variable Contracts. Thus, the sale of shares of the same portfolio to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

8. Consistent with the Commission's authority under Section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, the Applicants request relief for the class consisting of insurers and Separate Accounts that will invest in the Portfolios and to the extend necessary, Qualified Plans, other eligible holders of shares and investment advisers, principal underwriters and depositors of such accounts.

9. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a) (1) or (2). Rules 6e–2(b)(15) (i) and (ii) and Rules 6e–3(T)(b)(15) (i) and (ii) under the 1940 Act provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying management company.

10. Applicants submit that the partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of section 9 of the 1940 Act, in effect, limits the amount of monitoring necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management of the Trusts. Those individuals who participate in the management of the Trusts will remain the same regardless of which Separate Accounts or Qualified Plans invests in the Trusts. Applying the monitoring requirements of section 9(a) of the 1940 Act because of investment by separate accounts of other insurers or Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by contract owners.

11. Applicants state that since Qualified Plans, BA Advisors and General Accounts, unlike the Separate Accounts, are not themselves investment companies and, therefore, are not subject to section 9 of the 1940 Act and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

12. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between such a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of Rules 6e–2 and 6e–3(T), respectively, under the 1940 Act). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C), respectively, of Rules 6e–2 and 6e–3(T) under the 1940 Act).

13. Applicants assert that Rule 6e–2 under the 1940 Act recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies,

investment advisers, or principal underwriters. The Commission also expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. The Commission, therefore, deemed such exemptions necessary to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of Rule 6e–3(T) under the 1940 Act undoubtedly were adopted in recognition of the same factors.

14. Applicants state that with respect to the Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Qualified Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Qualified Plan assets to certain specified persons. Under Section 403(a) of ERISA, shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) when the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire, or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Similarly, BA Advisors and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, BA Advisors or General Accounts.

15. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shared held unless the right to vote such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants.

16. Where a Qualified Plan does not provide participants with the right to give voting instructions, the trustee or named fiduciary has responsibility to vote the shares held by the Qualified Plan. In this circumstance, the trustee has a fiduciary duty to vote the shares in the best interest of the Qualified Plan participants. Accordingly, even if BA Advisors were to serve in the capacity of trustee or named fiduciary with voting responsibilities, BA Advisors would have a fiduciary duty to vote those shares in the best interest of the Qualified Plan participants.

17. In addition, even if a Qualified Plan were to hold a controlling interest in a Portfolio, Applications do not believe that such control would disadvantage other investors in such Portfolio to any greater extent that is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Portfolio by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed funding or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

18. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. The purchase of shares Portfolios by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

19. Applicants submit that the prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 under the 1940 Act was adopted, variable annuity separate accounts could invest in mutual funds whose shares also were offered to the general public. Therefore, the Commission staff contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a state insurance regulatory authority to affect the operations of a publicly available mutual fund to affect the investment decisions of public shareholders.

20. For reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Rule 81–225 (Sep. 25, 1981) effectively deprived variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment vehicle for Variable Contracts (including variable life contracts). Section 817(h) of the Code in effect requires that the investment made by variable annuity and variable life insurance separate accounts by ''adequately diversified.'' If a separate account is organized as a UIT that invests in a single fund or series, the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if ''all of the beneficial interests'' in the underlying fund are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts. Accordingly, a UIT separate account that invests solely in a publicly available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any Portfolio, that sells shares to separate accounts, in effect, would be precluded from also selling its shares to the public. Consequently, there will be no public shareholders of any Portfolio.

21. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. A particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. The fact that different insurers may be domiciled in

different states does not create a significantly different or enlarged problem.

22. Applicants argue that shared funding by unaffiliated insurers, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. Affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedure for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, then the affected insurer will be required to withdraw its Separate Account's investment in the affected Trust. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Portfolio.

23. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give the insurance company the right to disregard the voting instructions of the contract owners. Applicants submit that this right does not raise any issues different from those raised by the authority of state insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good-faith determinations. However, if the insurer's judgment represents a minority position or would preclude a majority vote, then the insurer may be required, at the affected Trust's election, to withdraw its Separate Account's investment in such Portfolio. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreement entered into with respect to participation by the Participating Insurance Companies in each Portfolio.

24. Applicants represent that each Portfolio will be managed to attempt to achieve the investment objective or objective of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. There is no reason to believe that different features of various types of contract, including the ''minimum death benefit'' guarantee under certain variable life insurance contracts, will lead to different investment policies for different types of Variable Contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, the differing insurance charges imposed, in effect, adjust any such differences and equalize the insurers' exposure in either case.

25. Applicants do not believe that the sale of the shares of the Portfolios to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those that would otherwise exist between variable annuity and variable life insurance contract owners. Moreover, in considering the appropriateness of the requested relief, Applicants state that they have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans.

26. Applicants considered whether there are any issues raised under the Code, Regulations, or Revenue Rulings thereunder, if Qualified Plans, variable annuity separate accounts, and variable life insurance separate accounts all invest in the same underlying fund. As noted above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of Variable Contracts held in an underlying mutual fund. The Code provides that a Variable Contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified.

27. Regulations issued under section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated assets accounts of one or more insurance companies. However, the Regulations contain certain exceptions to this requirement, one of which allows shares in an underlying mutual fund to be held by the trustees of a qualified pension or retirement plan without adversely affecting the ability of such shares also to be held by separate accounts of insurance companies in connection with their Variable Contracts. (Treas. Reg. 1.817–5(f)(3)(iii)). Thus, the Regulations specifically permit ''qualified pension or retirement plans'' and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code, nor Regulations, nor Revenue Rulings thereunder, present any inherent conflicts of interest if the Qualified Plans and Separate Accounts all invest in the same Portfolio.

28. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Trusts. When distributions are to be made, and a Separate Account or Qualified Plans is unable to net purchase payments to make the distributions, the Separate Account and Qualified Plan will redeem shares of the relevant Portfolio at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distribution in accordance with the terms of the Qualified Plan.

29. Applicants represent that, in connection with any meeting of shareholders, the soliciting Trust will inform each shareholder, including each Separate Account and Qualified Plan, BA Advisors and General Account, of information necessary for the meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its agreement with the Trusts concerning participation in the relevant Portfolio. Shares of a Portfolio that are held by BA Advisors and any General Account will be voted as set forth below in the Applicants' Conditions. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of a Portfolio would be no different from the voting rights that are

provided to Qualified Plans with respect to shares of funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, If applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the affected Trust, to withdraw its investment in such Portfolio, and no charge or penalty will be imposed as a result of such withdrawal.

30. Applicants reviewed whether a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, is created with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan, BA Advisors or a General Account. Applicants concluded that the ability of the Trusts to sell shares of their Portfolios directly to Qualified Plans, BA Advisors or a General Account does not create a senior security. Senior security is defined under section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Qualified Plans, or contract owners under Variable Contracts, the Qualified Plans, BA Advisors, General Accounts and the Separate Account only have rights with respect to their respective shares of the Portfolio. They only can redeem such shares at net asset value. No shareholder of a Portfolio has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

31. Applicants assert that permitting a Portfolio to sell its shares to BA Advisors or to the General Account of a participating insurance company in compliance with Treas. Reg. 1.817–5 will enhance Portfolio management without raising significant concerns regarding material irreconcilable conflicts. Unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, the Trust may be deemed to lack an insurance company ''promoter'' for purposes of Rule 14–2 under the 1940 Act. Applicants state that they anticipate that other Portfolios that are established as new registrants will be subject to the requirements of section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares. Portfolios also will require more limited amounts of initial capital in connection with the creating of new series and the voting of initial shares of such series on matters requiring the approval of shareholders. A potential source of requisite initial capital is a Portfolio's adviser or participating insurance company.

32. Applicants assert that given the conditions of Treas. Reg. 1.817–5(f)(3) and the harmony of interest between the Portfolio and BA Advisors or a Participating Insurance Company, little incentive for overreaching exists. Applicant also argue that such investment should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, permitting investment by BA Advisors or Participating Insurance Companies' General Accounts will permit the orderly and efficient creation and operation of the Trusts or series thereof, and reduce the expense and uncertainty of using outside parties at the early stages of Portfolio operations.

33. Applicants submit that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts than currently offer such contracts. These factors include the costs of organizing and operating a funding vehicle, the lack of expertise with respect to investment management, and the lack of name recognition by the public of certain insurers as investment experts with whom the public feels comfortable entrusting their investment dollars. Some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own. Use of a Portfolio as a common investment vehicle for Variable Contracts would reduce or eliminate these concerns. Mixed and shared funding also should provide several benefits to Variable Contact owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of BA Advisors, but also from the potential cost efficiencies and investment flexibility afforded by a larger pool of funds. Mixed and shared funding also would permit a greater amount of assets available for investment by a Portfolio, thereby promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new Portfolios more feasible. Therefore, making the Portfolios available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts, and this should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants also assert that the sale of shares of the Portfolios to Qualified Plans, in addition to the Separate Accounts, will result in an increased amount of assets available for investment by such Portfolios. This may benefit Variable Contract owners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new Portfolios more feasible.

34. Applicants state that, regardless of the type of shareholder in a Portfolio, BA Advisors is or would be contractually and otherwise obligated to manage the Portfolio solely and exclusively in accordance with that Portfolio's investment objectives, policies and restrictions as well as any guidelines established by the Board of Trustees of the particular Trust. BA Advisors will work with the commingled pool of assets of each Portfolio and will not take into account the identity of the shareholders. Thus, each Portfolio will be managed in the same manner as any other mutual fund.

35. Applicants state that they see no significant legal impediment to permitting mixed and shared funding. Separate accounts organized as UITs historically have been employed to accumulate shares of mutual funds that are not affiliated with the depositor or sponsor of the separate account. Applicants assert that mixed and shared funding and sales of Portfolio shares to Qualified Plans, BA Advisors and General Accounts to the extent described above will not have any adverse Federal income tax consequences.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions (these conditions will also apply to any Future Trust that relies on the order):

1. A majority of the Board of Trustees (the ''Board'') of the Trust will consist of persons who are not ''interested persons'' of the Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or trustees, then the operation of this condition will be suspended: (a) For a period of 45

days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribed by order upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Trust, and determine what action, if any should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable Federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of such Trust are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners, and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf as well as by virtue of any investment of general account assets in a Portfolio), BA Advisors, and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Portfolio (collectively, the ''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Trust, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the disinterested trustees of the Board, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Portfolio and reinvesting such assets in a different investment vehicle including another Portfolio, or in the case of Participating Insurance Company Participants submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* annuity contract owners or life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the insurer may be required, at the election of the Trust, to withdraw such insurer's Separate Account's investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Trust, to withdraw its investment in the Trust, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Trust, and these responsibilities will be carried out with a view only to the interests of contract owners and Qualified Plan participants.

For purposes of this Condition 4, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Trust or BA Advisors, as relevant, be required to establish a new funding vehicle for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further no Qualified Plan will be required by this Condition 4 to establish a new funding vehicle for the Qualified Plan if (a) a majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners as required by the 1940 Act as interpreted by the Commission. However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participants, where applicable, will vote shares of the applicable Portfolio held in their Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting

privileges in a manner consistent with other Participants.

The obligation to calculate voting privileges in a manner consistent with other Participants will be a contractual obligation of all Participating Insurance Companies under their agreement with the Trusts governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares held in its General Account or otherwise attributed to it, in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges to be provided to variable contract owners, BA Advisors will vote its shares of any Portfolio in the same proportion as all variable contract owners having voting rights with respect to that Portfolio; provided, however, that BA Advisors or any insurance company General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, shall be the persons having a voting interest in the shares of the respective Portfolio, and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the Trust is not one of the trusts of the type described in the section 16(c) of the 1940 Act), as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Trust will disclose in its prospectus that (a) shares of the Trust may be offered to Separate Accounts of both variable annuity and variable life insurance contracts and, if applicable, to Qualified Plans, (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Trust and the interests of Qualified Plans investing in the Trust, if applicable, may conflict, and (c) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Trust and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), or Rule 6e–3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this Application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

12. All reports of potential or existing conflicts received by the Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trust will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Qualified Plan executes an agreement with the Trust governing participation in such Portfolio that includes the conditions set forth herein to the extent applicable. A Qualified Plan or Qualified Plan participant will execute an application containing an acknowledgment of this condition at this time of its initial purchase of shares of any Portfolio.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19699 Filed 8–6–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44628; File No. SR–CBOE–2001–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Marketing and Administrative Fees

July 31, 2001.

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 18, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items the CBOE has prepared. The CBOE submitted Amendment No. 1 to the proposed rule change on July 20, 2001. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to deduct a one-time supplemental administrative charge from fiscal year 2000 interest payments to the marketing fee accounts of Designated Primary Market Makers (''DPMs'') to offset some of the administrative costs that the CBOE incurred in fiscal year 2000 in paying interest and issuing rebates on marketing fee account balances.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In August 2000, the CBOE instituted a marketing fee program that imposed a $.40 per contract marketing fee on various options transactions executed on the CBOE. Under the plan, the proceeds from the fee were to be used by the appropriate DPM for marketing its services and attracting order flow to the CBOE.[3] The funds have been placed in separate accounts for each DPM according to the class of options involved in each transaction in which the fee was imposed. The fees collected in a particular class of option are applied only to the marketing expenses applicable to that class of option.

At times, some accounts have taken in more money than the DPMs have chosen to spend for marketing. The CBOE has implemented a one-time rebate of excess funds to the DPMs and market makers who contributed the funds. The CBOE intends periodically to refund account balances of $50 or more to those who contributed the fees.[4]

In collecting these fees over the course of the program, the CBOE found that the proceeds from the fee are typically received into separate DPM accounts and kept there for at least several days before the DPM uses them. At the request of the association representing the CBOE's DPMs, the CBOE has credited the accounts with interest earned retroactive to the start of the program, based on the average daily balance of each DPM account. According to the CBOE, the calculation and administration of interest payments and rebates requires it to make substantial expenditures on an ongoing basis. Therefore, effective July 1, 2001, the CBOE has imposed a prospective monthly $10,000 administrative fee to fund the implementation of these steps and to offset the overall costs related to its marketing fee program. The CBOE intends to reduce the aggregate interest payments to members by each member's *pro rata* share of the $10,000 per month administrative fee. According to the CBOE, this procedure will ensure that the fee is assessed to the various DPM accounts fairly, based on the relative size of each DPM account.[5]

The CBOE states that it has already incurred costs in excess of $10,000 per month in fiscal year 2000 to establish the payment of interest and issuance of rebates under the marketing fee program. In order to offset some of these costs, the CBOE proposes in this rule change proposal to offset the interest to be credited to the DPM accounts for fiscal year 2000 account balances by deducting an additional one-time supplemental administrative charge of $120,000.[6] As with the prospective administrative fee, the charge will be divided among the accounts of the various DPM trading stations trading equity options (currently numbering approximately 68) on a pro-rata basis according to the size of the accounts.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act[7] and furthers the objectives of section 6(b)(4) of the Act[8] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The CBOE neither solicited nor received comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR–CBOE–2001–35 and should be submitted by August 22, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19701 Filed 8–6–01; 8:45 am]

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[3] Securities Exchange Act Release No. 43112 (August 3, 2000) 65 FR 49040 (August 10, 2000) (File No. SR–CBOE–2000–28).

[4] *Id.*

[5] *Id.*

[6] The CBOE arrived at the $120,000 figure by taking the $10,000 per month prospective administrative fee that became effective upon the filing of SR–CBOE–2001–25 and multiplying it by the twelve months of fiscal year 2000. *See* letter from Christopher R. Hill, Attorney, CBOE, to Nancy Sanow, Assistant Director, Commission, dated July 19, 2001.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44631; File No. SR–NASD–00–38]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Application of NASD Rules and Interpretive Materials to Exempted Securities

July 31, 2001.

I. Introduction

On June 16, 2000, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] NASD Regulation amended its proposal on September 11, 2000,[3] and on March 28, 2001.[4] The proposal, as amended, will: (1) Adopt NASD Rule 0116, ''Application of Rules of the Association to Exempted Securities,'' which will enumerate the NASD rules and interpretive materials that apply to exempted securities, including government securities but not municipal securities; and (2) codify a NASD staff interpretation that the non-cash compensation provisions set forth in paragraph (g) of NASD Rule 2820, ''Variable Contracts of an Insurance Company,'' apply to group variable contracts that are exempted securities.

Prior to the publication of the notice of the proposal, the Commission received two comment letters asking the Commission to refrain from approving the proposal on an accelerated basis, as NASD Regulation had requested.[5] The Commission published notice of the proposed rule change and Amendment No. 1 for comment in the **Federal Register** on October 4, 2000.[6] Following the publication of the **Federal Register** notice, the Commission received two additional letters regarding the proposal.[7] This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments on, and is simultaneously approving, on an accelerated basis, Amendment No. 2 to the proposal.

II. Description of the Proposal

A. NASD Rule 0116

The Government Securities Act Amendments of 1993 (''GSAA'')[8] eliminated the statutory limitations on the NASD's authority to apply sales practice rules to transactions in exempted securities, including government securities but not municipal securities.[9] In 1996, the Commission approved an NASD proposal implementing the expanded sales practice authority granted to the NASD pursuant to the GSAA.[10] The 1996 listed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated September 11, 2000 (''Amendment No. 1''). In Amendment No. 1, NASD Regulation amended NASD Rule 0116 to: (1) Delete a reference to NASD Rule 2300; (2) replace a reference to IM–2520 with a reference to IM–2522; and (3) add references to NASD Rules 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM–8310–1, IM–8310–2, NASD Rule 8230, and NASD Rule 8330.

[4] *See* letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 27, 2001 (''Amendment No. 2.''). In Amendment No. 2, NASD Regulation amended its proposal to: (1) Add NASD Rules 2521, ''Margin Requirements—Exception for Certain Members,'' and 2522, ''Definitions Related to Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants Transactions,'' to NASD Rule 0116; (2) clarify that NASD Rule 2910, ''Disclosure of Financial Condition to Other Members,'' NASD Rule 8220, ''Suspension of Members for Failure to Furnish Information Duly Requested,'' and IM–8310–2, ''Release of Disciplinary Information,'' were intended to apply to transactions and business activities related to exempted securities; and (3) clarify its reasons for including NASD Rules 8221 through 8227 in NASD Rule 0116.

[5] *See* letter from Carl B. Wilkerson, Chief Counsel, Securities, American Council of Life Insurers (''ACLI''), to Jonathan G. Katz, Secretary, Commission, dated August 4, 2000 (''ACLI I''); and letter from David A. Winston, Vice President, Government Affairs, National Association of Insurance and Financial Advisors (''NAIFA''), dated August 30, 2000 (''NAIFA I'').

[6] *See* Securities Exchange Act Release No. 43370 (September 27, 2000), 65 FR 49240.

[7] *See* letter from Carl B. Wilkerson, Chief Counsel, Securities, ACLI, to Jonathan G. Katz, Secretary, Commission, dated October 17, 2000 (''ACLI II''); and letter from David A. Winston, Vice President, Government Affairs, NAIFA, to Jonathan G. Katz, Secretary, Commission, dated November 13, 2000 (''NAIFA II'').

[8] Government Securities Act Amendments of 1993, Pub. L. No. 103–202, Section 1(a), 107 Stat. 2344 (1993).

[9] The terms ''exempted securities,'' ''government securities,'' and ''municipal securities,'' are defined in Sections 3(a)(12), 3(a)(42), and 3(a)(29) of the Act, respectively.

[10] *See* Securities Exchange Act Release No. 37588 (August 20, 1996), 61 FR 44100 (August 27, 1996) (order approving File No. SR–NASD–95–39) (''1996 Order''). The 1996 Order approved the application of the following NASD rules to exempted securities, including government securities but not municipal securities: NASD Rule 2110, ''Standards of Commercial Honor and Principles of Trade;'' NASD Rule 2120, ''Use of Manipulative, Deceptive or Other Fraudulent Devices;'' NASD Rule 2210, ''Communications with the Public;'' IM–2210–1, ''Communications with the Public about Collateralized Mortgage Obligations;'' IM–2210–2, ''Communications with the Public about Variable Life Insurance and Variable Annuities;'' IM–2210–3, ''Use of Rankings in Investment Companies Advertisements and Sales Literature;'' NASD Rule 2250, ''Disclosure of Participation or Interest in Primary or Secondary Distribution;'' NASD Rule 2270, ''Disclosure of Financial Condition to Customers;'' NASD Rule 2310, ''Recommendations to Customers (Suitability);'' IM–2310–2, ''Fair Dealing with Customers;'' IM–2210–3, ''Suitability Obligations to Institutional Customers;'' NASD Rule 2320, ''Best Execution and Interpositioning;'' NASD Rule 2330, ''Customers' Securities or Funds;'' IM–2330, ''Segregation of Customers' Securities;'' NASD Rule 2340, ''Customer Account Statements;'' NASD Rule 2430, ''Charges for Services Performed;'' NASD Rule 2440, ''Fair Prices and Commissions;'' IM–2440, ''Mark-Up Policy;'' NASD Rule 2450, ''Installment or Partial Sales;'' NASD Rule 2510, ''Discretionary Accounts;'' NASD Rule 2520, ''Margin Accounts;'' NASD Rule 2521, ''Margin Requirements—Exception for Certain Members'' (formerly NASD Rule 2520(a); NASD Rule 2522, ''Definitions Related to Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants Transactions'' (formerly NASD Rule 2520(b); NASD Rule 2770, ''Disclosure of Price in Selling Agreements'' (applicable only to traditional underwriting arrangements); NASD Rule 2780, ''Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities;'' NASD Rule 2910, ''Disclosure of Financial Condition to Other Members;'' NASD Rule 3010, ''Supervision;'' NASD Rule 3020, ''Fidelity Bonds;'' NASD Rule 3030, ''Outside Business Activities of an Associated Person;'' NASD Rule 3040, ''Private Securities Transactions of an Associated Person;'' NASD Rule 3050, ''Transactions for or by Associated Persons;'' NASD Rule 3060, ''Influencing or Rewarding Employees of Others;'' NASD Rule 3070, ''Reporting Requirements;'' NASD Rule 3120, ''Use of Information Obtained in a Fiduciary Capacity;'' NASD Rule 3110, ''Books and Records;''IM–3110, ''Customer Account Information;'' NASD Rule 3130, ''Regulation of Members Experiencing Financial and/or Operational Difficulties;'' IM–3130, ''Restrictions on a Member's Activity;'' NASD Rule 3131, ''Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties;'' NASD Rule 3140, ''Approval of Change in Exempt Status under SEC Rule 15c3–3;'' NASD Rule 3230, ''Clearing Agreements;'' NASD Rule 3310, ''Publication of Transactions and Quotations;'' IM–3310, ''Manipulative and Deceptive Quotations;'' NASD Rule 3320, ''Offers at Stated Prices'' IM–3320, ''Firmness of Quotations;'' NASD Rule 3330, ''Payment Designed to Influence Market Prices, Other than Paid Advertising;'' NASD Rule 8110, ''Availability to Customers of Certificate, By-Laws, and Rules;'' NASD Rule 8120, ''Complaints by Public Against Members for Violations of Rules;'' NASD Rule 8130; ''Complaints by District Business Conduct Committees;'' NASD Rule 8140, ''Complaints by the Board of Governors;'' NASD Rule 8210, ''Reports and Inspections of Books for Purpose of Investigation Complaints; NASD Rule 8820, ''Suspension of Members for Failure to Furnish Information Duly Requested;'' NASD Rule 8310, ''Sanctions for Violation of Rules;'' IM–8310–1, ''Effect of a Suspension, Revocation, or Bar;'' IM–8310–2, ''Release of Disciplinary Information;'' NASD Rule 8320, ''Payment of Fines, Other Monetary Sanctions, or Costs; and NASD Rule 8330, ''Cost of Proceedings.'' As discussed more fully below, Amendment No. 2 clarifies NASD Regulation's reasons for including NASD Rules

Continued

the NASD rules that would apply to exempted securities, including government securities but not municipal securities. In addition, Notice to Member (''NTM'') 96–66, ''SEC Expands Scope of Conduct Rules and other NASD Rules to Government Securities; Approves New Suitability 1,'' identified some of the NASD rules that would apply to exempted securities, including government securities but not municipal securities.[11]

NASD Regulation noted in its filing, however, that the list of NASD rules interpretative materials outlined in the 1996 Order was not incorporated into a specific NASD rule and does not currently appear in the NASD Manual. To enable members and other interested parties to identify the NASD rules and interpretative materials applicable to exempted securities, including government securities but not municipal securities, in a more efficient manner, NASD Regulation proposed to codify those NASD rules and interpretative materials in new NASD Rule 0116.[12]

In Amendment No. 2, NASD Regulation clarified that the rules and interpretative materials listed in NASD Rule 0116 should include NASD Rules 2521, 2522, 2910, 8221 through 8227, and IM–8310–2. Specifically, NASD Regulation noted that the 1996 Order approved the application of NASD Rule 2520, ''Margin Accounts,'' to exempted securities, including government securities but not municipal securities. At that time, current NASD Rules 2521, ''Margin Requirements—Exception for Certain Members,'' and 2522, ''Definitions Related to Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants Transactions,'' were paragraphs (a) and (b), respectively, of NASD Rule 2520. Accordingly, NASD Regulations proposes to include NASD Rules 2521 and 2522 in NASD Rule 0116.[13]

In addition, NASD Regulation noted that NASD Rules 2910, ''Disclosure of Financial Condition to Other Members,'' 8220, ''Suspension of Members for Failure to Furnish Information Duly Requested,'' (now NASD Rules 8221 through 8227, as discussed below), and IM–8310–2, ''Release of Disciplinary Information,'' were not included in the list of rules provided in the 1996 Order because, prior to the 1996 reorganization of the NASD's rules,[14] NASD Rules 2910 and 8220 and IM–8310–2 were Resolutions of the Board (''Resolutions'') relating to Article III, Section 22, ''Disclosure of Financial Condition,'' Article IV, Section 5, ''Reports and Inspection of Books for Purpose of Investigating Complaints,'' and Article V, Section 1, ''Sanctions for Violations of the Rules,'' respectively.[15] NASD Regulation states that the Resolutions were not included in the list provided in the 1996 Order because the Resolutions were considered part of the rules they accompanied and a specific reference to the Resolutions was deemed to be unnecessary. Because the 1996 Order listed the rules the resolutions accompanied as applicable to exempted securities, including government securities but not municipal securities, the Resolutions also applied to exempted securities, including government securities but not municipal securities. Accordingly, NASD Regulation proposes to include NASD Rules 2910 and 8221 through 8227 (formerly NASD Rule 8220, as discussed below) and IM–8310–2 in NASD Rule 0116.[16]

NASD Regulation notes that prior to the 1996 reorganization of the NASD's rules, NASD Rule 8220 set forth potential penalties resulting from a member's failure to provide information requested by the NASD.[17] In 1997, the NASD amended its rules to replace NASD Rule 8220 with NASD Rules 8221, ''Notice,'' 8222, ''Hearing,'' 8223, ''Decision,'' 8224, ''Notice to Membership,'' 8225, ''Termination of Suspension,'' 8226, ''Copies of Notice and Decision to Member,'' and 8227, ''Other Action Not Foreclosed.''[18] According to NASD Regulation, NASD Rules 8221 through 8227 serve the same purpose as NASD Rule 8220 in that they provide potential penalties that may result from a member's or associated person's failure to provide information requested by the NASD.[19] In addition, NASD Regulation states that NASD Rules 8221 through 8227 provide procedural enhancements, including, for example, a hearing process through which a member or associated person may appeal an initial NASD decision made under NASD Rule 8221.[20]

B. Application of NASD Rule 2820(g) to Group Variable Contracts That Are Exempted Securities

NASD Regulation also proposes to codify an NASD staff interpretation that the non-cash compensation provisions set forth in NASD Rule 2820(g) apply to variable contracts that are exempted securities by including NASD Rule 2830(g) in NASD Rule 0116.[21] NASD Regulations notes that at the time the NASD identified the NASD rules that would apply to exempted securities, including government securities but not municipal securities, the NASD had not adopted NASD Rule 2820(g) and, accordingly, NASD Rule 2820(g) was not included in the list provided in the 1996 Order.

NASD Regulation states that because certain group variable contracts are exempted securities under the Act, members have questioned whether NASD Rule 2820(g) applies to group variable contracts. NASD Regulation states that it has interpreted NASD Rule 2820(g) to apply to group variable

2521, 2522, 2910, 8220 (which was expanded to include current NASD Rules 8221 through 8227), and IM–8310–2 in its list of rules and interpretative materials applicable to exempted securities, including government securities, other than municipal securities. *See* Amendment No. 2, *supra* note 4.

[11] NTM 96–66 advised NASD members that the GSAA eliminated the statutory limitations on the NASD's authority to apply its sales practice rules to transactions in exempted securities, including government securities but not municipal securities. NTM 96–66 also noted that the Commission approved amendments to the NASD's rules implementing the expanded sales practice authority on August 20, 1996. Although NTM 96–66 listed some of the NASD rules that would apply to exempted securities, including government securities but not municipal securities, NTM 96–66 omitted from its list of NASD rules in the 8000 Series which were included in the 1996 Order.

[12] Specifically, NASD Rule 0116(b) states that, unless otherwise indicated within a particular provision, the following NASD rules and interpretative materials apply to transactions and business activities relating to exempted securities but not municipal securities, conducted by members and associated persons: 2110, 2120, 2210, IM–2210–1, IM–2210–2, IM–2210–3, 2250, 2270, 2300, 2310, IM–2310–2, IM–2310–3, 2320, 2330, IM–2330, 2340, 2430, 2450, 2510, 2520, 2521, 2522, 2770, 2780, 2820(g), 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM–3110, 3120, 3130, IM–3130, 3131, 3140, 3230, 3310, IM–3310, 3320, IM–3320, 3330, 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM–8310, IM–8310–1, IM–8310–2, 8320, and 8330. *See* Amendment No. 2, *supra* note 4.

[13] *See* Amendment No. 2, *supra* note 4.

[14] In 1996, the Commission approved a proposal that reorganized the NASD's rules into their current format. *See* Securities Exchange Act Release No. 36698 (January 11, 1996), 61 FR 1419 (January 19, 1996) (order approving File No. SR–NASD–95–51).

[15] Specifically, the Resolution relating to Article III, Section 22 was ''Requirement of Members to Furnish Recent Financial Statement to other Members;'' the Resolution relating to Article IV, Section 5 was ''Suspension of Members for Failure to Furnish Information Duly Requested;'' and the Resolution relating to Article V, Section 1 was ''Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions and Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons.''

[16] *See* Amendment No. 2, *supra* note 4.

[17] *See* Amendment No. 2, *supra* note 4.

[18] *See* Securities Exchange Act Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997) (order approving File No. SR–NASD–97–28).

[19] *See* Amendment No. 2, *supra* note 4.

[20] *See* Amendment No. 2, *supra* note 4.

[21] NASD Rule 2820(g) limits the manner in which members and associated persons may pay or accept non-cash compensation in connection with the sale or distribution of variable contracts.

contracts that are exempted securities since the adoption of NASD Rule 2820(g). To clarify the application of NASD Rule 2820(g) to group variable contracts that are exempted securities, NASD Regulation proposes to codify the current staff interpretation by including NASD Rule 2820(g) in NASD Rule 0116.[22]

III. Summary of Comments

The Commission received four comment letters from two commenters regarding the proposal.[23] The two comment letters received prior to the publication of the **Federal Register** notice of the proposal asked the Commission to refrain from approving the proposal on an accelerated basis, as NASD Regulation had requested in its proposal.[24] As noted above, the Commission published the proposal for comment on October 4, 2000.[25]

In the comment letters received after the publication of the **Federal Register** notice, the ACLI and the NAIFA urged the Commission not to approve the proposal.[26] In addition, the commenters asked the Commission to order the NASD to rescind NTM 97–27, ''Application of NASD Conduct Rules to Group Variable Contracts and Other Exempted Securities,'' [27] and to issue an interpretative position stating that the rules cited in NTM 96–66 do not apply to the variable contracts distributed to qualified plans.[28]

Among other things, the ACLI asserts that the GSAA eliminated the statutory limitation on the NASD's authority to apply its sales practice rules to government securities, but not to other types of exempted securities. Accordingly, the ACLI believes that the NASD lacks the authority to apply its conduct rules to the sale of unregistered variable contracts that fund qualified retirement plans.

In addition, the ACLI maintains that the ''multiple, unnecessary layering of regulation caused by proposed [NASD] Rule 0116 and the codification of NTM 97–27 creates an anticompetitive burden * * *'' that reduces the product choices available to consumers and increases costs in the distribution of variable contracts by sales persons who are NASD registered representatives.[29] The ACLI maintains that NTM 97–27 has disrupted the marketing of variable contracts to qualified retirement plans.

The ACLI also asserts that the variable contracts distributed to qualified plans have not been the source of market conduct or sales practice abuses, and that the application of the NASD's conduct rules to these products is redundant and unnecessary because the Department of Labor, state insurance commissions, and other federal laws extensively regulate variable contracts that fund qualified retirement plans.

Like the ACLI, the NAIFA maintains that the GSAA was intended to apply only to government securities and that the NASD's application of its conduct rules to group variable contracts in NTM 97–27 represents an expansion of the NASD's jurisdiction that was not authorized by Congress or the Commission. In addition, the NAIFA believes that NASD regulation of variable contracts funding qualified retirement plans is unnecessary because state and federal authorities extensively regulate the sale of these products. The NAIFA also states that NTM 97–27 has caused significant anti-competitive effects and disrupted the marketing of variable contracts to qualified retirement plans.[30]

NASD Regulation responded to the commenters in a letter dated January 26, 2001.[31] In its response, NASD Regulation states that the GSAA amended Section 15A(f) of the Act to permit the application of the NASD's rules to all exempted securities, other than municipal securities. NASD Regulation notes that although Congress specifically excluded municipal securities from its grant of authority to the NASD in the GSAA, Congress did not exclude group variable contracts from its grant of authority to the NASD.

In response to the commenters' assertions that the codification of NTM 97–27 will result in multiple and unnecessary layers of regulation, NASD Regulation states that the application of the NASD's sales practice rules to group variable contracts will protect investors and promote the integrity of markets generally. NASD Regulation also notes that the scope, focus, and concern of NASD rules differ significantly from federal and state regulations that may require plan sponsors to act as fiduciary and for the benefit of plan participants and beneficiaries. NASD Regulation states, for example, that NASD rules require registered representatives to perform a thorough suitability analysis when making recommendations to customers and require that adequate disclosures be made to customers concerning group variable contracts. In addition, NASD Regulation notes that the NASD's rules restrict certain uses of non-cash compensation where such compensation could create point-of-sale incentives that might compromise the requirement to match the investment needs of the customer with the most appropriate investment product. NASD Regulation also states that members are subject to extensive supervisory requirements and must supervise activities by their registered representatives relating to group variable contracts.

IV. Discussion

After carefully considering the comments and NASD Regulation's response, the Commission finds, for the reasons discussed below, that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD. In particular, the Commission finds that the proposal is consistent with section 15A(b)(6) of the Act [32] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[33]

A. NASD Rule 0116

In the 1996 Order,[34] the Commission approved the NASD's proposal to implement the expanded sales practice authority granted to the NASD pursuant to the GSAA. The 1996 Order included a list of NASD rules that would apply to exempted securities, including government securities but not municipal

[22] Because NASD Rule 2820(g) applies only to transactions in variable products, the rule change would result in NASD Rule 2820(g) expressly applying to all variable products that are securities, including variable products that are exempted securities, such as group variable or similar products. NASD Regulation is not at this time recommending that other provisions of Rule NASD Rule 2820 apply to exempted securities.

[23] *See* ACLI I and NAIFA I, *supra* note 5, and ACLI II and NAIFA II, *supra*.7.

[24] *See* ACLI I and NAIFA I, *supra* note 5.

[25] *See* Securities Exchange Act Release No. 43370, *supra* note 6.

[26] *See* ACLI II and NAIFA II, *supra* note 7.

[27] In NTM 97–27, NASD Regulation asserted that the expanded sales practice authority that the Commission approved in the 1996 Order permits NASD Regulation to apply the NASD's conduct rules (''Conduct Rules'') to members and their registered representatives who sell or distribute group variable contracts and other exempted securities, other than municipal securities, and that such securities are subject to the Conduct Rules.

[28] *See* ACLI II and NAIFA II, *supra* note 7.

[29] *See* ACLI II, *supra* note 7 at 11.

[30] *See* NAIFA II, *supra* note 7.

[31] *See* letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated January 26, 2001 (''January 26 Letter'').

[32] 15 U.S.C. 78o–3(b)(6).

[33] In approving the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[34] *See* note 10, *supra*.

securities.[35] To the extent that NASD Rule 0116 codifies in one place the list of NASD rules that the Commission approved in the 1996 Order, the Commission finds that the proposal is consistent with the Act and does not raise new regulatory issues. The Commission believes that NASD Rule 0116 should help members more easily identify the NASD rules applicable to exempted securities, including government securities but not municipal securities.

As discussed more fully above, former NASD Rule 8220 was one of the NASD rules in the 1996 Order.[36] Following the 1996 Order, the NASD revised its rules to replace former NASD Rule 8220 with NASD Rules 8221 through 8227, which serve the same purpose as former NASD Rule 8220.[37] Like former NASD Rule 8220, current NASD Rule 8221 sets for the potential penalties, including suspension from membership or association, resulting from a failure to provide information requested by the NASD. NASD Rules 8222 through 8227 provide procedural protections, including, for example, a hearing process for members or associated persons who have received a notice issued pursuant to NASD Rule 8221. Because NASD Rules 8221 through 8227 serve the same purpose as former NASD Rule 8220, and, in addition, provide procedural protections for members and associated persons, the Commission believes that it is reasonable for the NASD to include NASD Rules 8221 through 8227 in NASD Rule 0116.

B. Grant of Authority Under the GSAA

The ACLI and NAIFA assert that the GSAA permitted the NASD to apply its sales practice rules solely to government securities and not to unregistered variable contracts that are exempted securities. The Commission notes, as it stated in the 1996 Order,[39] that the GSAA eliminated the statutory limitations on the NASD's authority to apply sales practice rules to transactions in exempted securities, including government securities but not municipal securities. Although Congress specifically excluded municipal securities. Although Congress specifically excluded municipal securities from its grant of authority to the NASD under the GSAA, it did not exclude any other type of exempted securities from its grant of authority.[39] Indeed, as amended, Section 15A(f) of the Act explicitly refers only to municipal securities. Accordingly, the NASD has the authority to apply its sales practice rules to transactions in group variable products that are exempted securities.

With regard to the commenters' assertions that NTM 97–27 has created a competitive burden and disrupted the marketing of variable contracts qualified retirement plans, the Commission notes that NASD Regulation maintains that sales of group variable contracts raise investor protection issues similar to those presented by sales of other types of securities products that are subject to the NASD's rules, such as individual variable annuities, variable life insurance, and mutual funds.[40] NASD Regulation also notes that NASD rules require registered representatives to perform a thorough suitability analysis when making a recommendation to a customer and require adequate disclosures to customers concerning group variable contracts.[41] In addition, NASD members must supervise activities by their registered representatives relating to group variable contracts.[42]

The Commission believes that the application of the NASD's sales practice rules to the sale of group variable contracts will help to ensure that customers purchasing group variable contracts that are securities are subject to the same sales practice protections as customers purchasing similar exempted securities. Accordingly, although the application of the NASD's rules to sales of group variable contracts may have affected the marketing of group variable contacts to qualified retirement plans, the Commission believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, consistent with section 15A(b)(9) of the Act.

C. NASD Rule 2820(g)

NASD Rule 2820(g) addresses the payment and acceptance of non-cash compensation in connection with the sale or distribution of variable contracts. NASD Regulation proposes to include NASD Rule 2820(g) in NASD Rule 0116 to clarify that NASD Rule 2820(g) applies to group variable contracts that are exempted securities. Because NASD Rule 2820(g) had not been adopted at the time of the 1996 Order, it was not included in the 1996 Order's list of NASD rules applicable to exempted securities, including government securities but not municipal securities. However, NASD Regulation states that it has consistently interpreted NASD Rule 2820(g) to apply to group variable contracts that are exempted securities since the adoption of NASD Rule 2820(g).

The Commission believes that including NASD Rule 2820(g) in NASD Rule 0116 will clarify NASD Regulation's position that NASD Rule 2820(g) applies to all variable contracts that are securities, including variable contracts that are exempted securities. In addition, the Commission believes that application of NASD rule 2820(g) will protect investors and the public interest by helping to reduce the point-of-sale impact of non-cash sales incentives that may compromise the duty of registered representatives to match the investment needs of customers with the most appropriate investment product.[43]

D. Accelerated Approval of Amendment No. 2

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 strengthens the proposal by clarifying NASD Regulations' rationale for including NASD Rules 2521, 2522, 2910, 8221 through 8227, and IM–8310–2 in NASD Rule 0116. Accordingly, the Commission finds it is consistent with Sections 15A(b)(6) and 19(b) of the Act to approve Amendment No. 2 on an accelerated basis.

[35] *See* note 10, *supra.*

[36] *See* Amendment No. 2, *supra* note 4.

[37] *See* Amendment No. 2, *supra* note 4.

[38] *See* note 10, *supra.*

[39] Under Section 3(a)(12)(A) of the Act, the term ''exempted security'' includes ''any security arising out of a contract issued by an insurance company, which . . . security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph.'' Section 3(a)(12)(C) indicates that, for purposes of subparagraph (A)(iv), ''the term 'qualified plan' means (i) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, or (iii) a governmental plan as defined in section 414(d) of such Code which as been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, other than any plan described in clause (i), (ii), or (iii) of this subparagraph which (I) covers employees some or all of whom are employees within the meaning of section 401(c) of such Code, or (II) is a plan funded by an annuity contract described in section 403(b) of such Code.''

[40] *See* January 26 Letter, *supra* note 31.

[41] *See* January 26 Letter, *supra* note 31.

[42] *See* January 26 Letter, *supra* note 31.

[43] *See* Securities Exchange Act Release No. 40214 (July 15, 1998), 63 FR 39614 (July 23, 1998) (order approving File No. SR–NASD–97–35).

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–38 and should be submitted by August 28, 2001.

VI. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[44] that the proposed rule change (SR–NASD–00–38), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19700 Filed 8–6–01; 8:45 am]

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[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44635; File No. SR–NSCC–2001–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Enhancing the Insurance Processing Service

August 1, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 5, 2001, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an enhancement to the Insurance Processing Service (''IPS''). The enhancement will allow members and insurance carrier members of NSCC to transmit data and information to each other regarding their state licensing and appointments activities and to settle payments between themselves relating thereto.

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 these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance IPS to allow members and insurance carrier members of NSCC to transmit data and information to each other regarding their state licensing and appointments activities and to settle payments between themselves related thereto.

A license is an authorization from a state insurance department permitting the licensee to sell insurance under the guidelines established by the insurance laws of that state. Insurance carriers sponsor certain agents (also known in the industry as producers) to be licensed by particular states. The enhancement to IPS related to licensing (''Licensing enhancement'') will allow insurance distributors who are members to request insurance carrier members to sponsor licenses for agents. Licensing will allow members and insurance carrier members to electronically exchange standardized relevant information about the agent. The insurance carrier members can then use the information (to the extent permitted by applicable state law) to sponsor licenses with state insurance departments. The contacts between insurance carrier members and state insurance departments will not be made through NSCC. In addition, the Licensing enhancement will allow insurance carrier members and members to communicate information to each other regarding the status of a license request.

An appointment is an authorization from an insurance carrier permitting the appointee to sell the products of that particular carrier in a particular state. Appointments are periodically renewed. The enhancement to IPS related to appointments and renewals and terminations thereof (''Appointments'') will allow insurance distributors who are members to request insurance carrier members to appoint agents to sell products in a particular state, renew and terminate appointments, and change demographic information relating to agents (collectively ''appointment activity''). Appointments will also allow members and insurance carrier members to electronically exchange standardized, relevant information about the agents. The insurance carrier members can use the information (to the extent permitted by applicable state law) to help them carry out appointment activity with the relevant state insurance departments. The contacts between insurance carrier members and state insurance departments will not be made through NSCC. In addition, the appointments enhancement will allow insurance carrier members and members to communicate information to each other regarding the status of a request relating to appointment activity.

The processing of data and information described above will be substantially similar to the processing of data and information that IPS carries out today.

There will be money settlements associated with Licensing and Appointments. For example, insurance distributors who are members may from time to time reimburse insurance carrier members for licensing fees that the insurance carrier members pay to state insurance departments with respect to agents. The processing of settlement of payments for licensing and appointments will be similar to IPS's processing of settlement payments for its Applications (APP) and Subsequent Premiums (SUB) functions.

NSCC's Rule 57, Sec. 1 states that NSCC ''may provide a service to enable Members and Insurance Carrier members to (i) transmit such data and

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

information as the Corporation may determine from time to time * * * and (ii) settle payments relating to insurance products between themselves.'' The Licensing and Appointments enhancements fall within this description.

Licensing and Appointments can be used by members and insurance carrier members for the following lines of insurance: Disability/health, fixed annuity, life, long-term care, pre-need (funeral), variable annuity, and variable life. The processing for data and information and the settlement of payments with respect to all of these lines of business will be substantially similar.

The proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder since it will facilitate the prompt and accurate processing of 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 relating to the proposed rule change 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(4) thereunder because the proposed rule change is effecting a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of securities of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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 Section, 450 Fifth street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–2001–10 and should be submitted by August 28, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19702 Filed 8–6–01; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval of a new, and/or currently approved information collection.

DATES: Submit comments on or before October 9, 2001.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Jacqueline White, Chief, Administrative Information Branch, Office of Administrative Services, Small Business Administration, 409 3rd Street, SW., Suite 5000, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Glenn P. Harris, Chief Counsel for Enforcement, Office of General Counsel, (202) 205–6862, or Curtis Rich, Management Analyst, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: National Environmental Policy Act Questionnaire.

Form No: SBA Form 2195.

Description of Respondents: Lenders participating in the section 7(a) guaranteed loan program, Certified Development Companies participating in the section 504 loan program, and certain small businesses that apply to SBA for financial assistance.

Annual Responses: 54,500.

Annual Burden: 32,614.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 01–19665 Filed 8–6–01; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of Organization, Functions and Delegations of Authority, which covers the Social Security Administration (SSA). Chapter S1 covers the Office of the Deputy Commissioner, Finance, Assessment and Management. Notice is given that Subchapter S1R, the Office of Facilities Management, is being amended to establish a new Office of Buildings Management (S1RM) and to reflect internal changes within the other existing Offices. The following material replaces Subchapter S1R in its entirety.

Subchapter S1R

Office of Facilities Management

S1R.00 Mission
S1R.10 Organization
S1R.20 Functions

Section S1R.00 *The Office of Facilities Management*—(Mission):

The Office of Facilities Management (OFM) manages SSA-wide materiel management and facilities management programs. It directs SSA's national real property program including short- and long-range facilities planning; design, construction and leasing of central office facilities; and maintenance, repair and construction projects and policy development related to the operation of delegated buildings. It acquires, utilizes and manages space at SSA headquarters and develops a comprehensive space

inventory and utilization system. It develops, implements and evaluates SSA's national environmental protection, safety and protective services programs. It ensures that these programs are responsive to the needs of the Agency and serves as a focal point for inquiries and guidance concerning these programs.

Section S1R.10 *The Office of Facilities Management*—(Organization):

The Office of Facilities Management, under the leadership of the Associate Commissioner for Facilities Management, includes:

A. The Associate Commissioner for Facilities Management (S1R).

B. The Deputy Associate Commissioner for Facilities Management (S1R).

C. The Immediate Office of the Associate Commissioner for Facilities Management (S1R).

1. Information Systems Management Staff (S1R–1).

D. The Office of Realty Management (S1RE).

1. Division of Architectural and Engineering Services (S1RE1).

2. Division of Field Support and Delegated Programs (S1RE4).

3. Division of Project Management (S1RE3).

E. The Office of Environmental Health and Occupational Safety (S1RG).

1. Division of Environmental Services (S1RG1).

2. Division of Industrial Hygiene (S1RG3).

F. The Office of Buildings Management (S1RM).

1. Division of Main Complex Management (S1RM1).

2. Division of Outlying Buildings Management (S1RM2).

3. Division of the National Computer Center (S1RM3).

G. The Office of Protective Security Services (S1RL).

1. Division of Security Program Services (S1RL1).

2. Division of Information Security Policy (S1RL3).

Section S1R.20 *The Office of Facilities Management*—(Functions):

A. The Associate Commissioner for Facilities Management (S1R) is directly responsible to the Deputy Commissioner for Finance, Assessment and Management for carrying out OFM's mission and provides general supervision to the major components of OFM.

B. The Deputy Associate Commissioner for Facilities Management (S1R) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Facilities Management (S1R) provides the Associate Commissioner with staff assistance on the full range of his/her responsibilities.

1. The Information Systems Management Staff (S1R–1) supports OFM components by planning, designing, developing, maintaining and improving OFM's information management infrastructure. Functions also include providing LAN/WAN administration, network and data security, and direct support for OFM's computer users.

D. The Office of Realty Management (S1RE) directs SSA's national real property program, including short- and long-range capital planning and budgeting, building management, cost savings initiatives and asset management.

1. The Division of Architectural and Engineering (A/E) Services (S1RE1) manages SSA's A/E and fire protection programs including A/E service contracts, and provides planning, investigation, technical consultation and design support, as well as facilities graphic database and document management.

2. The Division of Field Support and Delegated Programs (S1RE4) oversees SSA's energy management, recycling, and building delegation's programs, as well as portfolio management, including space acquisition, use and budget, and provides technical assistance for site preparation in support of the Agency's automation initiatives.

3. The Division of Project Management (S1RE3) oversees SSA prospectus and non-prospectus level construction and renovation projects in the Agency's major buildings nationwide, and completes SSA's facilities capital planning and budgeting activities.

E. The Office of Environmental Health and Occupational Safety (S1RG) directs SSA's national environmental health and occupational safety programs. Functions include long- and short-range planning, managing the Agency's national asbestos management program, managing national programs for water and indoor air quality, developing and implementing policies, procedures and technical assistance to support these national programs, and conducting comprehensive assessments of these programs.

1. The Division of Environmental Services (S1RG1) directs various SSA environmental health and safety programs and participates with the Division of Industrial Hygiene to implement national industrial hygiene programs.

2. The Division of Industrial Hygiene (S1RG3) directs the Agency's Industrial Hygiene Programs and participates with the Division of Environmental Services (DES) to implement various SSA national environmental health and safety programs and conducts comprehensive assessments of the DES programs.

F. The Office of Buildings Management (S1RM) directs operations at the East, Operations, Annex, West, Supply, Altmeyer, Metro West and National Computer Center Buildings and all leased headquarters space in Baltimore and Washington, DC Functions include long- and short-range planning, construction, and lease management, maintenance, repair, preventive maintenance, space planning and the development and implementation of policies, procedures and technical assistance to support these programs.

1. The Division of Main Complex Management (S1RM1) directs the day-to-day support of building operations at the East, Operations, Annex, West, Supply and Altmeyer Buildings. Responsibilities include long- and short-range planning, maintenance, repair, and development and implementation of policies and technical assistance to support these programs.

2. The Division of Outlying Buildings Management (S1RM2) directs the day-to-day support of building operations at the Metro West Building and all leased headquarters facilities in Baltimore and Washington, DC Responsibilities include long- and short-range planning, maintenance repair, and development and implementation of policies and technical assistance to support these programs.

3. The Division of the National Computer Center (S1RM3) directs the day-to-day support of building operations at the National Computer Center and the Utility Building. Responsibilities include long- and short-range planning, maintenance, repair, and development and implementation of policies and technical assistance to support these programs.

G. The Office of Protective Security Services (S1RL) directs SSA's physical and protective security program. Functions include formulating and administering physical security policies and procedures and for providing physical security operations and services Agency-wide for SSA personnel and property.

1. The Division of Security Program Services (S1RL1) provides physical security services at SSA facilities nationwide including developing and issuing policy and procedural guidance, conducting physical security reviews to identify vulnerabilities and recommend remedial actions, providing contract security guard oversight, establishing security action/emergency response plans, recommending and funding alarm systems/electronic security devices, designing space configurations and locking mechanisms to secure property and records and analysis of incident information.

2. The Division of Information Security Policy (S1RL3) develops and issues security policy, procedures and guidance for SSA facilities nationwide for the Agency suitability program for non-programmatic contracts, the Occupant Emergency Program (OEO), the property pass program, and the Agency-wide access program. Other functions include administering the parking and commuter support programs for Headquarters facilities.

Dated: August 30, 2001.

Paul Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 01–19643 Filed 8–6–01; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice: 3709]

30-Day Notice of Proposed Information Collection: Medical History and Examination for Foreign Service (OMB# 1405–0068, Department Form Numbers DS–1622 and DS–1843)

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of a currently approved collection.

Originating Office: Office of Medical Services, M/DGHR/MED.

Title of Information Collection: Medical History and Examination for Foreign Service.

Frequency: Biennially.

Form Numbers: DS–1843 and DS–1622.

Respondents: Candidates for Foreign Service Positions and their Eligible Family Members.

Estimated Number of Respondents: 12,000.

Average Hours Per Response: One Hour.

Total Estimated Burden: 12,000.

Public comments are being solicited to permit the agency to:

- 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 collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from John A Triplett, M.D., Office of Medical Services, 2401 E Street, NW., Room 201, U.S. Department of State, Washington, DC, telephone (202) 663–1680. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on (202) 395–3897.

Dated: July 2, 2001.

Gary R. Alexander,

Executive Director, Office of Medical Services, United States Department of State.

[FR Doc. 01–19774 Filed 8–6–01; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF STATE

[Public Notice 3735]

Notice of Proposal To Extend Agreement With Canada

AGENCY: Department of State.

ACTION: Notice.

Pursuant to the authority vested in me under Department of State Delegation of Authority 234, October 1, 1999, and Delegation of Authority 1–242, January 22, 2001, and pursuant to 19 U.S.C. 2602(f)(1), I hereby propose extension of the Agreement between the Government of the United States and the Government of Canada Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological and Ethnological Material, signed April 10, 1997. Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee will be requested.

A copy of this Agreement, the designated list of restricted categories of material, and related information is at *http://exchanges.state.gov/education/culprop.*

Dated: August 1, 2001.

Richard Boucher,

Assistant Secretary for Public Affairs, Department of State.

[FR Doc. 01–19775 Filed 8–6–01; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3750]

Notice of Meeting of the Cultural Property Advisory Committee

AGENCY: Department of State.

ACTION: Notice.

The Cultural Property Advisory Committee will meet on Thursday, September 20, from approximately 9 a.m. to 5 p.m., and on Friday, September 21, from approximately 9 a.m. to 1 p.m., at the Department of State, Annex 44, Room 800–A, 301 4th St., SW., Washington, DC to review the proposal to extend the ''Agreement between the Government of the United States of America and the Government of Canada Concerning the Imposition of Import Restrictions on Certain Categories of Archaeological and Ethnological Material.''

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). A copy of the Act, the subject Agreement, and related information may be found at this web site: *http://exchanges.state.gov/education/culprop.*

During its meeting on Thursday, September 20, the Committee will hold an open session, from 1:30–3:30 p.m. to receive oral public comment on the proposal to extend the Agreement. Persons wishing to attend this open session should notify the Cultural Property office at (202) 619–6612 by Thursday, September 13, to arrange for admission, as seating is limited. Those who wish to make oral presentations should also request to be scheduled, and submit a written text, by September 13. Oral comments will be limited to five minutes each and must specifically

address the proposal to extend the Agreement with particular attention to determinations that will be made under section 303(a)(1) of the Convention on Cultural Property Implementation Act, 19 U.S.C. 2602. The Committee also invites written comments and asks that they be submitted by September 13. All written materials, including the written texts of oral statements, should be sent to Cultural Property, Department of State, Annex 44, 301 4th Street, SW., Rm. 247, Washington, DC 20547; or faxed to (202) 619–5177.

Other portions of the meeting on September 20 and 21 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: August 1, 2001.

Richard Boucher,

Assistant Secretary for Public Affairs, Department of State.

[FR Doc. 01–19776 Filed 8–6–01; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During Week Ending July 20, 2001

The following Agreements were filed with the Department of Transportation under provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2001–10157.

Date Filed: July 16, 2001.

Parties: Members of the International Air Transport Association.

Subject: PTC2 ME 0095 dated July 6, 2001, TC2 Within Middle East Resolution r1–r14, MINUTES—PTC2 ME 0093 dated June 29, 2001, TABLES—PTC2 ME Fares 0035 dated July 10, 2001, PTC2 ME Fares 0035 (Re-Issued) dated July 13, 2001, Intended effective date: January 1, 2002.

Docket Number: OST–2001–10183.

Date Filed: July 19, 2001.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR–ME 0112 dated July 10, 2001, TC2 Europe-Middle East Expedited Resolutions r1–r5. Intended effective date: August 15, 2001.

Docket Number: OST–2001–9669.

Date Filed: July 20, 2001.

Parties: Members of the International Air Transport Association.

Subject: Memo: PTC2 EUR 0398 dated July 19, 2001, Corrects PTC2 EUR 0374 dated May 11, 2001.

Docket Number: OST–2001–10195.

Date Filed: July 20, 2001.

Parties: Members of the International Air Transport Association.

Subject: PTC12 USA–EUR 0121 dated June 29, 2001, North Atlantic USA-Europe Resolutions r1–r23, PTC12 USA–EUR 0124 dated July 3, 2001, (Technical Correction), MINUTES—PTC12 USA–EUR 0125 dated July 17, 2001, TABLES—PTC12 USA–EUR Fares 0060 dated July 6, 2001, Intended effective date: November 1, 2001.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 01–19742 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending June 22, 2001

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–9965.

Date Filed: June 19, 2001.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 10, 2001.

Description: Motion of Air Nauru pursuant to 14 CFR 302.4(f) and subpart B, requesting to file an unauthorized document, and to amend its application for renewal and amendment of its foreign air carrier permit, to be modified to read: between points behind Nauru, via Nauru and intermediate points, and any point or points in the United States and beyond.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–19741 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–01–021]

Houston/Galveston Navigation Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). HOGANSAC provides advice and makes recommendations to the Coast Guard on matters relating to the safe navigation of vessels to and from the Ports of Galveston, Houston, and Texas City, and throughout Galveston Bay, Texas.

DATES: All applications must be complete and postmarked no later than Monday, October 15, 2001.

ADDRESSES: You may request an application form by writing to Commanding Officer, USCG VTS Houston/Galveston, 9640 Clinton Drive, Houston, TX 77029; by calling 713–671–5166 (and asking to speak with either Petty Officer Hunter or Commander Simons); by submitting a faxed request to 713–671–5159; or by visiting HOGANSAC's website at www.uscg.mil/hq/g-m/advisory/hogansac/hogan.htm. All application forms must be returned to the following address: Commanding Officer, Attn: HOGANSAC Executive Secretary, USCG VTS Houston/Galveston, 9640 Clinton Drive, Houston, TX 77029.

FOR FURTHER INFORMATION CONTACT: Petty Officer Renee Hunter at (713) 671–5166 or CDR Peter Simons (713–671–5164).

SUPPLEMENTARY INFORMATION: HOGANSAC is a Federal advisory committee subject to the provisions of 5 U.S.C. App. 2. This committee provides local expertise to the Secretary of Transportation and the Coast Guard on such matters as communications, surveillance, traffic control, anchorages, aids to navigation, and other related topics dealing with navigation safety in the Houston/Galveston area. The committee normally meets at least three times a year at various locations in the Houston/Galveston area. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership is for two years. Individuals appointed by the Secretary based on applications submitted in response to this solicitation will serve from May 2002 until April 2004.

By law, the Committee consists of eighteen members who have particular expertise, knowledge, and experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels in the inshore and the offshore waters of the Gulf of Mexico. Committee members represent a wide range of constituencies. There are eleven membership categories:

(1) Two members who are employed by the Port of Houston Authority or have been selected by that entity to represent them; (2) two members who are employed by the Port of Galveston or the Texas City Port Complex or have been selected by those entities to represent them; (3) two members from organizations that represent shipowners, stevedores, shipyards, or shipping organizations domiciled in the State of Texas; (4) two members representing organizations that operate tugs or barges that utilize the port facilities at Galveston, Houston, and Texas City; (5) two members representing shipping companies that transport cargo from the ports of Galveston and Houston on liners, break bulk, or tramp steamer vessels; (6) two members representing those who pilot or command vessels that utilize the ports of Galveston, Houston and Texas City; (7) two at-large members who may represent a particular interest group but who use the port facilities at Galveston, Houston or Texas City; (8) one member representing labor organizations involved in the loading and unloading of cargo at the ports of Galveston or Houston; (9) one member representing licensed merchant mariners other than pilots, who perform shipboard duties on vessels which utilize the port facilities of Galveston, Houston or Texas City; (10) one member representing environmental interests; and (11) one member representing the general public. In support of the policy of the Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups. Individuals nominated to represent the general public will be required to complete a Confidential Financial Disclosure Report (OGE Form 450). Neither the report nor the information it contains may be released to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: July 23, 2001.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 01–19728 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 2001–10300]

National Offshore Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for membership on the National Offshore Safety Advisory Committee (NOSAC). NOSAC provides advice and makes recommendations to the Coast Guard on matters affecting the offshore industry.

DATES: Applications should reach us on or before September 30, 2001.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–1181; or by faxing 202–267–4570. A copy of the application form is available from the Coast Guard's Advisory Committee web page at: *http://www.uscg.mil/hq/g-m/advisory/index.htm.* Send your application in written form to the above street address. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Captain M.W. Brown, Executive Director of NOSAC, or James M. Magill, Assistant to the Executive Director, telephone 202–267–1181, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: NOSAC is a Federal advisory committee under 5 U.S.C. App. 2. It consists of 14 regular members who have particular knowledge and experience regarding offshore technology, equipment, safety and training and environmental expertise in the exploration or recovery of offshore mineral resources. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety and Environmental Protection on safety and rulemaking matters relating to the offshore mineral and energy industries. This advice assists us in formulating the positions of the United States in advance of meetings of the International Maritime Organization

NOSAC meets twice a year, with one of these meetings being held at Coast Guard Headquarters in Washington, DC. It may also meet for extraordinary purposes. Subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for five positions that expire or become vacant in January 2002 and one position that became vacant on January 2001. To be eligible, applicants should have experience in one of the following categories: (1) Offshore drilling, (2) offshore supply vessel services including geophysical services, (3) safety and training relating to offshore activities, (4) offshore production, (5) national environmental interests, or (6) general public interest associated with offshore activities. Please state on the application form which of the six categories you are applying for. Each member normally serves a term of 3 years or until a replacement is appointed. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the U.S. Department of Transportation on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and minority group members.

If you are selected as the general public member, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: July 27, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–19732 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–10253]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Subcommittees will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. All meetings will be open to the public.

DATES: CTAC will meet on Thursday, September 13, 2001, from 9:00 a.m. to 3:30 p.m. The Subcommittees on Prevention Through People (PTP) and Hazardous Substances Response Standards will meet on Wednesday, September 12, 2001, from 8:30 a.m. to 4:00 p.m. The Subcommittee on Vessel Cargo Tank Overpressurization will meet on Friday, September 14, 2001, from 9:00 a.m. to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before August 31, 2001. Requests to have a copy of written material distributed to each member of the Committee or Subcommittee should reach the Coast Guard on or before September 5, 2001.

ADDRESSES: CTAC will meet in room 2415, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC. The PTP Subcommittee will meet at Coast Guard Headquarters in room 1103. The Hazardous Substances Response Standards Subcommittee will meet in Suite 1000 at the National Pollution Funds Center, 4200 Wilson Blvd., Arlington, VA. The Vessel Cargo Tank Overpressurization Subcommittee will meet at Coast Guard Headquarters in room 2415. Send written material and requests to make oral presentations to Commander James M. Michalowski, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Commander James M. Michalowski, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

Chemical Transportation Advisory Committee

(1) Introduction of Committee members and attendees.

(2) Progress Reports from the PTP, Hazardous Substances Response Standards, and Vessel Cargo Tank Overpressurization Subcommittees.

(3) Presentation on the Millennium Class Tanker.

(4) Presentation by a Guest Speaker on ''Expansive Imbibition for Practical Pollution Particulation or Separating Things from Stuff.''

(5) Coast Guard update on Cargo Authority Lists for the New Coast Guard MISLE Database.

(6) Update of Coast Guard Regulatory Projects and IMO Activities.

Subcommittee on PTP. The agenda includes the following:

(1) Continuation of work on the development of a risk management guide for the chemical transportation industry.

Subcommittee on Hazardous Substances Response Standards. The agenda includes the following:

(1) Final development of recommendations to the Coast Guard concerning protocols for emergency chemical response.

Subcommittee on Vessel Cargo Tank Overpressurization. The agenda includes the following:

(1) Continuing development of recommendations for an industry standard to address the prevention of cargo tank overpressurization during inerting, padding, purging, and line clearing operations.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than August 31, 2001. Written material for distribution at a meeting should reach the Coast Guard no later than September 5, 2001. If you would like a copy of your material distributed to each member of the Committee or Subcommittee in advance of the meetings, please submit 25 copies to the Executive Director no later than September 5, 2001.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Assistant to the Executive Director of CTAC as soon as possible.

Dated: 27 July 2001.

Joseph J. Angelo

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–19729 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7514]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period.

SUMMARY: On April 13, 2001, the Coast Guard published a notice in the **Federal Register** requesting comments on proposed changes to the 1994 National Preparedness for Response Exercise Program (PREP) guidelines, and stated the proposed changes would be available by June 1, 2001. However, they were not made available in the Docket until July 3, 2001. Because of this delay, the Coast Guard is extending the comment period through October 3, 2001.

DATES: Comments on the proposed changes to the PREP Guidelines must reach the Docket Management Facility on or before October 3, 2001.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2000–7514), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this request for comments on PREP proposed guidelines. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or general information regarding the PREP program, contact Robert Pond, Office of Response, Plan and Preparedness

Division (G–MOR–2), U.S. Coast Guard Headquarters, telephone 202–267–6603, fax 202–267–4065 or e-mail *rpond@comdt.uscg.mil.* If you have questions on viewing, or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number (USCG–2000–7514), indicate the specific proposed change to which each comment applies, and give the reason for each comment. You may submit your comments and materials by mail or hand delivery. Submit them in an unbound format, no larger than 8½ X 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like confirmation of receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received on or before October 3, 2001.

SUPPLEMENTARY INFORMATION: On April 13, 2001, the Coast Guard published a notice in the **Federal Register** (66 FR 19282) requesting comments on proposed changes to the 1994 National Preparedness for Response Exercise Program (PREP) guidelines, and stated the proposed changes would be available in the Docket by June 1, 2001. However, they were not made available until July 3, 2001. Because of this delay, the Coast Guard is extending the comment period through October 3, 2001.

Dated: July 31, 2001.

J. G. Lantz,

Captain, U.S. Coast Guard, Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–19646 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2001–9852]

High Density Airports; Notice of Extension of the Lottery Allocation and Notice of Lottery for Limited Slot Exemptions at LaGuardia Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of lottery for takeoff and landing times at LaGuardia Airport.

SUMMARY: This notice announces the Federal Aviation Administration (FAA) extension of the current allocation of exemption slots at LaGuardia Airport (LGA) as authorized under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR–21''). Additionally, this notice announces a second lottery for a limited number of slot exemptions at LGA to allocate unused capacity under the agency imposed slot exemption limit, effective January 31, 2001. The FAA finds that this action maintains the current operating environment at LGA pending a long-term solution.

DATES: The lottery will be held on August 15, 2001.

ADDRESSES: The lottery will take place at 1:30 p.m., in the FAA Auditorium, 3rd floor, Federal Aviation Administration, 800 Independence Avenue , SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Lorelei D. Peter, the Airspace and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3073.

SUPPLEMENTARY INFORMATION:

Background

The FAA has broad authority under Title 49 of the United States Code (U.S.C.), Subtitle VII, to regulate and control the use of the navigable airspace of the United States. Under 49 U.S.C. 40103, the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as many be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of the navigable airspace. Also, under section 40103, the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

The High Density Traffic Airports Rule, or ''High Density Rule,'' 14 CFR part 93, subpart K, was promulgated in 1968 to reduce delays at five congested airports: John F. Kennedy International Airport, LaGuardia Aiport, O'Hare International Airport, Ronald Reagan Washington National Airport and Newark International Airport (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, by hour or half hour, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a ''slot'' for each IFR landing takeoff or landing during a specific 30-or-60 minute period. The restrictions were lifted at Newark in the early 1970s.

''AIR–21''

On April 5, 2000, the ''Wendell H. Ford Aviation Investment and Reform Act for the 21st Century'' (''AIR–21'') was enacted. Section 231 of AIR–21 significantly amended 49 U.S.C. § 41714 and included new provisions codified at 49 U.S.C. §§ 41716, 41717, and 41718. These provisions enabled air carriers meeting specified criteria to obtain new slot exemptions at New York's LaGuardia Airport (LaGuardia) and John F. Kennedy International Airport (JFK), Chicago's O'Hare International Airport (O'Hare) and Washington DC's Ronald Reagan Washington National Airport (National). As a result of this legislation, the Department of Transportation (Department) issued eight orders establishing procedures for the processing of various applications for exemptions authorized by the statute.

Specifically, Order 2000–4–11 implements 49 U.S.C. 41716(a), which provides in pertinent part that an exemption must be granted to any airline using Stage 3 aircraft with less than 71 seats that proposes to provide nonstop service between LaGuardia and an airport that was designated as a small hub or nonhub airport in 1997, under certain conditions. The exemption must be granted if: (1) The airline was not providing such nonstop service between the small hub or nonhub airport and LaGuardia Airport during the week of November 1, 1999; or (2) the proposed service between the small hub or nonhub and LaGuardia, exceeds the number of flights provided between such airports during the week of November 1, 1999; or (3) if the air transportation pursuant to the exemption would be provided with a regional jet as replacement of turboprop service that was being provided during the week of November 1, 1999.

According to AIR–21 and the Department's Orders, air carriers meeting the statutory tests delineated above automatically receive blanket approval for slot exemptions, provided that they certify in accordance with 14 CFR 302.4(b) that they meet each and every one of the statutory criteria. The certification must state the communities and airport to be served, that the airport was designated a small hub or nonhub airport as of 1997, that the aircraft used to provide the service have fewer than 71 seats, that the aircraft are Stage 3 compliant, and the planned effective dates. Carriers must also certify that the proposed service represents new

service, additional frequencies, or regional jet service that has been upgraded from turboprop service when compared to service for the week of November 1, 1999. In addition, carriers must state the number of slot exemptions and the times needed to provide the service.

Order 2000–4–10 implements the provisions of 49 U.S.C. 41716(b), which states in pertinent part, that exemptions must be granted to any new entrant or limited incumbent airline using Stage 3 aircraft that proposes ''to provide air transportation to or from LaGuardia or John F. Kennedy International Airport if the number of slot exemptions granted under this subsection to such air carrier with respect to such airport when added to the slots and slot exemptions held by such air carrier with respect to such airport does not exceed 20.'' Applications submitted under this provision must identify the airports to be served and the time requested.

Section 231 of AIR–21, 49 U.S.C. 4715(b)(1) expressly provides that the provisions for slot exemptions are not to affect the FAA's authority for safety and the movement of air traffic. The reallocation of exemption times by the lottery procedures described in this Notice is based on the FAA's statutory authority and does not rescind the exemptions issued by the Department under Orders 2000–4–10 and 2000–4–11. As provided in those orders, carriers that have filed the exemption certifications also need to obtain an allocation of slot exemption times from the FAA. The limiting and reallocation of these exemption slots is in recognition that it is not possible to add an unlimited number of new operations at LaGuardia Airport, especially during peak hours, even if those operations would otherwise qualify for exemptions under AIR–21.

Lastly, section 93.225 of Title 14 of the Code of Federal Regulations sets forth the process for slot lotteries under the High Density Rule. The process described in the regulations is similar to the process described herein and allows for special conditions to be included when circumstances warrant special consideration.

Notice of Proposed Extension of Lottery Allocation

On June 7, 2001, the FAA issued a Notice of Alternative Policy Options for Managing Capacity at LGA and Proposed Extension of the Lottery Allocation seeking comment on both long-term policy options and a short-term extension of the cap on slot exemptions at LaGuardia (66 FR 31731; June 12, 2001). The number of AIR–21 slot exemptions that may be operated at the airport was limited by the FAA to 159 operations effective January 31, 2001, and allocated in accordance with the slot lottery held on December 4, 2000. This allocation capped scheduled operations to 75 per hour between the hours of 7 a.m. and 9:59 p.m., which limited daily and hourly demand on airport facilities and the air traffic control system. The FAA has found that this number of flights can be accommodated in good weather conditions and at the same time, provides access for AIR–21 exemption flights. (This number does not include extra sections of scheduled air carrier flights or the 6 reservations per hour for ''Other'' nonscheduled operations, including general aviation, charters and military flights. Therefore, this maintains total operations of approximately 81 per hour, which is the optimum capacity benchmark established for LaGuardia Airport.)

The FAA also proposed to conduct a lottery for a limited amount of slot exemptions that are available for use and consistent with the overall cap on scheduled operations at the airport. The FAA proposed that first this unused capacity should provide access to LGA for carriers that previously were excluded or did not receive an allotment of four slot exemptions as a new entrant in the December 4 lottery and then be offered to carriers providing small community service. At the same time that this notice was issued, there were 14 exemption slots available for reallocation. Subsequent to that date, five additional slot exemptions have been returned to the FAA for a total of 19 slot exemptions available for reallocation by lottery.

Specifically, the agency proposed that carriers eligible to participate in the lottery for these slot exemptions be initially limited to new entrant carriers that did not participate in the December 4 lottery or new entrant carriers that were unable to select up to four exemptions slots during the first round of the December 4 lottery. Any slot exemption not selected by a new entrant in the first round would be offered to all eligible carriers providing small community service, again using the established rank order from the December 4 lottery.

Discussion of Comments

The FAA provided for a 30-day comment period, which closed on July 12, 2001. A total of 23 comments were filed in the docket. This notice does not address any comments filed regarding Phase 2. Comments on Phase 1 were submitted from nine airlines (Vanguard, Continental, America West, American Trans Air, Delta, USAirways, American, United and Spirit), four associations (the Air Carrier Association of America, the General Aviation Manufacturers Association, the National Air Carrier Association, Inc., and the Air Transport Association of America), the Airports Council International-North America, the Port Authority of New York and New Jersey, JBT3 Enterprises, the New York State Aviation Management Association, Newport News-Williamsburg International Airport, Congressman Gilman, and one individual.

Certain comments addressing long-term solutions and elimination of the extra section provision, the buy-sell rule and the perimeter rule are beyond the scope of this notice and will be addressed in separate agency actions.

Generally, most commenters support the proposed allocation extension and lottery of available capacity, and submitted additional considerations. America West opposed the extension of the lottery allocation but in the alternative offered some modifications to the lottery procedures. A summary of the comments and the FAA response are categorized as follows:

Extension of the Allocation Start Date

The FAA proposed all operations allocated in this second lottery must commence by October 29, 2001. While recognizing the strong demand for the limited slots at LaGuardia, Vanguard and the Air Carrier Association of America (ACAA) commented that the new entrant carriers respectively need 120 and 180 additional days from the date of allocation to plan schedules, to sell new service and to ensure that gate and other facilities are available. While the FAA agrees that under current conditions at the airport, some new entrant carriers may require additional start-up time, we are concerned that 180 days is excessive given demand. The FAA believes that 120 days will provide new entrants with adequate time to start operations at the airport. Consequently, the FAA will require that all operations subject to this lottery must commence within 120 days from the date of the lottery or they will be withdrawn.

Extension of the Allocation Termination Date (October 26, 2002)

Both American and United specifically commented that the proposed extension of the slot allocation date should be for an indefinite period of time rather than through October 26, 2002, as proposed. Continental supported the October 26, 2002, date or longer. American and United

commented that a longer-term solution is not likely to be in place by the proposed date and that the agency should not rush consideration of potential alternatives to the existing capacity allocation regime in order to meet this date. The FAA acknowledges that some of the longer-term alternatives proposed in the Notice could not be implemented by October 26, 2002, and that an extension of the proposed date may be necessary. However, the agency remains committed to finding a long-term solution at LaGuardia and considers this an agency priority. Therefore, the FAA affirms the proposed date for the present time, and as the process for Phase 2 continues to develop, will revisit this allocation date as necessary. The FAA assures that the process set forth for considering the proposals in Phase 2 will include the necessary time for public input and full agency consideration.

Slot Exemptions Allocated by the Contingent Round (the ''Legend Airlines'' Allocation)

The FAA proposed the retention of the seven slots allocated by the contingency round to carriers providing service to small communities. ACAA comments that these seven slot exemptions should be included in round 1 of this lottery for new entrants and that the FAA's rationale that ''withdrawal of these exemption slots would cause further disruption'' is merely a convenient agency excuse. The FAA notes that in the December 4 lottery, these seven slots were not ''tagged'' for new entrant service. It is significant that all new entrant carriers received the same number of slot exemptions that they were actually operating prior to the December 4 lottery; no new entrant carrier was forced to cancel existing service. Because Legend ceased scheduled operations on the weekend preceeding the lottery, the FAA conducted a contingency round that would reallocate the slots in accordance with the established procedures in the event that Legend would not resume regular operations. Consequently, the slots were reallocated to carriers providing small community service since the new entrant carriers had received all the slot exemptions that they could receive under the established lottery procedures while overall service to small communities was reduced. The FAA does find minimizing of service disruption to be a compelling and legitimate interest that must be taken into consideration while accommodating other public interest policies. Additionally, the FAA believes that retaining this allocation, in conjunction with the following lottery procedures adopted herein, provided equitable treatment between the two categories of operations addressed by AIR–21. The FAA is following the intent of AIR–21 to the maximum extent practicable.

New Entrant Service Versus Small Community Service

The majority of the comments concerned the number of slot exemptions that would be available during the lottery for new entrant service and small community service. USAirways states that the available slot exemptions should go to carriers that had to cancel service as a result of the administrative cap as opposed to allocating the slots to new entrants. Delta comments that the FAA should avoid service disruptions and that the agency should continue to monitor system performance at LaGuardia to determine whether to increase the hourly caps during this interim period. Delta further comments that any allocation of additional slot exemptions that become available due to increases in hourly caps should be made consistent with the objectives of AIR–21. Continental supports the additional allocation of unused capacity as proposed.

The carriers conducting small community service support either the lottery procedures as proposed or that all the slot exemptions should go to these carriers for the restoration of canceled service prior to any allocation to new entrants. Also, the carriers and supporters of new entrant service argued just the opposite. Both America West and ACAA agree with the proposed round 1 for new entrants at the airport. However, for subsequent rounds, ACAA and America West argue that only after all new entrants and limited incumbents have the opportunity for a total of 20 slots and slot exemptions, as set forth in AIR–21, should any slot exemptions be made available for small community service. These commenters also argued that the established carriers hold a significant majority of HDR slots at LaGuardia and that small community service may be preserved by using existing slots and not at the expense of limiting access by new entrant carriers that do not have an established slot base at the airport. American Trans Air comments that round 1 should be expanded to include a broader class of new entrant carriers to select additional slot exmeptions. American Trans Air further comments that FAA has consistently used broad groupings when allocating slots and that the procompetitive accomplishments at LaGuardia of new entrant carriers provide compelling public policy reasons to again broadly treat the class of new entrant carriers eligible to participate in the lottery.

AIR–21 provides access to the airport for both categories of operations (new entrants and small community service) during the phase-out of the HDR. Opportunity for small community service was not to be sacrificed by new entrant service nor vice versa. AIR–21 provided that carriers providing new entrant service may receive slot exemptions up to the point that the carrier had 20 slots and slot exemptions. AIR–21 also provided that carriers conducting small community service are not capped on the number of slot exemptions. As stated in the notice, the FAA finds it imperative to accommodate, albeit on a limited basis, new entrant carriers that could not participate in the December 4 lottery or that were unable to select up to four slot exemptions during that lottery. Even though this lottery allocation continues to represent a short-term solution to the complex issues at LaGuardia, the agency seeks to provide new entrants access to the airport. Ideally, the FAA would like to accommodate all new entrants and limited incumbent carriers that have not reached the 20 slots and slot exemptions maximum as contemplated by AIR–21, and also not limit carriers providing small community service. However, since the constraints at LaGuardia require a limit on all operations, the FAA finds it necessary to accommodate all these interests within the operational limits of the airport.

The FAA believes that the lottery procedures proposed for round 1 (new entrants or carriers that did not hold up to four slots and slot exemptions at the airport) and round 2 (small community service) should be adopted as proposed. The FAA continues to believe that round two should be reserved for small community service because it equitably treats the two categories of operations, consistent with statutory direction, and that these carriers were the only carriers that had to reduce or cancel service after the December 4 lottery. The FAA believes that service disruption to small communities is as critical a factor in public policy considerations as initiating and preserving new entrant service. However, if there are any remaining slot exemptions after round 2, the FAA believes that establishing procedures for a potential round 3 is also necessary to encourage balance between the two categories of service. Therefore, any slot exemption not selected by carriers providing small

community service in round 2 will be made available to any carrier that does not have 20 slots and slot exemptions at the airport, which also addresses certain comments requesting additional opportunities for limited incumbent carriers. Consequently, the FAA will conduct a third round for those carriers for any slot exemptions that remain.

Variation of the Lottery Procedures

Several commenters suggested variations to the proposed lottery procedures. USAirways comments that it supports using the December 4, 2000, rank order for round 2 providing that the rank order resumes where it left off, which is that USAirways gets the first selection due to the fact that it only was able to select one slot during the contingency round. The FAA agrees that following the procedures for the December 4 lottery and the established rank order confers the first selection in round 2 with USAirways.

American West and ACAA both comment that new entrants in round 1 should be able to select up to six slots in order to provide competitive service with three round trips. The FAA finds that providing new entrants with the ability to select four slots in the first round is consistent with the procedures used during the December 4 lottery and with regulatory provisions articulated for slot lotteries under the High Density Rule. In this particular situation at LaGuardia, it is necessary to accommodate both categories of operations to the greatest extent possible given the operating limitations at the airport. Allowing new entrants to select up to six slots in round 1 reduces the number of slots that would be available for small community service and would unfairly treat new entrant carriers in this lottery compared to new entrant carriers from the first lottery that were only above to select up to four slot exemptions in the first round. However, the establishment of a round 3 provision, in which all carriers that have less than 20 slots and slot exemptions may participate, places all new entrants and limited incumbents at the airport on equal footing for some type of modest growth within the cap on operations. Thus, under the third round new entrants and limited incumbents that have less than 20 slots and slot exemptions have potential to select additional slots exemptions.

ACAA further suggests that the FAA should amend the definition of a new entrant from 20 slots and slot exemptions to 30 slots and slot exemptions. Section 41714(h)(5) of Title 49 of the U.S.C. sets forth the definition of a limited incumbent carrier to be a carrier that holds less than 20 slots and slot exemptions. Also, § 41716(b) authorizes that new entrants and limited incumbents may receive slot exemptions under this section so as to not exceed 20 slots or slot exemptions per carrier. Even if the FAA agreed with ACAA's comment, the above statutory provisions would not authorize ten additional slot exemptions for new entrant or limited incumbent carriers. ACAA further comments that new entrants should be able to select one slot exemption in each 30 minute period without regard to whether a slot is available. ACAA's suggestion is tantamount to permitting a carrier to pick two slots in one hour regardless of whether the slot times are available. The adopted procedures accommodate new entrants by letting them choose an hour for each operation and the agency has placed limitations on the number of slot exemptions that can be selected in the 1700 and 1800 hours. It would be entirely contrary to the purpose of the agency's implementation of the 159 slot exemption cap (75 scheduled operations per hour) to permit historically congested hours to become even more oversubscribed since the purpose of the administrative cap is to balance demand with capacity. The FAA finds that in the interest of maintaining the current operating environment, it disagrees with this comment. Lastly, ACAA urges the agency to implement a ''fast track'' second Phase 1, which it describes as a process to adopt competition in the interim. According to ACAA, this ''fast track'' would entail a comprehensive review of all slot regulations that impact competition, including buy-sell, the extra section authority and slot reallocation. The FAA is committed to finding a workable long-term solution at LaGuardia that responds to all concerns. The elements described in the ''fast track'' are elements that appropriately would be considered in Phase 2.

American Trans Air suggests that the following limitations also apply to the class of eligible participants and round 1: (1) A participant must have participated in last December's lottery; (2) a participant must not have returned or had to surrender for insufficient use any LaGuardia slots; and (3) a participant must appear in the Department's latest Fare Survey as the lowest average fare carrier in at least one LaGuardia market. American Trans Air argues on the one hand that the category of eligible participants in round 1 be broadened to include carriers such as itself that received four or more slots in the December 4 lottery. In support of this argument, American Trans Air states that the agency typically uses broad carrier groupings when allocating slots and cites specific examples. However, on the other hand, American Trans Air then seeks to limit eligibility for this round with the above criteria. While the FAA does in fact count returned or unused slots and slot exemptions in determining each carrier's slot (and slot exemption) base, the FAA does not agree that further limitations as suggested above are justified in determining eligibility to participate in round 1. The above suggested limits would unduly favor the inclusion of a very discrete number of carriers for round 1.

Other Comments

Spirit Airlines suggested that the FAA provide carriers with some mechanism to ''prioritize'' their flights, and provide them with a means to identify and ''protect'' some small number of flights which are most sensitive to delays. While this comment is beyond the lottery extension and reallocation issues proposed, the FAA notes this comment and will also forward this comments for inclusion in the discussion of Phase 2.

The General Aviation Manufactures Associates (GAMA) commented that if any slots are unused for any reasons, the FAA should immediately allocate then to non-scheduled operations, even if only for a temporary basis. Under the High Density Rule (HDR), the ''Other'' category provides for six reservations per hour. While the HDR permits unallocated HDR slots to be made available under the ''Other'' category (14 CFR Section 93.123(b)(6)), AIR–21 does not provide such authority.

Procedure for Returned Slot Exemptions or Slot Exemptions Withdrawn for Non-Use

The FAA is also amending the proposed procedures for returned slot exemptions and slot exemptions withdrawn for non-use. The FAA proposed to reallocate slot exemptions that become available during the allocation period using the established rank orders. While there were not comments specific to this proposal, the agency has reconsidered this process in view of the general nature of the comments submitted. The FAA does not want to limit any carrier from commencing operations at the airport for the duration of the lottery allocation to the extent that there is some available capacity after the date of this lottery. Consequently, any slot exemptions that are returned to the agency or are withdrawn for non-use will be made available on a first-come, first-serve basis to any carrier that does not operate

at the airport, has certified accordingly with the Department, and has a written request on file with the FAA Slot Administration Office.

If the available slot exemptions are not selected by a new entrant carrier meeting the above criteria, the slot exemptions will be available to all carriers for selection in accordance with the appropriate established rank order, i.e., the December 4, rank order for carriers providing small community service and the August 15 rank order for all carriers that have less than 20 slots and slot exemptions. The slot exemptions will be selected by alternating between the two rank orders with the next carrier in line for selection from the December 4 rank order to select the first two available slot exemptions. The FAA believes that alternating selections between the two established rank orders will provide equitable treatment and opportunity to both categories of operations to obtain any available capacity throughout this allocation period.

Lottery Procedures

Definitions for the terms ''carriers,'' ''new entrant,'' and ''limited incumbent'' for purposes of participation in the lottery, are proposed as set forth in 14 CFR 93.213, and amended by § 231 of AIR–21. The FAA has applied the ''commuter affiliate'' provision in 49 U.S.C. 41714(k).

The January 31, 2001, allocation of slot exemptions at LaGuardia Airport is extended through October 26, 2002. The following 19 slot exemptions are available for reallocation by lottery: 7:00 (2), 8:00 (1), 9:00 (1), 12:00 (1), 13:00 (1) 14:00 (1) 17:00 (1), 18:00 (1), 21:00 (10). There is one exemption slot available in each the 17:00 and 18:00 hour. After the selection of those times, the 17:00 and 18:00 hours will be blocked from an additional selection since those two time periods are oversubscribed. The above slot exemptions will be allocated by lottery using the following procedures:

1. New entrant carriers eligible to participate in this lottery are carriers that did not participate in the December 4 lottery or carriers that selected less than four exemption slots during the first round of the December 4 lottery and must have certified to the Department of Transportation in accordance with the procedures articulated in OST Order 2000–4–10 by August 9, 2001.

2. New entrant carriers intending to participate must notify the FAA Slot Administration Office in writing by August 9, 2001 of their intent to participate in the lottery.

3. New entrant carriers and carriers that hold less than 20 slots and slot exemptions at LaGuardia will participate in a random drawing from establishing a selection rank order. Carriers eligible to participate in rounds 1 and 3 described herein will select in that order. Each carriers must make its selection within 5 minutes after being called or it shall lose its turn.

4. In the first round, new entrant carriers may select no more than four exemption times. Carriers that hold less than four slot exemptions may select exemption times so as to not exceed holding a total of four. Each new entrant carrier may select one slot exemption time in each hour without regard to whether a slot is available in that hour. The first round will be concluded when all participating new entrant carriers have reached their maximum allocation or choose not to select remaining available times.

5. After the first round is completed, any remaining slot exemptions will be available to carriers providing service to small hub or non-hub airports in accordance with the established rank order from the December 4, 2000, lottery. Each carrier may select up to two slot exemptions and must make its selection within 5 minutes after being called or shall lose its turn. The second round will be concluded when all carriers have selected their maximum for that round.

6. After the second round is completed, any remaining slot exemptions will be available to carriers that have less than 20 slots and slot exemptions using the established rank order described in paragraph 3 above.

7. Slot exemptions selected in rounds 2 and 3 may only be operated in the available times.

8. The FAA may approve the transfer of slot exemption times between carriers only on a temporary one-for-one basis for the purpose of conducting the operation in a different time period. Carriers must certify to the FAA that no other consideration is involved in the transfer.

9. The Chief Counsel will be the final decisionmaker concerning eligibility of carriers to participate in the lottery.

10. The slot exemptions reallocated by lottery will remain in effect through October 26, 2002.

11. All operations allocated under these lottery procedures must commence by December 13, 2001. Carriers receiving slot exemptions under this lottery may commence operations earlier than September 15, 2001, if so desired.

12. Carriers that participate and select exemption slots during the lottery must recertify to the Department of Transportation in accordance with the procedures articulated in OST Orders 2000–4–10 and 2000–4–11 prior to operations, and provide the Department and the FAA with the markets to be served, the number of exemption slots, the frequency, and the time of operation.

13. After the date of the lottery, if slot exemptions are turned-in to the FAA or are withdrawn for non-use, the FAA will make the slot exemptions available on a first-come, first-serve basis to a carrier that is not operating at LaGuardia as of August 15, 2001, certified to the Department in accordance with the procedures articulated in OST Order 2000–4–10, and has a written request on file with the FAA Slot Administration Office. Any carrier that meets the above criteria may select up to four available slot exemptions. Any slot exemptions not selected by the above described carriers will be available to all carriers for selection in accordance with the appropriate established rank order (the December 4 rank order for carriers providing small community service and the August 15 rank order for carriers with less than 20 slots and slot exemptions). Selections will alternate between the two rank orders, beginning with the next carrier in line from the December 4 rank order to select the first two available slot exemptions.

Issued on August 2, 2001 in Washington, DC.

James W. Whitlow,

Deputy Chief Counsel

[FR Doc. 01–19703 Filed 8–2–01; 3:27 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Transport Airplane and Engine Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA assigned the Aviation Rulemaking Advisory Committee a new task to develop a report recommending the adoption of harmonized guidance material for paragraph 25.603 of the JAR and Section 25.603 of the FAR. This notice is to inform the public of this ARAC activity.

FOR THER INFORMATION CONTACT: Charles Huber, Federal Aviation Administration, Northwest Mountain

Region, 1601 Lind Avenue, SW., Renton, Washington 98055, (425) 227–2589, *charles.huber@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA established the Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator on the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitments to harmonize Title 14 of the Code of Federal Regulations (14 CFR) with its partners in Europe and Canada.

The Task

1. Review the proposed guidance of Advisory Circular, Joint 25.603 paragraph 9 and Advisory Material Joint 25.603 (adopted in Joint Aviation Requirements—25 Change 15, resulting from Notice of Proposed Amendment 25D–256).

2. Develop a report based on the review and recommend the adoption of harmonized guidance material for paragraph 25.603 of the JAR and § 25.603 of the FAR.

3. During the development of the guidance, if there is a need to make regulatory changes, provide the appropriate rulemaking text (as well as cost estimates—responding to economic questions).

4. If as a result of the recommendations, the FAA publishes an NPRM and/or notice of availability of proposed advisory circular for public comment, the FAA may ask ARAC to review all comments and provide the agency with a recommendation for the disposition of those comments.

Schedule: This task is to be competed no later than February 24, 2003.

ARAC Acceptance of Task

ARAC accepted the task and assigned the task to the General Structures Harmonization Working Group, Transport Airplane and Engine Issues. The working group serves as staff to ARAC and assists in the analysis of assigned tasks. ARAC must review and approve the working group's recommendations. If ARAC accepts the working group's recommendations, it will forward them to the FAA.

Working Group Activity

The General Structures Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan for consideration at the next meeting of the ARAC on transport airplane and engine issues held following publication of this notice.

2. Give a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.

3. Draft the appropriate documents and required analyses and/or any other related materials or documents.

4. Provide a status report at each meeting of the ARAC held to consider transport airplane and engines issues.

Participation in the Working Group

The General Structures Harmonization Working Group is composed of technical experts having an interest in the assigned task. A working group member need not be a representative or a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than August 31, 2001. The requests will be reviewed by the assistant chair, the assistant executive director, and the working group co-chairs. Individuals will be advised whether or not their request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and actively participate in the working group (e.g., attend all meetings, provide written comments when requested to do so, etc.). They also will be expected to devote the resources necessary to support the working group in meeting any assigned deadlines. Members are expected to keep their management chain and those they may represent advised of working group activities and decisions to ensure that the proposed technical solutions do not conflict with their sponsoring organization's position when the subject being negotiated is presented to ARAC for approval.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group co-chairs.

The Secretary of Transportation determined that the formation and use of the ARAC is necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of the ARAC will be open to the public. Meetings of the General Structures Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. The FAA will make no public announcement of working group meetings.

Issued in Washington, DC, on July 30, 2001.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–19644 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee—Meeting Location Change

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of change in meeting location for the Executive Committee of the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: The FAA is issuing this notice to advise the public of a change in the meeting location of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held August 8, 2001, at 10 a.m.

ADDRESSES: The Holiday Inn—Capitol, 550 C Street, SW., Washington, DC 20024, Columbia Room.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9678; fax (202) 267–5075; e-mail *Gerri.Robinsin@faa.gov.*

SUPPLEMENTARY INFORMATION: The Executive Committee meeting location has been changed from the Federal Aviation Administration in Washington, DC, to the Holiday Inn—Capitol, 550 C Street, SW., Washington, DC 20024, Columbia Room. Please see the **Federal Register** notice published on July 2, 2001, (66 FR 34982) for additional information regarding the meeting.

Issued in Washington, DC, on August 1, 2001.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 01–19704 Filed 8–2–01; 3:27 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Certification Steering Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Certification Steering Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the pubic of a meeting of the RTCA Government/Industry Certification Steering Committee.

DATES: The meeting will be held August 31, 2001, from 8 am–12 pm.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW, Bessie Coleman Conference Center, Room 2 AB, Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Certification Steering Committee meeting. The agenda will include:

August 31

- Opening Session (Welcome and Introductory Remarks)
- Certification Select Committee Report
- Final Reports on Implementation of Task Force 4 Recommendations
- Closing Session (Other Business, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 1, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–19737 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Future Flight Data Collection Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Future Flight Data Collection Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Future Flight Data Collection Committee.

DATES: The meeting will be held September 11, 2001 starting at 9 am.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW, Suite 805, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; web site http://www.rtca.org.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given or a Future Flight Data Collection Committee meeting. The agenda will include:

September 11

- Opening Session (Welcome, Introductions, Administrative Remarks, Agenda Review, Review/Approve Summary of Previous Meeting)
- Review and Approve Final Draft Document
- Closing Session (Other Business, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statement at the meeting. Persons wishing to present statements or obtain information should contact the person listed in **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 2, 2001.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 01–19738 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In June 2001, there were 10 applications approved. This notice also includes information on one application, approved in May 2001, inadvertently left off the May 2001 notice. Additionally, 16 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Airport Authority of Washoe County, Reno, Nevada.

Application Number: 01–04–C–00–RNO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $16,136,466.

Earliest Charge Effective Date: August 1, 2001.

Estimated Charge Expiration Date: February 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Reno/Tahoe International Airport.

Brief Description of Project Approved for Collection at a $4.50 PFC Level: Southern portion of southwest air cargo ramp.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level:

Environmental assessment for southwest air cargo facility.
Taxiway A north reconstruction.
Terminal building security system.

Brief Description of Project Approved for Collection At a $3.00 PFC Level: Southwest air cargo facility road and utilities.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level:

Ramp scrubber.
Part 150 study update.
Eight jet bridges.

Brief Description of Withdrawn Project: Letter of Intent entitlement grant shortfall due to implementation of PFC.

Determination: This project was withdrawn by the public agency in its letter dated May 18, 2001. Therefore, the FAA did not rule on this project in this decision.

Decision Date: May 31, 2001.

For Further Information Contact: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: City of Atlanta, Department of Aviation, Atlanta, Georgia.

Application Number: 00–02–U–00–ATL.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue To Be Used in This Decision: $540,696,966.

Charge Effective Date: May 1, 1997.

Estimated Charge Expiration Date: May 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use at a $3.00 PFC Level: Design and construct roadway improvements.

Brief Description of Project Approved for Use at a $4.50 PFC Level: Design and construction of eastside terminal.

Decision Date: June 6, 2001.

For Further Information Contact: Terry Washington, Atlanta Airports District Office, (404) 305–7143.

Public Agency: City and Bureau of Juneau, Juneau, Alaska.

Application Number: 01–04–U–00–JNU.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used in This Decision: $32,298.

Charge Effective Date: October 1, 1998.

Estimated Charge Expiration Date: August 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: East end general aviation area development.

Decision Date: June 8, 2001.

For Further Information Contact: Debbie Roth, Alaska Region Airports Division, (907) 271–5443.

Public Agency: Central West Virginia Regional Airport Authority, Charleston, West Virginia.

Application Number: 01–07–C–00–CRW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,306,248.

Earliest Charge Effective Date: August 1, 2002.

Estimated Charge Expiration Date: September 1, 2003.

Classes of Air Carriers Not Required to Collected PFC's: (1) Part 121 charters for hire to the general public; (2) Part 135 charters for hire to the general public; (3) non-signatory and non-scheduled air carriers operating at the airport.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Yeager Airport.

Brief Description of Projects Approved for Collection and Use:

Purchase and install security camera.
Rehabilitate terminal—restrooms.
Expand main terminal apron.
Emergency generator.
Main apron rehabilitation.

Brief Description of Projects Approved for Collection:

Purchase and install security paging system.
Runway safety area enhancement—taxiway relocation.

Decision Date: June 15, 2001.

For Further Information Contact: Kenneth Kroll, Eastern Region Airports Division, (718) 553–3357.

Public Agency: County of Eagle, Eagle, Colorado.

Application Number: 01–05–C–00–EGE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $8,132,120.

Earliest Charge Effective Date: June 1, 2009.

Estimated Charge Expiration Date: September 1, 2018.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Project Approved for Collection and Use: Commercial terminal building expansion.

Decision Date: June 18, 2001.

For Further Information Contact: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: City of Pocatello, Idaho.

Application Number: 01–03–C–00–PIH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $549,967.

Earliest Charge Effective Date: October 1, 2001.

Estimated Charge Expiration Date: January 1, 2005.

Class of Air Carriers Not Required To Collect PFC'S: Non-scheduled air taxi/commercial operators utilizing aircraft having a seating capacity of less than 20 passengers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Pocatello Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Security fencing and automated gates.
Snow removal equipment procurement.
Rehabilitation of apron.
Airport signing project.
Terminal apron rehabilitation.
Procurement of aircraft rescue and firefighting vehicle.
Master plan.
Procurement of snow removal equipment.
Main entrance road rehabilitation.
Installation of precision approach path indicators and runway end identifier lights.
Apron rehabilitation.
Snow equipment storage/maintenance building.

Decision Date: June 18, 2001.

For Further Information Contact: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: MBS International Airport Commission, Saginaw, Michigan.

Application Number: 01–04–C–00–MBS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,999,052.

Earliest Charge Effective Date: September 1, 2005.

Estimated Charge Expiration Date: June 1, 2008.

Class of Air Carriers Not Required To Collect PFC'S: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at MBS International Airport.

Brief Description of Projects Approved for Collection and Use: Snow removal equipment procurement, front end loader (unit 2).

Design and expand snow removal equipment building, phase II. Expand airline terminal building, design only. Reimbursement of charges for PFC application preparation. Land acquisition, Draper property. Rehabilitate field lighting, runways and taxiways.

Decision Date: June 22, 2001.

For Further Information Contact: Jon Gilbert, Detroit Airports District Office, (734) 487–7281.

Public Agency: American Samoa Government Department of Port Administration, Pago Pago, American Samoa.

Application Number: 01–02–C–00–PPG.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $765,000.

Earliest Charge Effective Date: September 1, 2001.

Estimated Charge Expiration Date: June 1, 2003.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Project Approved for Collection and Use: Terminal improvements.

Decision Date: June 27, 2001.

For Further Information Contact: Steven Wong, Honolulu Airports District Office, (808) 541–1225.

Public Agency: City of Modesto, California.

Application Number: 01–06–C–00–MOD.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $124,180.

Earliest Charge Effective Date: September 1, 2001.

Estimated Charge Expiration Date: September 2, 2003.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

General aviation and terminal security lights.

Runway sweeper and equipment shelter.

General aviation and terminal service road seal.

Air carrier and transient aircraft apron expansion and reconstruction.

Airport master plan and environmental impact report.

Decision Date: June 27, 2001.

For Further Information Contact: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: Little Rock National Airport, Little Rock, Arkansas.

Application Number: 01–03–C–00–LIT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $15,986,750.

Earliest Charge Effective Date: September 1, 2001.

Estimated Charge Expiration Date: May 1, 2004.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Little Rock National Airport.

Brief Description of Project Approved for Collection: Runway 4R/22L extension and Roosevelt Road and Grundfest Drive relocations.

Brief Description of Projects Approved for Collection and Use:

Acquire snow broom.

Acquire rapid response vehicle.

Terminal ramp expansion.

Runway 4L/22R arresting system, southwest perimeter road, and relocate taxiway A.

Expand cargo ramp and runway 22R holding apron.

Terminal building renovation.

PFC development.

Brief Description of Withdrawn Project: North and east areas property acquisition.

Determination: This project was withdrawn by the public agency in its letter dated June 27, 2001. Therefore, the FAA did not rule on this project in this decision.

Decision Date: June 29, 2001.

For Further Information Contact: Dean A. McMath, Southwest Region Airports Division, (817) 222–5617.

Public Agency: Valdosta-Lowndes County Airport Authority, Valdosta, Georgia.

Application Number: 01–05–C–00–VLD.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $315,826.

Earliest Charge Effective Date: September 1, 2001.

Estimated Charge Expiration Date: November 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: (1)Nonscheduled/on-demand air carriers filing FAA Form 1800–31; (2) nonscheduled large certificated route air carriers filing Research and Special Programs Administration Form T–100.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Valdosta Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Master plan.

Install Part 139 signage.

Install lighting on airport apron.

Paint runway marking.

Construct aircraft parking apron for new commercial air terminal.

Construct partial parallel taxiway and taxiway stub.

Rehabilitate runway 17/35 lighting.

Install sliding security gates with key pads.

Approach zone obstruction study.

Repair drainage problems.

Runway hold bar marking.

Purchase of passenger lift device.

Tree removal around automated surface observation system.

Preparation of PFC application.

Runway protection zone obstruction clearing.

Overlay taxiway C.

Overlay taxiway F.

Replace rotating beacon.

Replace visual approach slope indicator (VASI) with precision approach path indicator (PAPI) and install runway end identifier lights on runway 4/22.

Replace VASI with PAPI on runway 17 and install PAPI on runway 35.

Expand terminal parking lot.

Construct perimeter road around north end of runway 17/35.

Rehabilitate taxiway A.

Rehabilitate general aviation apron.

Brief Description of Withdrawn Projects:

Obtain avigation or fee simple easement off the ends of runway 4/22.

Non-precision approach runway marking for runway 4/22.
Expand commuter apron.
Environmental assessment for runway 17 extension.
Construct T-hangar taxilane.
Extend taxiway M.

Determination: These projects were withdrawn by the public agency in its letter dated June 19, 2001. Therefore, the FAA did not rule on these projects in this decision.

Decision Date: June 29, 2001.

For Further Information Contact: Rusty Nealis, Atlanta Airports District Office, (404) 305–7142.

Amendments to PFC Approvals

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date.
99–01–C–01–AGS, Augusta, GA*	05/01/01	$29,169,803	$28,835,139	09/01/26	07/01/20
97–02–C–02–YNG, Youngstown, OH	05/30/01	384,078	440,178	07/01/02	02/01/02
94–02–C–04–DAY, Dayton, OH*	06/07/01	45,742,740	26,754,756	01/01/10	07/01/03
94–01–C–01–LNS, Lancaster, PA	06/07/01	1,750,800	1,483,000	02/01/15	02/01/09
96–01–I–02–ENV, Wendover, UT	06/07/01	6,807,996	142,300	12/01/32	10/01/99
96–02–U–01–ENV, Wendover, UT	06/07/01	NA	NA	12/01/32	10/01/99
98–03–C–03–CPR, Casper, WY	06/08/01	614,857	274,412	10/01/01	04/01/01
93–01–C–05–RHI, Rhinelander, WI	06/15/01	193,301	210,219	01/01/01	10/01/96
96–03–C–01–RHI, Rhinelander, WI	06/18/01	332,000	363,927	10/01/00	07/01/00
98–05–C–02–RHI, Rhinelander, WI	06/19/01	36,500	35,701	07/01/00	10/01/00
95–01–C–01–LIT, Little Rock, AR	06/20/01	32,765,055	25,164,000	06/01/03	09/01/01
96–02–U–01–LIT, Little Rock, AR	06/20/01	NA	NA	06/01/03	09/01/01
00–06–C–01–RHI, Rhinelander, WI*	06/20/01	335,056	445,303	02/01/03	01/01/04
96–01–C–01–BRL, Burlington, IA*	06/22/01	460,000	521,299	04/01/03	02/01/06
00–02–C–01–MFE, McAllen, TX	06/26/01	2,424,500	2,032,942	09/01/04	06/01/04
97–05–C–01–CMX, Hancock, MI	06/29/01	71,634	82,379	07/01/99	08/01/01

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Augusta, GA, this change is effective on July 1, 2001. For Burlington, IA, Dayton, OH, and Rhinelander, WI, this change is effective on September 1, 2001.

Issued in Washington, DC, on July 31, 2001.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 01–19645 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number PS–ACE100–2001–03]

Proposed Small Airplane Directorate Policy on Static Strength Substantiation of Composite Airplane Structure

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces a Federal Aviation Administration (FAA) proposed policy on static strength substantiation of composite airplane structure. This notice advises the public, especially manufacturers of normal, utility, and acrobatic category airplanes, and commuter category airplanes used in non-scheduled service and their suppliers, that the FAA intends to adopt a new policy concerning static strength substantiation. This notice is necessary to advise the public of this FAA policy and give all interested persons an opportunity to present their views on it.

DATES: Send your comments by September 6, 2001.

Discussion: On July 30, 2001, the Small Airplane Directorate issued a proposed policy statement. We are making this proposed policy statement available to the public and all manufacturers for their comments.

ADDRESSES: Copies of the proposed policy statement, PS–ACE100–2001–03, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The proposed policy statement is also available on the Internet at the following address *http://www.faa.gov/avr/air/ace/acehome.htm.* Send all comments on this policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Lester Cheng, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (316) 946–4111; fax: 816–329–4090; e-mail: lester.cheng@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite your comments on this policy statement. Send any data or views as you may desire. Identify the Policy Statement Number PS–ACE100–2001–03 on your comments, and send two copies of your comments to the above address. The Small Airplane Directorate will consider all communications received on or before the closing date for comments. We may change the proposal contained in this notice because of the comments received.

You may also send comments to the following Internet address: lester.cheng@faa.gov. Comments sent by fax or the Internet must contain ''Comments to proposed policy statement PS–ACE–100–2001–03'' in the subject line. You do not need to send two copies if you fax your comments or send them through the Internet. If you send comments over the Internet as an attached electronic file, format it in either Microsoft Word 97 for Windows or ASCII text. State what specific change you are seeking to the proposed policy memorandum and include justification (for example, reasons or data) for each request.

Issued in Kansas City, Missouri on July 31, 2001.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–19736 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Child Restraint Systems (CRS)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO) pertaining to child restraint systems. The proposed TSO prescribes the minimum performance standards (MPS) that CRS must meet to identified with the marking ''TSO–C100b.''

DATES: Comments must be received on or before October 15, 2001.

ADDRESSES: Send all comments on the proposed technical standard order to: Bobbie Smith, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Comments must identify the TSO file number: TSO–C100b.

FOR FURTHER INFORMATION CONTACT: John Petrakis, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9274 or FAX (202) 267–5340.

Comments Invited

Interested persons are invited to comment on this proposed TSO by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed TSO may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. to 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service before issuing the final TSO.

Background

the proposed TSO provides MPS for CRS for use in aircraft to restrain infants and small children during all phases of flight.

On February 12, 1997, the White House Commission on Aviation Safety and Security (the Commission) issued a final report to President Clinton that included a recommendation on CRS use on aircraft during flight. This report stated in pertinent part that ''[t]he FAA should * * * require that all occupants be restrained during takeoff, landing, and turbulent conditions, and that all infants and small children * * * be restrained in an appropriate child restraint system, such as child safety seats, appropriate to their height and weight.''

On February 18, 1998, the FAA published an Advance Notice of Proposed Rulemaking (ANPRM), in part, to respond to the Commission's recommendation. the notice requested public comment on issues related to the use of CRS in aircraft in order to ascertain the best regulatory approach to ensure the safety of children who are passengers in aircraft.

The FAA is developing a Notice of Proposed Rulemaking (NPRM) on the use of CRS on aircraft. We are considering whether to mandate the use of approved CRS on aircraft. This proposed TSO is essential to establishing a new and improved alternate means of approval for CRS used on aircraft.

Currently, Title 14 of the Code of Federal Regulations (14 CFR) §§ 91.107, 121.311, 125.211, and 135.128 set forth operational requirements on how CRS may be used on board aircraft. Under these regulations, today, a child under 2 years old may be held in an adult's lap throughout the flight, or parents may opt to use an approved CRS for children of this age group. If parents want to use a CRS, a separate passenger seat is required. If parents bought a ticket for the child, airlines are required to accommodate the use of approved CRS.

Performance and labeling requirements for CRS sold for use in the United States for both aircraft and automobiles are in 49 CFR 571.213, Federal Motor Vehicle Safety Standard, Standard No. 213 (FMVSS 213), Child restraint system. Certain CRS's that meet the requirements of FMVSS 213 for automobiles, such as booster seats and vest- and harness-type child restraint devices are prohibited for aircraft. Specifically, on June 4, 1996, the FAA, with the National Highway Traffic Safety Administration (NHTSA), withdrew its approval for using booster seats and vest- and harness-type child restraint devices during takeoff, landing, and ground movement but not in-flight. At the same time, the FAA emphasized its existing prohibition against the use, in all aircraft, of lap-held CRS (including belly belts).

We propose that TSO C100b, Child Restraint Systems (CRS) is suitable for any aircraft application. The proposed TSO references the Society of Automotive Engineers (SAE) Aerospace Standard (AS) 5276/1, ''Performance Standard for Child Restraint Systems in Transport Category Airplanes.''

How To Obtain Copies

You can get a copy of the proposed TSO–C100b via FAA Internet website @ www.faa.gov/avr/air/airhome.htm or by request from the office listed above under ''For Further Information Contact.''

You may buy copies of SAE AS 5276/1, AS 8049A, ARP 4466 and RP J211 from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies also can be obtained through the SAE Internet website @ *www.sae.org.*

You may buy copies of 14 CFR part 21, Subpart O, 14 CFR Part 25, and 49 CFR parts 571 and 572 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325. Copies also can be obtained from the Government Printing Office (GPO), electronic CFR Internet website @ *www.access.gpo.gov/ecfr/.*

You may get the following publications free of charge: Advisory Circular (AC) 20–110, ''Index of Aviation Technical Standard Order,'' AC20–36, ''Index of Articles Certified under the Technical Standard Order'' System,'' AC91–62, ''use of Child Seats in Aircraft,'' DOT/FAA/AR–00/12, Aircraft Materials Fire Test Handbook'' and TSO–C22g, ''Safety Belts'' may be obtained from the U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East business Center, 3341 Q 75th Avenue, Landover, MD 20785, telephone (301) 322–44779 or FAX (301) 386–5394. Copies also may be obtained from the FAA Internet website @ *www.faa.gov/avr/air/airhome.htm* and select from the ''Available Information'' drop down list.

Issued in Washington, DC, on August 1, 2001.

David Hempe,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 01–19739 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10294]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GOOD COMPANY.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905, February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 6, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10294. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) *Name of vessel and owner for which waiver is requested.* Name of vessel: Good Company. Owner: Joseph F. Garofano, Jr.

(2) *Size, capacity and tonnage of vessel.* According to the applicant: ''Size: 35.9 feet long 13.3 feet wide; Weight 7 gross tons 5 net tons pursuant to 46 U.S.C. 14502; Capacity: 6 plus 2 crew.''

(3) *Intended use for vessel, including geographic region of intended operation and trade.* According to the applicant: ''Intended Use: Private Fishing Charters; Geographic Region: Fire Island Inlet, NY to Newport RI up to 100 miles south.''

(4) *Date and Place of construction and (if applicable) rebuilding.* Date of construction: 1988. Place of construction: Taipei, Taiwan, Republic of China.

(5) *A statement on the impact this waiver will have on other commercial passenger vessel operators.* According to the applicant: ''This operation will have no impact on their operations as it will be a part time operation and cannot possibly affect any other operation in the area.''

(6) *A statement on the impact this waiver will have on U.S. shipyards.* According to the applicant: ''Since the vessel was built in 1988 there will be no impact on US Shipyards. This is a small operation.''

Dated: August 1, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–19666 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10295]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SAFARI ESCAPE.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 6, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10295. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime

Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) *Name of vessel and owner for which waiver is requested.* Name of vessel: SAFARI ESCAPE. Owner: Safari Escape Charters, LLC.

(2) *Size, capacity and tonnage of vessel.* According to the applicant: ''Registered length: 89.2′; Registered beam: 20.5′; Registered depth: 11.2′; Gross ITC tonnage: 151; Net ITC tonnage: 45.''

(3) *Intended use for vessel, including geographic region of intended operation and trade.* According to the applicant: ''The M/V Safari Escape caters to a specific demographic profile in the overall cruise market. It is providing a luxury yacht option with regularly scheduled departures via stateroom or charter.'' ''The geographic area of operation will be the Alaska Inside Passage, Southeast Alaska, the pacific Northwest area including Puget Sound and the San Juan Islands of Washington State.''

(4) *Date and Place of construction and (if applicable) rebuilding.* Date of construction: 1983. Place of construction: Brisbane, Australia

(5) *A statement on the impact this waiver will have on other commercial passenger vessel operators.* According to the applicant: ''The M/V Safari Escape operates within a niche market. In fact, it occupies a position in the luxury yacht ''sub-niche'' within the small ship arena * * *. There are seven other small ship companies operating in Alaska's Inside Passage, with a combined total of 20 vessels * * *.

A few 12-passenger overnight boats serve Alaska's Inside Passage, but this market could easily sustain more vessels of this type and size. The charter market is dramatically under-served.

Boats that are known to operate in this geographic region in this size category (in addition to The Boat Co.12-passenger ''Observer'' * * *) are the Alaska Song, Catalyst, Heron and the Midnight Sun. * * * The M/V Safari Escape would have little or no impact on the other small vessels in this market since they are selling to different groups of clientele or are so few in number.

The *Pacific Northwest/British Columbia region* with pertinent cruises originating and terminating in Seattle receives sporadic cruise ship activity. Spring and fall positioning cruises en route to and from Alaska are the staple of most operators. The only consistent operator of round trip Seattle cruises into Pacific Northwest is Cruise West with one boat carrying about 80 passengers. The luxury overnight yacht, M/V Safari Escape, would not pose an economic threat to this or other small charter boat operators as it would be the only luxury yacht home ported in Seattle, marketing regularly-scheduled stateroom and charter departures.

The overall cruise market is growing each year at a pace of about 9% and * * *. The M/V SARARI ESCAPE provides some minor relief to this market demand. Granting coastwise privileges as this overnight cruise market continues to surge would not economically disadvantage other boats.''

6) *A statement on the impact this waiver will have on U.S. shipyards.* According to the applicant: ''U.S. Shipyards would not be losing business if coastwise privileges were to be assigned to the M/V Safari Escape. On the contrary, this boat's entry into full coastwise operations in the near future would stimulate market awareness for this specific utilization * * *. The momentum created by the M/V Safari Escape's coastwise operations can generate more contracts with U.S. boat builders to meet future demand.

The M/V Safari Escape is presently undergoing a 1.0 million dollar rebuild in Fort Lauderdale, Florida. This work is being done in anticipation of being granted a coastwise wavier. In summary, U.S. shipyards would stand to gain additional economic benefit, rather then losing any opportunity to build a new vessel(s), if coastwise privileges are approved for the M/V Safari Escape.''

Dated: August 1, 2001.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–19667 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2001–10296]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TIME'S ARROW.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before September 6, 2001.

ADDRESSES: Comments should refer to docket number MARAD–2001–10296. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime

Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) *Name of vessel and owner for which waiver is requested.* Name of vessel: TIME'S ARROW. Owner: Mark and Lettina Heilbron.

(2) *Size, capacity and tonnage of vessel.* According to the applicant: ''17 (Net tons) Pursuant to 46 U.S.C. 14502; Length 36 feet; Beam 19 feet; Draft 3′6″.''

(3) *Intended use for vessel, including geographic region of intended operation and trade.* According to the applicant:

''Sightseeing, Snorkeling, Sport Fishing; Coast wise within the main Hawaiian islands.''

(4) *Date and Place of construction and (if applicable) rebuilding.* Date of construction: 1997. Place of construction: Grouson, France.

(5) *A statement on the impact this waiver will have on other commercial passenger vessel operators.* According to the applicant: ''This waiver will not greatly impact other operators as our operation is much smaller than others, and will not be able to compete with larger operators because of the limited passenger carrying capacity of the vessel. Other operators conducting the same type of operation, operate much larger vessels with carrying capacities of forty to sixty passengers.''

(6) *A statement on the impact this waiver will have on U.S. shipyards.* According to the applicant: ''There will be no impact whatsoever on U.S. Shipyards as this vessel would not be dry docked in those types of facilities.''

Dated: August 1, 2001.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 01–19668 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10258, Notice 1]

NovaBUS, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

NovaBUS, Inc. (NovaBUS) of Roswell, New Mexico, manufactured a number of buses which were equipped with one of two types of optional lamp systems. Both of these lamp systems are wired to flash. Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices, and Associated Equipment,'' requires that all lamps, except those specified, be wired to be steady burning. NovaBUS has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' It has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In FMVSS No. 108, paragraph S5.5.10 requires that, other than turn signal lamps, hazard warning signal lamps, school bus warning lamps, and headlamps and side marker lamps wired to flash for signaling purposes, all other lamps shall be wired to be steady burning.

Between January 1994 and March 2001, Nova produced 742 buses with optional deceleration lamps that flash in response to the level of deceleration of the vehicle. These lamps are amber and are located on the rear center of the bus. Nova also produced 1,819 buses with ''hoodlum'' lamps that flash when a switch is activated by the driver. The purpose of these lamps is to provide an alert to the police or public that a dangerous situation is occurring on the bus and that the driver requires assistance. These lamps are green or amber and are located on the top front of the bus.

Nova supports its application for inconsequential noncompliance by stating the following:

The lights do not pose a safety risk to the bus, passengers, driver, or other vehicles on the roadway. They in no way interfere with the normal operation of the bus. Their size, location, color, and flashing pattern make it impossible to confuse them with stop and turn lights. There are no other green lights on the vehicle. There is a slight chance the amber lens color may be confused with hazard lights. However, this is not a hindrance as the [deceleration] and hazard lights heighten other drivers' awareness of the bus.

These lights were requested by our customers to help attract attention to the buses in the stated situations. Since the requirement that ''all other lamps shall be wired to be steady burning'' applies to NovaBUS as an [original equipment manufacturer] but not to our customers, NovaBus believes these lights would not be changed to be steady burning if a recall process was executed.

NovaBUS no longer offers these options and is now compliant with the applicable FMVSSs.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. *Comment closing date:* September 6, 2001.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 1, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–19744 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzane Hedgepeth, Director, Office Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from application.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modifications request

Issued in Washington, DC, on August 1, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

New Exemption Applications

Application No.	Applicant	Reason for delay	Estimated date of completion
11862–N	The BOC Group, Murray Hill, NJ	4	08/31/2001
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	08/31/2001
12158–N	Hickson Corporation, Conley, GA	4	08/31/2001
12248–N	Ciba Specialty Chemicals Corp., High Point, NC	1, 4	09/28/2001
12290–N	Savage Industries, Inc., Pottstown, PA	4	09/28/2001
12339–N	BOC Gases, Murray Hill, NJ	4	09/28/2001
12353–N	Monson Companies, South Portland, ME	4	09/28/2001
12355–N	Union Tank Car Company, East Chicago, IN	4	09/28/2001
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	09/28/2001
12406–N	Occidental Chemical Corporation, Dallas, TX	4	09/28/2001
12412–N	Great Western Chemical Company, Portland, OR	4	09/28/2001
12434–N	Salmon Air, Salmon, ID	4	09/28/2001
12440–N	Luxfer, Inc., Riverside, CA	4	09/28/2001
12454–N	Ethyl Corp., Richmond, VA	4	09/28/2001
12456–N	Baker Hughes, Houston, TX	4	09/28/2001
12497–N	Henderson International Technologies, Inc., Richardson, TX	4	10/31/2001
12566–N	General Atomics, San Diego, CA	4	10/31/2001
12571–N	Air Products & Chemicals, Inc., Allentown, PA	4	10/31/2001
12574–N	Weldship Corporation, Bethlehem, PA	4	10/31/2001
12586–N	Wilsonart International Inc., Temple, TX	4	10/31/2001
12587–N	Georgia-Pacific Corp., Crossett, AR	4	10/31/2001
12588–N	El Dorado Chemical Co., Creve Ceour, MO	4	10/31/2001
12591–N	SGL Carbon, LLC, Morgantown, NC	1	10/31/2001
12592–N	Matson Navigation Co., San Francisco, CA	4	10/31/2001
12623–N	General Chemical Corporation, Parsippany, NJ	4	10/31/2001
12625–N	Smart-Hose Technologies, Inc., Philadelphia, PA	4	11/30/2001
12629–N	Western Sales & Testing of Amarillo, Inc., Amarillo, TX	4	11/30/2001
12630–N	Chemetall GmbH Gesellschaft, Langelsheim, DE	4	11/30/2001
12634–N	Norman International, Los Angeles, CA	4	11/30/2001
12644–N	Global Composites International, Inc., San Dimas, CA	4	11/30/2001
12646–N	Consani Engineering, Elsie River, SA	4	10/31/2001
12728–N	Eagle-Picher Technologies, LLC, Joplin, MO	4	11/30/2001
12768–N	BOC Gases, Murray Hill, NJ	4	11/30/2001

Modifications to Exemptions

Application No.	Applicant	Reason for delay	Estimated date of completion
7060–M	Federal Express, Memphis, TN	4	08/31/2001
8086–M	The Boeing Co. (Mil Aircraft & Missiles Sys Group), Seattle, WA	4	08/31/2001
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	08/31/2001
8554–M	Orica USA Inc., Englewood, CO	4	08/31/2001
8757–M	YZ Systems, Inc., Conroe, TX	4	09/28/2001
10695–M	3M Company, St. Paul, MN	4	09/28/2001
11202–M	Newport News Shipbuilding & Dry Dock Co., Newport News, VA	4	09/28/2001
11244–M	Aerospace Design & Development, Inc., Longmont, CO	4	08/31/2001
11316–M	TRW Automotive, Queen Creek, AZ	4	08/31/2001
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	08/31/2001
11759–M	Honeywell International, Inc., Morristown, NJ	4	09/28/2001
11769–M	Great Western Chemical Company, Portland, OR	4	08/31/2001
11769–M	Great Western Chemical Company, Portland, OR	4	09/28/2001
11769–M	Hydrite Chemical Company, Brookfield, WI	4	09/28/2001
11798–M	Anderson Development Company, Adrian, MI	4	08/31/2001

Application No.	Applicant	Reason for delay	Estimated date of completion
11911–M	Transfer Flow, Inc., Chico, CA	4	08/31/2001
12122–M	Atlantic Research Corp., Automotive Products Group, Knowville, TN	4	09/28/2001
12184–M	Weldship Corporation, Bethlehem, PA	4	09/28/2001
12266–M	Toyota Motor Sales, U.S.A., Inc., Torrance, CA	4	09/28/2001
12561–M	Rodia, Incorporated, Cranbury, NJ	4	09/28/2001
12581–M	Nat'l Aero & Space Admn (NASA), Goddard Space Ctr., Greenbelt, MD	4	08/31/2001

[FR Doc. 01–19743 Filed 8–6–01; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 5500, 5500–C/R, and Schedules (1998 Version)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Forms 5500, 5500–C–R, and Schedules, Annual Return/Report of Employee Benefit Plan (1998 Version).

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Annual Return/Report of Employee Benefit Plan (1998 Version).

OMB Number: 1545–0710.

Form Number: 5500,5500–C/R, and Schedules.

Abstract: Forms 5500 and 5500–C/R are annual information returns filed by employee benefit plans. The IRS uses this information to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Current Actions: The estimated volume of ''prior year'' returns (1998 and before) is lower for the upcoming precessing year (August 1, 2001 through July 31, 2002). This is due to the fact that only delinquent filers would have need for the 1998 (or prior) year versions of these forms.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 775,726.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 2, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–19789 Filed 8–6–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–44–94]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–44–94 (TD 8690), Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions (§§ 1.170A–13(f) and 1.6115–1).

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.

OMB Number: 1545–1464.

Regulation Project Number: IA–44–94.

Abstract: This regulation provides guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of $250 or more, and the disclosure requirements for quid pro quo contributions in excess of $75. The regulations affect donee organizations described in Internal Revenue code section 170(c) and individuals and entities that make payments to these organizations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 1,750,000.

Estimated Time Per Respondent: 1 hour, 8 minutes.

Estimated Total Annual Burden Hours: 1,975,000.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 31, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–19790 Filed 8–6–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209545–92]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking REG–209545–92, Earnings and Profits of Foreign Corporations (§ 1.964–1(c)(1)(v)).

DATES: Written comments should be received on or before October 9, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Earnings and Profits of Foreign Corporations.

OMB Number: 1545–1318.

Regulation Project Number: REG–209545–92 (formerly INTL–18–92).

Abstract: This regulation modifies the computation of earnings and profits of foreign corporations by allowing them to account for inventory costs using capitalization methods used for financial accounting purposes rather than the uniform capitalization rules required by Internal Revenue Code section 263A. The regulation also permits reliance on financial accounting conventions in computing depreciation for foreign corporations deriving less than 20 percent of gross income from U.S. sources and maintaining assets with financial book bases not materially different from tax bases. Use of simplified rules may result in an accounting method change which would ordinarily require the filing of Form 3115, Application for Change in Accounting Method. However, the regulation waives any Form 3115 filing requirements if certain conditions are met.

Current Actions: There are no changes to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden for the collection of information is reflected in the burden for Form 3115, Application for Change in Accounting Method.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 31, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–19791 Filed 8–6–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0474]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to exempt a veteran from paying funding fee.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 9, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or *e-mail irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0474'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501 '' 3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: A Computer Generated Funding Fee Receipt (Formerly VA Forms 26–8986 and 26–8986–1).

OMB Control Number: 2900–0474.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: A funding fee must be paid to VA before a loan can be guaranteed. The funding fee is payable on all VA guaranteed loans, i.e., Assumptions, Manufactured Housing, Refinances, and Real Estate purchase and construction loans. The funding fee is not required from veterans in receipt of compensation for service connected disability or veterans who, but for receipt of retirement pay, would be entitled to receive compensation for their service connected disability. Loans made to the unmarried surviving spouses of veterans (who have died in service or from service connected disability) are exempted from payment of the funding fee, regardless of whether the spouse has his/her own eligibility, provided that the spouse has not used his/her eligibility to obtain a VA guaranteed loan. For a loan to be eligible for guaranty, Lender's must provide a copy of the Funding Fee Receipt or evidence the veteran is exempt from the requirement of paying the funding fee. The receipt is computer generated and mailed to the lender ID number address that was entered into a Automated Clearing House service.

Affected Public: Business or other for -profit, and Individuals or households.

Estimated Annual Burden: 6,667 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 200,000.

Dated: July 25, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–19797 Filed 8–6–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0041]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information to complete the compliance inspection report for purchase or construction of residential property.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 9, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0041'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501 '' 3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Compliance Inspection Report, VA Form 26–1839.

OMB Control Number: 2900–0041.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by fee compliance inspectors to report acceptability of residential construction and conformity with standards prescribed for new housing proposed as security for loans guaranty. VA uses the information to determine whether completion of all onsite and offsite improvements is completed in accordance with plans and specifications used in the appraisal of the property.

Affected Public: Individuals or households.

Estimated Annual Burden: 1 hour.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 31,500

Dated: July 23, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–19798 Filed 8–6–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0045]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the reasonable value of properties proposed as security for guaranteed or direct home loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 9, 2001.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0045'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: VA Request for Determination of Reasonable Value (Real Estate), VA Form 26–1805.

OMB Control Number: 2900–0045.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1805 is used to collect data necessary for VA compliance with the requirements of Title 38, U.S.C., 3710 (b)(4), (5), and (6). These requirements prohibit VA guaranty or making of any loan unless the suitability of the security property for dwelling purposes is determined, the loan amount does not exceed the reasonable value, and if the loan is for purposes of alteration, repair, or improvements, the work substantially improves the basic livability of the property. The data supplied by persons and firms completing VA Form 26–1805 is used by VA personnel to identify and locate properties for appraisal and to make assignments to appraisers. VA is required to notify potential veteran-purchasers of such properties of the VA-established reasonable value. VA will also use VA Form 26–1843, Certificate of Reasonable Value, (included in the VA Form 1805 Package) as a notice to requesters of the reasonable (appraised) value or an authorized lender will issue a notice of value in connection with the Lender Appraisal Processing Program.

Affected Public: Individuals or households.

Estimated Annual Burden: 60,000 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Dated: July 23, 2001.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–19799 Filed 8–6–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0539]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 6, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0539.''

SUPPLEMENTARY INFORMATION:

Title: Application for Supplemental Service Disabled Veterans (RH) Life

Insurance, VA Forms 29–0188, 29–0189 and 29–0190.

OMB Control Number: 2900–0539.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by veterans to apply for Supplemental Service Disabled Veterans Insurance. The information is used by VA to establish eligibility for insurance coverage under the Supplemental Service Disabled Veterans Insurance program.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 26, 2001, at page 21043.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,333 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0539'' in any correspondence.

Dated: July 23, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–19794 Filed 8–6–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0495]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 6, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0495.''

SUPPLEMENTARY INFORMATION:

Titles: Marital Status Questionnaire, VA Form 21–0537.

OMB Control Number: 2900–0495.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 21–0537 is used to verify the marital status of a surviving spouse receiving dependency and indemnity compensation benefits (DIC). If a surviving spouse remarries, he or she is no longer entitled to DIC.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 22, 2001 at pages 33607–33608.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,875 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 34,500.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0495'' in any correspondence.

Dated: July 23, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–19795 Filed 8–6–01; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0383]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 6, 2001.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* ''Please refer to ''OMB Control No. 2900–0383.''

SUPPLEMENTARY INFORMATION: *Title:* Application for Educational Assistance Test Program Benefits (Section 901, PL 96–342), VA Form 22–8889.

OMB Control Number: 2900–0383.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and servicepersons pursuing approved programs of education under the Educational Assistance Test Program (EATP) use VA Form 22–8889 to apply for educational assistance. The information collected is used to determine eligibility for and entitlement to EATP benefits.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 7, 2001, at page 23084.

Affected Public: Individuals or households.

Estimated Annual Burden: 6 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 12.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0383'' in any correspondence.

Dated: July 23, 2001.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 01–19796 Filed 8–6–01; 8:45 am]

BILLING CODE 8320–01–U

Federal Register

Tuesday,
August 7, 2001

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1069–F]

RIN 0938–AJ55

Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes a prospective payment system for Medicare payment of inpatient hospital services provided by a rehabilitation hospital or by a rehabilitation unit of a hospital. It implements section 1886(j) of the Social Security Act (the Act), as added by section 4421 of the Balanced Budget Act of 1997 and as amended by section 125 of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000. Section 1886(j) of the Act authorizes the implementation of a prospective payment system for inpatient rehabilitation hospitals and rehabilitation units of hospitals. This section also authorizes the Secretary to require rehabilitation hospitals and rehabilitation units to submit data as the Secretary deems necessary to establish and administer the prospective payment system. The prospective payment system described in this final rule replaces the reasonable cost-based payment system under which rehabilitation hospitals and rehabilitation units of hospitals are paid under Medicare.

DATES: *Effective Date:* These regulations are effective on January 1, 2002.

Applicability Date: The provisions of this final rule are effective for cost reporting periods beginning on or after January 1, 2002.

FOR FURTHER INFORMATION CONTACT:

Robert Kuhl, (410) 786–4597 (General information, the case-mix classification system, and transition payments).

Pete Diaz, (410) 786–1235 (Requirements for completing the patient assessment instrument, and other assessment instrument issues).

Nora Hoban, (410) 786–0675 (Payment system, calculation of the payment rates, update factors, relative weights/case-mix index, wage index, transfer policies, and payment adjustments).

SUPPLEMENTARY INFORMATION:

Availability of Copies, and Electronic Access

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 $9. 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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- ADL Activities of Daily Living
- BBA Balanced Budget Act of 1997, Public Law 105–33
- BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Public Law 106–113
- BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Public Law 106–554

CMGs Case-mix groups
CMI Case-mix index
CMS Centers for Medicare & Medicaid Services (formerly the Health Care Financing Administration)
COS Clinical Outcomes Systems
DRGs Diagnosis-related groups
FIM Functional independence measure
FRG Function-related group
FY Federal fiscal year
HCFA Health Care Financing Administration (now the Centers for Medicare & Medicaid Services)
HIPAA Health Insurance Portability and Accountability Act of 1996, Public Law 104–191
HHAs Home health agencies
HMO Health maintenance organization
IRFs Inpatient rehabilitation facilities
MDCN Medicare Data Collection Network
MDS–PAC Minimum Data Set for Post-Acute Care
MedPAC Medicare Payment Advisory Commission
MedPAR Medicare Provider Analysis and Review File Tool
OASIS Outcome and Assessment Information Set
ProPAC Prospective Payment Assessment Commission
RAPs Resident assessment protocols
RICs Rehabilitation impairment categories
SNFs Skilled nursing facilities
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248
UDSmr Uniform Data Set for medical rehabilitation

I. Background

A. General

On November 3, 2000, we published a proposed rule in the **Federal Register** (65 FR 66304, HCFA–1069–P) to announce, and solicit public comments on, our proposed plans to establish a prospective payment system under Medicare for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation unit of a hospital. (The proposed rule and all other important information regarding the proposed IRF prospective payment system is contained on our website at www.hcfa.gov/medicare/irfpps.htm.) Section 1886(j) of the Social Security Act (the Act), as added by section 4421 of the Balanced Budget Act of 1997 (BBA)(Public Law 105–33) and as amended by section 125 of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (BBRA) (Public Law 106–113) and section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Public Law 106–554), authorizes the implementation of such a prospective payment system. Below we provide a history of Medicare payments for inpatient rehabilitation services and a discussion of the legislative changes that have affected these payments.

When the Medicare statute was originally enacted in 1965, Medicare payment for hospital inpatient services was based on the reasonable costs incurred in furnishing services to Medicare beneficiaries. The statute was later amended by section 101(a) of the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97–248) to limit payment by placing a limit on allowable costs per discharge. Section 601 of the Social Security Amendments of 1983 (Public Law 98–21) added a new section 1886(d) to the Act that replaced the reasonable cost-based payment system for most hospital inpatient services. Section 1886(d) of the Act provides for a prospective payment system for the operating costs of hospital inpatient stays effective with hospital cost reporting periods beginning on or after October 1, 1983.

Although most hospital inpatient services became subject to a prospective payment system, certain specialty hospitals were excluded from that system. Inpatient rehabilitation hospitals and distinct part rehabilitation units in hospitals were among the excluded facilities. We refer to these inpatient rehabilitation hospitals and units as ''inpatient rehabilitation facilities'' or ''IRFs'' throughout this rule.

Subsequent to the implementation of the hospital inpatient prospective payment system, both the number of excluded IRFs, particularly distinct part units, and Medicare payments to these facilities grew rapidly. In order to control escalating costs, the Congress, through enactment of section 4421 of the BBA, section 125 of the BBRA, and section 305 of the BIPA, provided for the implementation of a prospective payment system for IRFs. Section 4421 of the BBA amended the Act by adding section 1886(j), which authorizes the implementation of a prospective payment system for inpatient rehabilitation services. Section 125 of the BBRA amended section 1886(j) of the Act (as added by the BBA) to require the Secretary to use the discharge as the payment unit for inpatient rehabilitation services under the prospective payment system and to establish classes of patient discharges by functional-related groups. Section 305 of the BIPA further amended section 1886(j) of the Act to allow rehabilitation facilities to elect to be paid the full Federal prospective payment rather than the blended payments otherwise specified in the Act. This final rule implements the Medicare prospective payment system for IRFs, as authorized by section 1886(j) of the Act, as amended.

The statute provides for the prospective payment system for IRFs to be implemented for cost reporting periods beginning on or after October 1, 2000. However, because of the extensive changes required by the statute to change the payment systems for IRFs as well as the demands of simultaneously implementing new prospective payment systems for outpatient hospital and home health services, we determined, in the proposed rule, that it was not feasible to implement the IRF prospective payment system as of October 1, 2000. The creation of each new payment system or modification to an existing payment system requires an extraordinary amount of lead-time to develop and implement the necessary changes to our existing computerized claims processing systems. In addition, it requires additional time after implementation to ensure that these complex changes are properly administered. Therefore, in the November 3, 2000 proposed rule, we indicated our belief that the earliest feasible date to implement the IRF prospective payment system was for cost reporting periods beginning on or after April 1, 2001.

We have evaluated the changes that will be necessary in our various systems for the IRF prospective payment system in order to accommodate suggestions made in the comments (such as developing and administering a revised patient assessment instrument described in section IV. of this preamble) along with changes to other Medicare payment systems required by the BBA, the BBRA, and the BIPA. After an extensive analysis of the changes required to both the providers' and our systems, we have now determined that the earliest feasible date to implement the IRF prospective payment system in this final rule is for cost reporting periods beginning on or after January 1, 2002. We believe that this is the earliest feasible date given the scope and magnitude of the implementation and administrative requirements, including provider training, associated with the IRF prospective payment system and other mandated payment systems.

B. Summary of the Statutory Provisions Governing the IRF Prospective Payment System

Section 4421(a) of the BBA amended the Act by adding a new section 1886(j) to the Act that provides for the implementation of a Medicare prospective payment system for inpatient hospital rehabilitation services furnished in all IRFs. Under the

prospective payment system, IRFs will be paid based on predetermined amounts. These prospective payments will encompass the inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IRF prospective payment system. Covered rehabilitation services include services for which benefits are provided under Part A (the Hospital Insurance Program) of the Medicare program.

Section 1886(j)(1)(A) of the Act provides that, notwithstanding section 1814(b) of the Act and subject to the provisions of section 1813 of the Act regarding beneficiary deductibles and coinsurance responsibility, the amount of payment for inpatient rehabilitation hospital services equals an amount determined under section 1886(j) of the Act. Sections 1886(j)(1)(A)(i) and (j)(1)(A)(ii) of the Act, as in effect prior to the enactment of sections 305(b)(1)(A), (B), and (C) of the BIPA, provide for a transition period covering cost reporting periods that begin during FYs 2001 and 2002 under the prospective payment system. During this transition period, IRFs would receive a payment rate comprising a blend of the ''TEFRA percentage'' of the amount that would have been paid under Part A with respect to those costs if the prospective payment system had not been implemented, and the ''prospective payment percentage'' of payments using the IRF prospective payment system rate. The applicable transition percentages are described in section 1886(j)(1)(C) of the Act. Sections 305(b)(1)(A) and (C) of the BIPA amended section 1886(j)(1)(A) and added a new subparagraph (F) to section 1886(j)(1) of the Act, respectively, to allow an IRF to elect to be paid the full Federal prospective payment rather than a payment determined under the transition period methodology described in detail below. The provisions of section 305(b) of the BIPA take effect as if included in the enactment of the BBA.

Section 1886(j)(1)(B) of the Act, in effect prior to the enactment of section 305 of the BIPA, sets forth a requirement applicable to all IRFs for the payment rates under the fully implemented prospective payment system. Notwithstanding section 1814(b) of the Act and subject to the provisions of section 1813 of the Act regarding beneficiary deductibles and coinsurance responsibility, the amount of the payment for the operating and capital costs of an IRF for a payment unit (as defined in section 1886(j)(1)(D) of the Act) in a cost reporting period beginning on or after October 1, 2002 (FY 2003), will be equal to the per unit payment rate established under the prospective payment system for the fiscal year in which the payment unit of service occurs. Section 305(b)(1)of the BIPA amended section 1886(j)(1)(B) of the Act and added a new subparagraph (F) to section 1886(j)(l) to make the provisions of section 1886(j)(1)(B) of the Act applicable to an IRF that elects, not later than 30 days before its first cost reporting period for which it is subject to the payment methodology of section 1886(j)(1) of the Act, to be paid the full Federal prospective payment rather than a payment determined under the transition period methodology.

Sections 1886(j)(1)(C)(i) and (ii) of the Act set forth the applicable TEFRA and prospective payment rate percentages during the transition period. The two sections specify that, for a cost reporting period beginning on or after October 1, 2000, and before October 1, 2001 (FY 2001), the ''TEFRA percentage'' is 66⅔ percent and the ''prospective payment percentage'' is 33⅓ percent; and on or after October 1, 2001, and before October 1, 2002 (FY 2002), the ''TEFRA percentage'' is 33⅓ percent and the ''prospective payment percentage'' is 66⅔ percent. (As explained earlier in section I.A. of this final rule, we are implementing the IRF prospective payment system for cost reporting periods beginning on or after January 1, 2002. See section VI.H. of this final rule for a discussion of the implementation of the transition period methodology.)

Section 1886(j)(1)(D) of the Act contains the definition of ''payment unit.'' Until the passage of the BBRA, ''payment unit'' was defined by the statute as ''a discharge, day of inpatient hospital services, or other unit of payment defined by the Secretary.'' Section 125(a)(1) of the BBRA amended section 1886(j)(1)(D) of the Act by striking ''day of inpatient hospital services, or other unit of payment defined by the Secretary.'' Accordingly, the payment unit utilized in the IRF prospective payment system will be a discharge.

Section 125(a)(3) of the BBRA amended the Act by adding a new section 1886(j)(1)(E) to the Act that states: ''Nothing in this subsection shall be construed as preventing the Secretary from providing for an adjustment to payments to take into account the early transfer of a patient from a rehabilitation facility to another site of care.'' Our transfer policy is discussed in section VI.B. of this preamble.

Section 305(b)(1)(C) of the BIPA amended the Act by adding section 1886(j)(1)(F) to provide that an IRF may elect, not later than 30 days before its first cost reporting period for which the payment methodology applies to the facility, to have payment made to the facility under the provision of section 1886(j)(1)(B) of the Act (the fully implemented prospective payment system) rather than section 1886(j)(1)(A) of the Act (payment under the transition methodology) for each cost reporting period to which the payment methodology applies.

Section 1886(j)(2)(A) of the Act, as added by section 4421 of the BBA, directed the Secretary to establish case-mix groups (CMGs) based on the factors as the Secretary deems appropriate, which may include impairment, age, related prior hospitalization, comorbidities, and functional capability of the patient. This section also requires the Secretary to establish a method of classifying specific patients in IRFs within these groups. Section 125(a)(2) of the BBRA amended section 1886(j)(2)(A)(i) of the Act to establish classes of patient discharges by functional-related groups. Section 1886(j)(2)(A)(i) of the Act reads: ''classes of patient discharges of rehabilitation facilities by functional-related groups (each * * * referred to as a 'case mix group'), based on impairment, age, comorbidities, and functional capability of the patient and such other factors as the Secretary deems appropriate to improve the explanatory power of functional independence measure-function related groups.''

Section 1886(j)(2)(B) of the Act provides that the Secretary must assign each case-mix group a weighting factor that reflects the relative facility resources used for patients classified within the group as compared to patients classified within other groups.

Section 1886(j)(2)(C)(i) of the Act directs the Secretary to adjust ''from time to time'' the case-mix classifications and weighting factors ''as appropriate to reflect changes in treatment patterns, technology, case-mix, number of payment units for which payment is made * * * and other factors which may affect the relative use of resources.'' Such periodic adjustments must be made in a manner so that changes in aggregate payments are a result of real changes in case-mix, not changes in coding that are unrelated to real changes in case-mix. Section 1886(j)(2)(C)(ii) of the Act provides that, if the Secretary determines that adjustments to the case-mix classifications or weighting factors resulted in (or are likely to result in) a

change in aggregate payments that does not reflect real changes in case-mix, the Secretary must adjust the per payment unit payment rate for subsequent years so as to eliminate the effect of the coding or classification changes.

Section 1886(j)(2)(D) of the Act authorizes the Secretary to require rehabilitation facilities that provide inpatient hospital services to submit such data as the Secretary deems necessary to establish and administer the IRF prospective payment system.

Section 1886(j)(3)(A) of the Act describes how the prospective payment rate will be determined. A prospective payment rate must be determined for each payment unit for which an IRF is entitled to payment under the prospective payment system. The payment rate will be based on the average payment per payment unit for inpatient operating and capital costs of IRFs, using the most recently available data, and adjusted by the following factors:

- Updating the per-payment unit amount to the fiscal year involved by the applicable percentage increase (as defined by section 1886(b)(3)(B)(ii) of the Act) covering the period from the midpoint of the period for such data through the midpoint of FY 2000 and by an increase factor specified by the Secretary for subsequent fiscal years.
- Reducing the rates by a factor that is equal to the proportion of Medicare payments under the prospective payment system as estimated by the Secretary based on prospective payment amounts that are additional payments relating to outlier and related payments.
- Accounting for area wage variations among IRFs.
- Applying the case-mix weighting factors.
- Adjusting for such other factors as the Secretary determines necessary to properly reflect variations in necessary costs of treatment among IRFs.

Until the passage of the BIPA, section 1886(j)(3)(B) of the Act directed the Secretary to establish IRF prospective payment system payment rates during FYs 2001 and 2002 at levels so that, in the Secretary's estimation, total payments under the new system will equal 98 percent of the amount of payments that would have been made for operating and capital costs in those years if the IRF prospective payment system had not been implemented. In establishing these payment amounts, the Secretary must consider the effects of the prospective payment system on the total number of payment units from IRFs and other factors. Section 305(a) of the BIPA amended section 1886(j)(3)(B) of the Act by striking ''98 percent'' and adding ''98 percent for fiscal year 2001 and 100 percent for fiscal year 2002''. The heading for section 305(a) of BIPA is ''Assistance with administrative costs associated with the completion of patient assessment.'' In addition, section 305(b)(2) amended section 1886(j)(3)(B) of the Act to clarify that in establishing the levels of the payment rates under section 1886(j)(3)(B) of the Act, the Secretary is not to account for any payment adjustment for IRFs electing not to be paid under the transition period methodology as allowed under section 1886(j)(1)(F) of the Act as added by section 305(b)(1)(C) of the BIPA. Section VI.E. of this final rule contains a further discussion of the development of payment rates under section 1886(j)(3)(B) of the Act.

Section 1886(j)(3)(C) of the Act provides for an annual increase factor. This factor must be based on an appropriate percentage increase in a market basket of goods and services comprising services for which payment is made under section 1886(j) of the Act (which may be the market basket percentage increase described in section 1886(b)(3)(B)(iii) of the Act).

Under section 1886(j)(4)(A) of the Act, the Secretary is authorized, but not required, to provide for an additional payment to a rehabilitation facility for patients in a case-mix group, based upon the patient being classified as an outlier based on an unusual length of stay, costs, or other factors specified by the Secretary. The amount of the additional payment must approximate the marginal cost of care above what otherwise would be paid and must be budget neutral. The total amount of the additional payments to IRFs under the prospective payment system for a fiscal year may not be projected to exceed 5 percent of the total payments based on prospective payment rates for payment units in that year.

Section 1886(j)(4)(B) of the Act establishes that the Secretary is authorized but not required to provide for adjustments to the payment amounts under the prospective payment system as the Secretary deems appropriate to take into account the unique circumstances of IRFs located in Alaska and Hawaii.

Section 1886(j)(5) of the Act provides for the Secretary to publish in the **Federal Register**, on or before August 1 before each fiscal year, the classifications and weighting factors for the IRF case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

Section 1886(j)(6) of the Act provides that the Secretary must adjust the proportion (as estimated by the Secretary from time to time) of IRFs' costs that are attributable to wages and wage-related costs, of the prospective payment rates for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the IRF compared to the national average wage level for such facilities. Additionally, the Secretary is required to make a budget-neutral update to the area wage adjustment factor no later than October 1, 2001, and at least once every 36 months thereafter. The budget neutral update is based on information available to the Secretary (and updated as appropriate) of the wages and wage-related costs incurred in furnishing rehabilitation services.

Sections 1886(j)(7)(A), (B), (C), and (D) of the Act establish that there shall be no administrative or judicial review, under sections 1869 and 1878 of the Act or otherwise, of the establishment of case-mix groups, the methodology for the classification of patients within these groups, the weighting factors, the prospective payment rates, outlier and special payments and area wage adjustments.

Section 125(b) of the BBRA provides that the Secretary shall conduct a study of the impact on utilization and beneficiary access to services of the implementation of the IRF prospective payment system. A report on the study must be submitted to the Congress not later than 3 years after the date the IRF prospective payment system is first implemented.

C. Summary of the November 3, 2000 Proposed Rule

In the November 3, 2000 proposed rule, we proposed to establish a new subpart P under 42 CFR Part 412 of the Medicare regulations to implement the IRF prospective payment system and to make technical and conforming changes to other appropriate sections under Parts 412 and 413.

In the proposed rule, to support and explain our proposed policies, we presented the following:

- An overview of the reasonable cost-based payment system that would be replaced by the IRF prospective payment system.
- An extensive discussion of past research on IRF patient classification systems and prospective payment systems, including earlier research performed by the RAND Corporation that supported a per discharge based prospective payment system using a patient classification system known as Functional Independence Measures-Functional Related Groups (FIM–FRGs).

• A discussion of the following policy objectives we identified to evaluate the relative merits of the various policy options considered:

—The creation of a beneficiary-centered payment system that promotes quality of care, access to care, and continuity of care and is administratively feasible while controlling costs.

—The provision of incentives to furnish services as efficiently as possible without diminishing the quality of the care or limiting access to care.

—The creation of a payment system that is fair and equitable to facilities, beneficiaries, and the Medicare program.

—The development of an IRF prospective payment system that has the capability to recognize legitimate cost differences among various settings furnishing the same service; and a patient classification system used to group patients and services that is based on clinically coherent categories and, at the same time, reflects similar resource use. This would limit opportunities to ''upcode'' or ''game'' the system.

• A discussion of options considered for the following major components of the proposed IRF prospective payment system: the patient assessment instrument; the patient classification system; the unit of payment; and the data used to construct the payment rates.

• A discussion of the proposed requirement that IRFs complete the Minimum Data Set for Post-Acute Care (MDS–PAC) (a patient assessment instrument) as a part of the data collection deemed necessary by the Secretary to implement and administer the IRF prospective payment system. (As explained in section IV. of this final rule, we are adopting a revised patient assessment instrument.)

• A discussion of the proposed IRF patient classification system using CMGs and the prospective payment system supported by RAND's research using 1996 and 1997 data. The results of this research were released in a report by RAND in July 2000. (This report is contained on our website: www.hcfa.gov/medicare/irfpps.htm.)

• A discussion of the impact of the proposed IRF prospective payment system on the Medicare program and on IRFs.

D. General Overview of the IRF Prospective Payment System

In accordance with the requirements of section 1886(j) of the Act, and following issuance of the November 3, 2000 proposed rule and consideration of public comments, we are implementing a prospective payment system for IRFs that replaces the current reasonable cost-based payment system. The new prospective payment system utilizes information from a patient assessment instrument to classify patients into distinct groups based on clinical characteristics and expected resource needs. Separate payments are calculated for each group with additional case-level and facility-level adjustments applied.

We are requiring IRFs to complete the patient assessment instrument described in section IV. of this preamble, for all Medicare Part A fee-for-service patients admitted or discharged on or after January 1, 2002.

Data from the patient assessment instrument will be used to—

• Determine the appropriate classification of a Medicare patient into a CMG for payment under the prospective payment system (using data from only the initial patient instrument completed after admission, as described in section IV. of this preamble);

• Implement a system to monitor the quality of care furnished to Medicare patients; and

• Ensure that appropriate case-mix and other adjustments can be made to the patient classification system.

Further details of the CMG classification system are discussed in section V. of this preamble.

IRFs are required to input the patient assessment data into a computerized data system. In general, this system consists of a computerized patient grouping software program (GROUPER software) and data transmission software.

Upon the discharge of a Medicare patient, the GROUPER software will determine the appropriate CMG classification number. IRFs must enter the CMG classification number onto the Medicare claim form in accordance with Medicare claims processing procedures. The operational aspects and instructions for completing and submitting Medicare claims under the IRF prospective payment system will be addressed in a Medicare program memorandum issued prior to the effective date of this final rule. We are aware that, beginning October 16, 2002, the submission of electronic claims must be in compliance with the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, as specified in the Standards for Electronic Transactions final rule published in the **Federal Register** on August 17, 2000 (65 FR 50312). We will be taking the necessary steps in the future to ensure compliance with this provision of the HIPAA.

The payment unit for the IRF prospective payment system for Medicare patients will be a discharge. The payment rates will encompass inpatient operating and capital costs of furnishing covered inpatient rehabilitation hospital services, including routine, ancillary, and capital costs, but not the costs of bad debts or approved educational activities. (A detailed description of the payment policies, including the transition period methodology, appears in section VI. of this final rule.)

E. Summary of Public Comments Received on the November 3, 2000 Proposed Rule

The November 3, 2000 proposed rule provided for a 60-day comment period ending January 2, 2001. We extended this initial comment period an additional 30 days, until February 1, 2001, through the publication of a notice in the **Federal Register** on December 27, 2000 (65 FR 81813).

We received a total of 399 timely items of correspondence containing multiple comments on the November 3, 2000 proposed rule. Major issues addressed by commenters included the use of the MDS–PAC as the patient assessment instrument; various aspects of the CMG classification system, including the recognition of comorbidities; various aspects of the facility and case level payment adjustments; and the requirements to be classified as an IRF.

Summaries of the public comments received and our responses to those comments are set forth below under the appropriate subject heading.

II. Requirements and Conditions for Payment Under the Prospective Payment System for IRFs

In the November 3, 2000 proposed rule, we proposed the conditions that an IRF must meet to be paid under the IRF prospective payment system (proposed § 412.604). In general, if the conditions are not met, we may reduce or withhold Medicare payments or may classify the IRF as a hospital that is paid under the acute care hospital prospective payment system (proposed § 412.604(a)(2)).

A. Classification Criteria for IRFs

1. Provisions of Proposed Rule

In the November 3, 2000 proposed rule, we stated that we were not proposing to change the existing criteria for a hospital or hospital unit to be classified as a rehabilitation hospital or a rehabilitation unit that is excluded

from the acute care hospital prospective payment systems under sections 1886(d) and 1886(g) of the Act, that are codified in regulations in 42 CFR Part 412. In addition, we indicated that we were not proposing to revise the survey and certification procedures applicable to entities seeking this classification.

Under § 412.604(b), we proposed that, to be classified as a rehabilitation hospital or rehabilitation unit, an IRF must meet the criteria set forth in existing §§ 412.23(b), 412.25, and 412.29 for exclusion from the inpatient hospital prospective payment system. Existing § 412.23(b) provides that a rehabilitation hospital must—

- Have a provider agreement under Part 489 to participate as a hospital;
- Except for a newly participating hospital seeking exclusion for its first 12-month cost reporting period, show that during its most recent 12-month cost reporting periods, it served an inpatient population of whom at least 75 percent required intensive rehabilitation services for one or more of 10 conditions specified in the regulations;
- Have in effect a preadmission screening procedure under which each prospective patient's condition and medical history are reviewed to determine whether the patient is likely to benefit significantly from an intensive inpatient hospital program or assessment;
- Ensure that patients receive close medical supervision and furnish rehabilitative nursing, physical therapy, and occupational therapy, plus, as needed, speech therapy, social or psychological services, and orthotic and prosthetic services, through the use of qualified personnel;
- Have a director of rehabilitation who meets the criteria specified in the regulations;
- Have a plan of treatment for each inpatient that is established, reviewed, and revised as needed by a physician in consultation with other professional personnel who provide services to the patient; and
- Use a coordinated multidisciplinary team approach in the rehabilitation of each inpatient in the manner specified in the regulations.

Existing § 412.25 provides that a rehabilitation unit must—

- Be part of an institution that has in effect an agreement under part 489 of this chapter to participate as a hospital; is not excluded in its entirety from the prospective payment systems; and has enough beds that are not excluded from the prospective payment systems to permit the provision of adequate cost information, as required by § 413.24(c);
- Have written admission criteria that are applied uniformly to both Medicare and non-Medicare patients;
- Have admission and discharge records that are separately identified from those of the hospital in which it is located and are readily available;
- Have policies specifying that necessary clinical information is transferred to the unit when a patient of the hospital is transferred to the unit;
- Meet applicable State licensure laws;
- Have utilization review standards applicable for the type of care offered in the unit;
- Have beds physically separate from (that is, not commingled with) the hospital's other beds;
- Be serviced by the same fiscal intermediary as the hospital;
- Be treated as a separate cost center for cost finding and apportionment purposes;
- Use an accounting system that properly allocates costs;
- Maintain adequate statistical data to support the basis of allocation;
- Report its costs in the hospital's cost report covering the same fiscal period and using the same method of apportionment as the hospital;
- As of the first day of the first cost reporting period for which all other exclusion requirements are met, the unit is fully equipped and staffed and is capable of providing hospital inpatient rehabilitation care regardless of whether there are any inpatients in the unit on that date.

In addition, existing § 412.25 contains requirements on changes in hospital size and existing § 412.29 includes specific requirements for new and converted units (as specified in § 412.30), preadmission screening, staffing, plans of treatment, a coordinated multidisciplinary team approach as documented in clinical records, and administration.

2. Public Comments and Departmental Responses

Comment: Many commenters suggested that we update the 10 conditions specified in § 412.23(b)(2) that are used to determine if at least 75 percent of facility's patients require intensive rehabilitative services. One commenter recommended completely eliminating the ''75 percent'' rule to classify a facility or unit as an IRF because we proposed to use the 21 rehabilitation impairment categories (RICs) as defined in the proposed rule.

Response: Currently, hospitals or hospital units that meet the requirements at existing §§ 412.23(b), 412.25, and 412.29 are eligible to be classified as rehabilitation hospitals or rehabilitation units that are excluded from the acute care inpatient hospital prospective payment systems established under sections 1886(d) and 1886(g) of the Act. Section 1886(j) of the Act was added to implement the prospective payment system described in this final rule for excluded hospitals and hospital units that are classified as rehabilitation hospitals and rehabilitation units. As we noted in the proposed rule, we were not proposing changes to the existing requirements for classification under § 412.23(b)(2). We believe that the existing requirements are appropriate in classifying a hospital or unit as an IRF that is paid under section 1886(j) of the Act. Accordingly, for this final rule, we are not revising the existing requirements at §§ 412.23(b), 412.25, and 412.29. However, as more data, including patient data associated with the RICs, become available after we initially implement the IRF prospective payment system, we may reconsider whether it would be appropriate to revisit the requirement regarding the ''75 percent'' rule in the future.

Comment: Several commenters suggested that we amend § 412.30 to clarify that hospitals seeking to convert skilled nursing facility (SNF) beds to excluded inpatient rehabilitation beds must wait for 12 months before being excluded from the acute care hospital prospective payment system (and be paid under the IRF prospective payment system) just as acute care hospitals must do if they convert medical-surgical beds to excluded inpatient rehabilitation beds.

Response: Currently, the 12-month delay for the conversion of beds under § 412.30 to IRF beds does not apply to SNF beds. For this final rule, as stated in the proposed rule, we are not changing the existing criteria for a hospital or hospital unit to be classified as a rehabilitation hospital or a rehabilitation unit that is excluded from the acute care inpatient hospital prospective payment system. We believe that the existing requirements are appropriate in classifying a hospital unit as an IRF that is paid under section 1886(j) of the Act. In accordance with section 125(b) of the BBRA, we indicated that we will be conducting a study of the impact on utilization and beneficiary access to services of the implementation of the IRF prospective payment system. If this study shows the need to change this requirement to include converted SNF beds, we will propose to do so in the future. Accordingly, we are not making any

changes to the existing § 412.30 as the commenters suggested.

3. Provisions of the Final Rule

Under §§ 412.604(a) and (b) of the final regulations, we are specifying that, for cost reporting periods beginning on or after January 1, 2002, hospitals or hospital units that are classified as rehabilitation hospitals or rehabilitation units will be paid under the IRF prospective payment system (except for IRFs that are paid under the special payment provisions at § 412.22(c) of the regulations) as described below.

• Requirements for IRFs. The IRF prospective payment system will apply to inpatient rehabilitation services furnished by Medicare participating entities that are classified as rehabilitation hospitals or rehabilitation units under §§ 412.23(b), 412.25, and 412.29. In addition, we are adopting as final the proposed technical changes to §§ 412.22, 412.23, 412.25, and 412.29 to reflect the application of the classification criteria to IRFs under the IRF prospective payment system.

• Location of IRFs outside the 50 States. IRFs that meet the requirements of §§ 412.22, 412.23, 412.25, 412.29, and 412.30 that are located in Puerto Rico, Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the District of Columbia will be subject to the IRF prospective payment system.

• Hospitals Not Subject to the IRF Prospective Payment System. The following hospitals are paid under special payment provisions described in § 412.22(c) and, therefore, are *not* subject to the IRF prospective payment system rules:

—Veterans Administration hospitals.

—Hospitals that are reimbursed under State cost control systems approved under 42 CFR Part 403.

—Hospitals that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Public Law 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Public Law 92–603 (42 U.S.C. 1395b–1 (note)).

• Other Technical Changes. In addition to the technical changes to §§ 412.22, 412.23, 412.25, and 412.29 cited above, we are adopting as final the proposed technical changes to §§ 412.1, 412.20, 412.116, 412.130, 413.1, 413.40, and 413.64 to reflect payment for inpatient rehabilitation services furnished by IRFs under the IRF prospective payment system, effective January 1, 2002.

B. Completion of Patient Assessment Instrument

Proposed § 412.604(c) provided that, for each Medicare patient admitted or discharged on or after April 1, 2001, the IRF must complete a patient assessment instrument. In the proposed rule under § 412.606(b), we had proposed the use of the MDS–PAC as the patient assessment instrument. However, as discussed in detail in section IV.D. of this preamble, we are replacing the MDS–PAC with our inpatient rehabilitation facility patient assessment instrument. Under § 412.604(c) of this final rule, we are requiring an IRF to complete our inpatient rehabilitation facility patient assessment instrument for each Medicare Part A fee-for-service patient admitted to or discharged from the IRF on or after January 1, 2002.

C. Limitation on Charges to Beneficiaries

Proposed § 412.604(d) specified that an IRF may not charge a beneficiary for any services for which payment is made by Medicare, even if the facility's costs of furnishing services to that beneficiary are greater than the amount the facility is paid under the IRF prospective payment system. Proposed § 412.604(d) further specified that an IRF receiving a prospective payment for a covered hospital stay (that is, a stay that includes at least one covered day) may charge the Medicare beneficiary or other person only for the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of the regulations.

We did not receive any comments on proposed § 412.604(d) and are adopting it as final with one modification. In the proposed rule, we inadvertently did not specify that, in addition to the applicable deductible and coinsurance amounts, a facility is limited to its charges to beneficiaries and other individuals on their behalf under existing § 489.20(a) of the regulations.

D. Furnishing of Inpatient Hospital Services Directly or Under Arrangement

Proposed § 412.604(e) specified that an IRF must furnish all necessary covered services to the Medicare beneficiary either directly or under arrangements. The IRF prospective payments are payment in full for all inpatient hospital services, as defined in § 409.10. We proposed that we would not pay any provider or supplier other than the IRF for services furnished to a Medicare beneficiary who is an inpatient of the IRF, except for physicians' services reimbursable under § 405.550(b) and services of an anesthetist employed by a physician reimbursable under § 415.102(a) of the regulations.

We did not receive any comments on proposed § 412.604(e) and are adopting it as final with two conforming changes:

We are revising proposed paragraph (e)(1) to conform it to the provisions of existing § 412.50, which lists the types of services that are not included as inpatient hospital services. Section 412.50 was revised on April 7, 2000 (65 FR 18537). However, we inadvertently did not include the revised list in the proposed rule.

Proposed § 412.622(b) (which we are adopting as final) specifies that payments for approved educational activities, bad debts, and per units for blood clotting factor are separate payments made outside the scope of the full prospective payment to IRFs for inpatient rehabilitation services. We are including in § 412.604(e)(l) a citation to § 412.622(b) to clarify that payment for these three types of services are not included in the full prospective payment for all inpatient IRF services.

E. Reporting and Recordkeeping Requirements

Under proposed § 412.604(f), we specified that all IRFs participating in the IRF prospective payment system must meet the recordkeeping and cost reporting requirements of §§ 413.20 and 413.24 of the regulations.

We did not receive any comments on proposed § 412.604(f) and, therefore, are adopting it as final without modification.

III. Research To Support the Establishment of the IRF Prospective Payment System

A. Overview of Research for the Proposed Rule

In 1995, the Rand Corporation (RAND) began extensive research, sponsored by us, on the development of a per discharge based prospective payment system using a patient classification system known as Functional Independence Measures-Functional Related Groups (FIM-FRGs) using 1994 data. The results of RAND's earliest research were released in September 1997 and are contained in two reports available through the National Technical Information Service (NTIS). The reports are—

• Classification System for Inpatient Rehabilitation Patients—A Review and Proposed Revisions to the Function Independence Measure-Function Related Groups, NTIS order number PB98–105992INZ; and

• Prospective Payment System for Inpatient Rehabilitation, NTIS order number PB98–106024INZ.

These reports can be ordered toll-free by calling the NTIS sales desk at 800–553–6847 or by e-mail at www.orders@ntis.fedworld.gov.

In summarizing these reports, RAND found in the research based on 1994 data that, with limitations, the FIM–FRGs were effective predictors of resource use based on the proxy measurement: length of stay. FRGs based upon FIM motor scores, cognitive scores, and age remained stable over time (prediction remained consistent between 1990 and 1994 data). Researchers at RAND developed, examined, and evaluated a model payment system based upon FIM–FRG classifications that explains approximately 50 percent of patient costs and approximately 60 to 65 percent of costs at the facility level. Based on this earlier analysis, RAND concluded that an IRF prospective payment system using this model is feasible.

In July 1999, we contracted with RAND to update their earlier research. The update included an analysis of FIM data, the FRGs, and the model rehabilitation prospective payment system using more recent data from a greater number of IRFs. The purpose of updating the earlier research was to develop the underlying data necessary to support the Medicare IRF prospective payment system based on case-mix groups for the proposed rule. RAND expanded the scope of their earlier research to include the examination of several payment elements, such as comorbidities, facility-level adjustments, and implementation issues, including evaluation and monitoring.

Specifically, as described in the proposed rule (65 FR 66313), RAND performed the following tasks:

• Constructed a data file, using 1996 and 1997 FIM data from the Uniform Data Set for medical rehabilitation (UDSmr) and the Clinical Outcomes System (COS). Our files and other sources were used to obtain data on Medicare beneficiaries and IRFs for 1996 and 1997.

• Determined that the FIM data from UDSmr and COS data are representative of the Medicare population.

• Identified factors or variables that were used to design the proposed prospective payment system.

• Developed data on the elements of the proposed prospective payment system regarding RICs, the CMGs, relative weights and payment rates for each CMG, facility-level adjustments, and patient-level adjustments.

• Developed data to examine the joint performance of all of the payment system elements by simulating facility payments for our analysis of the impact of implementing the payment system.

• Developed data to assist in identifying specific issues in connection with implementing the payment system.

• Presented options regarding the design and development of a system to monitor the effects of the payment system and other changes in the health care market on IRFs and on other post-acute care providers, including home health agencies and skilled nursing facilities, by measuring factors such as access, utilization, quality, and cost of care.

RAND issued a report on the findings on its analysis of the 1996 and 1997 data in July 2000. We have made the report available on our web site at www.hcfa.gov/medicare/irfpps.htm.

B. Updated Research for the Final Rule

In the November 3, 2000 proposed rule, we indicated we would refine some of the patient CMGs and corresponding weights and rates if further analysis of the data file and consideration of the comments that we received in response to the proposed rule warranted such refinements.

RAND has updated their research, as discussed below, to include patient assessment data and Medicare beneficiary data from more recent years than the data used to develop the provisions of the proposed rule. RAND's analysis of the later data assisted us in developing responses to comments on the proposed rule and identifying aspects of the patient classification and payment systems where refinements were justified or where further research was necessary. We discuss the details of refinements that we believe are necessary in section V. (Case-Mix Group Patient Classification System) and in section VI. (Payment Rates) of this final rule.

1. Sources and Description of More Recent Data

We used 1996 and 1997 Medicare program data and patient assessment data to develop the provisions of the proposed rule. For this final rule, we used 1998 and 1999 Medicare program data and patient assessment data as follows:

• Medicare Program Data—Calendar year 1998 and 1999 Medicare Provider Analysis and Review (MedPAR) files were used in RAND's updated research. The MedPAR file contains the records for all Medicare hospital inpatient discharges (including discharges for rehabilitation facilities). The data in the MedPAR file include patient demographics (age, gender, race, residence zip code), clinical characteristics (diagnoses and procedures), and hospitalization characteristics (admission date, discharge date, days in intensive care wards, charges by department, and payment information).

The Medicare cost report data are contained in the Health Care Provider Cost Report Information System (HCRIS). The cost report files contain information on facility characteristics, utilization data, and cost and charge data by cost center. For RAND's updated research, we obtained the HCRIS data from the most current available cost data for cost reports (FYs 1998, 1997, and/or 1996). Supplementary information to this file includes: (1) The wage data for the area in which an IRF is located; (2) data on teaching hospitals, including the number of residents assigned to rehabilitation units and the distribution of resident time across inpatient and outpatient settings; (3) data on the number of Medicare cases at each IRF that represent Supplemental Security Income (SSI) beneficiaries; and (4) information about payments under the existing reasonable cost payment system.

• Patient Assessment Data—We entered into an agreement with the University at Buffalo Foundation Activities, Inc. to obtain 1998 and 1999 UDSmr patient assessment data. For the proposed rule, we entered into an agreement with Caredata.com, Inc. to retrieve COS patient assessment data. However, as mentioned in the proposed rule, the COS has been discontinued as of July 2000. COS patient assessment data for 1998 and 1999 were available though, for a majority of COS providers that operate under the HealthSouth Corporation. Accordingly, we entered into an agreement with the HealthSouth Corporation to retrieve patient assessment data for 1998 and 1999. Collectively, we will refer to the patient assessment data from the UDSmr (1996 through 1999), the COS (1996 and 1997), and the HealthSouth Corporation (1998 and 1999) as FIM data throughout this final rule.

The FIM data include demographic descriptions of the patient (birth date, gender, zip code, ethnicity, marital status, living setting), clinical descriptions of the patient (condition requiring rehabilitation, ICD–9–CM diagnoses, functional independence measures at admission and discharge) and the hospitalization data (encrypted hospital identifier, admission date,

discharge date, charges, payment source, and an indicator of whether this is the first rehabilitation hospitalization for this condition, a readmission, or a short stay for evaluation).

2. Description of the Methodology Used To Construct the Data File

In the proposed rule (65 FR 66314), we described the methodology that RAND used to construct the data file that formed the basis of the proposed CMG patient classification system and the resulting payment weights, rates, and payment adjustments using 1996 and 1997 data. RAND updated and expanded the data file to include the 1998 and 1999 data as follows:

RAND linked the 1998 and 1999 FIM patient records with patient records on the respective MedPAR files that describe the same discharge. RAND determined the Medicare provider number(s) that correspond to each facility code in the FIM data. Next, RAND matched the FIM patients and MedPAR patients within the paired facilities.

Because of the proprietary and sensitive nature of the FIM patient records, certain data fields that specifically identify the patient and the servicing IRF were encrypted. Therefore, as in RAND's previous research, it was necessary to subject the FIM and MedPAR records to a sophisticated and complex matching probability technique. The result produces the most statistically valid match of patient/facility records and a data file that contains the characteristics of each Medicare beneficiary and his or her servicing IRF.

Because of the complex scope and nature of the matching technique used, we have included in Appendix A of this final rule a technical discussion of each step taken to create the updated data file. The tables contained in Appendix A show the actual effects of applying the matching technique on both the patient and facility records for 1996 through 1999.

3. Representativeness of the Updated Data File

It is extremely important to examine the quality of the resulting match, including the extent to which the linked MedPAR and FIM records are representative of the MedPAR universe. We believe that the updated data file described in Appendix A, contains the best available and most representative data to construct a prospective payment system for all IRFs within the parameters of the statutory requirements. Our analysis of the updated data file allows us to develop the CMG patient classification and payment system, described in sections V. and VI. of this final rule.

C. Research on the Patient Assessment Instrument for the Final Rule

In the proposed rule (65 FR 66315), we set forth the proposed requirements regarding the completion of the MDS–PAC rather than the FIM patient assessment instrument. We stated that we would test further whether the MDS–PAC results in patient classifications that are equivalent to the classifications that occurred with the FIM (that is, the assessment instruments that were used to design the prospective payment system).

We expanded RAND's scope of work under the 1999 contract to include a study of the MDS–PAC and FIM instruments to answer the following questions:

- How accurate is the MDS–PAC for use in classifying cases into CMGs for the proposed IRF prospective payment system?
- How do the validity, reliability, and consistency of the FIM and the MDS–PAC elements compare?
- What are the costs associated with the data collection on the FIM and MDS–PAC instruments?
- Are comorbidities being coded accurately on the FIM and the MDS–PAC instruments?
- Does the additional data in the MDS–PAC provide an opportunity for better groupings in the future?

Work on this project was performed by the Harvard Medical School under the RAND contract. The design and results of this study are discussed in detail in section IV. of this final rule.

D. Analyses to Support Future Adjustments to the IRF Prospective Payment System

The principal goal of the analysis described in section III.B. of this final rule is to determine the extent to which measurable patient characteristics, as reported on a patient assessment instrument, permit classification of patients into identifiable groups that accurately reflect the use of resources in IRFs. The research to date indicates that CMGs are effective predictors of resource use as measured by proxies such as length of stay and cost. The use of these proxies is necessary because data that measure actual nursing and therapy time spent on patient care, and other resource use data, are not available. The collection of data on patient characteristics and patient-specific resource use may enhance our ability to refine the CMGs in a manner that supports our policy objectives for future refinement of the IRF prospective payment system. Accordingly, we have contracted with Aspen Systems Corporation to collect actual resource use data in a sample of IRFs. The data collected by Aspen will be submitted to RAND for analysis to determine if the data can be used to support future refinements to the CMGs.

IV. The IRF Patient Assessment

A. Implementation of a Patient Assessment Instrument

1. Statutory Authority and Proposed Rule

Under section 1886(j)(2)(D) of the Act, ''The Secretary is authorized to require rehabilitation facilities that provide inpatient hospital services to submit such data as the Secretary deems necessary to establish and administer the prospective payment system under this subsection.'' The collection of patient data is indispensable for the successful development and implementation of the IRF prospective payment system. A comprehensive, reliable system for collecting standardized patient assessment data is necessary for: (a) The objective assignment of Medicare beneficiaries to appropriate IRF CMGs; (b) the development of a system to monitor the effects of an IRF prospective payment system on patient care and outcomes; (c) the determination of whether future adjustments to the IRF CMGs are warranted; and (d) the development of an integrated system for post-acute care in the future.

2. Proposed Rule—Patient Assessment Instrument

In the November 3, 2000 proposed rule (65 FR 66315), we proposed to use the MDS–PAC as the standardized patient assessment instrument under the IRF prospective payment system (§§ 412.604(c) and 412.606). We acknowledged that the nature of the patient data we would collect may evolve over time. We stated our belief that the present structure of independent Medicare post-acute benefits, which includes payment systems, coverage requirements, and quality assessment instruments based primarily on site of care, may provide incentives that result in reduced access and choice for beneficiaries and may contribute to inappropriate care. We are continuing to reevaluate the methods we use to pay for the delivery of post-acute services, with the objective of developing an integrated approach. The use of post-acute care patient assessment instruments is one way to operationally advance an integrated

approach. We believe that MedPAC recognized the integrating function that post-acute care patient assessment instruments can play when, in its 1999 Report to Congress, MedPAC recommended that the Secretary collect a core set of patient assessment information across all post-acute care settings (Recommendation 5A).

As we strive to develop an integrated approach to the delivery of post-acute services, we are trying to implement MedPAC's March 2001 Report to Congress recommendation that the Secretary: (1) minimize reporting burden and needless complexity; and (2) assure that only the data necessary for payment and quality monitoring are collected (Recommendation 6B). We believe that the revised IRF patient assessment instrument contained in this final rule meets this MedPAC recommendation.

In the November 3, 2000 proposed rule, we proposed that only the IRF clinicians that we specified assess Medicare patients in IRFs using the MDS–PAC as the patient assessment instrument. We proposed that an IRF clinician assess a Medicare IRF patient on Day 4, Day 11, Day 30, and Day 60 of the patient's IRF stay, and also when the patient was discharged. We proposed that the patient assessment data for each of these assessments would be transmitted to us. In addition, we proposed to impose penalties on the IRF based on late completion of the MDS–PAC and late transmission of the MDS–PAC data.

As discussed in detail in section IV.B. of this preamble, based on the public comments received, we have decided to use a patient assessment instrument that is different from the MDS–PAC and is more similar to the UDSmr patient assessment instrument.

3. Public Comments Received on Proposed Use of MDS–PAC as the Patient Assessment Instrument

In the November 3, 2000 proposed rule, we sought public comment on the use of MDS–PAC as the assessment instrument for the IRF prospective payment system, including: comments and supporting data regarding the additional burden and cost, if any, associated with this instrument; the suitability of the instrument for the rehabilitation setting and as a model for other post-acute care settings; views on whether the instrument has been properly tested and validated for industry-wide use; and the utility and reliability of the quality data items contained in the instrument.

- We received numerous comments regarding our proposal to use the MDS–PAC as the patient assessment instrument. In general, the commenters stated that—
- We should use the UDSmr patient assessment instrument, commonly referred to as the ''FIM,'' instead of the MDS–PAC as the patient assessment instrument for the IRF prospective payment system;
- The MDS–PAC consisted of too many items;
- The reliability and validity of the items associated with monitoring quality of care had not been appropriately demonstrated;
- The FIM is as appropriate as the MDS–PAC to both classify patients into CMGs and monitor quality of care;
- The number of proposed patient assessments was excessive;
- The MDS–PAC item scoring scales for the FIM-like motor and cognitive items would contribute to errors scoring these items;
- The inconsistency of the item assessment time periods would detract from the accuracy of the assessment;
- An IRF's accreditation by JCAHO and CARF would be jeopardized or made unnecessarily burdensome and complicated if an IRF had to use the MDS–PAC;
- Clinicians other than those listed in the proposed rule should be allowed to certify that the assessment instrument had been properly completed;
- The list of the types of clinicians who could complete portions of the assessment should be expanded;
- The penalties associated with late completion or transmission of the MDS–PAC were too harsh;
- The policies for the IRF prospective payment system should only apply to patients admitted to an IRF after the system's implementation date; and
- More specifics regarding the assessment instrument test transmission should be given.

Below we give an overview of the patient assessment policies specified in the proposed rule, followed by a discussion of the public comments received and our response to those comments.

We have by no means abandoned our goal of ultimately establishing a common system to assess patient characteristics and care needs for all post-acute care services and pursing more integrated approaches to their payment and delivery. As we stated earlier, that goal was endorsed by MedPAC in its March 1999 Report to the Congress, in which MedPAC recommended that the Secretary collect a core set of patient assessment information across all post-acute care settings (Recommendation 5A).

In its March 2001 Report to Congress, MedPAC recommends that ''The Secretary should develop for potential implementation a patient classification system that predicts costs within and across post-acute settings'' (Recommendation 6C). We continue to share MedPAC's view of the utility of implementing a common patient assessment data system and a common patient classification system across post-acute settings. The implementation of these common systems would facilitate across post-acute settings consistency of payments, consistency of patient assessment burden, and consistency of quality of care monitoring. We believe that the assessment instrument set forth in this final rule will help achieve these goals.

The patient assessment instrument adopted in this final rule supports both our payment and quality objectives. In addition, we note that section 545 of BIPA requires the Secretary to report to Congress by January 1, 2005, on the development of standard instruments for the assessment of the health and functional status of patients, for items and services offered in all settings and to include in the report a recommendation on the use of such standard instruments for payment purposes. We believe that as a result of the study necessary to develop the report, we will make refinements in the design and application of our IRF patient assessment instrument. The refinements will provide us with even more essential information on which to base policy decisions related to post-acute care and its characteristics, including the quality of care furnished and our payment methods. We note that only Medicare Part A fee-for-service (original Medicare) IRF patients must be assessed by an IRF clinician using the patient assessment instrument.

In the proposed rule, we discussed our premise that the implementation of the per-case prospective payment system based on the ''functional-related group'' methodology requires the use of a standardized data collection instrument that contains the elements required to classify a patient into a distinct CMG. To classify a patient into a distinct CMG, the data collection instrument must first assign the patient into one of the various high level categories that are based principally on ICD–9–CM diagnoses plus some additional patient information. These high level categories are called Rehabilitation Impairment Categories (RICs). After that initial classification step, the level of the patient's impairment, as determined by the patient's motor and cognitive function

scores, and the age of the patient are used to classify a patient into a distinct CMG within the higher level RIC. How a patient's comorbidities may affect a patient's CMG is discussed in section VI. of this preamble. Additional data elements are required to identify the patient and for monitoring the quality of care furnished to patients in IRFs.

In the proposed rule, we indicated that we had explored several available approaches to the collection of the required data elements: These included: (a) The development of a new data collection instrument, the MDS–PAC (as discussed in the proposed rule); (b) the adoption of an instrument closely modeled on the UDSmr and the COS instrument; and (c) the incorporation verbatim into a new instrument (MDS–PAC) of the UDSmr/COS data elements that are relevant to payment. We indicated in the proposed rule that we proposed to use the first option, the MDS–PAC. We are referring readers to the November 3, 2000 proposed rule for a detailed description of the MDS–PAC instrument (65 FR 66304).

Comment: We received many comments stating that the proposed MDS–PAC assessment instrument was too long and too complex. The commenters stated that the length and complexity of the patient assessment instrument create an unreasonable time burden in terms of performing the patient assessment. The unreasonable time burden in turn translated into excessive IRF patient assessment costs. The commenters urged us to use the FIM as the patient assessment instrument.

Response: Our goal was to collect comprehensive patient assessment data, with that data being used to classify patients into payment groups and for quality of care purposes. However, after analysis of the public comments, we have decided to reconsider the number and complexity of patient assessment items and, therefore, are adopting in this final rule the use of a modified version of the UDSmr patient assessment instrument (FIM) as our patient assessment instrument (§§ 412.604(c) and 412.606(b)) rather than the MDS–PAC. We have decreased the number of assessment items and changed some of the FIM items in an effort to make them easier to understand and complete.

We recognized that many rehabilitation hospitals already use the FIM. Another organization known as Caredata.com used to market a patient assessment instrument that is very similar to the UDSmr patient assessment instrument. (We have been notified that, as of July 2000, Caredata.com discontinued the part of its business operations related to patient data analysis and reporting that was similar to the function UDSmr continues to perform for IRFs.) The FIM assessment system has been under development since the mid-1980s. The FIM was developed by researchers who were funded by a consortium of rehabilitation professional associations and the Department of Education at the State University of New York (SUNY) at Buffalo in the 1980s. The FIM is marketed by the UDSmr, maintained by SUNY/Buffalo, and is proprietary. There has been extensive training in and experience with the data elements, particularly the functional components, that enter into the construction of the CMGs. We believe that with a few modifications it can be the basis for a valid and reliable instrument to measure impairments in IRFs. The reliability and validity of using the FIM to assess IRF patients have been documented by a substantial list of publications produced both in the United States and overseas (for example, Sweden and Japan), by the developers of the system and by independent investigators. We also conducted a study of the FIM. We discuss the results of that study concerning the reliability and validity of the patient assessment instrument in section IV.E. of this preamble.

Many rehabilitation providers are clients of UDSmr. Our 1997 data show that approximately 68 percent of Medicare patients had a UDSmr or COS data file, indicating that these patients were assessed with the FIM. (We received comments indicating that currently approximately 85 percent of IRFs use the FIM. UDSmr also indicated that approximately 85 percent of IRFs currently use the FIM.)

The developers of the FIM offer a certification course to train assessors in the use of the instrument. This results in high rates of intrarater and interrater reliability, with Cronbach alpha coefficients of more than 0.9 for both the motor and cognitive subscores. The Cronbach alpha coefficient is a statistical measure of interrater reliability with perfect reliability equal to 1.0. Therefore, a score of 0.9 indicates a very high level of interrater reliability.

The principal objective of the FIM is to assess person-level disability in the inpatient medical rehabilitation setting. FIM data are collected at admission and discharge, and, when possible, 6 months after discharge. The strength of the FIM assessment instrument is that it is a well-evolved and extensively tested approach to the assessment of the critical components of care provided by IRFs and the measurement of patient improvement in functional capacity. The variations among facilities in the difference between the observed and expected improvement in function are used as indicators of the quality and the effectiveness of the facilities. UDSmr analyzes FIM data for providers and generates benchmark data that allow IRFs to compare the outcome of their performance on the functional independence measures relative to other providers participating in the system.

In sections VIII. and IX. of this final rule, we discuss in detail the burden of the use of a modified version of the FIM patient assessment instrument that we will use under the IRF prospective payment system.

Comment: Many commenters stated that the item scoring scales for the FIM-like motor and cognitive items would cause errors in scoring these items, because the scoring scales were different from the FIM motor and cognitive items.

Response: We have incorporated the actual FIM motor and cognitive items into our revised patient assessment instrument. Therefore, the scoring of these items will be exactly as currently done for these FIM items. In addition, in consultation with UDSmr staff, we made the coding of some other items on our patient assessment instrument as similar as possible to how the FIM motor and cognitive items are coded.

Comment: One commenter requested a patient assessment item that would be used to collect speech-language data that are more descriptive of speech-language problems the patient may have.

Response: Our patient assessment instrument is now a slightly modified version of the UDSmr patient assessment instrument. Consequently, we will be using the UDSmr assessment items to assess a patient's communication ability. As we state repeatedly in this preamble, we want to limit the burden on IRFs. Therefore, we are being parsimonious in what items are added to the UDSmr instrument, and are only adding items that clearly increase the capability of our instrument to classify a patient into a CMG or items that clearly collect needed and proven quality of care data. At this time, we do not have data that clearly indicate the value of changing the UDSmr communication assessment category of items.

Comment: Several commenters stated that the inconsistency of assessment time periods for different patient assessment instrument items would detract from the accuracy of the patient assessment. The different item assessment time periods would create confusion about how to perform the

assessment and create an additional assessment burden.

Response: In the proposed rule, we specified that the item we proposed to use to assess ''Indicators of Delirium-Periodic Disordered Thinking/Awareness'' requires an assessment time period that is 7 calendar days in length. We also specified that the items we proposed to use to assess ''Bladder Continence'' and ''Bowel Continence'' each requires an assessment time period that is 7 to 14 calendar days in length. We stated that we would conduct additional testing of the MDS–PAC to determine if the assessment time period for these items should be changed. In addition, we stated that, if the additional testing indicated that the assessment time periods for these items should not be changed, we would make appropriate changes to the patient assessment schedule.

We conducted testing of both the MDS–PAC and the UDSmr patient assessment instrument. Our additional testing confirmed that the assessment time periods for the bowel and bladder items should, in some cases, remain as long as 14 calendar days in length. In addition, we consulted with UDSmr staff regarding the assessment time period for the bladder and bowel items in the FIM, because the algorithms for these items indicate an assessment time period as long as 14 days. UDSmr staff recommended that the assessment time period for the bladder and bowel items remain as long as 14 days.

Our patient assessment instrument is a slightly modified version of the UDSmr patient assessment instrument, and contains all 18 of the UDSmr patient assessment instrument functional independence measures that are used to measure both motor and cognitive functioning. Therefore, in accordance with the public comments that recommended we make the assessment time periods for our patient assessment instrument items consistent, and in recognition of the assessment time periods used for the items in the UDSmr patient assessment instrument, in this final rule we are requiring that the assessment time period for all of our patient assessment instrument items is 3 calendar days, except for some items as discussed below. We are not including in our assessment instrument the MDS–PAC item ''Indicators of Delirium-Periodic Disordered Thinking/Awareness.'' Our additional testing did not confirm that this MDS–PAC item was as valid or reliable as our earlier testing indicated.

In general, the proposed rule specified an admission assessment time period that covers calendar days 1 through 3 of the patient's current IRF hospitalization, and an assessment reference date that is the third day of the admission assessment time period. These 3 calendar days are the days during which the patient's clinical condition would be assessed so that the clinical, as opposed to demographic, data that are required on the patient assessment instrument can be collected. In addition, these 3 calendar days must be days during which the patient was furnished Medicare Part A fee-for-service inpatient rehabilitation services. In this final rule, for the admission assessment, we are retaining the general guideline that the assessment reference date is the third calendar day of the admission assessment time period. However, we believe that it may be necessary to allow additional time to assess certain items in order to most appropriately capture patient information to facilitate the payment and quality of care monitoring objectives of our IRF patient assessment instrument. Our item-by-item guide will provide specific guidelines on the observation period for individual items. We note that the UDSmr coding manual allows for an admission assessment time period for some items that is longer than 3 calendar days.

Specifically, clinical experience may indicate the optimal clinical assessment of the activity covered by an item would be more accurately obtained by using a longer assessment time period. Consequently, for a given patient assessment item, the item-by-item guide may specify an assessment time period that is longer than the general guideline of the first 3 calendar days of the patient's current hospitalization. In that situation, the IRF may use information from a variety of sources to assess the patient's clinical condition for the time period that is prior to the patient's current IRF hospitalization. The other sources could be one or more of the following: (1) The patient's physician; (2) the patient's clinical record if the patient is coming directly from an acute care hospital or a SNF; (3) the medical record maintained by an HHA if the patient was being furnished services by an HHA immediately prior to the IRF hospitalization; (4) information obtained from the patient's family or someone who has personal knowledge of the patient's clinical condition; or (5) information obtained from the patient. For example, in order to perform the optimal clinical assessment for item ''X'', the admission assessment time period may need to be 7 calendar days. Therefore, in this example, the IRF would assess that item using data collected during the first 3 calendar days of the patient's current IRF hospitalization, and for the other 4 calendar days preceding the admission use data gathered from one or more of the specified other sources.

We believe that only one set calendar day should be the assessment reference date. In the example situation above, in order to have only one assessment reference date, the assessment reference date would remain being the third calendar day of the patient's current IRF hospitalization, but the span of calendar days for the admission assessment time period would be 7 calendar days with respect to that item.

The discharge assessment may also have items that require an assessment time period longer than 3 calendar days. If the patient has not been an IRF patient during the time period covered by this longer assessment time period, the IRF may obtain the data for these items using one of more of the sources specified above.

In this final rule, we are adopting the proposed provision that, for the discharge assessment, the assessment reference date is the day that the first of either of the two following events occurs: (1) The patient is discharged from the IRF; or (2) the patient stops being furnished Medicare Part A inpatient rehabilitation services, which includes the situation when a patient dies. In general, we are adopting the proposed rule provision that the assessment time period will be the 3 calendar days immediately prior to the assessment reference date. However, similar to the admission assessment, the assessment time period for some items for the discharge assessment will be different than the 3 calendar days prior to the assessment reference date. In addition, for the discharge assessment, in no case will the discharge assessment time period include a calendar day(s) prior to the admission assessment reference calendar date or the admission assessment reference calendar date itself. For example, a patient admitted on July 1, 2002, will have an admission assessment reference date of July 3, 2002. If that patient is either discharged from the IRF or stops being furnished Medicare Part A inpatient rehabilitation services on July 12, 2002, the discharge assessment reference date is July 12, 2002. In this case, the discharge assessment time period for any of the items will not be the time period prior to or include July 3, 2002. Otherwise, we would be capturing data already recorded on the admission assessment. The goal of the discharge assessment is to obtain motor and cognitive data for the time period between the admission

assessment and the discharge assessment.

In the final rule, for admission assessments, we are adopting the proposed assessment completion date of 1 calendar day after the assessment reference date. For discharge assessments, the completion date is the 5th calendar day in the period beginning with the assessment reference date. Charts 1, 2, and 3 and the accompanying discussion of the charts in section IV.D. of this preamble further illustrate the application of the assessment reference date and other associated patient assessment schedule dates.

Comment: Several commenters stated that they used the FIM to comply with the accreditation process administered by either the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Commission on Accreditation of Rehabilitation Facilities (CARF). These commenters believed that substituting the MDS–PAC for the FIM as the patient assessment instrument would jeopardize their accreditation that was based on use of the FIM. The commenters stated it would be burdensome if they had to use the MDS–PAC and the FIM to satisfy both our requirements and the requirements of JCAHO and CARF.

Response: The patient assessment instrument that we are adopting in this final rule incorporates the majority of the UDSmr patient assessment instrument items. Therefore, we believe that use of our assessment instrument contains the same motor and cognitive items that IRFs need to maintain their JCAHO or CARF accreditation.

Comment: Several commenters stated that our proposed list of clinicians who would be authorized to sign the patient assessment instrument attesting to the completion and accuracy of the data recorded in the assessment instrument was too restrictive. They believed that additional types of clinicians should be authorized. However, the commenters believed that no clinician should have to attest to the accuracy of the data recorded for each item, because it would normally be difficult or impossible for a clinician to verify the accuracy of the data recorded by one or more other clinicians during the time period we proposed to allow for completion of the assessment instrument.

Several commenters stated that the type of clinician who was authorized to complete a portion of our assessment instrument should be expanded to include several other types of clinicians.

Response: In this final rule, we are using a patient assessment instrument that is a modified version of the UDSmr patient assessment instrument. The UDSmr patient assessment instrument does not have an attestation section. Therefore, we are not including the attestation section in our patient assessment instrument in order to increase the similarity between the two assessment instruments. We are revising proposed § 412.606 in these final regulations to remove the attestation provisions.

In addition, because we are using a slightly modified version of the UDSmr patient assessment instrument, we will follow UDSmr's item coding format. The data for the UDSmr patient assessment instrument items can be collected and recorded on the instrument by any clinician trained in how to collect and record the data. Therefore, we have decided to allow any clinician who is employed by the IRF or is a contract clinician of the IRF, and who has been trained in how to perform a patient assessment using our assessment instrument, to perform a patient assessment and record data for any item on the patient assessment instrument. Similar to UDSmr, we believe that any clinician who has been properly trained in collecting the patient assessment data is capable of satisfactorily collecting the data. The IRF will be responsible for ensuring that the data recorded by any clinician of the IRF on the patient assessment instrument are accurate and complete and in accordance with the policies contained in these final regulations (§ 412.606(c)(1) and (2)).

B. The Patient Assessment Process

As discussed in section IV.A. of this preamble, we are requiring that IRFs use our IRF patient assessment instrument to collect data on Medicare patients being furnished care in IRFs. In the proposed rule, we did not state specifically that Medicare Part A fee-for-service patients are the only Medicare patients that must be assessed using the CMS patient assessment instrument. Therefore, in this final rule, for clarity we are stating that Medicare Part A fee-for-service patients are the only Medicare patients that must be assessed using our IRF patient assessment instrument. Our IRF patient assessment instrument consists of nine sections, each to collect different categories of patient information. These categories include identification and demographic information about the patient, medical information, and information related to quality of care and basic patient safety. Appendix B of this final rule contains the CMS IRF patient assessment instrument. However, our IRF patient assessment instrument must be approved by the Office of Management and Budget (OMB) prior to its use. Therefore, we may be required to make changes to the patient assessment instrument while the instrument is undergoing the OMB approval process. After the patient assessment instrument is approved by OMB, we will make it available on the IRF prospective payment system website (www.hcfa.gov/medicare/irfpps.htm). (In the proposed rule, we included an item-by-item guide for the proposed MDS–PAC patient assessment instrument. Because we are changing the patient assessment instrument from the proposed MDS–PAC to a modified version of the UDSmr patient assessment instrument, we will need to develop additional instructions to supplement the UDSmr guide.)

The additional instructions supplementing the UDSmr guide will, in effect, be our draft item-by-itself guide to the IRF patient assessment instrument. Once the IRF patient assessment instrument is approved by OMB, we will submit the draft item-by-item guide to OMB for public review and comment, in compliance with the Paperwork Reduction Act of 1995 (PRA). When we submit the draft item-by-item guide to OMB for public review and comment, we will place it on the IRF prospective payment system website specified above. We anticipate that this draft item-by-item guide will be available for review and comment beginning September 2001. We will be providing appropriate training on the IRF patient assessment instrument and the item-by-item guide, after both the issuance of this final rule and OMB approval of the patient assessment instrument and the item-by-item guide.

IRFs must computerize and electronically report the patient assessment data (§ 412.614). Each year tens of thousands of Medicare patients are treated in IRFs. As discussed in more detail later in section IV.D. of this preamble, each Medicare Part A fee-for-service patients will be assessed two times by an IRF clinician using our inpatient rehabilitation facility patient assessment instrument. Therefore, there will be a large quantity of data collected and submitted to us each year. As a result, it would be unrealistic for us to perform a meaningful analysis of this large amount of data for payment, medical review, and quality monitoring purposes in the absence of the capability to use automated data collection. An analysis of IRF patient assessment data would allow us to use the data in a manner similar to how we use SNF patient assessment data. (See 42 CFR 413.343 and 483.20 and the July

30, 1999 SNF prospective payment system final rule (64 FR 41644).)

One use of SNF patient assessment data is to support quality of care monitoring. The SNF patient assessment data is reliable and effective in supporting early identification of potential quality of care problems. Early identification, in turn, helps to focus the survey process on these identified problem areas.

Using SNF patient assessment data, we have developed indicators of the quality of care in SNFs. These quality of care indicators are used for internal quality improvement and public reporting to help beneficiaries make more informed decisions. The quality of care indicators are also used to support analytical evaluations of the quality of services that SNFs furnish. For example, we use MDS data to provide us with objective and detailed measures of the clinical status and care outcomes of residents in a SNF. In addition, quality of care indicators can be used to analyze the relationship between Medicare policy changes and quality of care.

Computerization of the IRF patient assessment data makes it easier and more practical for an IRF to use the patient assessment data to classify a patient into a CMG. Electronic transmission of the patient assessment data by the IRF makes the creation of an IRF patient assessment database feasible. That database, in turn, permits the data to be accessed easily in various formats for different analytical purposes, which can be used to support the Medicare program's fraud and abuse efforts, for medical review purposes, and for uses similar to how the SNF MDS data are used.

Beginning on January 1, 2002, for Medicare Part A fee-for-service patients, IRFs must collect patient assessment data using the CMS IRF patient assessment instrument as part of the IRF's inpatient assessment process. This data collection requirement applies to Medicare beneficiaries who are already inpatients as of January 1, 2002, as well as beneficiaries admitted as inpatients on or after January 1, 2002 (§ 412.606(b)). In addition, IRFs must use our patient assessment instrument to assess inpatients in accordance with the assessment schedule discussed in section IV.D. of this preamble and specified in § 412.610(c).

The IRFs must encode the patient assessment data by entering the data into a computer software program that we will provide at no charge to IRFs (§ 412.614(a)). The patient assessment data records will be considered ''locked'' when they have passed all of our specified edits and are accepted by the IRF patient assessment database to which the IRF transmitted its records.

IRFs also must maintain all completed Medicare patient assessments that were performed using the CMS IRF patient assessment instrument for the previous 5 years, either in a paper format in the patient's clinical record or in an electronic computer file format that can be easily obtained (§ 412.610(f)). We are imposing this requirement because the assessments may be needed as part of a retrospective review conducted at the IRF for various purposes (for example, as part of the documentation that the IRF used to determine the medical necessity of the Medicare-covered services the IRF furnished). Also, completed patient assessments that are available at the IRF could be beneficial to other entities that appropriately have access to these records (for example, a State or Federal agency conducting an investigation due to a complaint of patient abuse or a suspicion of fraud). In addition, retention of the patient assessment instrument by the IRF will provide a backup to the electronic database.

We will use data from the initial patient assessment to classify patients into a CMG (§ 412.620(a)(3)). The CMG determines the base payment rate that the IRF receives for the Medicare-covered Part A services furnished by the IRF during the Medicare beneficiary's episode of care.

IRFs must complete a successful transmission of test patient assessment data to us by a date that we will specify in program instructions. A successful transmission by the IRFs of test data to us is necessary to determine connectivity with the system and to identify any transmission problems. Our system will transmit a test data feedback report to each IRF indicating that the test data transmission was either completely successful or experienced problems. Problems will be specified in the test data transmission report.

We will provide training and technical support to the IRFs on administering and completing our IRF patient assessment instrument, as well as transmitting the data.

C. Documentation Requirements for the Patient Assessment

The admission patient assessment will be used to classify each Medicare Part A fee-for-service patient into a CMG, and the CMG will be used to determine the IRF payment. While the admission assessment is used to place a patient in a CMG, the discharge assessment is used to determine the relevant weighting factors, if applicable, associated with comorbidities. Section VI. of this preamble discusses comorbidities. One principle governing appropriate Medicare payment and utilization of Medicare inpatient services is that there must be documentation establishing that the inpatient services furnished to a patient meet the requirements set forth in section 1862(a) of the Act (for example, are reasonable and necessary for the diagnosis or treatment of illness or injury) (§ 412.606(a) and (c)).

When the data recorded on the patient assessment instrument accurately reflect the patient's clinical status, they form the basis for documenting that services furnished to the IRF Medicare inpatient are reasonable and necessary. There may be cases in which we raise questions about the accuracy of the recorded patient assessment items and, by extension, the associated medical necessity of the services that the IRF furnished. In these cases, other provider documentation may be examined to verify the information recorded on the patient assessment instrument. Other documentation that will support the accuracy of the recorded data (and the medical necessity for the services furnished to the inpatient) must be recorded in the patient's medical record and could include, but is not limited to: (1) Physician's orders; (2) physician's notes; (3) nursing notes; (4) notes from therapists; (5) diagnostic tests and their results; and (6) other associated information, such as social worker or case manager notes.

A patient's clinical status for a given time period, as indicated by the completed patient assessment instrument, must be verifiable and consistent with the clinical information independently or separately recorded in the patient's clinical record. Otherwise, inaccurately completed patient assessments might be used to classify patients into CMGs that would, in turn, form the basis for Medicare payment for medically inappropriate or unnecessary services.

Facilities must transmit each Medicare inpatient's patient assessments to us, and submit claims for Medicare payment to the fiscal intermediary, in accordance with the Medicare Part A claims processing procedures. Payment to the IRF will be made according to the CMG recorded on the claim sent to the fiscal intermediary.

D. Patient Assessment Schedule and Data Transmission

In the November 3, 2000 proposed rule, we discussed our proposal to implement the patient assessment instrument as part of the IRF prospective payment system. We

included a discussion of the patient assessment schedule; what assessment items would be collected on each assessment; the penalties for late completion of assessments; the computerization of the patient assessment data; the transmission of the patient assessment data, including the late transmission penalty; and the patient assessment instrument computer software that would be required to be used.

1. Assessment Schedule

In the proposed rule, we stated that we were proposing to require that a Medicare patient be assessed at Day 4, Day 11, Day 30, and Day 60 of his or her IRF stay, and also when the patient either is discharged from the IRF or stops receiving Medicare Part A inpatient rehabilitation services (65 FR 66325 and 66326 and proposed § 412.610(c)). Given that the mean length of stay in an IRF is 15.81 days (median length of stay is 14 days), we solicited comments in the November 3, 2000 proposed rule on the benefits of mid-stay assessments, that is, the Day 11, Day 30, and Day 60 assessments. We noted that the IRF stay of a small percentage of patients is over 30 days, and an even smaller percentage of patients stay over 60 days.

In proposed § 412.602, we proposed that an interrupted stay is one in which an IRF patient is discharged from the IRF and returns to the same IRF within 3 consecutive calendar days. In counting the 3 calendar day time period to determine the length of the interruption of the stay, the first day of the start of the interruption of the stay is counted as ''day 1,'' with midnight of that day serving as the end of that calendar day. The 2 calendar days that immediately follow would be days 2 and 3. If the patient returns to the IRF by midnight of the third calendar day, the patient would be determined to have had an interrupted stay of 3 calendar days or less. We are adopting as final the definition of interrupted stay as proposed, with further clarification that an interruption is 3 consecutive calendar days that begins with the day of discharge and ends on midnight of the third day.

We indicated that when a patient has an interrupted stay, the interrupted stay must be documented on the assessment instrument interrupted stay tracking form. The data recorded on the interrupted stay tracking form must be transmitted to our patient data system within 7 calendar days of the date the patient returns to the IRF.

We proposed that when an interruption of a patient's IRF stay occurs, it may affect the assessment reference dates, completion dates, encoding dates, and transmission dates.

Comment: We received numerous comments stating that the proposed number of assessments was excessive and created an undue burden on the IRF. The commenters stated that they believed that assessing patients only upon the patient's admission and discharge to the IRF was sufficient to fulfill our payment classification and quality of care monitoring goals. Some of the commenters emphasized that the UDSmr patient assessment system requires patient assessment only upon the patient's IRF admission and discharge.

Response: As described more fully in the proposed rule, we believe that a patient assessment at one or more points between a patient's admission and discharge would yield valuable quality of care monitoring data. However, after analyzing the public comments that stated that our proposed method was an undue time burden, we are making changes to reduce the burden associated with our proposed assessment schedule. In this final rule, we are requiring the completion of the patient assessment instrument only upon the patient's admission and discharge, for a total of two assessments (§ 412.610(c)).

In addition to requiring the completion of the patient assessment instrument upon only the patient's admission and discharge, in section IV.D.2. of this final rule, we are specifying that patient assessment data for both the admission and discharge assessment are to be transmitted only once and at the same time (§ 412.614(c)). Thus, there will be only one transmission of all of the patient assessment data. To be consistent with the time requirement for transmission of the patient admission and discharge assessment data, we also are requiring that the interruption in stay data be transmitted only at the same time that the admission and discharge assessment data is transmitted (§ 412.618).

We agree with the commenters who stated that, by collecting IRF patient assessment data only upon the patient's admission and discharge (as approximately 85 percent of IRFs that subscribe to the UDSmr patient assessment system currently do), we can achieve our goals of appropriately classifying a patient into a CMG, and at the same time monitor the quality of care furnished to the IRF patient. In our proposed rule, we stated that we believed that in order to monitor the quality of care furnished to a patient, we needed patient data collected between the admission and discharge assessments. However, we agree with the commenters that obtaining data for quality of care monitoring, using the method employed by approximately 85 percent of IRFs that our data indicate subscribe to the UDSmr patient assessment system, will be sufficient to meet our quality of care monitoring goal. We note that the IRF prospective payment system is a discharge-based system that pays based on the entire episode of the IRF stay. That is in contrast to the SNF prospective payment system which, because it is a per-diem based payment system, needs to have more frequent patient assessment data in order to evaluate if the prior per-diem payment rate that was previously determined based on patient assessment data is still appropriate.

Patient Assessment Instrument Dates Associated with the Admission Assessment. The following Charts 1 and 2 and the accompanying discussion illustrate application of the final patient assessment schedule and associated assessment reference date, assessment instrument completion date, assessment instrument encoding date, and assessment instrument transmission date to the admission assessment.

CHART 1.—PATIENT INSTRUMENT ADMISSION ASSESSMENT SCHEDULE AND ASSOCIATED DATES

Assessment type	Hospitalization time period and observation time period	Assessment reference date	Patient assessment instrument must be completed by:	Payment time covered by this assessment:	Patient assessment data must be encoded by:	Patient assessment instrument data must be transmitted by:**
Admission assessment.	First 3 days	Day 3*	Day 4	Entire Medicare Part A stay time period.	Day 10	See ** below for how to calculate this date.

* Except for some items, as discussed previously in section IV.A.3. of this preamble.

** Because all the assessment data for admission and discharge assessments must be transmitted together after the patient is discharged or stops receiving Medicare Part A services, the admission assessment data must be transmitted at the same time the discharge data are transmitted. That transmission date is by the 7th calendar day in the period beginning with the last permitted *discharge* patient assessment instrument ''encoded by'' date.

CHART 2.—EXAMPLE APPLYING THE PATIENT ASSESSMENT INSTRUMENT ADMISSION ASSESSMENT SCHEDULE AND ASSOCIATED DATES

Assessment type	Hospitalization time period and observation time period	Assessment reference date	Patient assessment instrument must be completed by:	Patient assessment instrument data must be encoded by:	Patient assessment instrument data must be transmitted by:**
Admission assessment	First 3 days (Patient admitted on 7/3/02).	* 7/5/02	7/6/02	7/12/02	See ** below for how to calculate this date.

* Except for some items, as discussed previously in section IV.A.3. of this preamble.

** If the patient is discharged on 7/16/02, the last permitted discharge patient assessment instrument encoding date is 7/26/02, and the admission and discharge assessment data must be transmitted by 8/01/02. See Chart 3 that illustrates how to apply the patient assessment instrument discharge dates. Note that the span of time to complete the admission assessment is different from the time to complete the discharge assessment as discussed in this section IV.D. of the preamble.

Each Medicare Part A fee-for-service patient must be assessed by a clinician(s) using our IRF patient assessment instrument to perform a comprehensive assessment according to the schedule specified above. More than one clinician may contribute to the completion of the patient assessment instrument. We believe that the accuracy of the assessment would be enhanced if the data collected for a patient assessment item were collected by a clinician with specialized training and experience in the area of the data being collected. For example, although a registered nurse could fully assess all aspects of a patient and collect all the patient assessment instrument data, a physical therapist or an occupational therapist has the specialized training that may contribute to a more accurate assessment of some neuromuscular items. Our objective is to have data collected that would best reflect the patient's unique circumstances and clinical status during the assessment observation period, considering the accuracy of patient assessment is contingent on the training and experience of the clinician assessor.

In Chart 6.—Critical Patient Assessment Items in section V.D. of this preamble, we specify the patient assessment instrument items that will be used to classify a patient into a specific CMG.

If an interruption of 3 calendar days or less occurred for the admission assessment observation time period (for example, the days specified in the ''Hospitalization Time Period and Observation Time Period'' column in Charts 1 and 2 illustrated previously), the associated assessment reference date, patient assessment instrument completion date, patient assessment instrument encoded by date, and patient assessment instrument transmitted by date for the admission assessment would be shifted forward by the number of days that the patient was not an inpatient of the IRF. We refer to Chart 2 to help guide the reader during our discussion of the shifting forward of dates. With regard to the admission assessment, assume that the patient's stay began with admission to the IRF on July 3, 2002, but was interrupted on July 4, 2002, which would be day 2 of the patient's IRF hospitalization. The patient returned to the same IRF prior to midnight of July 6, 2002, and had an interrupted stay of 3 calendar days. The assessment reference date observation time period for the admission assessment would be shifted to July 6, 7, and 8. (Without the interrupted stay, the admission assessment reference date observation time period would have been July 3, 4, and 5, with the assessment reference date being July 5, 2002.) Because of the interruption in stay, the admission assessment reference date would be reset to July 8, 2002. The admission assessment completion date would be reset to July 9, 2002. The admission assessment ''patient assessment instrument must be encoded by'' date would be reset to July 15, 2002. The admission assessment ''patient assessment instrument must be transmitted by'' date would be reset to a date calculated according to the footnote for the ''patient assessment instrument must be transmitted by'' column in Chart 2.

In the final rule, we are revising proposed § 412.610 to specify under paragraph (c)(1) the admission assessment reference dates and the admission assessment completion dates.

Patient Assessment Instrument Dates Associated with the Discharge Assessment. In this final rule, we are revising proposed § 412.610(c) to specify under paragraph (2) that the assessment reference date for the discharge assessment is the actual day that one of two events occurs first: (1) The day on which the patient is discharged from the IRF; or (2) the day on which the patient ceases to receive Medicare-covered Part A inpatient rehabilitation services. Note that the day the patient ceases to receive Medicare-covered Part A inpatient rehabilitation services includes a situation when a patient dies. The discharge assessment is performed only at the first point in time that either of these events occurs. There may be cases when a patient ceases receiving Medicare Part A inpatient rehabilitation services, but is not discharged from the IRF.

After the assessment reference date for the discharge assessment is determined, the completion date for the discharge assessment must be set. We are revising proposed § 412.610(c) to include under paragraph (2)(i)(B) that the completion date for the discharge assessment is the 5th calendar day that follows the discharge assessment reference date with the discharge assessment reference date itself being counted as the first day of the 5 calendar day time period. To determine the 5th calendar day, the discharge assessment reference date is counted as day 1 of the 5 calendar days. For example, if the assessment reference date is July 16, 2002, the completion date would be July 20, 2002.

We are not using the method used to determine the completion date for the admission assessment to determine the completion date for the discharge assessment.

The reason for using a different method to determine the discharge completion date is because of the

definition of an interrupted stay. Previously, we specified that, after the patient returns to the IRF after an interrupted stay, another admission assessment is not performed, and the CMG into which the patient classified prior to starting the interrupted stay is still in effect. Therefore, in order to ensure that a clinician does not perform a discharge assessment on a patient who meets the criteria of an interrupted stay, it is necessary to make the completion date of the discharge assessment a date that exceeds the interrupted stay defined time period. This safeguard prevents the performance of unnecessary discharge assessments by the IRF.

In addition, any discharge assessment that is transmitted to the CMS patient data system is used by the system to indicate that a patient is no longer hospitalized in the IRF. Therefore, if a discharge assessment that is associated with an interrupted stay is transmitted to our patient data system, it would result in our patient data system rejecting the subsequent true discharge assessment that would be transmitted when the patient is actually discharged or stops being furnished Medicare Part A inpatient rehabilitation services.

We are revising proposed § 412.610 to remove the contents of paragraph (d) that reference penalties for late completions (as discussed in section IV.D.4. of this preamble); to remove from paragraph (e) the provisions on assessment completion dates (which are now under paragraph (c)); and to specify under new paragraph (d) only encoding dates. (As conforming changes, proposed paragraphs (f) and (g) are redesignated as paragraphs (e) and (f), respectively.)

We are providing that the discharge assessment ''must be encoded by date'' is the 7th calendar day in the period beginning with the determined discharge completion date. To determine the 7th calendar day, count the discharge assessment completion date as day 1 of the 7 calendar days. For example, if the discharge assessment completion date is July 20, 2002, the assessment must be encoded by date would be July 26, 2002.

In this final rule, we also are revising proposed § 412.614(c) to specify that the discharge assessment ''must be transmitted by date'' is the 7th calendar day in the period beginning with the discharge assessment ''must be encoded by date''. To determine the 7th calendar day, count the discharge assessment ''must be encoded by date'' as day 1 of the 7 calendar days. For example, if the discharge assessment ''must be encoded by date'' is July 26, 2002, the assessment ''must be transmitted by date'' would be August 1, 2002.

Chart 3 below illustrates the discharge assessment dates discussed above:

CHART 3.—EXAMPLE APPLYING THE PATIENT ASSESSMENT INSTRUMENT DISCHARGE ASSESSMENT DATES

Assessment type	Discharge date *	Assessment reference date	Assessment Instrument must be completed on:	Assessment instrument data must be encoded by:	Assessment instrument data must be transmitted by:
Discharge assessment	* 7/16/02	** 7/16/02	7/20/02	7/26/02	8/01/02

* This is either: (1) The day the patient is discharged from the IRF; or (2) the day the patient ceases receiving Medicare-covered Part A inpatient rehabilitation services.

** Except for some items, as discussed previously in section IV.A.3. of this preamble.

Comment: Some commenters believed that the IRF prospective payment system policies should only apply to patients admitted to an IRF on or after the implementation date of the IRF prospective payment system. They did not believe that the IRF prospective payment system policies should apply to patients who were admitted prior to implementation of IRF prospective payment system, and are still patients on the day the IRF prospective payment system is effective.

Response: Because the IRF prospective payment system is a discharge-based system, payment is made to the IRF based on the entire episode of stay of the patient in the IRF. Therefore, any IRF that discharges any patient after the IRF prospective payment system is implemented must be paid according to the IRF prospective payment system policies. Consequently, we are adopting as final the ''Assessment Rule to Use if Medicare Beneficiaries Are Receiving IRF Services on the Effective Date of the Regulation'' policy (65 FR 66328) we proposed in the proposed rule.

2. Data Items To Be Collected

In the proposed rule, we specified a list of data items that we were proposing to be collected for Day 4, Day 11, Day 30, and Day 60 of an admission and at discharge (65 FR 66328–66330).

Comment: As stated previously, many commenters urged us to use the FIM as the patient assessment instrument. In addition, the commenters urged us to collect the patient assessment data according to the same schedule as the UDSmr uses for the FIM.

Response: In sections IV.A. and B. of this preamble, we state that the patient assessment instrument we are adopting in this final rule is more similar to the UDSmr patient assessment instrument. We also state under this final rule that we are requiring IRFs to collect patient assessment data in a manner similar to how the UDSmr patient assessment data are collected, that is, only upon the admission and discharge of the patient. However, as we specified in the proposed rule (under proposed § 412.610(c)(5)) and as we are adopting in this final rule under § 412.610(c)(2)(ii), if the patient stops receiving Medicare Part A inpatient rehabilitation services before being discharged from the hospital, for purposes of the discharge assessment, the day that the patient stops receiving Medicare Part A services becomes the discharge day. In other words, in this situation the day that the patient stops receiving Medicare Part A services is the day to use as the discharge day. The net effect is that the patient is still only assessed twice during the patient's IRF stay. We note that the IRF is only required to collect patient assessment data on Medicare Part A fee-for-service patients.

The IRF must record the items in the identification information, admission information, and payer information sections of the patient assessment instrument only once on the assessment instrument, and must transmit these items to the CMS patient data system when all of the admission and discharge assessment data are completed. Once entered into the computerized version of the assessment instrument, that data will be retained in the computerized version, negating the need to enter the same information again. Data for the other sections of the patient assessment instrument will be collected only upon the patient's admission or discharge as

appropriate; the patient assessment instrument clearly delineates which items are collected upon admission and which are collected upon discharge.

The proposed rule contained a table entitled ''Table 7C.—MDS–PAC ITEMS REQUIRED BY TYPE OF ASSESSMENT''. That table specified the data items that would be collected during the admission, update, or discharge assessment. Chart 4 below (a replacement for proposed Table 7C) is a category, sub-category, item name, and item number specification of the data items that are to be collected for the admission assessment and the discharge assessment. As would be expected, the data for all of the items will be recorded during the admission assessment, with the logical exception of the items for which data can only be recorded upon the patient's discharge. The ''X'' in the admission or discharge column indicates if that item is collected upon the admission or discharge assessment. Chart 4 takes into account that the admission assessment items associated with the patient assessment instrument categories of data related to patient identification, admission information, payer information, medical information, medical needs, function modifiers, FIM instrument, and quality indicators will be retained in the data fields of the computerized version (software) of the patient assessment instrument. Therefore, there are many data items that are not collected during the discharge assessment, but because the data items are retained in the patient assessment software, will also be transmitted when the discharge assessment items are completed and the entire assessment instrument is transmitted.

CHART 4.—PATIENT ASSESSMENT ITEMS BY TYPE OF ASSESSMENT

Item category, item sub-category, item name, item no.	Admission assessment	Discharge assessment
Identification Information*		
1. Facility Information:		
A. Facility Name	X	
B. Facility Medicare Provider Number	X	
2. Patient Medicare Number	X	
3. Patient Medicaid Number	X	
4. Patient First Name	X	
5. Patient Last Name	X	
6. Birth Date	X	
7. Social Security Number	X	
8. Gender	X	
9. Race/Ethnicity (Check all that apply):		
American Indian or Alaska Native	X	
Asian	X	
Black or African American	X	
Hispanic or Latino	X	
Native Hawaiian or Other Pacific Islander	X	
White	X	
10. Marital Status	X	
11. Zip Code of Patient's Pre-Hospital Residence	X	
Admission Information*		
12. Admission Date	X	
13. Assessment Reference Date	X	
14. Admission Class	X	
15. Admit From	X	
16. Pre-Hospital Living Setting	X	
17. Pre-Hospital Living With	X	
18. Pre-Hospital Vocational Category	X	
19. Pre-Hospital Vocational Effort	X	
Payer Information*		
20. Payment Source:		
A. Primary Source	X	
B. Secondary Source	X	
Medical Information*		
21. Impairment Group	X	X
22. Etiologic Diagnosis:	X	
23. Date of Onset of Etiologic Diagnosis	X	
24. Comorbid Conditions:		
A	X	X
B	X	X
C	X	X
D	X	X
E	X	X
F	X	X
G	X	X
H	X	X
I	X	X
J	X	X
Medical Needs		
25. Is patient comatose at admission?	X	
26 Is patient delirious at admission?	X	
27. Swallowing Status:	X	X
28. Clinical signs of dehydration	X	X
Function Modifiers*		
29. Bladder Level	X	X
30. Bladder Freq.	X	X
31. Bowel Level	X	X
32. Bowel Freq.	X	X
33. Tub Transfer	X	X
34. Shower Transfer	X	X
35. Distance Walked (feet)	X	X
36. Distance Traveled in Wheelchair (feet)	X	X
37. Walk	X	X
38. Wheelchair	X	X
FIM Instrument*		
Self-care:		
A. Eating	X	X
B. Grooming	X	X
C. Bathing	X	X
D. Dressing—Upper	X	X
E. Dressing—Lower	X	X
F. Toileting	X	X
Sphincter Control:		
G. Bladder	X	X
H. Bowel	X	X
Transfers:		
I. Bed, Chair, Wheelchair	X	X
J. Toilet	X	X
K. Tub, Shower	X	X
Locomotion:		
L. Walk/Wheelchair	X	X
M. Stairs	X	X
Communication:		
N. Comprehension	X	X
O. Expression	X	X
Social Cognition:		
P. Social Interaction	X	X
Q. Problem Solving	X	X
R. Memory	X	X
Discharge Information*		
40. Discharge Date		X
41. Patient discharge against medical advice:		X
42. Program Interruptions		X
43. Program Interruption Dates:		
A. 1st Transfer Date		X
B. 1st Return Date		X
C. 2nd Transfer Date		X
D. 2nd Return Date		X
E. 3rd Transfer Date		X
F. 3rd Return Date		X
44A. Discharge to Living Setting:		X
44B. Was patient discharged with Home Health Services?		X
45. Discharge to Living With:		X
46. Diagnosis for Transfer or Death:		X
47. Complications during rehabilitation stay:		
A		X
B		X
C		X
D		X
E		X
F		X

CHART 4.—PATIENT ASSESSMENT ITEMS BY TYPE OF ASSESSMENT—Continued

Item category, item sub-category, item name, item no.	Admission assessment	Discharge assessment
Quality Indicators		
Respiratory Status:		
48. Shortness of breath with exertion	X	X
49. Shortness of breath at rest	X	X
50. Difficulty coughing	X	X
Pain:		
51. Rate the highest level of pain reported by the patient within the assessment period	X	X
Push Scale:		
Pressure Ulcers:		
52A. Highest current pressure ulcer stage	X	X
52B. Number of current pressure ulcers	X	X
52C. Length multiplied by width (open wound surface area)	X	X
52D. Exudate amount	X	X
52E. Tissue type	X	X
52F. Total Push Score	X	X
Safety		
53. Total number of falls during the rehabilitation stay	.....	X
54. Balance problem	X	X

*The FIM data set, measurement scale and impairment codes incorporated or referenced herein are the property of U B Foundation Activities, Inc. © 1993, 2001 U B Foundation Activities, Inc. The FIM mark is owned by UBFA, Inc.

The IRF must collect the patient assessment data upon admission and discharge, but must transmit the patient assessment data only one time to our patient data system. This transmission will contain all the admission data and the discharge data.

In the proposed rule, we named the patient data system to which the IRF would transmit its patient assessment data the ''HCFA MDS–PAC system''. Because we are using a patient assessment instrument that is different from the MDS–PAC, we are renaming the HCFA MDS–PAC system ''the CMS Patient Data System.'' The IRF will still encode the patient data into a computerized version of the patient assessment instrument. Also, the computer program will use the encoded admission assessment data to classify a patient into a CMG.

3. Data Transmission

a. Computerization of Patient Assessment Data

In the proposed rule, we specified that the data for all MDS–PAC specified assessments must be encoded. Encoding the data means entering the data into the IRF's computer using appropriate software, including performing data edits. In § 412.610(e)(3), we proposed that IRFs encode and edit the data for Medicare patients within 7 calendar days of the date that the MDS–PAC is completed. We proposed to specify a maximum of 7 calendar days because we believed that this is a reasonable amount of time for IRFs to complete these tasks (65 FR 66330).

In § 412.610(f) we proposed that the encoded data must accurately reflect the patient's status at the time the data are collected. Because the patient's clinical status may change over time, the data must accurately represent a patient's clinical status as of a particular assessment reference date. Before transmission, the IRF must ensure that the data items on the paper copy match the encoded data that are sent to our patient data system. We also proposed to require that once the clinician(s) complete the assessment using either a paper copy of the instrument or an electronic version, the IRF must ensure that the data encoded into the computer and transmitted to our system accurately reflect the data collected by the clinician.

b. Transmission of Data

The IRF must have a system that supports dial-up communication for the transmission of the patient assessment instrument data to our system. The patient assessment data will be submitted to our system via the Medicare Data Collection Network (MDCN). The MDCN is a secured private network. Specific instructions and telephone numbers will be provided to the IRFs in order for the IRFs to be able to access the MDCN.

We will utilize the most current technology capable of maintaining the security of the patient data (for example, encryption technology) in order to ensure the security of the information transmitted to and from our system. For security purposes, there are two levels of user authentication required. For the first level, to obtain access to the MDCN, the IRF must obtain an individual network-identification code for each person submitting the data to our system. The CMS system administrator or our agents distribute this identification code. Then, to obtain access to our data system, an IRF must also obtain a facility-identification code from our system administrator. The IRF must transmit the patient assessment data via the MDCN secured lines to our data system. At that time, the data will be checked to ensure it complies with our system data formatting specifications.

In § 412.614, we proposed to require that the IRF electronically transmit to our patient data system accurate, complete, and encoded data for each Medicare patient. We also proposed that the data must be transmitted in a format that meets the general requirements specified in § 412.614. We believed that once the patient assessment data are encoded and edited, it is a relatively simple procedure to complete the preparation of the data for transmission to our system. Therefore, we proposed that encoded and edited data that have not previously been transmitted, must be transmitted within 7 calendar days of the day by which the data must be encoded as specified in the assessment schedule and associated dates (Charts 1 and 3 in section IV.D. of this preamble). In addition, we proposed that the data must be transmitted in a manner that meets the locked data criteria specified in the proposed rule. At the end of the transmission file, an entry concerning the number of records being transmitted is required to complete the transmission process.

As specified in section IV.D.2. of this preamble, we are changing the proposed patient assessment schedule so that a patient is now assessed only at admission and upon discharge. As a result of this revision, in this final rule we are revising proposed § 412.614(c) to reflect transmission dates that conform to the schedule admission and discharge assessment and encoding dates.

c. Patient Instrument Computer Software

In the proposed rule under § 412.614(c), we proposed that the IRF encode and transmit the MDS-PAC data using the software available from us or other software that conforms to our standard data specifications, data dictionary, and other data requirements specified by us, and that includes the data items that match the most updated version of the patient assessment instrument. We indicated that our Minimum Data Set for Post-Acute Care Tool (MPACT) software would be able to be used for several purposes, such as to encode data, to maintain IRF and patient-specified information, to create export files to submit data, and to test alternative software. The MPACT software would provide comprehensive on-line help to users in encoding,

editing, and transmitting the data. Additionally, there would be a toll-free hotline to support this software product.

Comment: Several commenters requested more information regarding the IRF patient assessment data test transmission that we will conduct.

Response: Because we were not able to publish a final rule prior to February 1, 2001, we were not able to have IRFs conduct a patient data test transmission during February 2001 as stated in the proposed rule. At this time, we have not finalized when the test transmission time period will occur. We will train the IRFs on the CMS IRF patient assessment instrument and the patient assessment process. During that time, we will provide the IRFs with specifics about the patient data test transmission process.

4. Penalties for Late Assessments

In the proposed rule, we proposed that the assessment is late if the assessment is not in accordance with the assessment reference date specification for the Day 4 assessment and outlined the penalties (65 FR 66330; § 412.614(d)). We stated that, if the IRF transmits the patient assessment data late, the IRF would be paid either a reduced CMG-determined payment or no CMG-determined payment. We proposed that the CMG-determined payment be reduced by 25 percent if the IRF transmitted the patient assessment data 10 or less calendar days late. We also proposed that if the IRF transmitted the patient assessment data more than 10 calendar days late, the IRF receives no payment for the Medicare Part A services the IRF furnished.

Comment: Several commenters stated that the penalties associated with late completion and late transmission of the patient assessment data were too harsh.

Response: In the proposed rule, we proposed a penalty for late completion of the MDS–PAC assessment. As specified in section IV.D.2. of this preamble, we are changing the assessment schedule so that the patient is only assessed upon admission and discharge. In addition, in this final rule, we are specifying that both the admission and discharge patient assessment data must be transmitted together. Because of these changes the focus of our patient assessment data monitoring will be the assessment reference date and the data transmission date, instead of the instrument completion date. In addition, as stated previously, we are deleting the proposed assessment attestation section of the patient assessment instrument. The attestation section was the basis for the completion penalty, because it contained the date on the assessment instrument form that specified when the data for all of the assessment instrument items had been recorded on the patient assessment instrument. Thus, the date on the proposed attestation section was the basis for determining the date when the assessment instrument had been completed. The result of eliminating the proposed attestation section is that the completion date that the IRF would record on the assessment instrument form that indicated when all of the assessment items had been completed is also eliminated. In order to have a completion penalty, there must be a completion date specified on the assessment form. For these reasons the completion penalty is eliminated. However, the IRF must still complete the CMS IRF patient assessment instrument in accordance with the calendar date specifications contained in this final rule.

After analysis of the public comments we received, we have decided to revise the transmission penalty. In the proposed rule, we proposed that ''late transmission'' meant the IRF did not transmit MDS'PAC data in accordance with the transmission timeframes specified in Table 4C of section III. of the proposed rule. The payment penalties we proposed are described above under item 4.

As specified in section IV.D.2. of this preamble, we are changing the patient assessment schedule so that a patient is now assessed only at admission and upon discharge. In addition, we are specifying that for each IRF stay, the patient assessment data will be transmitted only once. Because of the change in the patient assessment schedule, we no longer need the data to be transmitted more frequently. This less frequent assessment of the patient and transmission of the patient assessment data will reduce the time burden associated with the assessment process as requested by many commenters. Because of the changes to the patient assessment schedule, we are revising the specifications of what constitutes a late transmission. In this final rule, ''late transmission'' means the IRF did not transmit the patient assessment data in accordance with the transmission timeframes specified in Charts 1, 2, and 3 of section IV.D. of this final rule. In addition, we are persuaded by the commenters that the transmission penalty as proposed in the proposed rule, and described above under item 4, is too harsh. It is appropriate for the IRF to be paid some amount for the treatment the IRF furnished to the patient. To address the commenters' concern, we are reducing the amount of the penalty so that the IRF is paid some of the CMG associated payment for the patient care the IRF furnished (§ 412.614(d)).

In this final rule under § 412.614(d)(2), we are specifying that if the IRF transmits the patient assessment data more than 10 calendar days late, the IRF will be paid a CMG-determined payment that will be reduced by 25 percent. There will not be any other penalty associated with late transmission.

E. Quality Monitoring

Before we present our specific strategies for quality monitoring in IRFs, we want to discuss our conceptual framework for understanding and advancing quality in the setting of IRFs, as well as other post-acute care settings.

The degree of efficiency of any process that produces a service is measured by the span of time, the amount of resources, and the type of resources consumed to produce the service. The degree of effectiveness of the service is measured by the change that occurs when that service process is applied. The concept ''quality of care'' refers to the relationship between patient treatment (a service) efficiency and the resulting effect of that treatment process. Therefore, to measure the relationship (quality of care), we must collect and quantify both before and after treatment patient assessment data so that the correlation or consequences due to the efficiency (time, amount and type of resources used) and the effectiveness (outcomes) of the patient treatment process can be evaluated.

To help promote efficiency in the rehabilitation treatment process, the IRF prospective payment system methodology uses historical data to determine a payment amount that, given the patient's clinical status, is representative of what we consider to be an appropriate use and mix of available treatment resources. To measure the relationship (that is, the quality of the care furnished) between the IRF treatment process resources used (and paid by Medicare) and the effects of the treatment process, we need to use generally acknowledged measures that indicate the results that are due to the treatment the patient was furnished. At a minimum, these measures must indicate that the patient's health and safety are being fostered. In addition, the measures should reveal changes in the patient's capabilities, with the changes reflecting the impact of the treatment process. The changes can be measured by changes in the patient's functional (motor), cognitive, and emotional status.

The CMS IRF patient assessment instrument can be used to record (code) the patient's diseases and injuries. The patient assessment instrument focuses on generalized changes in a patient's functional, cognitive, and emotional status in response to the treatment furnished, as opposed to focusing on the impact of the application of a specific disease or injury treatment process. We note that we are exploring the potential for developing disease-specific quality of care measures.

When measuring changes in the patient's functional, cognitive, emotional, or lifestyle status, a determination must be made if the changes reflect good or bad patient care. Therefore, the changes must be compared to either a predetermined standard or, because we believe that facility comparison promotes competitiveness which leads to enhanced quality, to similar patients treated in other but similar treatment facilities.

Determining if a predetermined generally accepted standard of good care has been met means that the quality of care indicators must demonstrate that the patient care techniques used promoted a positive change in the patient's health. Examples of such patient care techniques include ensuring that the patient consumes appropriate amounts and types of food and fluid, the prevention of patient injury (for example, falls and pressure ulcers), the prevention of the exacerbation of existing injuries (for example, pressure ulcers), or enhancing the caliber of patient's lifestyle (for example, by preventing or mitigating pain). Therefore, to measure the relationship (quality of the care furnished) between the treatment resources used and resulting patient outcomes, we need to: (1) Be able to compare similar patients in similar facilities; and (2) have the ability to determine if some basic patient care, patient safety, and lifestyle enhancement measures are being implemented during the patient's treatment.

From the above discussion, it is clear that quality of care is complex, sometimes difficult to define, and is multidimensional in nature. One dimension is that the care achieve its intended result, which in the context of the IRF setting is most often to improve the patient's functioning in order to foster more independent living. A second dimension of quality is the prevention of avoidable complications or other adverse events and minimizing the effects of adverse events. A third related dimension is to improve management of the patient's medical impairments, with the goal being to promote ''improved'' health as well as function, or at least to improve the management of the patient's medical conditions. In addition, it is important to use data to identify other sentinel events. Identifying these potentially negative impacts to care allows us to perform root cause analysis and determine solutions to prevent them from reoccurring. Our specific quality monitoring processes should be developed in a way that supports this multidimensional view of quality.

The consequences of detecting possible quality of care problems through IRF data are varied and could include— (a) increasing educational efforts to beneficiaries to help them make better informed selections of providers; and (b) improving the survey and oversight of IRFs and accrediting organizations. An IRF's staff may use quality of care information from our patient assessment instrument for their own quality assurance and, ultimately, quality improvement activities. We also have the potential to develop refinements to the case-mix methodology which provide incentives for improving quality.

As our payment policies continue to evolve, our objective is to move forward with a quality assessment and improvement agenda that is based on standardized data, beneficiaries' clinical characteristics, and patient care outcomes. To achieve that objective, we need to collect common data elements and develop standardized assessment tools that will enable us to focus on beneficiary care needs rather than the characteristics of the provider. We believe that the most important short-term goal of post-acute care quality monitoring is to assess the effects of implementing the changes in the payment system on the quality of care furnished in post-acute care settings.

We are aware of MedPAC's concern that we may have only a limited ability to assess the impact of Medicare payment changes that either have been implemented or will soon be initiated— for example, the IRF prospective payment system. There is a need to enhance our ability to assess this impact in order to improve the policies associated with our Medicare prospective payment systems.

In its March 2000 Report to Congress, MedPAC states that ''Quality monitoring systems could help ensure that payment systems are designed correctly and that providers are responding appropriately to the systems' incentives, and could also be used to accomplish several other important objectives.'' (page 62) MedPAC believes that such information ''could assist in tracking trends over time, or provide an early warning of impending problems in quality'', and further indicated that ''Attaining any of these ends requires routine, systematic measurement of health care quality.'' (page 62) We believe that our current patient assessment instrument is another step in the development of the process for monitoring quality of care in IRFs.

The nonpayment-related items in our instrument are necessary to provide an inventory of patient factors that are necessary to monitor quality and assess risk. These data can be used by facilities to identify patients at risk for adverse outcomes. In addition, our patient assessment instrument data may contribute to development of the patient care plan. Information collected can identify patients at risk for adverse outcomes, such as weight loss, aspiration, or pressure ulcers, and support the monitoring of these patients to prevent outcomes that might negatively impact patients' likelihood of optimal rehabilitation.

We believe that the data collected by our patient assessment instrument can be used to monitor the impact of the IRF prospective payment system upon IRFs and beneficiaries, including beneficiary access to care. Section 125 of the BBRA directs the Secretary to conduct a monitoring study, and to submit a report to the Congress no later than 3 years from the date that the IRF prospective payment is implemented. To both monitor the impact of the IRF prospective payment system on IRFs and beneficiaries, and support this BBRA-mandated report to the Congress, we need a data-driven monitoring system that will give us the capability to acquire objective (as opposed to anecdotal) data for analysis.

The discharge assessment will provide data about a patient's clinical status at discharge and give us the ability to compare a patient's clinical status at discharge with the patient's clinical status at the admission assessment. Comparison of the patient's clinical status at admission and at discharge will give us the data to analyze the relationship between any changes in the patient's clinical status and the quantity and effectiveness of the services the IRF furnished to the patient. That comparison will provide us with data that will indicate the quality of the IRF services furnished, and if an IRF was not furnishing the level of Medicare-covered services the patient needed.

Many studies have examined overall and condition-specific functional gain

from admission to discharge as a measure of the effectiveness of a rehabilitation program. National benchmarks of functional gain have been used by providers to measure their performance relative to other facilities. In addition, some work has also been devoted to understanding providers' efficiency by linking measures of length of stay and functional gain.

The data associated with each patient assessment item will enhance our ability to monitor and, thus, safeguard the quality of care that beneficiaries receive. A quality of care improvement monitoring system that is based on our IRF patient assessment instrument data is consistent with other information-based quality monitoring programs, such as the ORYX process used by the JCAHO.

While only some assessment items will be used to determine the CMG, we believe that the data provided by all assessment items are an essential first step in developing the type of quality monitoring system that both MedPAC and our favor. Possible uses of the data include: (1) strengthening existing quality assurance mechanisms; (2) generating indicators that will allow providers to assess their performance, and to compare it against benchmarks derived from standards of care or the performance of peers; and (3) creating a system that assists beneficiaries in making informed decisions when choosing among providers. In addition, the patient assessment items may be useful in developing core measures that provide meaningful information on patient characteristics and outcomes across post-acute care settings.

1. Monitoring the IRF Prospective Payment System

We are planning a system that can be used to monitor access to rehabilitation facilities as well as to monitor the quality of the care delivered in these facilities. This will be done through the monitoring of payment for the care and the associated cost of the delivered care. Monitoring will include variables such as length of IRF stay, percent of IRF discharges to SNF, long-term care hospital, or intensive outpatient rehabilitation programs, change in motor function between admission and discharge, and the case-mix distribution of the facility. We plan to examine changes within ''market areas'' as well as individual facilities.

In addition, we will be developing a variety of methods for monitoring the impact of the IRF prospective payment system. Monitoring may describe changes in access to rehabilitation, in payments to rehabilitation facilities, in quality of care, and in the cost of rehabilitation care. This monitoring will also help to identify unintended changes in the operations of providers, and help to identify refinements needed in the IRF prospective payment system. In addition, because the IRF prospective payment system may have effects on non-IRF providers, and because changes in the payment systems for other providers may affect IRFs once common core data elements are required across post-acute care providers and linked with other data, the monitoring system could also describe changes in access, utilization, quality, and cost of care in different types of post-acute care sites, including, but not limited to HHAs and SNFs. We could start these activities in approximately 2 years.

2. Quality Indicators

Quality indicators are markers that indicate either the presence or absence of potentially poor facility care practices or outcomes. The development of quality indicators depends on the collection and analysis of sufficient patient assessment data from a representative national sample. We are attempting to design a monitoring system that would not only describe quality indicators, but also show how they can be used together to obtain a clear description of access, outcomes, and cost in IRFs. Quality indicators will be developed around the different dimensions of quality discussed earlier in this section. We believe that quality indicators developed for individual IRFs would help identify the IRFs that require attention because they may be coding incorrectly or providing lower quality care. Analysis of the distribution of hospital indicators within specific classes of hospitals (for example, teaching hospitals and rural hospitals) will help us to evaluate whether facility level adjustments are warranted.

We will decide which quality indicators we will use to evaluate IRF quality of care outcomes based on the results of a contractor's analysis of patient assessment instrument data. Quality indicators are not direct measures of quality but rather point towards potential areas that require further investigation. Quality indicators identify the percent of a patient population with a certain condition and compare this percent to a state level and a national level. If a facility ''flags'' for scoring ''high'' on a particular quality indicator, this does not necessarily mean that the facility has a quality of care problem but simply that further focused review of care practices may be required. Quality indicators have already been developed by the University of Wisconsin for use in SNFs and are being effectively used by State surveyors to target facilities for closer onsite review of care practices as well as by some nursing homes to identify potential problems within their facility.

We have already begun consideration of quality indicators that may be created from IRF patient assessment data to evaluate care delivered in IRFs. However, we note that, due to the quality monitoring developmental process and the time needed to develop quality indicators and benchmarking information, quality monitoring based on the patient assessment instrument will not be implemented for at least 2 years. We agree with MedPAC's view that quality monitoring efforts be closely coordinated across different types of post-acute care providers. We expect to develop measures to be applied across different settings. We anticipate that measures of functional improvement from admission to discharge will be examined. In addition, during calendar year 2001, the infrastructure to collect the data to identify quality indicators for IRFs will be under development. Field validation of these indicators is expected to begin in FY 2003. Once the indicators have been field tested, we can begin to utilize these data to monitor quality. The next step will be validation of the assessment data. Piloting the reporting of data will be ongoing during this time period. ''Tool kits'' will be developed for targeted interventions to address common quality issues in IRFs. Examples of quality indicators currently being considered for IRFs are described below.

a. Functional Independence

The main goal of an IRF is to assist the patient in regaining his or her prior level of functional ability. A measure of the quality of a rehabilitation program is the patient's ability to function independently upon discharge to the community. Using our IRF patient instrument assessment data, we believe it will be possible to measure the percent of all cases discharged to the community who are functionally independent or whose functional status has improved at the time of discharge.

Functional independence on the patient assessment instrument would be measured using the functional modifiers and FIM instrument sections of the instrument. A patient's progress can be evaluated with respect to thresholds or milestones, developed after analysis of data collected during rehabilitation stays rather than based upon theoretical assumptions. The data also will assist in the development of quality indicators to predict the types of patients who have

the best prognosis for improvement in rehabilitation programs. In addition, this information may encourage referrals to IRFs for patients who might otherwise not have been referred. The data derived from functional information may also serve to better match patients with program characteristics to ''fine tune'' the delivery of rehabilitation services.

Additional items on our patient assessment instrument will allow the facility to consider factors that may affect a patient's ability to return to his or her previous level of functional ability or live independently in the community. Indicators based on functional gain will be useful in public reporting to help beneficiaries make more educated decisions about the facility from which they choose to receive care. In addition, PROs may be able to use the data from successful IRFs to identify factors that are better at assisting patients in achieving functional independence and returning to the community. This information can be shared with other IRFs to help improve their success rate as well.

b. Incidence of Pressure Ulcers

Pressure ulcers (also known as decubitus ulcers) are a problem in IRFs as well as in other post-acute care and acute care settings. Pressure ulcers will be documented using the PUSH scale developed by the National Ulcer Advisory Panel. Many facilities are already using this scale and laud its ability to present a true picture of the pressure ulcer status in a facility. In some situations, the patient is admitted with these ulcers. IRFs cannot be held responsible for ulcers that were present upon admission, but if these ulcers increase in size or grade, or if new ulcers develop, this can be an indicator of poor quality of care. Information about pressure ulcers would be collected in the quality indicators section of our patient assessment instrument. Information about bed mobility and transfer ability, bladder incontinence, and nutritional status is useful in identifying patients at high risk for developing new pressure ulcers. A pressure ulcer quality indicator could be used by the facility to institute such measures as staff training or more attention to techniques and equipment intended to prevent the development of pressure ulcers (such as frequent change of position of patients unable to move themselves and use of pressure relieving devices). In addition, quality indicators at the facility and State level can be compared to national averages for a better understanding of a facility's performance relative to its peers. Focused review will help identify which factors are contributing to the higher incidence of pressure ulcers. Analysis of patient assessment data can also be used to identify facilities that are successful in resolving and treating existing pressure ulcers. These facilities may have effective pressure ulcer reduction programs in place that can be shared with other facilities that are experiencing difficulty treating and reducing the incidence of pressure ulcers. Public reporting of the rate of pressure ulcers based on quality indicator information may help consumers make more informed choices when choosing a facility.

c. Falls Prevention

Falls prevention is an important component of a rehabilitation program and is critical to avoiding repeat hospitalizations which, in turn, delay return to independence. Items in our patient assessment instrument such as balance, dizziness, and falls provide critical information regarding fall risk to help facilities identify patients who may be at risk for falls. This indicator may also be used to identify facilities with poorer track records in fall avoidance. Information about falls prevention also provides information so that facilities serving different types of patients can be distinguished. PROs may also use these data to teach facilities how to better identify patients at risk for falls and set up programs to reduce the incidence of falls through such methods as low beds or better monitoring of at-risk patients.

As illustrated by these examples, there are several ways the quality information gathered through our patient assessment instrument may be used. As noted, quality indicator data do not necessarily illustrate that a facility is providing a lower level of care, but this information can be useful in targeting facilities for closer review of their patient care practices and facility layout. Quality indicators can also be used to identify facilities with best practices. Identifying how these facilities maintain a high-quality level of care may provide valuable information to assist facilities.

3. Quality Improvement

Quality assurance involves the establishment of standards and having a system to enforce compliance with these standards. Quality improvement fosters and facilitates continuous enhancement of whatever service or product an organization is engaged in or produces. The JCAHO require facilities to have quality improvement programs. Currently, the Medicare conditions of participation require hospitals to do quality assurance, which we believe can be supported with the information obtained from the IRF patient assessment instrument. The proposed change in these conditions for hospitals would require hospitals, including IRFs, to have quality improvement programs (62 FR 66726, December 19, 1997). Also, we are identifying opportunities in which PROs can use their expertise and skill mix to provide valuable information on quality improvement to post-acute care providers. For example, PROs have been working with SNFs for the past year, and feedback from the SNFs has indicated that the information shared by the PRO in a penalty-free environment has been valuable in helping the SNFs learn how to use the MDS to identify their own opportunities for quality improvement. In addition, many IRFs already have data-based quality improvement systems addressing some aspects of quality. PROs may build on their experience in SNFs and on the experience of IRFs and become a resource on how to use information derived from our patient assessment instrument to identify potential quality concerns. Quality improvement activities may include providing each facility with information derived from its submissions of its patient assessment data for use in self-monitoring, providing facilities with information comparing their performance with that of their peers, and maintaining a clearinghouse of ''best practices'' that can be used by facilities to improve the quality of care they deliver.

IRFs may also use data from our patient assessment instrument to generate quality indicators on their own, and use this information to help them target specific problems within their facility, or identify areas where quality improvement projects may be most effective. IRFs can also use the data from our patient assessment instrument to perform their own monitoring of changes in quality of care within the facility.

Comment: Many commenters questioned the reliability and validity of the patient assessment items that we had proposed to use for quality of care monitoring.

Response: The patient assessment items that we had proposed for monitoring quality of care in IRFs were (1) being used by us to monitor quality of care in other post-acute settings; (2) the items that resulted from our extensive MDS-PAC pilot and field testing; or (3) the result of the consensus of the Technical Expert Panel. However, in accordance with our statement in the proposed rule that we would conduct

further study of the patient assessment instrument, after publishing the proposed rule we conducted additional field testing of all the MDS–PAC items.

In order to reduce the burden imposed by our patient assessment instrument, we have greatly decreased the number of items. The CMS IRF patient assessment instrument is now very similar to the UDSmr patient assessment instrument, because we used the UDSmr patient assessment instrument as the foundation for our assessment instrument. Our data indicate that approximately 85 percent of IRFs currently use the UDSmr patient assessment instrument to assess their patients.

As stated in the proposed rule, an independent panel of technical experts highlighted areas of concern regarding the FIM's accuracy in predicting costs for patient care. Panelists were concerned that the scoring of some items, such as cognitive functioning, gave raters a great deal of discretion in determining what evidence was used in the assessment and how often the behavior had occurred. These technical experts also agreed that a functional status assessment for payment purposes should be based on clinical observation of performance rather than on the rater's assessment of the patient's capacity to perform the task.

In order to address these and other concerns, a special study was completed to assess the validity and reliability of the MDS–PAC and the FIM instruments. This special study was also completed in accordance with our statement in the proposed rule that we would be conducting additional testing of the MDS–PAC and the FIM.

In the proposed rule, we proposed to use the MDS–PAC as the patient assessment instrument for payment purposes. We qualified our proposal by indicating that we were in the process of performing a special study to assess the reliability and validity of both these instruments. We further indicated that the findings of this study would inform our final decisionmaking process regarding the instrument of choice for implementing the inpatient rehabilitation payment system.

Our study was in a sample of facilities that are currently using UDSmr's FIM patient assessment instrument. These facilities completed the UDSmr instrument and the MDS–PAC on the same patient at the same time. We then compared the results of this paired assessment to determine the capability of the MDS–PAC instrument to accurately and consistently assign CMGs and whether the MDS–PAC assigns the same CMGs as the UDSmr instrument would.

The purpose of this study was not only to assess the accuracy of the MDS–PAC for classifying cases into CMGs, but also to determine the time it would take clinicians to administer the FIM and the MDS–PAC, the accuracy of coding of comorbidities, and a comparison of the validity, reliability, and consistency of the FIM and the MDS–PAC. The following summarizes the findings from this study:

- Interrater reliabilities were higher on the FIM than on the MDS–PAC.
- The FIM and MDS–PAC functional and cognitive scores were able to produce the same case-mix groups 53 percent of the time and a comparison of a more FIM-like version of the MDS–PAC and the FIM increased the case-mix group match to 57 percent.
- The study found that payment differences between the two instruments varied by RIC. While overall the payment differences (using the two instruments) were small, 20 percent of the hospitals could see revenue differences of 10 percent or more depending on which instrument was used.
- The administrative burden associated with the MDS–PAC, that is, 120 minutes compared with 23 minutes to complete the FIM, was found to be substantial.

As stated in the proposed rule, if the tests showed that patients are classified differently using the MDS–PAC, we would incorporate the phrasing and definitions of the FIM to replace sections of the MDS–PAC. This would meet our objective to field a more extensive instrument to provide a more complete picture of the condition of the patient and of the care provided in the IRF, while also retaining confidence in the validity of the CMG classification of the patient. Using the phrasing and definitions of many of the UDSmr patient assessment instrument items will minimize the effect on reliability and validity inherent in the design of new data collection instruments. Based upon our study findings, the comments received on the proposed rule, the earlier research and analysis supporting the design of the prospective payment system for inpatient rehabilitation facilities, and after conferring with UDSmr staff, we decided to use a majority of the UDSmr patient assessment instrument items and some other quality of care items to collect the information needed for implementation of the IRF prospective payment system.

Comment: Many commenters indicated that they believed that using only the items on the UDSmr patient assessment instrument could fulfill our goals to classify patients into payment groups and monitor quality of care.

Response: We believe that, in order to adequately monitor quality of care, we need to add quality items to the UDSmr patient assessment instrument. Therefore, we have added to the basic UDSmr patient assessment instrument a few items we believe are critical to monitor quality of care. Also, in response to the recommendations following additional data analysis by our contractor, RAND, and in consultation with and with the agreement of UDSmr, we have added functional independence measure modifiers to our patient assessment instrument. We will use the functional independence measure modifiers, and other items as specified in Chart 7.—Critical Patient Assessment Items in section V.E. of this preamble, to classify patients into CMG payment groups. We also will use the functional independence measure modifiers items and some other items as specified in the ''Critical Items'' chart to monitor quality of care.

We used items similar to MDS–PAC items to modify the UDSmr patient assessment instrument because the MDS–PAC covers several topics, such as nutrition, swallowing, and pain, that are either not included in the FIM or not covered in sufficient detail in the FIM for clinical assessment purposes. Therefore, we decided to retain some of the nonpayment items from the MDS–PAC. The MDS–PAC items that we have chosen to retain in our patient assessment instrument are the items that we believe will yield significant quality of care data and will be used to direct and define development of quality indicators for use in IRFs.

4. Consumer Information

We plan to use the quality information derived from our patient assessment instrument in our public reporting strategy. Our patient assessment data, after appropriate evaluation and validation, can be used to inform consumers about the performance of facilities in their area so that they can make informed decisions when selecting a rehabilitation facility. In addition, information derived from our patient assessment instrument and the comparable information available in SNFs and other settings will help us understand which patients fare better in which types of post-acute care settings, or even within subsets of IRFs, thus informing and shaping future long-term care quality initiatives.

As part of our efforts in designing a monitoring system, in the November 3,

2000 proposed rule we solicited comments on whether we should also collect data related to medications and medication administration.

Comment: One commenter stated that because data related to medications and medication administration will have no bearing on how the CMG is determined, collecting this information would be an unnecessary burden on the IRF.

Response: Considering the consequences of both medication administration errors and the incorrect prescribing of medications, we believe that data on these issues are of benefit in monitoring quality of care. However, these data are contained in the patient's clinical record or in some other documentation maintained about the patient. Therefore, at this time we will not use the IRF patient assessment instrument to collect these data.

F. Training and Technical Support for IRFs

We will provide educational and technical resources to IRFs to support both implementation of the CMS IRF patient assessment instrument and the computerization and transmission of the patient assessment data. We will provide training and technical support on the use of our patient assessment instrument by clinical staff and on the use of software to encode and transmit the patient assessment data.

Although we will be providing both initial and ongoing training and technical support, IRFs will probably find it advantageous to designate a staff member as an IRF trainer, in order to have in-house capability both to train newly hired staff, and to have a designated person who can serve as the in-house resource for other staff.

We will train and support the IRFs in the implementation of the IRF prospective payment system and automation of our patient assessment instrument by—

- Training IRFs on our patient assessment data set;
- Answering questions on the clinical aspects of our patient assessment instrument and providing information to IRFs on the use of the instrument to determine CMGs;
- Providing training to State agency staff in using our patient assessment data for survey activities;
- Training IRFs in interpreting validation reports;
- Providing information relative to hardware and software requirements; and
- Providing support for transmission of test data, supporting callers who request technical assistance, providing passwords to IRFs, and answering questions about the computer edits and reports.

Comment: One commenter stated that having an IRF clinician that we [CMS] have trained to be the trainer of other clinicians at an IRF may lead to incorrect information being disseminated, because the clinician that we have trained might unintentionally distort the information when that clinician trains other clinicians. Other commenters stated that we underestimated the time needed to train clinicians, and the number of clinicians that need to be trained. One commenter indicated that only 5 to 6 hours are needed by UDSmr to train IRF clinicians in how to perform a patient assessment using the UDSmr patient assessment instrument.

Response: We, along with other organizations, have successfully used the ''train the trainer'' technique, in which the person trained then trains others. We acknowledge that there is the possibility that an IRF staff member trained by us might inadvertently train another IRF staff member incorrectly in some aspect of the IRF patient assessment process that is specified in our final rule. However, we note that all IRF staff will have the patient assessment instrument item-by-item guide available to them as a resource in how to perform the patient assessment. In addition, all staff members may refer to this final rule and call our contractors or us if they have questions about the patient assessment process.

We are still in the process of finalizing our plans for training IRFs on the patient assessment process. However, we are aware that UDSmr estimates that it only takes a day to train IRF clinicians in how to perform a patient assessment using the UDSmr patient assessment instrument. We believe that ''a day'' means approximately 8 hours. Our patient assessment instrument is a slightly modified version of the UDSmr patient assessment instrument. Therefore, we believe that our estimate of 16 hours of initial training, in order to train the IRF lead clinician on our patient assessment instrument and assessment process, is a reasonable estimate. We believe that our estimate of 12 hours of initial training to train the nonlead IRF clinicians also is a reasonable estimate. In addition, we believe that 5 hours to initially train clerical personnel is reasonable, because their tasks under the IRF patient assessment process are not as complicated as the tasks that the clinicians must perform. We note that the training hours specified in the rule, both for the initial training and for ongoing training, are estimates, and we will adjust the hours as needed when we finalize our training plans and schedules. In addition, due to the wide variety of the sizes of IRFs, we have no way of knowing how many clinicians are employed by an IRF. Therefore, we could only give estimates of how many clinicians would need to be trained. When we have a final training schedule, we will publish it on our IRF prospective payment system website.

G. Release of Information Collected Using the Patient Assessment Instrument

As in the proposed rule under § 412.616, in this final rule we are providing that the IRF and its agents must ensure the confidentiality of the information collected using the assessment instrument in the same manner as all other information in the medical record, in accordance with the hospital conditions of participation at § 482.24(b)(3). While the conditions of participation include confidentiality requirements that apply broadly to all patient information used and disclosed by the IRF, in this final rule we are establishing additional requirements that apply specifically to data collected using the patient assessment instrument. Specifically, we are establishing a requirement to inform patients of their rights regarding collection of the patient assessment (§ 412.608), as well as requirements governing release of patient-identifiable information to IRF agents (§ 412.616(b)). The facility must ensure that information may be released only to authorized individuals and must ensure that unauthorized individuals cannot gain access to or alter patient records. The original medical record must be released by the facility or its agent only in accordance with Federal or State laws, court orders or subpoenas. In addition, we are providing that an agent acting on behalf of an IRF in accordance with a written contract with that IRF may only use the information for the purposes specified in the contract. We believe that these provisions will ensure that access to patient assessment data (paper copy as well as electronic data) is secured and controlled by the IRF, in accordance with Federal and State laws.

On December 28, 2000, the Department of Health and Human Services published a final rule adopting standards for the privacy of certain individually identifiable health information (65 FR 82462) (Privacy Rule). The Privacy Rule is the second in a series of rules mandated by provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191. In part, the Privacy

Rule establishes a new Subpart E under 45 CFR Part 164. Subpart E establishes standards that entities covered by the statute—health plans, health care clearinghouses, and certain health care providers—are required to comply with in order to protect the privacy of certain individually identifiable health information. The standards establish requirements relating to the use and disclosure of protected health information, the rights of individuals with respect to that information, and the procedure for exercising those rights.

On February 26, 2001, the Department published a final rule (66 FR 12434) correcting the effective date of the December 28, 2000 final rule. The new effective date is now April 14, 2001. In accordance with the requirements set forth in the Privacy Rule, we are proceeding with an implementation plan that will result in full compliance with these standards on or before April 14, 2003. This plan includes compliance with the standards as they relate to information collected as part of the IRF patient assessment instrument set forth in this final rule. Accordingly, as we proceed with its compliance efforts associated with the Privacy Rule, we may be making future changes in the regulations adopted in this final rule.

In the proposed rule, we indicated that, as with other regulations that result in the creation of a new system of records, we are in the process of developing a notice describing the new system of records that is unique to MDS-PAC. We have typically issued notices describing new systems of records in conjunction with the issuing of a final rule. The notices, required by the Privacy Act of 1974, describe both the entities to whom identifiable and nonidentifiable data can be routinely disclosed, as well as the safeguards that will protect the privacy and the security of the data. While each system of records notice is unique to the system and the data instrument, readers interested in understanding a recent approach are referred to the notice of the new system of records published June 18, 1999 (64 FR 32992) for the ''Home Health Agency Outcome and Assessment Information Set (OASIS).''

We solicited comments on issues germane to the notice that we would develop for the patient assessment records.

Comment: Several commenters believed that the great number of items in the MDS–PAC are not necessary to determine that a payment is excessive. In the commenters' view, the excessive number of these nonpayment items is both of dubious value in monitoring quality of care and amount to a violation of the patient's privacy.

Response: Our patient assessment instrument is now closely modeled on the UDSmr patient assessment instrument. The items that we have added to the UDSmr instrument either improve the capability of the instrument to determine a patient's CMG or collect quality of care data. We believe that the number of items we have added to the basic UDSmr patient assessment instrument is not excessive, especially considering the vital data these items will yield. The quality of care data items are few, especially when the number of these items are compared to all the nonpayment items in the MDS–PAC. In addition, the quality of care items now in our instrument collect basic data that we have found to be of significant value in monitoring quality of care. Therefore, we are only collecting data needed to appropriately classify a patient into a CMG and data that benefit the patient by helping monitor the quality of the services furnished. We will be publishing a system of records notice in the **Federal Register** that will detail our efforts to safeguard the privacy of the data that we collect using our inpatient rehabilitation facility patient assessment instrument in this final rule.

H. Patient Rights

We are adopting the provision of the proposed rule under § 412.608 that in order to receive payment for the Medicare IRF services furnished, a clinician must inform the Medicare inpatient of the following rights with respect to the assessment prior to performing the assessment. These rights include—

- The right to be informed of the purpose of the patient assessment data collection;

The right to have any patient assessment information that is collected remain confidential and secure;

- The right to be informed that the patient assessment information will not be disclosed to others except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;
- The right to refuse to answer patient assessment data questions; and
- The right to see, review, and request changes on the patient assessment instrument.

We are requiring the IRF to ensure that a clinician documents in the Medicare patient's clinical record that the patient has been informed of the above patient rights. IRFs should note that the above patient rights are in addition to the patient rights specified under the conditions of participation for hospitals in § 482.13.

Our statements of patient rights with regard to the IRF patient assessment instrument will be available via our Inpatient Rehabilitation Facility Prospective Payment System website. These statements may be revised in accordance with the Office of Management and Budget Paperwork Reduction Act reapproval process. Future revisions to these statements will be available via our Inpatient Rehabilitation Facility Prospective Payment System website, and in other instructional materials that we issue.

Comment: Commenters asked what the IRF should do if the patient refuses to answer questions when the IRF clinician tries to collect patient assessment data, and how this would be indicated on the electronic version of the patient assessment instrument.

Response: In the proposed rule, we proposed that data that are not obtained by direct observation by an IRF clinician of an activity performed by the patient can be obtained from the patient, the patient's clinical record, other patient documents or the patient's family. In addition to the patient's family, we are including in this final rule the provision that the data can be obtained from someone personally knowledgeable about the patient's clinical conditions or capabilities. Data that are obtained from the patient's clinical record, other patient documents, the patient's family, or someone personally knowledgeable about the patient's clinical conditions or capabilities do not have to be specially indicated or annotated on the paper or electronic version of the patient assessment instrument. However, the clinician has the discretion to note in the patient's clinical record that the information recorded for an item was obtained from one of these other sources, and not directly from the patient.

We believe that the data for the items associated with observation by the clinician of a particular activity performed by the patient will always be recorded on the patient assessment instrument, because these items allow for the recording of the data in different ways, including recording that the activity did not occur. We reiterate that, for the patient assessment observational items, the clinician assessor should not require a patient to perform an activity that, in the clinician's professional judgment, is clinically contraindicated or hazardous to the patient.

I. Medical Review Under the IRF Prospective Payment System

Under a discharge-based prospective payment system, IRFs might have financial incentives to miscode information on the patient assessment instrument in order to gain a higher CMG and, therefore, payment (that is, case-mix upcoding for payment). Data analysis may be conducted to identify program payment vulnerabilities or areas of risk, and medical review may be conducted to ensure that appropriate payment is being made for services furnished by IRFs.

V. Case-Mix Group Patient Classification System

A. Background

1. Statutory Authority for the Establishment of a Patient Classification System

Section 1886(j)(2)(A)(i) of the Act, as amended by section 125 of the BBRA, requires the Secretary to establish ''classes of patient discharges of rehabilitation facilities by functional-related groups (each referred to * * * as a 'case mix group'), based on impairment, age, comorbidities, and functional capability of the patient, and such other factors as the Secretary deems appropriate to improve the explanatory power of functional independence measure-function related groups.'' In addition, the Secretary is required to establish a method of classifying specific patients in IRFs within these groups. (These provisions are implemented in § 412.620 of this final rule.)

2. Development of the Proposed Case-Mix Groups

In the November 3, 2000 proposed rule, we proposed a methodology to establish a patient classification system using case-mix groups called CMGs (65 FR 66337). The proposed CMGs are based on the FIM–FRG methodology and reflect refinements to that methodology. In addition, we described in the proposed rule the process to classify a patient into a CMG.

In general, a patient is first placed in a major group called a RIC based on the patient's primary reason for inpatient rehabilitation, such as a stroke or a hip fracture. Next, the patient is placed into a CMG within the RIC, based on the patient's ability to perform specific activities of daily living, and sometimes the patient's cognitive ability and/or age. Other special circumstances, such as the occurrence of very short stays or cases where the patient expired, would be considered in determining the appropriate CMG.

In the proposed rule, we stated that our analysis of 1996 and 1997 FIM and Medicare data validated our proposal to establish 21 RICs and 92 CMGs based on the FIM–FRG methodology. The data also supported the establishment of five additional special CMGs that improved the explanatory power of the FIM–FRGs. That is, we proposed to establish one additional special CMG to account for very short stays and four additional special CMGs to account for cases where the patient expired. In addition, we proposed to pay an additional amount with the presence of at least one relevant comorbidity for certain CMGs.

Comment: Several commenters suggested that we use the term ''FIM–FRGs'' rather than ''CMGs'' to describe the patient classification groupings.

Response: The FIM–FRGs' ability to predict resource use has been improved since their original development with the recognition of comorbidities and other special circumstances. We believe that identifying the groups as CMGs avoids any confusion that the basis of the CMGs is not only the original FIM–FRG methodology, but that it also includes improvements to that methodology. In addition, we believe that the statutory language also recognized that improvements have been made and may be made in the future to the original FIM–FRG methodology by referring to the groups as ''case mix groups.'' Accordingly, the patient classification system that we are implementing under § 412.620(a) of these final regulations will classify patients into case-mix groups called CMGs.

3. Refinements to the Proposed CMGs

We explained in the proposed rule that further analysis of FIM and Medicare data and our review of the comments received may result in refinements to some proposed CMGs. For this final rule, we use the most recent FIM and Medicare data from 1998 and 1999 as described in section III. of this preamble. Developing the CMGs with the 1998 and 1999 data results in 95 CMGs based on the FIM–FRG methodology rather than the 92 CMGs described in the proposed rule. In addition, in the following subsections, we will describe the results of analyzing these later data that validate the use of the same 21 RICs and five special CMGs as proposed.

B. Description of Methodology Used To Develop the CMGs Based on the FIM–FRG Methodology for the Final Rule

1. Rehabilitation Impairment Categories

In the first step to develop the CMGs, the FIM data from 1998 and 1999 were used to group patients into RICs. Specifically, the impairment code from the assessment instrument used by clients of UDSmr and Healthsouth indicates the primary reason for the inpatient rehabilitation admission. This impairment code is used to group the patient into a RIC. Chart 5 below (a replacement for Table 1D in the proposed rule) shows each RIC and its associated impairment code.

The earlier RAND research using 1994 data resulted in 20 RICs. We initially used RAND's statistical analysis of 1997 data which showed that the 1997 data generally performed as well as the 1994 data in predicting resource use in RICs 01 through 20. Based on this analysis, the impairment code 14.9 ''Status post major multiple fractures'' appeared to fit more appropriately into RIC 17. Also, based on the 1997 data, we created a separate RIC for burn cases.

For this final rule, we will continue to use the 21 RICs described in the proposed rule and shown in Chart 5 below.

CHART 5.—REHABILITATION IMPAIRMENT CATEGORIES (RICS) AND ASSOCIATED IMPAIRMENT GROUP CODES

Rehabilitation impairment category	Associated impairment group codes
01 Stroke (Stroke)	01.1 Left body involvement (right brain) 01.2 Right body involvement (left brain) 01.3 Bilateral Involvement 01.4 No Paresis 01.9 Other Stroke
02 Traumatic brain injury (TBI)	02.21 Open Injury 02.22 Closed Injury

CHART 5.—REHABILITATION IMPAIRMENT CATEGORIES (RICS) AND ASSOCIATED IMPAIRMENT GROUP CODES—Continued

Rehabilitation impairment category	Associated impairment group codes
03 Nontraumatic brain injury (NTBI)	02.1 Non-traumatic 02.9 Other Brain
04 Traumatic spinal cord injury (TSCI)	04.210 Paraplegia, Unspecified 04.211 Paraplegia, Incomplete 04.212 Paraplegia, Complete 04.220 Quadriplegia, Unspecified 04.2211 Quadriplegia, Incomplete C1–4 04.2212 Quadriplegia, Incomplete C5–8 04.2221 Quadriplegia, Complete C1–4 04.2222 Quadriplegia, Complete C5–8 04.230 Other traumatic spinal cord dysfunction
05 Nontraumatic spinal cord injury (NTSCI)	04.110 Paraplegia, unspecified 04.111 Paraplegia, incomplete 04.112 Paraplegia, complete 04.120 Quadriplegia, unspecified 04.1211 Quadriplegia, Incomplete C1–4 04.1212 Quadriplegia, Incomplete C5–8 04.1221 Quadriplegia, Complete C1–4 04.1222 Quadriplegia, Complete C5–8 04.130 Other non-traumatic spinal cord dysfunction
06 Neurological (Neuro)	03.1 Multiple Sclerosis 03.2 Parkinsonism 03.3 Polyneuropathy 03.5 Cerebral Palsy 03.8 Neuromuscular Disorders 03.9 Other Neurologic
07 Fracture of LE (FracLE)	08.11 Status post unilateral hip fracture 08.12 Status post bilateral hip fractures 08.2 Status post femur (shaft) fracture 08.3 Status post pelvic fracture
08 Replacement of LE joint (Rep1LE)	08.51 Status post unilateral hip replacement 08.52 Status post bilateral hip replacements 08.61 Status post unilateral knee replacement 08.62 Status post bilateral knee replacements 08.71 Status post knee and hip replacements (same side) 08.72 Status post knee and hip replacements (different sides)
09 Other orthopedic (Ortho)	08.9 Other orthopedic
10 Amputation, lower extremity (AMPLE)	05.3 Unilateral lower extremity above the knee (AK) 05.4 Unilateral lower extremity below the knee (BK) 05.5 Bilateral lower extremity above the knee (AK/AK) 05.6 Bilateral lower extremity above/below the knee (AK/BK) 05.7 Bilateral lower extremity below the knee (BK/BK)
11 Amputation, other (AMP–NLE)	05.1 Unilateral upper extremity above the elbow (AE) 05.2 Unilateral upper extremity below the elbow (BE) 05.9 Other amputation
12 Osteoarthritis (OsteoA)	06.2 Osteoarthritis
13 Rheumatoid, other arthritis (RheumA)	06.1 Rheumatoid Arthritis 06.9 Other arthritis
14 Cardiac (Cardiac)	09 Cardiac
15 Pulmonary (Pulmonary)	10.1 Chronic Obstructive Pulmonary Disease 10.9 Other pulmonary
16 Pain Syndrome (Pain)	07.1 Neck pain 07.2 Back pain 07.3 Extremity pain 07.9 Other pain
17 Major multiple trauma, no brain injury or spinal cord injury (MMT–NBSCI).	08.4 Status post major multiple fractures 14.9 Other multiple trauma
18 Major multiple trauma, with brain or spinal cord injury (MMT–BSCI)	14.1 Brain and spinal cord injury 14.2 Brain and multiple fractures/amputation

CHART 5.—REHABILITATION IMPAIRMENT CATEGORIES (RICS) AND ASSOCIATED IMPAIRMENT GROUP CODES—Continued

Rehabilitation impairment category	Associated impairment group codes
	14.3 Spinal cord and multiple fractures/amputation
19 Guillian Barre (GB)	03.4
20 Miscellaneous (Misc)	12.1 Spina Bifida 12.9 Other congenital 13 Other disabling impairments 15 Developmental disability 16 Debility 17.1 Infection 17.2 Neoplasms 17.31 Nutrition (endocrine/metabolic) with intubation/parenteral nutrition 17.32 Nutrition (endocrine/metabolic) without intubation/parenteral nutrition 17.4 Circulatory disorders 17.51 Respiratory disorders-Ventilator Dependent 17.52 Respiratory disorders-Non-ventilator Dependent 17.6 Terminal care 17.7 Skin disorders 17.8 Medical/Surgical complications 17.9 Other medically complex conditions
21 Burns (Burns)	11 Burns

In the proposed rule, we stated in the footnote to Table 1D that we were analyzing the effect of moving the few cases with an impairment code of 12.1 (Spina Bifida) to one of the other spinal cord RICs (RIC 05 or 04). Based on our analysis of the 1998 and 1999 data, there were a combined total of 45 cases with an impairment code for Spina Bifida for both years. With such a small sample of cases, the results of our analysis of the effects of moving these cases to another RIC were inconclusive. Therefore, in this final rule, we are retaining the 12.1 impairment code in RIC 20 (Miscellaneous). We will continue our analysis of these cases in the future with later data to determine if moving them to another RIC would be appropriate.

2. Functional Status Measures and Age

After using the RIC to define the first split among the inpatient rehabilitation groups, we used functional status measures and age to partition the cases further. For this final rule, we used more recent data (1998 and 1999 Medicare bills with corresponding FIM data) to create the CMGs and more thoroughly examine each item of the motor and cognitive measures. Based on this analysis, we found that we could improve upon the CMGs by making a slight modification to the motor measure. We modify the motor measure by removing the transfer to tub/shower item because we found that an increase in a patient's ability to perform functional tasks with less assistance for this item is associated with an increase in cost, whereas an increase in other functional items decreases costs. We describe below the statistical methodology (Classification and Regression Trees (CART)) that we used to incorporate a patient's functional status measures (modified motor score and cognitive score), and age into the construction of the CMGs in this final rule.

We used the CART methodology to split the rehabilitation cases further within each RIC. In general, CART can be used to identify statistical relationships among data and, using these relationships, construct a predictive model for organizing and separating a large set of data into smaller, similar groups. Further, in constructing the CMGs, we analyzed the extent to which the independent variables (motor score, cognitive score, and age) help predict the value of the dependent variable (the log of the cost per case).

The CART methodology creates the CMGs that classify patients with clinically distinct resource needs into groups. CART is an iterative process that creates initial groups of patients and then searches for ways to split the initial groups to decrease the clinical and cost variances further and to increase the explanatory power of the CMGs. (Further information regarding this methodology can be found in the seminal literature on CART (Classification and Regression Trees, Leo Breiman, Jerome Friedman, Richard Olshen, Charles Stone, Wadsworth Inc., Belmont CA, 1984: pp. 78–80).)

As a result of this analysis, Chart 6 lists 95 CMGs and their respective descriptions, including the motor and cognitive scores and age that will be used to classify discharges into CMGs in the IRF prospective payment system.

Comment: One commenter suggested that spinal cord injury (SCI) patients who are ventilator-dependent should have their own CMG and an associated payment. The commenter stated that, under the proposed CMGs, an SCI ventilator-dependent patient would always result in an outlier payment. The commenter further noted that while there is not a large number of these patients, the outlier payment could result in a large financial loss to providers.

Response: We are not including a separate CMG for ventilator-dependent, spinal cord injury patients in this final rule. We will consider analyzing this group of patients for future refinements. Our current CMGs are based on historical data. In order to develop a separate CMG, we need to have data on a sufficient number of cases to develop coherent groups. As the commenter noted, the data that RAND analyzed did not have a sufficiently large number of these patients. The cost of caring for ventilator-dependent spinal cord injury patients is reflected in the relative weights for the CMGs in which these cases fall. Ventilator-dependent spinal cord injury cases will be classified to comorbidity tier 1. We grouped these types of cases only with other very expensive spinal cord injury patients, and the relative weights set forth in this final rule reflect the average cost for these cases. Therefore, we believe that the standard IRF prospective payment

plus the outlier payment (which addresses the marginal cost of care beyond the applicable threshold) will pay adequately for these cases. It is certainly possible that, for a given case, the total payment for the case might be lower than the cost for the case, but for other cases, the total payment might be higher than costs.

Comment: A few commenters believed that payment for burns was insufficient.

Response: For the proposed rule, we created one case-mix group, CMG 2101, for all burn cases. For CMG 2101, we calculated an average length of stay of 18.5 days and a relative weight of 1.2863 as described in the proposed rule. However, for the CMGs set forth in this final rule, we use the latest available data as described in Appendix A. These data include more burn cases compared to the data used to create the CMGs in the proposed rule. We created two CMGs with the more recent data using the CART methodology described earlier in this preamble. The costs of providing care for patients with the lowest motor scores (those patients needing more assistance with tasks such as transferring, bathing, and dressing) are more on average than the costs for patients with higher motor scores. When we use the most recent data, we find that the CMG for a burn patient with the lower motor score, from 12 to 45 (CMG 2102 with no comorbidities) has an average length of stay of 29 days and a relative weight of 1.8226. The CMG for a burn patient with a higher motor score of 46 to 84 (CMG 2101) who can perform self-care task with less assistance reflects the lower costs of caring for these patients. The average length of stay for patients classified to CMG 2101 with no comorbidities is 16 days and the relative weight is .8387. It is possible that, for a given case, the total payment for a burn case might be lower than the costs for the case, but for other burn cases, the total payment might be higher than costs. For burn cases with extremely high costs, outlier payments may be made as well. Therefore, we believe payment for burn cases will be sufficient.

3. Comorbidities

A comorbidity is considered in the context of the principal diagnosis. That is, a comorbidity is a specific patient condition that is secondary to the patient's principal diagnosis or impairment that is used to place a patient into a RIC. A patient could have more than one comorbidity present during the inpatient rehabilitation stay.

Our analysis found that the presence of a comorbidity could have a major effect on the cost of furnishing inpatient rehabilitation care. For the proposed rule, we found that the effect of comorbidities varied across RICs, significantly increasing the costs of patients in some RICs, while having no effect in others.

We linked frequently occurring comorbidities to impairment categories in order to ensure that all of the chosen comorbidities are not an inherent part of the diagnosis that assigns the patient to the RIC. For example, providing rehabilitation services to a beneficiary with a total hip replacement can become both more complex and more costly if the beneficiary also has pneumonia. In contrast, hemiparesis paralysis of one side of the body would not have an impact on patients in RIC 01, stroke.

In the proposed rule, we found comorbidities to affect cost per case for some of the CMGs, but not all. When comorbidities substantially increased the average cost of the CMG and were determined to be clinically relevant (not inherent in the diagnosis in the RIC), we developed CMG relative weights adjusted for comorbidities (§ 412.620(b)).

In this final rule (as we had proposed in the November 3, 2000 proposed rule), we are specifying that a payment adjustment will be made if one of the comorbidities listed in Appendix C of this final rule is present during the patient's stay.

Comment: We received a number of comments suggesting that we take into account the existence of multiple comorbidities.

Response: We have completed considerable analysis on how to account for the severity of each comorbidity that may be present during an inpatient rehabilitation stay. Further discussion of the results of this analysis appears in section VI. of this final rule.

C. Description of Methodology Used to Develop CMGs for Special Cases for the Final Rule

As we did with the proposed rule, for this final rule, we analyzed the payment-to-cost ratios for special types of cases that were not typical cases to determine if costs could be predicted. (We define typical cases as those that stay more than 3 days, receive a full course of inpatient rehabilitation care, and are discharged to the community.) From this analysis, we believe that IRFs would be paid substantially more for cases in which the patient expires and cases with a length of stay of 3 days or less (not including transfer cases) than for the costs of these cases if facilities received the full CMG payment. To improve the explanatory power of the groups, we added four CMGs to account for cases in which the patient expires and one CMG for all cases that have a length of stay of 3 days or less (not including transfer cases). We explain these five types of special cases in greater detail in section VI. of this final rule.

D. Final Set of CMGs

Chart 6 below shows the final set of 95 CMGs based on the FIM–FRG methodology and 5 special CMGs and their description. In section V.E. of this preamble, we discuss the process of how to classify a patient into a RIC and a CMG.

CHART 6.—DEFINITION OF CASE MIX GROUPS (CMGS)

CMG No.*	CMG description
0101	Stroke with motor score from 69–84 and cognitive score from 23–35.
0102	Stroke with motor score from 59–68 and cognitive score from 23–35.
0103	Stroke with motor score from 59–84 and cognitive score from 5–22.
0104	Stroke with motor score from 53–58.
0105	Stroke with motor score from 47–52.
0106	Stroke with motor score from 42–46.
0107	Stroke with motor score from 39–41.
0108	Stroke with motor score from 34–38 and patient is 83 years old or older.
0109	Stroke with motor score from 34–38 and patient is 82 years old or younger.
0110	Stroke with motor score from 12–33 and patient is 89 years old or older.
0111	Stroke with motor score from 27–33 and patient is between 82 and 88 years old.
0112	Stroke with motor score from 12–26 and patient is between 82 and 88 years old.
0113	Stroke with motor score from 27–33 and patient is 81 years old or younger.
0114	Stroke with motor score from 12–26 and patient is 81 years old or younger.

CHART 6.—DEFINITION OF CASE MIX GROUPS (CMGS)—Continued

CMG No.*	CMG description
0201	Traumatic brain injury with motor score from 52–84 and cognitive score from 24–35.
0202	Traumatic brain injury with motor score from 40–51 and cognitive score from 24–35.
0203	Traumatic brain injury with motor score from 40–84 and cognitive score from 5–23.
0204	Traumatic brain injury with motor score from 30–39.
0205	Traumatic brain injury with motor score from 12–29.
0301	Non-traumatic brain injury with motor score from 51–84.
0302	Non-traumatic brain injury with motor score from 41–50.
0303	Non-traumatic brain injury with motor score from 25–40.
0304	Non-traumatic brain injury with motor score from 12–24.
0401	Traumatic spinal cord injury with motor score from 50–84.
0402	Traumatic spinal cord injury with motor score from 36–49.
0403	Traumatic spinal cord injury with motor score from 19–35.
0404	Traumatic spinal cord injury with motor score from 12–18.
0501	Non-traumatic spinal cord injury with motor score from 51–84 and cognitive score from 30–35.
0502	Non-traumatic spinal cord injury with motor score from 51–84 and cognitive score from 5–29.
0503	Non-traumatic spinal cord injury with motor score from 41–50.
0504	Non-traumatic spinal cord injury with motor score from 34–40.
0505	Non-traumatic spinal cord injury with motor score from 12–33.
0601	Neurological with motor score from 56–84.
0602	Neurological with motor score from 47–55.
0603	Neurological with motor score from 36–46.
0604	Neurological with motor score from 12–35.
0701	Fracture of lower extremity with motor score from 52–84.
0702	Fracture of lower extremity with motor score from 46–51.
0703	Fracture of lower extremity with motor score from 42–45.
0704	Fracture of lower extremity with motor score from 38–41.
0705	Fracture of lower extremity with motor score from 12–37.
0801	Replacement of lower extremity joint with motor score from 58–84.
0802	Replacement of lower extremity joint with motor score from 55–57.
0803	Replacement of lower extremity joint with motor score from 47–54.
0804	Replacement of lower extremity joint with motor score from 12–46 and cognitive score from 32–35.
0805	Replacement of lower extremity joint with motor score from 40–46 and cognitive score from 5–31.
0806	Replacement of lower extremity joint with motor score from 12–39 and cognitive score from 5–31.
0901	Other orthopedic with motor score from 54–84.
0902	Other orthopedic with motor score from 47–53.
0903	Other orthopedic with motor score from 38–46.
0904	Other orthopedic with motor score from 12–37.
1001	Amputation, lower extremity with motor score from 61–84.
1002	Amputation, lower extremity with motor score from 52–60.
1003	Amputation, lower extremity with motor score from 46–51.
1004	Amputation, lower extremity with motor score from 39–45.
1005	Amputation, lower extremity with motor score from 12–38.
1101	Amputation, non-lower extremity with motor score from 52–84.
1102	Amputation, non-lower extremity with motor score from 38–51.
1103	Amputation, non-lower extremity with motor score from 12–37.
1201	Osteoarthritis with motor score from 55–84 and cognitive score from 34–35.
1202	Osteoarthritis with motor score from 55–84 and cognitive score from 5–33.
1203	Osteoarthritis with motor score from 48–54.
1204	Osteoarthritis with motor score from 39–47.
1205	Osteoarthritis with motor score from 12–38.
1301	Rheumatoid, other arthritis with motor score from 54–84.
1302	Rheumatoid, other arthritis with motor score from 47–53.
1303	Rheumatoid, other arthritis with motor score from 36–46.
1304	Rheumatoid, other arthritis with motor score from 12–35.
1401	Cardiac with motor score from 56–84.
1402	Cardiac with motor score from 48–55.
1403	Cardiac with motor score from 38–47.
1404	Cardiac with motor score from 12–37.
1501	Pulmonary with motor score from 61–84.
1502	Pulmonary with motor score from 48–60.
1503	Pulmonary with motor score from 36–47.
1504	Pulmonary with motor score from 12–35.
1601	Pain syndrome with motor score from 45–84.
1602	Pain syndrome with motor score from 12–44.
1701	Major multiple trauma without brain or spinal cord injury with motor score from 46–84.
1702	Major multiple trauma without brain or spinal cord injury with motor score from 33–45.
1703	Major multiple trauma without brain or spinal cord injury with motor score from 12–32.
1801	Major multiple trauma with brain or spinal cord injury with motor score from 45–84 and cognitive score from 33–35.
1802	Major multiple trauma with brain or spinal cord injury with motor score from 45–84 and cognitive score from 5–32.
1803	Major multiple trauma with brain or spinal cord injury with motor score from 26–44.

CHART 6.—DEFINITION OF CASE MIX GROUPS (CMGS)—Continued

CMG No.*	CMG description
1804	Major multiple trauma with brain or spinal cord injury with motor score from 12–25.
1901	Guillian Barre with motor score from 47–84.
1902	Guillian Barre with motor score from 31–46.
1903	Guillian Barre with motor score from 12–30.
2001	Miscellaneous with motor score from 54–84.
2002	Miscellaneous with motor score from 45–53.
2003	Miscellaneous with motor score from 33–44.
2004	Miscellaneous with motor score from 12–32 and patient is 82 years old or older.
2005	Miscellaneous with motor score from 12–32 and patient is 81 years old or younger.
2101	Burns with motor score from 46–84.
2102	Burns with motor score from 12–45.
5001	Short-stay cases, length of stay is 3 days or fewer.
5101	Expired, orthopedic, length of stay is 13 days or fewer.
5102	Expired, orthopedic, length of stay is 14 days or more.
5103	Expired, not orthopedic, length of stay is 15 days or fewer.
5104	Expired, not orthopedic, length of stay is 16 days or more.

* The first two digits of the CMG number from 01 to 21 correspond with a specific RIC number shown on Chart 5.

E. Methodology to Classify Patients Into CMGs

Data from the patient assessment instrument, described in section IV.A. of this preamble and specified in § 412.620(a)(3) of the final regulations, will be used to classify a patient into a RIC and CMG. In Chart 7, we have identified the impairment code needed to classify a patient into a RIC and specific items that must be completed on the instrument in order to classify a patient into a CMG. The items from the instrument will be used to establish a motor score, a cognitive score, and age of the patient that corresponds with a specific CMG description.

CHART 7.—CRITICAL PATIENT ASSESSMENT ITEMS

Item category, item sub-category, item name, item number	Admission assessment	Discharge assessment
Identification Information *		
1. Facility Information:		
A. Facility Name	X	
B. Facility Medicare Provider Number	X	
2. Patient Medicare Number	X	
3. Patient Medicaid Number	X	
4. Patient First Name	X	
5. Patient Last Name	X	
6. Birth Date**	X	
7. Social Security Number	X	
8. Gender	X	
9. Race/Ethnicity (Check all that apply):		
American Indian or Alaska Native	X	
Asian	X	
Black or African American	X	
Hispanic or Latino	X	
Native Hawaiian or Other Pacific Islander	X	
White	X	
10. Marital Status	X	
11. Zip Code of Patient's Pre-Hospital Residence	X	
Admission Information*		
12. Admission Date	X	
13. Assessment Reference Date	X	
14. Admission Class	X	
15. Admit From	X	
16. Pre-Hospital Living Setting	X	
17. Pre-Hospital Living With	X	
18. Pre-Hospital Vocational Category	X	
19. Pre-Hospital Vocational Effort	X	
Payer Information*		
20. Payment Source:		
A. Primary Source	X	
B. Secondary Source	X	
Medical Information*		
21. Impairment Group**	X	X
22. Etiologic Diagnosis	X	
23. Date of Onset of Etiologic Diagnosis	X	
24. Comorbid Conditions:**		
A.	X	X
B.	X	X
C.	X	X
D.	X	X
E.	X	X
F.	X	X
G.	X	X
H.	X	X
I.	X	X
J.	X	X
Medical Needs		
25. Is patient comatose at admission?	X	
26. Is patient delirious at admission?	X	
27. Swallowing Status	X	X
28. Clinical signs of dehydration	X	X
Function Modifiers*		
29. Bladder Level**	X	X
30. Bladder Freq.**	X	X
31. Bowel Level**	X	X
32. Bowel Freq.**	X	X
33. Tub Transfer**	X	X
34. Shower Transfer**	X	X
35. Distance Walked (feet)**	X	X
36. Distance Traveled in Wheelchair (feet)**	X	X
37. Walk**	X	X
38. Wheelchair**	X	X
FIM Instrument*		
Self-Care:		
A. Eating**	X	X
B. Grooming**	X	X
C. Bathing**	X	X
D. Dressing—Upper**	X	X
E. Dressing—Lower**	X	X
F. Toileting**	X	X
Sphincter Control		
G. Bladder**	X	X
H. Bowel**	X	X

CHART 7.—CRITICAL PATIENT ASSESSMENT ITEMS—Continued

Item category, item sub-category, item name, item number	Admission assessment	Discharge assessment
Transfers		
I. Bed, Chair, Wheelchair **	X	X
J. Toilet **	X	X
K. Tub, Shower	X	X
Locomotion		
L. Walk/Wheelchair **	X	X
M. Stairs **	X	X
Communication		
N. Comprehension **	X	X
O. Expression **	X	X
Social Cognition		
P. Social Interaction **	X	X
Q. Problem Solving **	X	X
R. Memory **	X	X
Discharge Information *		
40. Discharge Date		X
41. Patient discharge against medical advice		X
42. Program Interruptions		X
43. Program Interruption Dates:		
A. 1st Transfer Date		X
B. 1st Return Date		X
C. 2nd Transfer Date		X
D. 2nd Return Date		X
E. 3rd Transfer Date		X
F. 3rd Return Date		X
44A. Discharge to Living Setting		X
44B. Was patient discharged with Home Health Services?		X
45. Discharge to Living With		X
46. Diagnosis for Transfer or Death		X
47. Complications during rehabilitation stay: **		
A.		X
B.		X
C.		X
D.		X
E.		X
F.		X
Quality Indicators		
Respiratory Status:		
48. Shortness of breath with exertion	X	X
49. Shortness of breath at rest	X	X
50. Difficulty coughing	X	X

CHART 7.—CRITICAL PATIENT ASSESSMENT ITEMS—Continued

Item category, item sub-category, item name, item number	Admission assessment	Discharge assessment
Pain		
51. Rate the highest level of pain reported by the patient within the assessment period	X	X
Push Scale		
Pressure Ulcers		X
52A. Highest current pressure ulcer stage	X	X
52B. Number of current pressure ulcers	X	X
52C. Length multiplied by width (open wound surface area)	X	X
52D. Exudate amount	X	X
52E. Tissue type	X	X
52F. Total Push Score	X	X
Safety		
53. Total number of falls during the rehabilitation stay		X
54. Balance problem	X	X

* The FIM data set, measurement scale, and impairment codes incorporated or referenced herein are the property of UB Foundation Activities, Inc. "1993, 2001 UB Foundation Activities, Inc. The FIM mark is owned by UBFA, Inc.

** Denotes the items from the patient assessment instrument that must be recorded by item number to classify a patient into a CMG. All other items in this Chart will be used to administer, monitor, and analyze possible refinements to the IRF prospective payment system. The items identified will be further explained and may be refined in the manual associated with our patent assessment instrument.

Case Example

The following is an example of how data from the admission patient assessment will be used to code the functional independence measure items of the IRF patient assessment instrument.

Note: This is a fictitious patient.

Martin P. is an 84-year-old left-handed male who was admitted to an acute care hospital at 11:00 A.M. An initial medical history was obtained from his wife. He is English speaking. Martin is retired and lives with his 72-year-old wife in a townhouse with three levels. He has been an adult-onset diabetic for 10 years, who has been treated with oral medication which provides adequate control of his blood glucose. He has a history of hypertension. He has, nevertheless, been actively traveling with his wife and actively involved with his daughter and her family who live a few blocks away. His wife explained that Martin complained of heaviness in his right arm and an overall tired or weak feeling prior to the onset and asked his wife to call the doctor. When his speech was affected, she called an ambulance.

On admission to the hospital, Martin's speech was garbled, but he was able to follow simple commands. His right arm and leg were weak with diminished sensation.

Diagnosis on admission: Ischemic stroke involving the left middle cerebral artery.

Four days after admission to an acute care hospital, Martin was medically stable. He was alert, cooperative, and had the support of his family. He was transferred to an IRF for intensive inpatient rehabilitation. Functional assessment during the first 3 days after admission to the rehabilitation unit is as follows:

Eating

Martin eats by himself after the helper provides setup assistance, such as opening milk and juice containers and cutting meat.

Grooming

Martin performs grooming activities at the sink. He washes his face, combs his hair, rinses his dentures, and shaves himself after the helper provides setup assistance.

Bathing

Martin washes, rinses, and dries just less than half of his body while sitting on a tub bench. Specifically, he bathes his chest, abdomen, and his left and right thighs. The helper then bathes Martin's arms, lower legs, buttocks, and perineal area.

Dressing—Upper Body

Martin typically wears a sweatshirt to therapy. The helper threads the left and right sleeves of the sweatshirt. Martin pulls the shirt over his head and down over his trunk. Martin performs just over half of the effort.

Dressing—Lower Body

Martin typically wears underwear, sweatpants, antiembolic stockings, and shoes on his lower body. The helper performs most of the lower body dressing tasks, with Martin performing just over one-fourth of the effort.

Toileting

Martin uses a urinal to void and the toilet for bowel movements. The helper manages his clothing before and after using the toilet or urinal. Martin

cleanses himself after voiding and moving his bowels. Martin performs approximately one-third of the toileting effort.

Bladder Management

Martin uses a urinal to void. The helper places the urinal within reach on the bedside table and empties it for Martin. He has had two bladder accidents during the past week.

Bowel Management

Martin has not had any episodes of bowel incontinence. He does not use any assistive devices related to bowel management, but does take a stool softener every day.

Transfers: Bed, Chair, Wheelchair

The helper provides lifting assistance to transfer Martin from the wheelchair to the bed. Although Martin assists during the transfer, he performs less than half of the effort.

Transfers: Toilet

The helper provides lifting assistance to get Martin from a sitting position in the wheelchair to a standing position. Although Martin assists during the transfer, he performs less than half of the effort.

Locomotion: Walk/Wheelchair

The therapist expects Martin to be ambulating at discharge. At admission, Martin travels in the wheelchair over 150 feet requiring supervision and cueing only. He walks only 15 feet at a time in therapy with one person assisting. Note: Since patient is expected to walk at discharge, record walking score.

Locomotion: Stairs

Martin has not attempted going up or down stairs.

Comprehension

Martin understands directions and questions about his daily activities. Martin indicates food and beverages preferences when someone reads the hospital menu. He does not understand more abstract information such as humor or discharge planning. Overall, Martin understands just over 90 percent of the basic information presented to him.

Expression

During the day, Martin expresses basic daily information such as asking for pain medication and food preferences. His speech is slurred, but understandable. He does not express more complex information.

Social Interaction

Martin interacts appropriately with the hospital staff, other patients and family members.

Problem Solving

Martin recognizes and solves basic problems as he performs his daily activities such as asking for help as he tries to thread his shirt without success, and asking for assistance to wash his lower body. He has more trouble with unfamiliar tasks. For example, he is unable to solve more complex problems such as managing his medications.

Memory

Martin recognizes people frequently encountered, and remembers his daily therapy schedule and directions in most situations. He has difficulty remembering under stressful situations, and requires prompting less than 10 percent of the time.

In order to classify a patient into a CMG, the IRF will use the IRF patient assessment instrument admission assessment data to score a patient's functional independence measures that consist of what are termed ''motor'' items and the ''cognitive'' items. In addition to the functional independence measures, the patient's age will also influence the CMG into which the patient is classified. The motor items are generally indications of the patient's physical functioning level. The cognitive items are generally indications of the patient's mental functioning level, and are related to the patient's ability to process and respond to empirical factual information, use judgment, and accurately perceive what is happening. The motor items are eating, grooming, bathing, dressing upper body, dressing lower body, toileting, bladder management, bowel management, transfer to bed/chair/wheelchair, transfer to toilet, walking or wheelchair use, and stair climbing. The cognitive items are comprehension, expression, social interaction, problem solving, and memory. (The CMS IRF patient assessment instrument manual will include more information on these items.) Each item is generally recorded on our patient assessment instrument and scored on a scale of 1 to 7, with a 7 indicating complete independence in this area of functioning, and a 1 indicating that a patient is very impaired in this area of functioning.

Under the current instructions for completing the FIM instrument, a 1 is recorded if an activity did not occur indicating that the patient needs total assistance to perform the activity. For our patient assessment instrument, an 8 will be recorded to indicate that the activity did not occur. This will enable us to distinguish between patients who needed total assistance from patients who did not perform an activity. However, for the purpose of classifying a patient into a CMG, a recorded score of 8 will be recoded as a 1. This scoring methodology will then be consistent with the scoring methodology for the FIM data used to construct the CMGs in this final rule. The methodology to determine the score will be further explained in the manual associated with our patient assessment instrument.

The coding of this patient's functional independence measures on the IRF patient assessment instrument is reflected in the chart below:

Item	Rating	Rationale *
Eating	5	The helper provides assistance such as opening containers—Setup.
Grooming	5	The helper provides setup assistance—Setup.
Bathing	2	Martin washes less than half of his body—Maximal Assistance.
Dressing-Upper Body.	3	The helper threads both sweatshirt sleeves. Martin threads his neck through the sweatshirt and pulls the sweatshirt over his trunk—Moderate Assistance.
Dressing-Lower Body.	2	Martin performs just over one-fourth of the effort—Total Assistance.
Toileting	2	Martin does his own perineal hygiene. The helper manages Martin's clothing before and after toilet/urinal use—Maximal Assistance.

Item	Rating	Rationale*
Bladder Management.	3	Martin has had two bladder accidents (wetting linen/clothing) during the past week (level 3). The helper provides setup assistance for bladder management. Record the lower rating—Moderate Assistance.
Bowel Management.	6	Martin is not incontinent of stool (level 7) and does not use any assistive devices. He takes a stool softener (medication—level 6)—Record the lower rating—Modified Independence.
Transfer: Bed, Chair, Wheelchair.	2	Martin performs between 25 and 49 percent of the effort—Maximal Assistance.
Transfer: Toilet ..	2	Martin performs between 25 and 49 percent of the effort—Maximal Assistance.
Walk/Wheelchair	1	Martin travels in a wheelchair more than 150 feet with supervision (level 5), but is expected to walk by discharge. Record the rating based on Martin's walking: Level 1—Total Assistance.
Stairs	1	Martin has not attempted stairs. Activity Did Not Occur—Code 8 on form, and recode to 1 for CMG assignment.
Comprehension	5	Martin understands over 90 percent of the basic information presented to him, but not complex information—Standby Prompting.
Expression	5	Martin expresses basic information, not complex information—Standby Prompting.
Social Interaction	7	Martin interacts appropriately with the staff—Complete Independence.
Problem Solving	5	Martin recognizes and solves routine problems only (not complex)—Supervision
Memory	5	Martin remembers more than 90 percent of the time. He only has difficulty during stressful situations—Supervision.

*The use of the rationale and the methodology to determine the rating (score) will be further explained in the manual associated with the patient assessment instrument.

The patient's motor score (the sum of the scores for eating; grooming; bathing; dressing; toileting; bladder and bowel management; transfer: bed, chair, wheelchair; transfer: toilet; locomotion: walk/wheelchair; and locomotion: stairs) equals 34. The patient's cognitive score (the sum of comprehension; expression; social interaction; problemsolving; and memory) equals 27. Based on this patient's reason for rehabilitation (ICD–9 coding: Cerebral artery occlusion—434.91, hemiplegia—342.9, aphasia—784.3), he is first classified into RIC 01 for stroke. He is then classified into CMG 0108 because his motor score is between 34–38 and he is more than 83 years old. (The cognitive score does not affect this CMG assignment.)

F. Adjustment to the CMGs

In accordance with § 412.620(c) of the final regulations and section 1886(j)(2)(C)(i) of the Act, we adjust the CMGs periodically to reflect changes in treatment patterns, technology, number of discharges, and other factors affecting the relative use of resources. 191

VI. Payment Rates

The IRF prospective payment system in this final rule utilizes Federal prospective payment rates across 100 distinct CMGs. The Federal payment rates are established using a standard payment amount (referred to as the budget neutral conversion factor). A set of relative payment weights that account for the relative difference in resource use across the CMGs is applied to the budget neutral conversion factor and, finally, a number of facility-level and case-level adjustments may apply. The facility-level adjustments include those that account for geographic variation in wages (wage index), disproportionate share hospital (DSH) percentages, and location in a rural area. Case-level adjustments include those that apply for interrupted stays, transfer cases, short-stays, cases in which patients expire, and outlier cases, as described later in this section.

The budget neutral conversion factor provides the basis for determining the CMG-based Federal payment rates. It is a standardized payment amount that is based on average costs from a base period and also reflects the combined aggregate effects of the payment weights, various facility-level and case-level adjustments, and other policies discussed in this section. Consequently, in discussing the methodology for development of the Federal payment rates, we begin by describing the various adjustments and factors that serve as the inputs used in establishing the budget neutral conversion factor.

We developed prospective payments for IRFs using the following major steps:

- Develop the CMG relative weights.
- Determine the payment adjustments.
- Calculate the budget neutral conversion factor.
- Calculate the Federal CMG prospective payments.

A description of each step and a discussion of our final policies follow.

A. Development of CMG Relative Weights

Section 1886(j)(2)(B) of the Act requires that an appropriate relative weight be assigned to each CMG. Relative weights are a primary element of a case-mix adjusted prospective payment system that account for the variance in cost per discharge and resource utilization among the payment groups. The establishment of relative weights will help ensure that beneficiaries have access to care and receive the appropriate services that are

commensurate to other beneficiaries that are classified to the same CMG. In addition, prospective payments that are based on relative weights encourage provider efficiency and, hence, help ensure a fair distribution of Medicare payments. Accordingly, under § 412.620(b)(1) of the final regulations, we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. We discuss the details of developing the relative weights below.

As indicated in section III. of this final rule, we believe that the RAND analysis has shown that CMGs based on functional-related groups (adjusted for comorbidities) are effective predictors of resource use as measured by proxies such as length of stay and costs. The use of these proxies is necessary in developing the relative weights because data that measure actual nursing and therapy time spent on patient care, and other resource use data, are not available. Throughout this section of the final rule, we describe how we used these proxy measures of resource use to develop the relative weights for each CMG and the specific case-level adjustments.

1. Overview of Development of the CMG Relative Weights

To calculate the relative weights, we estimate operating (routine and ancillary services) and capital costs of IRFs. For the payment rates set forth in this final rule, we use the same method for calculating the cost of a case as we did for the proposed rule; however, we have used the most recent data available. Specifically, for the relative weights set forth in this final rule, we obtained cost-to-charge ratios for ancillary services and per diem costs for routine services from the most recent available cost report data (FYs 1998, 1997, and/or 1996). We obtained charges from calendar year 1999 Medicare bill data and derived corresponding functional measures from the FIM data. We omitted data from rehabilitation facilities that are classified as all-inclusive providers from the calculation of the relative weights, as well as from the parameters that we use to define transfer cases, because these facilities are paid a single, negotiated rate per discharge and they do not maintain a charge structure.

For ancillary services, we calculate both operating and capital costs by converting charges from Medicare claims into costs using facility-specific, cost-center specific cost-to-charge ratios obtained from cost reports. Our data analysis showed that some departmental cost-to-charge ratios were missing or found to be outside a range of statistically valid values. For anesthesiology, a value greater than 10, or less than 0.01, was found not to be statistically valid. For all other cost centers values greater than 10 or less than 0.5 were found not to be statistically valid. As with the proposed rule, we replace individual cost-to-charge ratios outside of these thresholds. The replacement value that we use for these aberrant cost-to-charge ratios is the mean value of the cost-to-charge ratio for the cost-center within the same type of hospital (either freestanding or unit).

For routine services, per diem operating and capital costs are used to develop the relative weights. In addition, per diem operating and capital costs for special care services are used to develop the relative weights. (Special care services are furnished in intensive care units. We note that fewer than 1 percent of rehabilitation days are spent in intensive care units.) Per diem costs are obtained from each facility's Medicare cost report data. We use per diem costs for routine and special care services because, unlike for ancillary services, we cannot obtain cost-to-charge ratios for those services from the cost report data. To estimate the costs for routine and special care services included in developing the relative weights, we sum the product of routine cost per diem and Medicare inpatient days and the product of the special care per diem and the number of Medicare special care days.

In this final rule, we use a hospital-specific relative value method to calculate relative weights as described in the proposed rule. We use the following basic steps to calculate the relative weights for this final rule:

The first step in calculating the CMG weights is to estimate the effect that comorbidities have on costs. The second step is to adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step. In the third step, the adjusted costs from the second step are used to calculate ''relative adjusted weights'' in each CMG using the hospital-specific relative value method. The final steps are to calculate the CMG relative weights by modifying the ''relative adjusted weight'' with the effects of the existence of the comorbidity tiers (explained below) and normalize the weights to 1.

We describe each of these steps in greater detail below.

2. Steps for Calculating the Relative Weights

Step 1—Estimate the effect of comorbidities on costs.

We use regression analyses to determine if we should establish a separate relative weight for cases in a CMG with comorbidities meeting the appropriate criteria described in section V.B. of this preamble. In the proposed rule, we indicated that a higher payment would be made for cases that have at least one relevant comorbidity from the list included in Appendix C of the proposed rule. Under the proposed policy, payment for a case with one relevant comorbidity would be the same as a case with multiple relevant comorbidities.

Comment: Several commenters suggested that additional payments should be made for more than one comorbidity. Further, some commenters suggested that payment for comorbidities should be based on a tiered approach. Specifically, a tiered approach provides for different payments based on the cost of the comorbidity.

Response: In response to these comments, for this final rule we analyzed the use of a tiered approach that consists of three weighting levels that account for variations in severity of relevant comorbidities. The data indicate that arraying comorbidities into three categories based on whether the costs associated with the comorbidities are considered high, medium, or low improves the extent to which payment matches cost. As described later in this final rule, separate relative weights for three tiers will now be calculated for each CMG using the weighting methodology. Then, separate payment rates will be calculated by multiplying the relative weights by a standardized payment amount which is also discussed later in this final rule. The result is variations in payment for CMGs based on differences in costs among relevant comorbidities for each tier. When a case has more than one comorbidity, the applicable CMG payment rate will be determined by the comorbidity that results in the highest payment. We believe the use of this 3-tiered approach will improve the extent to which the IRF prospective payments accurately reflect case costs. Therefore, we will use the 3-tiered approach for the payment rates set forth in this final rule.

Comment: Several commenters suggested that the list of comorbidities in the proposed Appendix C should be expanded to include specific diagnoses. In contrast, some commenters recommended that certain diagnoses

should be excluded from the list of comorbidities because they suggested these codes were inappropriate for care furnished in an inpatient rehabilitation setting.

Response: We analyzed the comorbidities listed in Appendix C in the proposed rule extensively to determine the appropriateness of the diagnoses and improve the list. Based on the results of the analyses described below, we are modifying the list of comorbidities in Appendix C of this final rule. Specifically, we applied the following general criteria to refine the comorbidity list further: We deleted codes that we found to be irrelevant to the inpatient rehabilitation population and added codes that we found to be associated with higher costs in the inpatient rehabilitation population. We removed from the list those comorbidities that we determined to be preventable by good medical care. An example would be not to pay extra for urinary tract infections, many of which can be prevented by removing unnecessary Foley catheters. In addition, as we proposed, conditions that we determined to be inherent to a specific RIC were excluded from the list of relevant comorbidities for that RIC.

We will continue to examine the appropriateness of the comorbidities and may refine the list in the future if warranted. We used the final list of comorbidities in Appendix C of this final rule to construct the payment rates effective with this final rule. This list of comorbidities will help determine which comorbidity tier may be appropriate for payment.

To compute payments for the comorbidity tiers, we performed a regression analysis to determine if the comorbidity tiers affect costs per case by RIC. In the analysis, we found that each comorbidity tier does not have the same effect on each RIC. Therefore, if coefficients by RIC are positive and significant and the comorbidity is deemed to be relevant clinically to the CMG, we calculate separate relative weights for cases for each comorbidity tier in Step 3 below.

Comment: One commenter requested clarification regarding why the CMGs that depicted expired patients were not affected by comorbidities.

Response: The process of determining the effects of comorbidities excludes cases that end in death. The number of cases used to calculate the relative weights for cases that end in death is too small to develop different payments based on comorbidities. However, the effects of comorbidities are still accounted for in the payments. To the extent that comorbidities occur with cases ending in death, the costs of comorbidities are included in the average cost and, thus, the relative weight for these cases reflects comorbidities for these cases.

Step 2—Adjust the costs of each discharge for the effects of comorbidities.

The second step in the calculation of the weights is to adjust the resource use for each case to eliminate the effect of comorbidities. The adjusted cost (A) for a discharge is calculated as follows: Let x be a vector (a quantity completely specified by a magnitude and a direction) with three elements, one for each comorbidity tier. Each element of x will be 1 if the case is in that tier and 0 otherwise. The a is the transposed vector of coefficients corresponding to each tier in the RIC for the case. Then A = cost per discharge/exp(a*x). These adjusted costs for each discharge are then used to calculate the adjusted relative weight for each CMG, thereby eliminating the effect of comorbidities from the weight (signified by wk in the formula described in step 3 below).

Step 3—Calculate the CMG relative weights adjusted for comorbidity tiers, on an iterative basis.

The process of calculating the CMG relative weights is iterative. First, we give an initial case-mix index (CMI) value of 1 to each facility. Then, for each case, we calculate a facility-specific relative value by dividing the comorbidity-adjusted cost of the case by the average comorbidity-adjusted cost of all cases at the facility, and multiplying the result by the facility's CMI. We then set the CMG-adjusted weights in proportion to the average of the facility-specific relative values. The result is a new CMI for each facility and, therefore, new facility-specific, relative values. The process continues until there is convergence between the weights produced at adjacent steps, for example, when the maximum difference is less than 0.0001. After the first iteration, we remove statistical outlier—cases that differ from the CMG mean by more than three standard deviations in the log scale of standardized cost. We believe this method is a reasonable statistical approach to remove aberrant values that could skew the remainder of the data. We treat discharges that meet the definition of a transfer case as a fraction of a case. (See discussion of transfers in section VI.B. of this preamble.) We calculate relative weight for each relevant combination of CMG ''without comorbidity'', ''tier 1'', ''tier 2'', and ''tier 3'', using the following formula:

$$W(k, x) = \exp(a*x)w_k$$

where x and a are the vectors described in step 2 (all elements of x are 0 if no comorbidities were present, so exp(a*x) = 1 when no comorbidities are present). The variable (w_k) equals the comorbidity adjusted weight. If the coefficient (a) is not positive and significant as previously discussed in Step 1, then (a) will be set to equal 0 in the formula. This results in exp(a*x), in the formula, to equal 1 and the weight (W) will equal (w_k).

Step 4—Calculate the weight by modifying the relative adjusted weight with the effects of comorbidity and normalizing the weights to 1.0.

This step entails calculating a relative weight for each relevant combination of CMG and comorbidity tier. In this step, we determine the average cost per discharge for all the cases and use that value as the divisor to calculate the relative weights. For example, if the average cost per discharge across all discharges is $12,000, then the relative weight for a CMG with an average cost of $12,000 is 1, and the relative weight for a CMG with an average cost per discharge of $20,000 is 1.67. If ''r'' is the relative adjusted weight for a case in a CMG with a comorbidity given by:

$$w = k\ r\ \exp(a*x),$$

then k is determined so that the average value of w is 1.

Table 1 in the Addendum to this final rule lists the CMGs, the comorbidity tiers, and their respective relative weights. The relative weights reflect the inclusion of cases with a very short interruption (return on day of discharge or either of the next 2 days). Information obtained from the first assessment will be used to determine the appropriate CMG and corresponding payment.

Comment: A few commenters suggested that additional payments should be made if the comorbidity develops at any time during the course of the inpatient stay, rather than only if the condition is recorded on the admission assessment.

Response: For the proposed rule, we stated that we proposed to pay an additional amount with the presence of a relevant comorbidity based on the initial assessment. In this final rule, we are using a modified version of the UDSmr patient assessment instrument, the FIM. For the FIM instrument, comorbidity data are not coded until the discharge assessment. Because we are modifying our patient assessment instrument to reflect more closely the items and data collection methods from the FIM, we will obtain information regarding comorbidities from the discharge assessment. However, we will not use any comorbidities identified on the day prior to the day of discharge or the day of discharge to determine a comorbidity tier. We believe increasing payment for comorbidities that occur at the end of a beneficiary's stay is

inappropriate because these comorbidities have less effect on the resources consumed during the entire stay. Often, the occurrence of a comorbidity at the end of the stay may be part of the reason the rehabilitation stay was ended. Comorbidities that are identified on the day prior to the day of discharge or the day of discharge should not be listed on the discharge assessment; we will reevaluate the appropriateness of this type of coding in the future. Therefore, in order to determine the appropriate comorbidity, we will use the ICD–9–CM codes (item 24 on the patient assessment instrument) obtained from the discharge assessment.

If a relevant comorbidity is indicated on the discharge assessment, payment will be based on the relative weight from the appropriate comorbidity tier column in Table 1 in the Addendum to this final rule.

Comment: Several commenters expressed concern regarding relative weight compression in the proposed classification system.

Response: Subsequent to issuance of the proposed rule our analysis showed that the proposed CMG relative weights exhibited weight compression and suggested a methodology for addressing it. Weight compression may exist when payment for ''high weighted'' cases is less than the cost of the case and payment for ''low weighted'' cases is more than the cost of the case. Similarly, CMI compression may exist when facilities with high CMIs have higher standardized costs relative to their CMG than facilities with low CMIs.

To measure compression, we use regression analysis to assess the relationship of the log of the average cost minus outlier payments at a facility and the log of the CMI. The coefficient on the CMI illustrates how much cost increases with increasing the CMI. If the weights are neither compressed or decompressed, the coefficient will be 1. A value greater than 1 indicates compression. The relative weights computed for this final rule also exhibited CMI compression with a coefficient of about 1.10. In other words, a facility with a case-mix index that is 10 percent higher than another facility will, on average, cost about 11.0 percent more.

In light of the coefficient, we explored possible reasons for compression. Analysis of the data supports an assumption that the use by IRFs of a single uniform per diem charge for routine services may be a major cause of the observed compression. This results in data on IRF claims that may not fully reflect the relative resource requirements for nursing and other routine services. Further analysis also indicates that the likely causes for the compression may be due to the bundling of ancillary services into routine costs and varying nursing intensity across CMGs. However, at the present time, there is a lack of data to resolve these issues directly. When staff time measurements become available in the future (as discussed in section III. of this final rule), we will analyze these data in terms of potential explanation of compression and modify the relative weights or payment methodologies, if warranted.

We believe it is important to alleviate compression to the extent that payment for higher cost cases is lower than costs, and payment for lower cost cases is higher than costs. If the weights are not adjusted, inappropriate incentives will exist to admit the lower cost cases. Limiting access to higher cost cases is not a desirable outcome. In order to adjust the relative weights for this final rule, we developed an algorithm using the relationship of IRF average costs and CMI. We believe that using this algorithm to adjust the relative weights will, to the extent possible, eliminate CMI compression and result in weights that are a better measure of costs than the compressed weights. Therefore, we adjust the relative weights using the following basic formula:

$$nw(i) = w(i) + 0.10(w(i)-1)$$

where nw(i) is the new relative weight and w(i) is the relative weight prior to the adjustment.

The adjusted relative weights result in average payments per IRF that vary directly with average costs at the IRF. Although this formula is used to adjust the relative weights for each CMG, we do not apply it to the short-stay CMG because the result would be a negative relative weight. Instead, we reduce the case weight by 15 percent, which we believe based on our analysis is an appropriate amount to offset the increase in the relative weights at the high end (that is, over 1.0) and results in weights that we find are a better measure of costs than the compressed weights.

B. Transfer Payment Policy

1. Background

In the November 3, 2000 proposed rule, we proposed a transfer policy under § 412.624(f) to provide for payments that more accurately reflect facility resources used and services delivered. This reflected our belief that it is important to minimize the inherent incentives specifically associated with the early transfer of patients in a discharge-based payment system. Discharging patients early can be profitable in that IRFs can receive the full CMG payment without providing a complete course of treatment. As we previously stated, length of stay has been shown to be a good proxy measure of costs. Thus, in general, reducing lengths of stay will be profitable under the IRF prospective payment system. We are concerned that incentives might exist for IRFs to discharge patients prematurely, as well as to admit patients that may not be able to endure intense inpatient therapy services. Even if patients were transferred before receiving the typical, full course of inpatient rehabilitation, the IRF could still be paid the full CMG payment rate in the absence of a transfer policy. Accordingly, we proposed a transfer policy that reduces the full CMG payment rate when a Medicare beneficiary is transferred.

2. Definition of Site of Care

In the proposed rule, for the purposes of our transfer policy, we proposed to define site of care as an ''institutional site'', although we were considering the option to extend the definition of site of care to the ''provider site'' definition. In addition, we solicited comments regarding the inclusion of nursing homes in the definition of site of care.

3. Criteria for Defining Transfer Cases

In the proposed rule, we proposed that in order for a discharge from an IRF to be classified as an early transfer, the length of stay for the discharge must be less than the average length of stay for the given CMG (as shown in section XII. of the proposed rule), and the patient must be discharged to another rehabilitation facility, a long-term care hospital, an inpatient hospital, or a nursing home that accepts payment under either the Medicare program or the Medicaid program, or both (65 FR 66346).

Comment: Some commenters suggested that we limit or completely eliminate the transfer policy. Specifically, some commenters noted that a prospective payment system, by design, is based on averages, making adjustments for transfer cases unnecessary. Other commenters suggested that nursing homes be removed from the definition of transfer cases. Another commenter focused on potential access barriers for patients who use a nursing home as their residence.

Response: With the development of each new prospective payment system, analysis of the inherent incentives is necessary to determine what factors will

motivate providers to optimize their payments inappropriately. As we stated in the proposed rule, a discharge-based payment system based on national average costs contains the inherent incentive to discharge patients prematurely and admit patients inappropriately. If these incentives are not addressed, Medicare funds will not be distributed in the most equitable manner possible or, more specifically, to those IRFs that are providing the full course of rehabilitative services. We note that a transfer policy for IRFs is contemplated under the statute. Specifically, section 1886(j)(1)(E) of the Act states: ''Nothing in this subsection shall be construed as preventing the Secretary from providing for an adjustment to payments to take into account the early transfer of a patient from a rehabilitation facility to another site of care.''

Some commenters suggested that applying our transfer policy to cases discharged to nursing homes will pose access barriers to patients whose permanent residence is a nursing home because discharge prior to the average length of stay for a CMG will always involve a transfer payment. Thus, IRFs may decide to not admit nursing home patients because they want to avoid the risk of receiving a transfer payment for their services. We believe that payments for such cases (which include an additional half day payment for the first day) are adequate to cover costs of care and should mitigate any potential incentives not to admit these patients (see comment and response regarding increasing payment for transfer cases). Accordingly, we are not adopting the commenters' recommendation to eliminate or narrow the focus of the transfer policy.

In the November 3, 2000 proposed rule, we stated that we were analyzing claims data to determine the extent to which we could distinguish among services that could be considered a substitution of care rather than an extension of the normal progression for inpatient rehabilitation care, and to determine the frequency and intensity of both home health and outpatient therapy services. We noted that estimating the potential substitution of home health therapy services was made more challenging because we had just developed the HHA prospective payment system, and it was difficult to anticipate how therapy services would be delivered after implementation of that system.

We indicated in the proposed rule that we were not proposing to include home health services, outpatient therapy, and ''day programs'' in our transfer policy. However, we were considering including these services to the extent that we could distinguish when home health and outpatient therapy services are more intensive and used as a substitution for inpatient rehabilitation care. We proposed that if we could determine that the care is used as a substitution rather than just the normal progression of care, then we believed that these types of intensive home health and outpatient therapy services should be included as part of the transfer policy. We specifically solicited comments on this option.

Comment: Several commenters recommended that the transfer policy should not be extended to include home health and outpatient rehabilitation services. Specifically, the commenters noted that many Medicare beneficiaries need and benefit from some short-term home health or outpatient therapy following discharge from an IRF. They also observed that home health and outpatient therapy services are the most appropriate and cost effective way to continue their care.

Response: To date, claims data are not available to determine the extent to which we can distinguish those services that represent a substitution of care rather than an extension of the normal progression for inpatient rehabilitation care, and to determine the frequency and intensity of both home health and outpatient therapy services. Therefore, we believe it would be inappropriate to expand the transfer policy at this time to include discharges of patients who will receive home health and outpatient therapy services. We acknowledge that many patients will require some form of therapy after discharge from the IRF. However, we remain concerned about incentives to discharge patients prematurely under the IRF prospective payment system, and as part of the monitoring system we will analyze data to compare practice patterns prior to and after its implementation. Based on future analysis of practice patterns, we may refine payments in the future, if warranted.

In the November 3, 2000 proposed rule, we also solicited comments on a monitoring system that includes transfers or discharges from an IRF to ''provider sites.'' This would have included transfers or discharges from an IRF to a SNF, a long-term care facility, an HHA, or an inpatient hospital. The monitoring system would include discharges and transfers from one IRF to a different IRF, including situations where the transfer occurs between organizations of common ownership. We indicated that although it does not currently appear that this type of transfer occurs frequently, further analysis of data regarding this type of transfer between IRFs may warrant an adjustment to payments. We did not receive any comments in response to our solicitation, and we will continue to develop a monitoring system that will allow us to assess the impact of the IRF prospective payment system on these types of situations.

4. Transfer Case Payment

For the November 3, 2000 proposed rule, we proposed to compute the per diem-based payment for a transfer case as follows: first, calculate the unadjusted per diem amount for each CMG (except the short-stay CMG) by dividing the average length of stay for nontransfer cases (those cases discharged to the community with a length of stay exceeding 3 days) in the CMG into the Federal prospective payment (with or without comorbidities) for that CMG. Next, multiply the CMG per diem payment from the first step by the number of days that the beneficiary was in the IRF prior to his or her transfer. The result equals the proposed unadjusted Federal prospective payment for the transfer case. We solicited comments on the appropriateness of our proposed methodology for computing payments for transfer cases.

Comment: Several commenters suggested that there are additional costs associated with the initial day in comparison to each additional day a patient is in the IRF, and therefore recommended that we pay transfer cases at a higher rate. Further, the commenters noted the additional costs of the initial day are related to: processing the patient through the admissions department; integrating the patient into the facility; assessing the patient; and providing appropriate diagnostic tests, pharmaceuticals, and supplies. Most of the commenters recommended an additional half day payment for the first day to account for the higher costs incurred at the beginning of the stay. Some commenters recommended a transfer payment methodology similar to the acute transfer payment methodology, where the initial day is paid two times the per diem and each additional day at the per diem.

Response: In light of these comments, we analyzed cost data for each day of stay to determine if per diem costs were significantly higher for the first day relative to subsequent days. The data support the commenters' recommendations to include an additional half day payment for the first day of a stay for transfer cases. However,

the data do not support payment at two times the per diem for the first day. Therefore, under § 412.624(f) of these final regulations, we will pay transfer cases a per diem amount and include an additional half day payment for the first day. As with other adjustments, this payment will be made in a budget neutral manner. We are concerned that this more precise matching of payment to average historical costs has the potential to provide an incentive for IRFs to admit patients who are not appropriate for an intensive inpatient rehabilitation program. These patients may be less expensive to care for than patients requiring intensive rehabilitation and, thus, may be more profitable to hospitals even though these patients are soon transferred to another setting. We will monitor the appropriateness of admissions for patients who have shorter than average stays and are then transferred to another setting. We may make future payment refinements based on the extent to which this type of case increases.

Comment: Several commenters suggested that the proposed payments did not account for long-stay transfers. The commenters stated that long-stay transfers would not receive adequate payments and suggested an increase in payment for these cases.

Response: Based on the comments received, we believe it is necessary to clarify which cases were included in the construction of the CMGs, and also to identify the types of cases that were included in the construction of the relative weights for the CMGs. The cases included in the construction of the CMGs were those cases in which the patient returned home and had a length of stay greater than 3 days (short-stay and expired CMGs were created based on the remainder of the cases). For the proposed rule, we also used these data to determine the average length of stay for the groups based on these cases. Once we constructed the CMGs for the proposed rule, we then calculated the relative weights for each group using cases in which the patient returned home and had a length of stay greater than 3 days in addition to the long-stay transfer cases. Therefore, long-stay transfer cases were included for cases other than short stays and expired cases in the construction of the relative weights for the CMGs.

For this final rule, we calculate the average length of stay for the CMGs which included those cases in which the patient returned home and had a length of stay greater than 3 days as well as long-stay transfer cases. We calculate the average length of stay in this manner so that the inputs are consistent with those used to develop the relative weights. For CMGs that have a very small number of cases (less than 10 cases), we use a model to estimate the average length of stay for that CMG. To do this, we estimate the average length of stay from an analysis of variance using the log of the length of stay as the dependent variable. The independent variables are the CMG and the comorbidity tier coefficient for each RIC. It is possible that payment for an individual case might be lower than the cost of the case, but for other cases, the total payment might be higher than costs.

C. Special Cases That Are Not Transfers

Section 1886(j)(3)(A)(v) of the Act permits us to adjust the payment rates by such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities. There are three types of special cases that are not transfers. The special cases include short-stay outliers, cases in which the patient expires, and interrupted stays.

1. Short-Stay Outliers

We proposed under § 412.620(b)(2) of the proposed rule to develop separate weighting factor(s) for patients who are discharged (and not transferred) within a specified number of days after admission. We proposed to define a short-stay outlier as a case that has a length of stay of 3 days or less (regardless of the CMG) and that does not meet the definition of a transfer (as discussed in section VI.B. of this final rule). Payment-to-cost ratios for these cases show that, if facilities received a full CMG payment, the payment would substantially exceed the resources the IRF had expended.

We proposed to pay short-stay outliers a relative weight of 0.1908. We computed this relative weight for short-stay outlier discharges by identifying all cases in which the length of stay is 3 days or less and the discharge does not meet the policy criteria to be considered a transfer. In the proposed rule, we calculated the relative weight for short-stay cases using the hospital-specific relative value methodology. For this final rule, we will pay short-stay cases a relative weight of 0.1651. This amount also was derived using the hospital-specific relative value method. However, we use the most recent data available (calendar year 1999 Medicare bills with corresponding FIM data) and we adjust the weight due to the results of the regression analyses described earlier in this preamble which measured the extent to which the relative weights reflect case costs.

In addition, in the proposed rule we specifically solicited comments on the appropriate time period for our short-stay criteria. We proposed that the considerations underlying the short-stay policy might also apply to cases with a length of stay greater than 3 days. More specifically, we noted that some beneficiaries may have longer lengths of stay, and yet may not require intensive inpatient rehabilitative care, or may lack the capacity to participate in an intensive rehabilitation program. Thus, we were also considering a short-stay policy that could encompass certain cases with a length of stay longer than 3 days. We indicated that we were in the process of further analyzing claims data for Medicare beneficiaries to determine the most appropriate number of days to use in the definition of a short-stay case. We stated that if analysis of the data supported increasing the number of days for the short-stay criteria, we might adopt in the final rule a definition covering a longer timeframe than the 3-day period.

Comment: One commenter suggested that adjustments for short-stay outliers are unnecessary, because the prospective payment system is based on averages; some patients have a longer length of stay, while others have a shorter length of stay.

Response: Section 1886(j)(3)(A)(v) of the Act provides us with broad authority to adjust the payment rates under the IRF prospective payment system by such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities. Because the prospective payment system is based on a system of averages, certain cases could be paid significally more than their cost if the facility receives the full CMG payment. Due to the budget neutrality provision, excessive payment for short-stay outlier cases that do not actually entail the full course of rehabilitative care results in reducing payment for those cases that warrant full payment based on the rehabilitation services delivered. Adjusting for short-stay outlier cases is a means of matching payment as closely to cost as possible. Therefore, we are not adopting the suggestion to eliminate the short-stay outlier policy.

Comment: Some commenters maintained that the time period used to define the short-stay outlier policy (3 days or less) is appropriate. Other commenters disagreed with increasing the short-stay outlier policy to encompass cases with a length of stay of longer than 3 days.

Response: In developing the short-stay CMG for the proposed rule, we performed extensive analyses using the frequency distribution of existing claims data to determine the most appropriate length of stay for the short-stay CMG. Specifically, we found that a length of stay of 3 days or less will capture the majority of those cases in which the beneficiary is unlikely to receive and benefit from a full course of rehabilitative treatment. Further, based on consultation with clinical experts, we determined the minimum length of time needed to acclimate a beneficiary to an IRF before intensive rehabilitation can begin. In view of administrative processes and the initial assessment activities, we believe that 3 days is appropriate. Based on these analyses, we are not expanding the 3-day period for the short-stay outlier policy. However, we will monitor the extent to which practice patterns change as a result of implementing this policy, and we may make refinements in the future, if warranted.

2. Cases in Which the Patient Expires

In general, payment for cases that end in death might substantially exceed the costs if facilities received the full CMG payment for these cases. Even excluding all of the short-stay cases with a length of stay of 3 days or fewer, payment for the remaining expired cases as a whole would still be substantially more than the costs.

In the proposed rule, we indicated that we had analyzed payment-to-cost ratios and found that we could improve the accuracy of the payments if we split expired cases into two categories based on the RIC—one for orthopedic cases and one for all other types of RICs. We further found that splitting these cases based on length of stay also improves the accuracy of the payment system. Therefore, under proposed § 412.620(b)(3), we proposed to determine weighting factor(s) for patients who expired within a specified number of days after admission. We proposed that expired cases in which a beneficiary dies within 3 days after admission are classified into the short-stay CMG. Expired cases with a length of stay greater than 3 days are classified into one of four CMGs, based on length of stay and whether the discharge falls within an orthopedic RIC (RICs 07, 08, and 09). More specifically, one group includes orthopedic discharges with a length of stay of more than 3 days but less than or equal to the average length of stay for expired cases classified within the orthopedic RIC. The second group includes orthopedic discharges with a length of stay greater than the average length of stay for expired cases classified within the orthopedic RIC. The third group includes nonorthopedic discharges with a length of stay of more than 3 days but less than or equal to the average length of stay of expired cases that are not classified within the orthopedic RIC. The fourth group includes nonorthopedic discharges with a length of stay greater than the average length of stay of expired cases that are not classified within the orthopedic RIC. We calculated the proposed relative weights for each expired CMG using the hospital-specific relative value methodology discussed previously in this preamble.

Comment: A few commenters suggested that adjustments for cases that end in death are not necessary in the IRF prospective payment system. Specifically, one commenter indicated that, since the system is based on averages, it should account for atypical cases.

Response: Section 1886(j)(3)(A)(v) of the Act permits us to adjust the payment rates by such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities. In the proposed rule, we noted that certain cases (such as cases in which the patient expires) that receive less than the full course of treatment for a specific CMG would be paid inappropriately if the facility received the full CMG payment. In general, cases in which the patient expires might be paid substantially more than costs if we did not create separate CMGs for these cases. Further, other cases that warrant full payment because they receive the full course of rehabilitative care would instead receive reduced payments, due to the budget neutrality provision of the statute. Adjusting for cases in which the patient expires is a means of matching payment more closely to the cost of the case. Expired cases may also warrant additional outlier payments if the estimated cost of the case exceeds the adjusted CMG payment amount and the adjusted loss threshold amount. Therefore, in this final rule we are adopting as final the provision at proposed § 412.620(b)(3), which provides for the development of weighting factor(s) for cases in which patients expire within the number of days after admission that we specify.

3. Interrupted Stay

In proposed § 412.602, we proposed to define an interrupted stay as a stay in which the beneficiary is discharged and returns to the same IRF within 3 consecutive calendar days. We proposed to pay one discharge payment for these cases. The assessment from the initial stay would be used to determine the appropriate CMG.

Comment: Several commenters expressed concern about the proposed interrupted stay policy. Some commenters recommended that the interrupted stay policy be eliminated or limited to a 24-hour time period.

Response: We believe that, in the absence of an interrupted stay policy, incentives might exist for facilities to attempt to inappropriately receive more than one CMG payment for the same patient by moving the patient out of the IRF, only to return the patient to the same IRF, solely to maximize payments. We believe this would be an undesirable outcome of the IRF prospective payment system. Therefore, we are not adopting the recommendation to eliminate or reduce the interrupted stay policy. In addition, in this final rule, we are clarifying in § 412.602 that the duration of the interruption of stay of 3 consecutive calendar days begins with the day of discharge from the IRF and ends on midnight of the third day.

Comment: One commenter suggested that we include the interrupted stay policy in the codified regulations text.

Response: In response to this comment, we are adding language to the regulation text at § 412.624(g).

Comment: Other commenters requested clarification regarding how services during the interruption of the IRF stay would be paid.

Response: As stated above, in this final rule we are adding a paragraph (g) to proposed § 412.624 to specify special payment provisions for interrupted stays when a beneficiary is discharged from the IRF to an acute care hospital. Under § 412.624(g), there will be no separate DRG payment to the acute care hospital when the beneficiary is discharged and returns to the same IRF on the same day. However, if a beneficiary receives inpatient acute care hospital services, the acute care hospital can receive a DRG payment if the beneficiary is discharged from the IRF and does not return to that IRF by the end of that same day.

D. Adjustments

Section 1886(j)(6) of the Act requires an adjustment to the Federal prospective payments to account for geographic area wage variation. Section 1886(j)(3)(A)(v) of the Act confers broad discretion on the Secretary to adjust prospective payments ''by such other factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.'' Section 1886(j)(4) of the Act authorizes (but

does not require) the Secretary to make specified payment adjustments (including an adjustment for outlier cases).

Consistent with what we proposed in the November 3, 2000 proposed rule, in this final rule we will adjust payments for facilities located in rural areas, in addition to the geographical wage adjustment. Further, we will adjust payments to reflect the percentage of low-income patients. We discuss these adjustments and the final payment methodologies below.

1. Area Wage Adjustment

Section 1886(j)(6) of the Act specifies that payment rates under the IRF prospective payment system must be adjusted to account for geographic area wage variation. The statute requires the Secretary to adjust the labor-related portion of the prospective payment rates for area differences in wage levels by a factor reflecting the relative facility wage level in the geographic area of the rehabilitation facility compared to the national average wage level for these facilities. In accordance with § 412.624(e)(1) of this final rule, we will adjust payment rates for geographic wage variations using the following methodology:

To account for wage differences, we first identify the proportion of labor and nonlabor components of costs. In general, the labor-related share is the sum of relative importance of wages, fringe benefits, professional fees, postal services, labor-intensive services, and a portion of the capital share from an appropriate market basket. We use the excluded hospital market basket with capital costs to determine the labor-related share. The excluded hospital market basket with capital costs is derived from available cost data for rehabilitation hospitals, long-term care hospitals, psychiatric hospitals, cancer hospitals, and children's hospitals. In the proposed rule, we estimated the labor-related share for FY 2001. However, because implementation of the IRF prospective payment system is effective with cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002, we are now estimating the labor-related share for FY 2002.

The labor-related share is the sum of the weights for those cost categories contained in the excluded hospital with capital market basket that are influenced by local labor markets. These cost categories include wages and salaries, employee benefits, professional fees, labor-intensive services and a 46-percent share of capital-related expenses. The labor-related share for FY 2002 is the sum of the FY 2002 relative importance of each labor-related cost category, and reflects the different rates of price change for these cost categories between the base year and FY 2002. The sum of the relative importance for FY 2002 for operating costs (wages and salaries, employee benefits, professional fees, and labor-intensive services) is 68.821 percent, as shown in the chart below. The portion of capital that is influenced by local labor markets is estimated to be 46 percent, which is the same percentage used for the hospital inpatient capital-related prospective payment system. Because the relative importance for capital is 7.770 percent of the excluded hospital with capital market basket in FY 2002, we take 46 percent of 7.770 percent to determine the labor-related share for FY 2002. The result is 3.574 percent, which we add to 68.821 percent for operating cost to determine the total labor-related share for FY 2002. Thus, the labor-related share that we will use for rehabilitation facilities in FY 2002 is 72.395 percent, as show in the chart below.

TOTAL LABOR-RELATED SHARE

Cost category	Relative Importance—FY 2002 (percent)
Wages and salaries	50.038
Employee benefits	11.285
Professional fees	2.045
Postal services	0.245
All other labor intensive services	5.208
Subtotal	68.821
Labor-related share of capital costs	3.574
Total	72.395

Comment: A few commenters requested clarification of references to different labor-related shares in the proposed rule.

Response: In the proposed rule, we described the methodology for computing the labor-related share for FY 2001 (71.301 percent). We proposed a wage adjustment using an estimated FY 2001 labor-related share which was appropriate given that the IRF prospective payment system was proposed to be implemented on or after April 1, 2001. However, in this final rule, we use the estimated FY 2002 labor-related share of 72.395 to develop the impacts among the various classes of IRFs, as well as for determining the payment rates set forth in this final rule. We use the estimated FY 2002 labor-related share for these purposes because the payment system will be implemented during FY 2002, and we updated the payments used in the impact analysis in section VIII. of this final rule to the midpoint of FY 2002.

In the proposed rule as well as in this final rule, we apply an estimated labor-related share of 70.5 percent (FY 1998) in order to determine the facility-level adjustments other than the wage adjustment. For purposes of determining facility-level adjustments (other than the wage adjustment), the FY 1998 labor-related share continues to be appropriate, given that, for the proposed rule, the labor-related share was applied to FY 1998 cost report and cost per case data. Although we obtained more recent Medicare bill and FIM data in developing the payment rates set forth in this final rule, the cost report data are still primarily from FY 1998. Therefore, we believe the estimated labor-related share for FY 1998 remains most appropriate to apply to the data used in the regression analyses to determine the facility-level adjustments other than the wage adjustment.

The labor-related portion of the unadjusted Federal payment is multiplied by a wage index value to account for area wage differences. We use inpatient acute care hospital wage data to compute the wage indices.

The inpatient acute care hospital wage data that we use include the following categories of data associated with costs paid under the inpatient acute care hospital prospective payment system (as well as outpatient costs): salaries and hours from short-term, acute care hospitals, home office costs and hours, certain contract labor costs and hours, and wage-related costs. The wage data exclude the wages for services provided by teaching physicians, interns and residents, and nonphysician anesthetists under Medicare Part B, because these services are not covered under the IRF prospective payment system.

Consistent with the wage index methodologies in other prospective payment systems, we divide hospitals into labor market areas. For purposes of defining labor market areas, we define an urban area as a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Executive Office of Management and Budget. We define a rural area as any area outside an urban area. For the purposes of computing the wage index for IRFs, we determine the wage index values for urban and rural areas without regard to geographic reclassification under section 1886(d)(8) or 1886(d)(10) of the Act.

Comment: One commenter questioned how we would compute the wage index for providers with more than one MSA. Also, a few commenters requested that we use ''post-reclassification'' wage data, that is, wage data that reflects any geographic reclassification, to compute the IRF wage index.

Response: We believe the actual location of an IRF as opposed to the location of affiliated providers is most appropriate for determining the wage adjustment because the data support the premise that the prevailing wages in the area in which a facility is located influence the cost of a case. Further, IRFs provide services that are considered part of the post-acute continuum of care. In order to be consistent with the area wage adjustments made to other post-acute care providers (that is, under the existing SNF and HHA prospective payment systems), we are using the inpatient acute care hospital wage data without regard to any approved geographic reclassifications under section 1886(d)(8) or 1886(d)(10) of the Act. Therefore, we are not adopting the use of ''post-reclassification'' wage data and the wage index used by an IRF will be based on the facility's actual location, as shown in Tables 3A and 3B in the Addendum to this final rule, without regard to the urban or rural designation of any affiliated or related providers.

In the November 3, 2000 proposed rule, we proposed to use an IRF wage index that was based on FY 1996 inpatient acute care hospital wage data (65 FR 66349). These data were also used to compute the FY 2000 hospital inpatient prospective payment system wage indices. In the proposed rule, we also indicated that we proposed to use FY 1997 inpatient acute care hospital wage data to develop the wage index for IRFs for this final rule. Because these are the most recent final data available, for this final rule, we used the FY 1997 inpatient acute care hospital wage data to develop the wage index for the IRF prospective payment system.

Comment: Some commenters recommended that we research the development of a separate wage index for rehabilitation facilities. Further, commenters stated that the acute care hospital wage structure and labor classification are not necessarily representative of rehabilitative staffing and wages.

Response: At this time, we are unable to develop a separate wage index for rehabilitation facilities. There is a lack of specific IRF wage and staffing data necessary to develop a separate IRF wage index accurately. Further, in order to accumulate the data needed for such an effort, we would need to make modifications to the cost report. In the future, we will continue to research a wage index specific to IRF facilities. Because we do not have an IRF specific wage index that we can compare to the hospital wage index, we are unable to determine at this time the degree to which the acute care hospital data fully represent IRF wages. However, we believe that a wage index based on acute care hospital wage data is the best and most appropriate wage index to use in adjusting payments to IRFs, since both acute care hospitals and IRFs compete in the same labor markets.

The final IRF wage indices are computed as follows:

- Compute an average hourly wage for each urban and rural area.
- Compute a national average hourly wage.
- Divide the average hourly wage for each urban and rural area by the national average hourly wage—the result is a wage index for each urban and rural area.

To calculate the adjusted facility payments for the payment rates set forth in this final rule, the prospectively determined Federal prospective payment is multiplied by the labor-related percentage (72.395) to determine the labor-related portion of the Federal prospective payments. This labor-related portion is then multiplied by the applicable IRF wage index shown in Table 3A for urban areas and Table 3B for rural areas in the Addendum to this final rule.

The resulting wage-adjusted labor-related portion is added to the nonlabor-related portion, resulting in a wage-adjusted payment. The following example illustrates how a Medicare fiscal intermediary would calculate the adjusted facility Federal prospective payment for IRF services with a hypothetical Federal prospective payment of $10,000 for services provided in the rehabilitation facility located in Heartland, USA. The rehabilitation wage index value for facilities located in Heartland, USA is 1.0234. The labor-related portion (72.395 percent) of the Federal prospective payment is $7,239.50 = ($10,000*72.395 percent), and the nonlabor related portion (27.605 percent) of the Federal prospective payment is $2,760.50 = ($10,000*27.605 percent). Therefore, the wage-adjusted payment calculation is as follows: $10,169.40 = ($7,239.50*1.0234) + $2,760.50

2. General Specifications to Determine Other Adjustments

As indicated earlier, section 1886(j)(3)(A)(v) of the Act confers broad authority on the Secretary to adjust prospective payments ''by such other factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.'' To determine whether other payment adjustments are warranted for the IRF prospective payment system, we conducted extensive regression analyses of the relationship between IRF costs (including both operating and capital costs per case) and several facility characteristics such as percentage of low-income patients, geographic location, and other factors that may affect costs. The appropriateness of potential payment adjustments is based on both cost effects estimated by regression analysis and other factors, including simulated payments that we discuss in section VIII.B.2. of this final rule.

Our analyses for developing the payment adjustments set forth in this final rule included 714 facilities for which cost and case-mix data were available. We estimated costs for each case by taking facility specific, cost-center specific cost-to-charge ratios and multiplying them by charges. We obtained cost-to-charge ratios from FYs 1996, 1997, and/or 1998 cost report data, and obtained charges from the calendar years 1998 and 1999 Medicare claims data. We calculated the cost per case by summing all costs and dividing by the number of equivalent full cases. After calculating the cost per case for both years, we combined the number of cases and total costs for both years. For this final rule, we did not adjust the 1998 cost per case by the case-weighted average change in cost per case between 1998 and 1999 because the difference is less than 0.2 percent and adjusting the 1998 costs would have such a small effect. Using the data from both years should provide more stability in the payment adjustments than would using data for a single year. When data for only one year are available, we use the costs and number of equivalent cases for that year.

Multivariate regression analysis is a standard way to examine facility cost variation and analyze potential payment adjustments. We looked at two standard models: (1) Fully specified explanatory models to examine the impact of all relevant factors that might potentially affect facility cost per case; and (2) payment models that examine the impact of those factors specifically used

to determine payment rates. The general specification for the multi-variate regression is that the estimated average cost per case (the dependent variable) at the facility can be explained or predicted by several independent variables, including the CMI, the wage index for the facility, and a vector of additional explanatory variables that affect a facility's cost per case, such as its teaching program or the proportion of low-income patients. The CMI is the average of the CMG weights derived by the hospital-specific relative value method for each facility. We give transfer cases a partial weight based on the ratio of the length of stay for the transfer to the average length of stay for the CMG, in addition to an increase to account for the half-day payment for the first day. We count interrupted stay cases as a single stay. Using the regression coefficients, we then simulated payments and calculated payment-to-cost ratios for different classes of hospitals, for specific combinations of payment policies.

For the proposed rule, we used payment variables from the hospital inpatient prospective payment system, including DSH patient percentage, both capital and operating teaching variables (resident-to-average daily census and resident-to-bed ratios, respectively) as well as the teaching variable (resident-to-adjusted average daily census ratio) used in the analyses for the hospital outpatient prospective payment system, and variables to account for location in a rural or large urban area.

For this final rule, we updated the variables described above based on the availability of more recent data and refined some of the independent variables based on suggestions from the comments received. A discussion of the major payment variables and our findings for this final rule appears below.

3. Adjustments for Rural Location

We examined costs per case for both large urban and rural IRFs. In the regression models, both explanatory and payment, the variable for rural IRFs was positive and significant ($p<0.05$). The standardized cost per case for rural IRFs is almost 16 percent higher than the national average. On average, rural IRFs tend to have fewer cases, a longer length of stay, and a higher average cost per case. The difference in costs becomes more evident when the average cost per case is standardized for the CMI and the wage index. In the regression models, large urban IRFs were not significantly different from other urban facilities. Under § 412.624(e)(3) of this final rule, we adjust for rural IRFs by multiplying the payment by 1.1914. This adjustment was determined by using the coefficients derived from the regressions.

Comment: Two commenters suggested that we consider the patient's residence to determine eligibility for the rural adjustment, as opposed to the physical location of the IRF.

Response: Our analysis of the IRF data has shown that the physical location of IRFs corresponds with the cost of a case, with rural IRFs experiencing higher costs other things being equal. Rural IRFs have higher costs because they exhibit practice patterns that contribute to increased expense relative to other facilities, such as lower transfer rates for longer lengths of stay. Further, if any effects in costs are associated with beneficiaries who reside in rural locations, the relative weights should address these differences. The purpose of the relative weights is to account for the level of severity of a given case. If beneficiaries who reside in rural locations require more costly care, the relative weights should account for these costs. Therefore, we are not adopting the recommendation to consider the beneficiary's place of residence to determine eligibility for the rural adjustment.

4. Adjustments for Indirect Teaching Costs

In general, facilities with major teaching programs tend to be located in large urban areas and have more cases, a higher case mix, and a higher proportion of low-income patients. For the proposed rule, we found that when the regression models used only the payment variables that might warrant an adjustment under the prospective payment system (that is, percentage of low-income patients or rural/urban status, rather than for-profit and not for-profit), the indirect teaching cost variable was not significant. Accordingly, we did not propose an adjustment for indirect teaching costs.

For the proposed rule, we looked at different specifications for the teaching variable. We used a resident-to-average daily census ratio and a resident-to-bed ratio that we based on the estimated number of residents assigned to the inpatient area of the rehabilitation facility. We also used a resident-to-adjusted average daily census ratio based on the total number of residents at the hospital complex and outpatient as well as inpatient volume.

For this final rule, we assessed the extent to which we could improve the variable used to measure indirect teaching intensity in order to reassess the appropriateness for an adjustment. However, developing an appropriate measure is complicated by differences in reporting resident counts for freestanding rehabilitation hospitals and units.

To determine if an adjustment for indirect teaching costs is warranted for this final rule, we use the same approach that we used in the proposed rule to calculate the number of full-time equivalent (FTE) residents. That is, we use the number of residents reported for the rehabilitation units of acute care hospitals. For freestanding hospitals, we estimate the number of residents assigned to the routine area (that is, room and board and direct nursing care) based on the ratio of resident salaries apportioned to those areas to total resident salaries for the facility. We define teaching intensity as the ratio of FTE residents-to-average daily census. As in the proposed rule, the indirect teaching variable was insignificant in the payment regressions. Therefore, we will not adjust payments for costs associated with indirect teaching.

Comment: A few commenters requested that we reconsider an adjustment for costs associated with indirect teaching.

Response: As we previously stated, the results of the regression analyses for the proposed rule showed that the indirect teaching variable was significant only with the fully specified regression, and not with the payment regression. However, in the analyses conducted for this final rule, the indirect teaching variable was not significant for either the fully specified regression or the payment regression. Also, the impacts among the various classes of facilities reflecting the fully phased-in IRF prospective payment system in section VIII. of this final rule illustrate that IRFs with the highest measures of indirect teaching lose approximately 2 percent of estimated payments under the IRF prospective payment system. Further, these impacts among the various classes of facilities do not account for changes in behavior that facilities will likely adopt in response to the inherent incentives of the IRF prospective payment system. Accordingly, IRFs can change their behavior in ways to mitigate any potential losses. In considering the impacts among these types of facilities and the results of the regression analyses, we will not adjust payments for indirect teaching because we believe that this type of adjustment is not supported by our regression analyses or impact analyses.

5. Adjustments for Low-Income Patients

We assessed the appropriateness of adjustments for facilities serving low-

income patients. For the proposed rule, we limited our analysis to the effects of serving low-income patients on costs per case rather than a subsidy for uncompensated care.

Also, in the proposed rule, we evaluated a facility-level adjustment that takes into account both the percentage of Medicare patients who are receiving Supplemental Security Income (SSI) and the percentage of Medicaid patients who are not entitled to Medicare. We proposed to use the same measure of the percentage of low-income patients currently used for the acute care hospital inpatient prospective payment system, which is the DSH variable. The low-income payment adjustment we chose improves the explanatory power of the IRF prospective payment system because as a facility's percentage of low-income patients increases, there is an incremental increase in a facility's costs. We proposed to adjust payments for each facility to reflect the facility's percentage of low-income patients using the DSH measure.

Comment: One commenter suggested that the payment for the percentage of low-income patients adjustment should reflect all low-income patients, including uninsured patients.

Response: While we recognize that an adjustment accounting for the costs of serving uninsured patients may be desirable, we do not currently have access to data that would allow us to measure uncompensated care. However, we analyzed the performance of other measures of low-income patients, in addition to DSH, such as the SSI ratio, dual eligibles (Medicare beneficiaries entitled to Medicaid), and self-pay/charity cases (determined by UDSmr non-Medicare data by primary and secondary payer) in order to determine the measure that most accurately matches payment to costs. To do this, we used data for the IRFs for which we had all payer information. These data indicate that the DSH variable improves the explanatory power of the groups better than the other measures, with an r-squared of .0529. The measure of dual eligibles, self-pay/charity, and the SSI ratio did not predict costs as well as DSH. Further, the SSI ratio measure was not significant in our regression analyses. After examining the use of these alternative low-income measures, we found the DSH variable explained costs more fully than the other variables that we examined. Therefore, we are not adopting the commenter's suggestion and will use the DSH variable as the basis of the adjustment for low-income patients.

Comment: A few commenters noted that the adjustment for low-income patients was not consistent with the name of the adjustment, ''disproportionate'' share adjustment. In general, one commenter stated that if all IRFs are eligible to receive this adjustment, then the adjustment is not applicable only to those IRFs that treat a ''disproportionate'' share of low-income patients.

Response: In response to this comment, in this final rule, we will refer to the adjustment for low-income patients as the LIP adjustment. However, we will use the term DSH when we refer to the measure used to compute IRF's percentage of low-income patients because it is the same measure used to measure low-income patients in acute care hospitals.

Comment: Some commenters suggested that the LIP adjustment have a threshold similar to the inpatient acute care hospital prospective payment system.

Response: We analyzed different specifications for the LIP adjustment. One option had a threshold of 5 percent. In general, under this option, a facility would not be allowed to receive the LIP adjustment unless its DSH was greater than 5 percent. Although we considered this option, we favored the use of a LIP adjustment that matches payment as closely to cost as possible. The LIP adjustment we chose improves the explanatory power of the IRF prospective payment system because as a facility's percentage of low-income patients increases, there is an incremental increase in a facility's cost. It is also important to note that the thresholds established under the inpatient acute care hospital prospective payment system were statutorily mandated. Thus, we have decided to adjust the IRF payments set forth in this final rule for the percentage of low-income patients, but the adjustment does not have a threshold amount.

As we stated in the proposed rule, section 4403(b) of the BBA requires us to develop a Report to the Congress containing a formula for determining additional payment amounts to hospitals under section 1886(d)(5)(F) of the Act. In light of our current study of a new payment formula for determining adjustments for hospitals serving low-income patients and MedPAC's related recommendation, in the November 3, 2000 proposed rule, we indicated that we would consider these study results and other information as they become available and potentially refine the LIP adjustment in the future to ensure that we pay facilities in the most consistent and equitable manner possible.

Comment: One commenter requested clarification of whether all facilities will receive a LIP adjustment.

Response: All IRFs are eligible to receive a LIP adjustment. There is not a required threshold for a minimum number of beds or a minimum amount of DSH in order to receive the adjustment.

In accordance with proposed § 412.624(e)(2), which we are adopting as final, for the payment rates set forth in this final rule, we multiply each IRF's payment by the following formula to account for the cost of furnishing care to low-income patients:

(1+DSH) raised to the power of .4838

$$\text{Where DSH} = \frac{\text{Medicare SSI Days}}{\text{Total Medicare Days}} + \frac{\text{Medicaid, Non-Medicare Days}}{\text{Total Days}}$$

Comment: One commenter stated that the calculation of the LIP adjustment should exclude the data that we imputed for 46 IRFs. The commenter indicated that the regressions are extremely sensitive to these imputed values.

Response: In light of this comment, we analyzed the data to assess the extent to which the results of the multivariate regressions are sensitive to the imputed DSH values used to calculate the proposed adjustments. For the proposed rule, we used a 2-step process to impute missing values for our low-income patient measures: (1) For rehabilitation units where we were missing only the Medicaid days, we estimated the Medicaid rehabilitation days by applying the ratio of Medicaid acute care days to total acute care inpatient days to the total inpatient rehabilitation days. (2) If we were missing the SSI days or if we were also missing Medicaid days for the hospital, we imputed low-income variable values by assigning the State average DSH percentage for large urban and other facilities as appropriate. Our regression analyses indicated that the facilities

with missing values were significantly different from other facilities. The findings indicate that the results are sensitive to the imputation methodology described above.

In this final rule, we have modified the imputation methodology for imputing DSH values for the LIP adjustments. To impute, we estimate the proportion of non-Medicare days in the rehabilitation facility that are attributable to Medicaid patients as a function of two variables: the facility's percentage of Medicare patients who are entitled to SSI and the State in which the facility is located. The results of the regressions are not sensitive to this methodology (r-squared = .4159). We believe the value of including the imputations is that it allows us to address other concerns the industry expressed in its comments. Specifically, these concerns referred to the number of facilities used to calculate the payment rates. Using an imputation method allows us to include more facilities than we could have otherwise if we had not imputed DSH values for this final rule. In order for an IRF to be included in the analysis for the facility-level adjustment, all values of the independent variables examined under the regression must exist. For example, if we are missing the DSH value for certain facilities, even if we know the remainder of the independent variables (such as the wage index), we cannot include these facilities in the regression. Therefore, in this final rule we use an improved imputation methodology for the DSH variable that does not influence the results of the adjustments.

Comment: Several commenters expressed concern about the data used to measure DSH for purposes of calculating the LIP adjustment. Specifically, some commenters preferred the use of a DSH measure that better reflected the inpatient rehabilitation units, while others preferred the use of the overall acute care hospital DSH measure for the units.

Response: We constructed the DSH variable, as described above, using the latest data available at the time that we developed the proposed rule. Specifically, we used the ratio of Medicaid days to total days specific to the rehabilitation unit when the facility identified this information on its cost report. When the unit-specific information was unavailable, we used the overall Medicaid days and total days for the entire facility. For the SSI portion of the DSH variable, we used the acute care hospitals' ratio of SSI days to total Medicaid days for the rehabilitation units.

For purposes of constructing the LIP adjustment for this final rule, we obtained unit specific measures of the ratio of the SSI days to the total number of Medicare days. Further, we used the ratio of Medicaid (non-Medicare days) to total days when this information was available on the cost reports, in addition to the improved imputation methodology described above. Therefore, to the extent possible, the LIP adjustment set forth in this final rule is based on data specific to inpatient rehabilitation units, as well as freestanding inpatient rehabilitation hospitals. We believe data that are most reflective of the characteristics of the inpatient rehabilitation setting are most appropriate in determining payments under the IRF prospective payment system.

Comment: Some commenters suggested that differences in Medicaid coverage rules would disadvantage IRFs in certain States because of the LIP adjustment.

Response: In order to evaluate these concerns, we examined the feasibility of making an adjustment for the percentage of low-income patients using only the ratio of SSI to Medicare days. The results of this analysis indicated that the ratio of SSI to Medicare days would not predict the cost of a case as well as using the DSH variable. Specifically, the r-square value for the DSH variable is .0609 compared to the r-square value of .0525 for the SSI variable. Therefore, using the DSH variable enables us to develop a payment system that better predicts IRF costs compared to using the SSI variable. We acknowledge that Medicaid coverage rules may vary from State to State. However, based on considerable analysis, we believe that the DSH variable is the best current predictor of costs associated with treating low-income patients in IRFs. In addition, it is unclear whether certain IRFs in States are disadvantaged in the context of the entire payment (reflecting all adjustments). Further, analysis of the ''new payment to current payment ratios'' illustrated in Table II of section VIII. of this final rule indicates that the IRFs with the lowest DSH percentages gain approximately 2 percent of estimated payments under the IRF prospective payment system, while IRFs with moderate levels of DSH lose approximately 1 or 2 percent of estimated payments under the IRF prospective payment system. Therefore, if an IRF has a DSH amount that is lower than average due to Medicaid coverage rules for its State, the IRF may still experience a gain in payments under the IRF prospective payment system. In the future, we will assess the extent to which DSH continues to measure the percentage of low-income patients adequately. This future analysis may include the effect of the LIP adjustment on IRFs in various States.

Comment: Some commenters requested clarification of how new providers would receive DSH payment adjustments.

Response: New providers will receive a LIP adjustment when cost report data are available to determine a DSH amount. Until information from the cost report is available, the information used to calculate DSH is unknown and we will not be unable to determine the LIP adjustment. Once we have the information from the cost report, we will make final payments for the previous appropriate year in a lump sum and we will use these data in the calculation of future interim payments. We will issue further instructions in a Medicare program memorandum regarding the details of implementing this policy.

Comment: One commenter suggested that the LIP adjustment is beyond our legislative authority and stated that the LIP adjustment fulfills no policy objectives.

Response: Section 1886(j)(3)(A)(v) of the Act gives the Secretary broad authority to adjust the prospective payment rates by ''such other factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.'' Through the multivariate regression analyses described above, we found that providing a LIP adjustment would allow us to match payment more closely to cost. Therefore, as a matter of policy, the purpose of the LIP adjustment for the payment rates set forth in this final rule is to pay IRFs more accurately for the incremental increase in Medicare costs associated with the facility's percentage of low-income patients.

6. Adjustments for Alaska and Hawaii

Section 1886(j)(4)(B) provides that the Secretary is authorized, but not required, to take into account the unique circumstances of IRFs located in Alaska and Hawaii. There are currently three IRFs in Hawaii and one in Alaska. However, for the proposed rule, we had cost and case-mix data for only one of the facilities in Hawaii (982 cases) and the facility in Alaska (117 cases). Due to the small number of cases, analyses of the simulation results were inconclusive regarding whether a cost-of-living adjustment would improve payment equity for these facilities. Therefore, we did not propose to make an adjustment

for rehabilitation facilities located in Alaska and Hawaii.

Comment: A few commenters suggested that a cost-of-living adjustment for Hawaii and Alaska should be revisited.

Response: As with the proposed rule, in determining the adjustments for the final rule, we had cost and case-mix data for only one of the facilities in Hawaii and the facility in Alaska. Further, the total number of cases in the 1999 data (783) is smaller. Due to the small number of cases, analyses of the simulation results were inconclusive regarding whether a cost-of-living adjustment would improve payment equity for these facilities. Therefore, we are not making an adjustment under section 1886(j)(4)(B) of the Act for rehabilitation facilities located in Alaska and Hawaii for the payment rates set forth in this final rule.

7. Adjustments for Cost Outliers

Section 1886(j)(4) of the Act specifies that the Secretary is authorized, but not required, to provide for additional payments for outlier cases. Further, section 1886(j)(4)(A)(iii) of the Act specifies that the total amount of the additional payments for outliers cannot be projected to exceed 5 percent of the total Medicare payments to IRFs in a given year. Providing additional payments for costs that are beyond a facility's control can strongly improve the accuracy of the IRF prospective payment system in determining resource costs at the patient and facility level. In general, outlier payments reduce the financial risk that would otherwise be substantial due to the relatively small size of many rehabilitation facilities. These additional payments reduce the financial losses caused by treating patients who require more costly care and, therefore, will reduce the incentives to underserve these patients.

In the November 3, 2000 proposed rule (65 FR 66357), we considered various outlier policy options. Specifically, we examined outlier policies using 3, 4, and 5 percent of the total estimated payments. In order to determine the most appropriate outlier policy, we analyzed the extent to which the various options reduce financial risk, reduce incentives to underserve costly beneficiaries, and improve the overall fairness of the system. We proposed an outlier policy of 3 percent of total estimated payments because we believed this option would optimize the extent to which we could protect vulnerable facilities, while still providing adequate payment for all other cases.

We proposed under § 412.624(e)(4) to make outlier payments for discharges whose estimated cost exceeds an adjusted threshold amount ($7,066 multiplied by the facility's adjustments) plus the adjusted CMG payment. We would adjust both the loss threshold and the CMG payment amount for wages, rural location, and disproportionate share. We proposed to calculate the estimated cost of a case by multiplying an overall facility-specific cost-to-charge ratio by the charge. Based on analysis of payment-to-cost ratios for outlier cases, and consistent with the marginal cost factor used under section 1886(d) of the Act, we proposed to pay outlier cases 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the CMG payment and the loss amount of $7,066, as adjusted). We calculated the outlier threshold by simulating aggregate payments with and without an outlier policy, and applying an iterative process to determine a threshold that would result in outlier payments being equal to 3 percent of total payments under the simulation.

Comment: Some commenters suggested that adjusting the outlier threshold by the rural adjustment and the LIP adjustment would be inappropriate.

Response: In the proposed rule, we stated that the outlier threshold of $7,066 was to be multiplied by the facility-level adjustments reflecting facility characteristics such as geographic location and LIP. Before the above calculation can be done, we must first determine if any facility characteristics affect the cost of a case. Then we determine adjustments for these characteristics. As we previously discussed, the data showed that wage variation, IRFs located in rural areas, and the percentage of low-income patients affect case costs. Further, we calculate an IRF standardized budget neutral conversion factor that eliminates the effects of the IRF adjustments. We then determine the appropriate outlier percentage based on analyses of the data. As in the proposed rule, in this final rule we calculate the standardized threshold amount by eliminating the effects of the various adjustments. The standardized outlier threshold for the payment rates set forth in this final rule is $11,211. In this final rule, as with the proposed rule, the standardized outlier threshold is then adjusted for each IRF to account for its wage adjustment, its LIP adjustment, and its rural adjustment, if applicable. Using this facility-specific adjusted threshold amount to determine eligibility for outlier payments results in facility payments that do not unduly harm any particular class of IRFs and appears to distribute payments more equitably among the various cases as shown in section VIII. of this final rule. Therefore, we believe applying the facility-level adjustment to the threshold amount is appropriate.

Comment: Some commenters, including MedPAC, suggested increasing the outlier provision from the proposed 3 percent to the full 5 percent allowed under the BBA. One commenter suggested that if we address the issue of compression with the relative weights (which we discuss in response to an earlier comment in this section VI. of this final rule), the increase to 5 percent may not be necessary.

Response: Since outlier payments are a redistribution of payment, it is important to set the outlier percentage so that it maximizes resources available for all types of cases while still protecting a facility from the financial risk associated with extremely high-cost cases. As we stated earlier, section 1886(j)(4) of the Act authorizes, but does not require, us to provide for additional payments for outlier cases. Further, section 1886(j)(4)(A)(iii) of the Act provides that the total amount of the additional payments cannot be projected to exceed 5 percent of the total payments projected or estimated to be made to prospective payment units in a given year. The outlier policy options specified in the proposed rule were evaluated by analyzing financial risk, accuracy of payment at the case level, and accuracy of payment at the hospital level.

We measure financial risk of an IRF using the standard deviation of annual profit as a fraction of expected annual revenue. The outlier payment decreases the financial risk of an IRF as the outlier percentage increases. However, financial risk decreases at a declining rate of improvements as the outlier percentage increases. These results indicate that an outlier percentage lower than the statutory maximum amount of 5 percent of total estimated payments would allow us to pay more appropriately for both outlier and nonoutlier cases.

Increasing the percentage of the outlier policy would leave less payments available to cover the costs of nonoutlier cases, due to the budget neutral provision of the statute. Specifically, an increase in the outlier percentage would decrease the budget neutral conversion factor and reduce payment for all nonoutlier cases. Although the purpose of outlier payments is to funnel more payments to high-cost cases in which the IRF

prospective payment system payment would be substantially less than the cost of the case, it is possible that in some instances the IRF total prospective payment, including the outlier payment, will exceed the cost of the case. Paying cases more than costs may occur with outlier payments because an IRF's overall cost-to-charge ratio, which is used to derive the estimated cost of the case to determine if the case is an outlier may differ substantially from an actual department (for example, a physical therapy cost center) cost-to-charge ratio in which the services are delivered. Specifically, analysis of the various outlier percentage options for the proposed rule illustrated that the amount by which payment is more than cost increases substantially as the outlier percentage increases. Simulating payments using the 1997 data, the 1-percent outlier payment policy option resulted in an estimated total ''overpayment'' of approximately $300,000. When we simulated a 3-percent outlier percentage, estimated ''overpayments'' were at $1.0 million, and when we simulated outlier payments at 5 percent, ''overpayments'' almost doubled to $1.9 million.

Outlier payments funnel more resources to the most costly cases, which improves accuracy of payment at the case level. This is evident in the analysis of r-squared values, a statistical measure of how well the outlier payment matches the costs of the case. The percent improvement of the predictive r-squared value decreases as the outlier payment percentage increases. Using the 1997 cost data, going from the ''no outlier'' policy option to setting the outlier policy at 1 percent increases the r-squared value by 30.7 percent, while going from a 4-percent to a 5-percent outlier payment percentage increases the r-squared value by only 4.2 percent.

To evaluate an outlier policy at the hospital level, we compared payment-to-cost ratios over each outlier percentage option. Because outliers in the data sample appeared to be widely distributed across all types of hospitals, we found that the amount of the outlier payment has little effect on the payment-to-cost ratio for any specific group at the hospital level.

In summary, the results of financial risk, accuracy at the case level, and accuracy at the hospital level suggest that there should be a limit on the outlier percentage that is less than the statutory limit and that balances the need to compensate accurately for high-cost care while still maximizing remaining resources to improve the payment accuracy of nonoutlier cases. The 3-percent outlier policy set forth in the proposed rule reflected a careful analysis of the previously discussed issues and research that supported this policy. Therefore, under § 412.624(e)(4) of this final rule, we are adopting the outlier policy that we had proposed. Accordingly, we are establishing an outlier policy to adjust payments under § 412.624(d)(1) of this final rule. This outlier policy reflects 3 percent of estimated aggregate payments under the IRF prospective payment system.

Comment: Some commenters requested clarification of how new facilities will be able to qualify for outlier payments, since these facilities will not have the historical cost reports needed to compute the estimated cost that determines if the case is an outlier.

Response: We will calculate national average cost-to-charge ratios for urban and rural areas. We will apply these cost-to-charge ratios to new facilities based on the facility's urban or rural status.

Comment: Some commenters requested clarification of whether we will pay more or less for outlier cases retrospectively based on actual cost-to-charge ratios once they exist.

Response: We will not make any retrospective adjustments for outlier payments.

Comment: A few commenters suggested that we adjust payments in the initial 5 years of the IRF prospective payment system in order to provide a financial cushion for hospitals that experience significant losses.

Response: We developed the adjustments described in this final rule based on an analysis of empirical data, as well as consideration of numerous comments. The impacts of the IRF prospective payment system among the various classes of providers are shown in section VIII. of this final rule. In general, the new payment to current payment ratios in Table II of section VIII. of this preamble illustrate that most groups of providers will benefit under the IRF prospective payment system. Further, based on these impacts, there is no strong indication that any particular group of providers will experience significant losses under the IRF prospective payment system. Therefore, we are not adopting the suggestion to provide an additional adjustment for those facilities that may be paid less than their costs under the IRF prospective payment system.

Comment: Some commenters requested clarification regarding the order in which the case-level and facility-level payment provisions apply to a case.

Response: First, we will discuss the order in which the case-level adjustments (excluding outlier payments) may apply to a case. Then we will describe the order in which the facility-level adjustments apply. Lastly, we will discuss the possible application of outlier payments.

The first case-level adjustment that needs to be considered for possible application is whether or not the case meets the definition of an interrupted stay. If the case meets the definition of an interrupted stay, then one CMG payment will be made based on the assessments from the initial stay. Also, if the case meets the definition of an interrupted stay, the total number of days the beneficiary was in the IRF, both prior to and after the interruption, is counted in order to determine if the case meets the definition of a transfer case or the short-stay CMG.

The next case-level adjustment considered for application is the transfer policy. To do this, the length of stay is considered, as well as the discharge destination. Specifically, if the length of stay of the case is less than the average length of stay for the given CMG and the patient is transferred to another IRF, long-term care hospital, inpatient hospital, or nursing home that accepts Medicare or Medicaid, then the case will be considered to be a transfer. If the case is not a transfer, then we determine whether or not the case falls under the short-stay CMG where the length of stay is 3 days or less, irrespective of whether the beneficiary expired. If the beneficiary's length of stay is more than 3 days and he or she expires, one of the four CMGs for expired cases will be applicable, depending on the length of stay and whether the beneficiary is classified to an orthopedic RIC or not. If none of the above case-level adjustments are applicable to a given case, then the case is classified to the appropriate CMG.

After the appropriate case-level adjustments and the CMG is assigned, facility-level adjustments will be applied. First, the wage adjustment is applied by taking the labor-related share of the payment, multiplying by the appropriate wage index, and adding the results to the nonlabor-related portion of the payment. Then the adjustment for low-income patients is determined and multiplied by the wage adjusted payment. Also, if the IRF is a rural facility, the payment will be further multiplied by 1.1914. After all the adjustments described above, both case-level and facility-level, are applied to a case, a determination can be made as to whether or not an outlier payment is warranted.

E. Calculation of the Budget Neutral Conversion Factor

1. Overview of Development of the Budget Neutral Conversion Factor

Prior to BIPA, section 1886(j)(3)(B) of the Act specified that, for prospective payment units during FYs 2001 and 2002, the amount of total payments, including any payment adjustments under sections 1886(j)(4) and (6) of the Act, must be projected to equal 98 percent of the amount of payments that would have been made during these fiscal years for operating and capital-related costs of rehabilitation facilities had section 1886(j) of the Act not been enacted. We proposed to incorporate this provision in proposed § 412.624(d).

Under proposed § 412.624(c)(1) and (c)(3), we proposed to calculate the budget neutral conversion factor using the following steps:

Step 1—Update the latest cost report data to the midpoint of the fiscal year 2001.

Step 2—Estimate total payments under the current payment system.

Step 3—Calculate the average weighted payment per discharge amount under the current payment system.

Step 4—Estimate new payments under the proposed payment system without a budget neutral adjustment.

Step 5—Determine the budget neutral conversion factor.

These same steps are used in developing the payment rates set forth in this final rule.

However, in this final rule, we update the latest cost report data to the midpoint of the FY 2002 because the IRF prospective payment system will be implemented on or after January 1, 2002 and before October 1, 2002.

2. Steps for Developing the Budget Neutral Conversion Factor

• *Data Sources*

In the November 3, 2000 proposed rule, the data sources that we proposed under § 412.624(a)(1) to construct the budget neutral conversion factor included the cost report data from FYs 1995, 1996, and 1997, a list obtained from the fiscal intermediaries of facility-specific target amounts applicable for providers that applied to rebase their target amount in FY 1998, and calendar year 1996 and 1997 Medicare claims with corresponding UDSmr or COS (FIM) data. We used data from 508 facilities to calculate the budget neutral conversion factor. These facilities represented those providers for which we had cost report data available from FYs 1995, 1996, and 1997. We used the 3 years of cost report data to trend the data to the midpoint of the year 2001 based on the facilities' historical relationship of costs and target amounts.

In the proposed rule, we indicated that we were unable to calculate payment under the current payment system for some IRFs because cost report data were unavailable. We stated that we would attempt to obtain the most recent payment amounts for these IRFs through their Medicare fiscal intermediaries and we would consider using these data to construct the payment rates for the final rule. We also indicated that we would examine the extent to which certain IRFs (such as new facilities) are not included in the construction of the budget neutral conversion factor, and would consider the appropriateness of an adjustment to reflect total estimated payments for IRFs more accurately.

In addition, because we did not have FIM data for all rehabilitation facilities, we indicated that for the final rule we would further analyze the extent to which the data used to construct the budget neutral conversion factor accurately reflect the relationship between case-mix and cost. We stated that we were considering the use of weighted averages to account more fully for those types of facilities that might be underrepresented with the given data.

Comment: Some commenters suggested that the sample of IRFs used to develop the budget neutral conversion factor was not representative of all IRFs in terms of size, location, and case-mix. They added that a nonrepresentative sample would skew the development of a budget neutral conversion factor.

Response: To address these concerns, for the final rule we used more IRFs in the construction of the budget neutral conversion factor. To do this, we modified the update methodology to include newer IRFs for which we were unable to obtain cost report data for FYs 1996, 1997, and 1998. We explain the modifications to the update methods below.

For IRFs that did not have cost report data for FYs 1996, 1997, and 1998, we updated their cost report data by applying the excluded hospital operating market basket update. For instance, if an IRF was new in FY 1997, we applied the excluded hospital operating market basket to update its cost report data to FY 1999. If the IRF was new in FY 1998, we used the excluded hospital operating market basket update to update its cost report data for FY 1999 and FY 2000. For IRFs that were not considered ''new,'' we used cost report data from FYs 1996, 1997, and 1998 to trend the data to the midpoint of the year 2001 based on the IRF's historical relationship of costs and target amounts. The FY 1996 cost report data were used to determine the update to be used for FY 1999; the FY 1997 cost report data were used to determine the update to be used for FY 2000; and the FY 1998 cost report data were used to determine the update for FY 2001.

In the proposed rule, we discussed the methodology for developing the budget neutral conversion factor in which we used data from only those IRFs that we had matching bill and FIM data and historical cost report data. In the proposed rule, we stated our intent to further analyze the extent to which the data used to construct the budget neutral conversion factor accurately reflects the relationship between case-mix and cost. Through this further analysis, we are able to include more IRFs into the data used to construct the budget neutral conversion factor. Including more IRFs with characteristics, as well as more cases in addition to the data for which we have Medicare bills matched with FIM data, allows for the development of prospective payments that will better reflect the IRF population.

The CMI for an IRF is computed as the average of the CMG relative weights for all rehabilitation cases for that particular facility. The CMI reflects resource use and can be regarded as a measure of the average relative cost of each IRF's cases. Because case payment under the IRF will be a function of the budget neutral conversion factor as well as case-level and facility-level adjustments, the conversion factor can be influenced by each facility's historical CMI.

In an attempt to include IRFs, as well as cases, with missing FIM data in the calculation of the budget neutral conversion factor, we developed a technique to estimate CMI data for these facilities. By utilizing the relationship between case-level and facility-level characteristics and their predictive power of an IRF's CMI, we can include more IRFs in the calculation of the budget neutral conversion factor, which should better reflect the characteristics of all types of facilities. We are able to estimate the CMI because we can obtain pertinent information regarding the characteristics of all IRFs, such as the facility's TEFRA payment, the facility's adjustment factor(s), (the wage adjustment, the LIP adjustment, and, if applicable, the rural adjustment) and other facility characteristics (for example, freestanding/unit status). We also use pertinent information regarding the characteristics of a case (even those cases for which we do not have matched

FIM data) such as surgical procedures performed during the preceding acute care stay, the principal diagnosis of the acute care stay, and all the diagnoses for the rehabilitation stay, the length of stay, and the type of facility the beneficiary may be transferred to after the rehabilitation stay. Using these facility and case characteristics, we estimated the CMI. We then combined these CMI estimates with the CMIs derived from those cases for which we had matching bill and FIM data and we calculated the budget neutral conversion factor using the methodology described in the proposed rule and in this final rule.

By using these estimated CMIs, the data used to construct the budget neutral conversion factor better represents IRFS. The overall effect of using more data in the construction of the budget neutral conversion factor is an increase of 1.0 percent. The majority of this increase occurs because IRFs are less likely to report FIM data for very short stay cases.

In summary, in this final rule, we specify under § 412.624(a)(1) the data sources used to construct the budget neutral conversion factor (the basis for the prospective payment). For this final rule, the latest available data include the cost report data from FYs 1996, 1997, and 1998 and calendar year 1998 and 1999 Medicare claims with corresponding FIM data. We used data from 1,024 facilities to calculate the budget neutral conversion factor.

The steps below describe the methodology we used to calculate the budget neutral conversion factor for the payment rates set forth in this final rule.

Step 1—Update the latest operating and capital cost report data to the midpoint of fiscal year 2002.

Section 1886(j)(3)(A)(i) of the Act and § 412.624(b) of these final regulations specify that the per-payment-unit amount is to be updated to the midpoint of the fiscal year 2001, using the weighted average of the applicable percentage increases provided under section 1886(b)(3)(B)(ii) of the Act. The statute allows us more discretion in determining an appropriate methodology to update from the years 2000 to 2001. For this final rule, under § 412.624(c)(2), we update from the midpoint of the year 2001 to the midpoint of the year 2002 using the same methodology provided under section 1886(b)(3)(B)(ii) of the Act. For this final rule, as in the proposed rule, we determine the appropriate update factor for each facility by using one of the following four methodologies:

- For facilities with costs that equal or exceed their target amounts by 10 percent or more for the most recent cost reporting period for which information is available, the update factor is the market basket percentage increase.
- For facilities that exceed their target by less than 10 percent, the update factor is equal to the market basket minus .25 percentage points for each percentage point by which operating costs are less than 10 percent over the target (but in no case less than 0).
- For facilities that are at or below their target but exceed two-thirds of the target amount, the update factor is the market basket minus 2.5 percentage points (but in no case less than 0).
- For facilities that do not exceed two-thirds of their target amount, the update factor is 0 percent.

Step 2—Estimate total payments under the current payment system.

Operating payments are calculated using the following methodology:

Step 2a—We determine the facility-specific target amount, subject to the applicable cap on the target amounts for rehabilitation facilities. There are two national caps for rehabilitation facilities. We used the cap amounts for excluded rehabilitation hospitals and units published in the August 1, 2000 **Federal Register** (65 FR 47096). For facilities certified before October 1, 1997, the applicable cap for FY 2001 is $15,164 for the labor-related share, adjusted by the appropriate geographic wage index and added to $6,029 for the nonlabor-related share. For facilities certified on or after October 1, 1997, the cap applicable for FY 2001 is $13,002 for the labor-related share, adjusted by the appropriate geographic wage index and added to $5,169 for the nonlabor-related share (65 FR 47098). We then inflate these amounts to the midpoint of the year 2002 by applying the excluded hospital operating market basket.

Step 2b—We calculate the lower of the results of Step 2a.

- The facility-specific target amount (including application of the cap) times the Medicare discharges (the ceiling); or
- The facility average operating cost per case times Medicare discharges. We determine payment for operating costs by using one of the following methods:

(1) For facilities whose operating costs are lower than or equal to the ceiling, payment is the lower of either the operating costs plus 15 percent of the difference between the operating costs and the ceiling, or the operating costs plus 2 percent of the ceiling.

(2) For facilities whose operating costs are more than 110 percent of the ceiling, payment is the lower of either the ceiling multiplied by 1.10 or half of the difference between 110 percent of the ceiling and the operating costs.

(3) For facilities whose operating costs are greater than the ceiling but less than 110 percent of the ceiling, payment is the ceiling.

Step 2c—After operating payments are computed, we determine capital payments. As we previously stated in step 1, capital cost report data are updated to the midpoint of FY 2002. Section 4412 of the BBA amended section 1886(g) of the Act by reducing capital payments that would otherwise be made for rehabilitation facilities. Payments for capital-related costs are made on a reasonable cost basis. The BBA mandated the reduction of capital payments by 15 percent. Therefore, we reduce capital payments for IRFs multiplying the costs by .85.

Step 2d—The next step in determining total payments under the current payment system is to add operating and capital payments. Section 1886(j)(1)(A) of the Act specifies that the IRF prospective payment system will include both operating and capital-related costs. Once we determine appropriate payments for operating costs (including bonus and penalty payments as appropriate), and after making reductions for capital payments, we add the operating costs and the reduced capital-related costs together.

Step 2e—The BIPA provides for the Secretary to adjust the rates so that the amount of total payments to IRFs are projected to equal payments that would have been paid in the absence of this new payment methodology. Payments made for cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002 are based on both the facility-specific payment and the Federal prospective payment that we implement with this final rule. Therefore, in accordance with § 412.624(d)(2) in this final rule, we adjust the Federal prospective payment rates for FY 2002 so that aggregate payments under the prospective payment system are estimated to equal the amount that would have been made to IRFs had the IRF prospective payment system not been implemented. However, under the amendments made by section 305(b) of BIPA, in calculating the budget neutrality adjustment, we do not take into account payment adjustments resulting from elections by hospitals under section 1886(j)(1)(F) of the Act (as added by section 305(b)(1)(C) of BIPA) to not be paid under the transition period methodology described in section VI.H. of this final rule. In addition, we adjust total estimated payments to reflect the estimated proportion of additional outlier payments under § 412.624(d)(1), and for coding and classification

changes under § 412.624(d)(3). These payments are the numerator of the equation used to calculate the budget neutral adjustment.

Step 3—Calculate the average weighted payment per discharge amount under the excluded hospital payment system.

Once we calculate total payments under the excluded hospital payment system, we can then calculate an average per discharge payment amount weighted by the number of Medicare discharges under the current payment system. We do this by first determining the average payment per discharge amount under the excluded hospital payment system for each facility. We use cost report data to calculate each facility's average payment per discharge by dividing the number of discharges into the total payments. The next step is to determine the weighted average per discharge payment amount. To calculate this amount, we multiply the number of discharges from the Medicare bills by each facility's average payment per discharge amount. We then sum the amounts for all facilities and divide by the total number of discharges from the Medicare bills to derive an average payment per discharge amount that is weighted by the number of Medicare discharges.

Step 4—Estimate payments under the IRF prospective payment system without a budget neutral adjustment.

We then simulate payments under the IRF prospective payment system without a budget neutral adjustment. To do this, we multiply the following: each facility's CMI, the number of discharges from the Medicare bills, the appropriate wage index, the rural adjustment (if applicable), an appropriate LIP adjustment, and the weighted average per discharge payment amount computed in Step 3. We then add together the total payments for each facility. This total is the denominator in the calculation of the budget neutral adjustment.

Step 5—Determine the budget neutral conversion factor.

The denominator of the budget neutral adjustment equation is the total estimated payments for the prospective payment system without a budget neutral adjustment (the total amount calculated in Step 4). We calculate the budget neutral adjustment by dividing total reduced payments under the excluded hospital payment system (the total amount calculated in Step 2) by estimated payments for the prospective payment system implemented with this final rule. We then multiply the resulting budget neutral adjustment by the average weighted per discharge payment amount under the excluded hospital payment system to derive the budget neutral conversion factor.

Comment: A few commenters suggested that the proposed budget neutral conversion factor was too low.

Response: As explained in the proposed rule, the conversion factor is the payment amount adjusted for budget neutrality and standardized to account for a number of facility-level and case-level adjustments. Because the adjustments in this final rule reflect modifications from the proposed rule (specifically the LIP adjustment), the budget neutral conversion factor is higher compared to the proposed budget neutral conversion factor. We further adjust the budget neutral conversion factor to include a behavioral offset in order to calculate the final budget neutral conversion factor.

As previously stated, to calculate the budget neutral conversion factor, we had to estimate what would have been paid under the excluded hospital payment system. However, due to the incentives for premature discharge inherent in the new IRF prospective payment system, we expect that differences in the utilization of these services might result. In the case of the IRF prospective payment system implemented with this final rule, discharges to other settings of care may take place earlier than under the excluded hospital payment system due to payments based on average costs. This would result in lower payments under that payment system for this care, which must be taken into account when computing budget neutral payment rates. Accounting for this effect through an adjustment is commonly known as a behavioral offset.

For this final rule, the budget neutral conversion factor with a behavioral offset is $11,838.00. This represents a 1.16 percent reduction in the calculation of the budget neutral conversion factor otherwise calculated under the methodology described in this section VI.E. of this final rule. In determining this adjustment, we actuarially assumed that the IRFs would regain 15 percent of potential losses and augment payment increases by 5 percent through transfers occurring at or beyond the mean length of stay associated with CMG or home health care at any point. We applied this actuarial assumption, which was based on consideration of our historical experience with new payment systems, to the estimated ''losses'' and ''gains'' among the IRFs.

Comment: Some commenters were concerned about the inclusion of the reduction to the budget neutral conversion factor (the behavioral offset) and suggested that the reduction be removed in the final calculation of the IRF prospective payments. For example, the commenters advanced various reasons for eliminating the offset, including the perception that the reduction penalizes efficient providers and the concern that the offset further reduces facility revenues to offset the costs of implementing the MDS–PAC.

Response: We apply the behavioral offset as a reduction to the budget neutral conversion factor before applying all case-level and facility-level adjustments to determine a final payment amount. For this final rule, the behavioral offset is very low, at 1.16 percent and represents an integral part of the budget neutrality system. The justification for including an offset relates to the inherent incentives of a discharged-based prospective payment system. Because the prospective payment system bases payment rates on average costs for clinically similar cases, it will be more profitable for facilities to discharge patients earlier than under the excluded hospital cost-based payment system. We have identified the length of stay of a case as an important variable in predicting the costs of the case. Reductions in length of stay will reduce costs for the facilities while Medicare, in the absence of a behavioral offset, would continue to pay based on lengths of stay and rehabilitation services provided prior to the IRF prospective payment system. Our application of this adjustment is consistent with Section 1886(j)(3)(B) of the Act. This provision requires the Secretary, in establishing budget neutral rates, to consider the effects of the new payment system on utilization and other factors reflected in the composition of Medicare payments. Although one of the primary purposes of a prospective payment system is to provide incentives to be efficient, historic reductions in length of stay after a prospective payment system is implemented indicate the need to reduce the budget neutral conversion factor further. The purpose of the budget neutrality provision is to pay the same amount under the prospective payment system as would have been paid under the excluded hospital cost-based payment system for a given set of services, but not to pay that same amount for fewer services furnished as a result of the inherent incentives of the new prospective payment system. Thus, our methodology must account for the change in practice patterns due to new incentives in order to maintain a budget neutral payment system.

Efficient providers are adept at modifying and adjusting practice patterns to maximize revenues while

still maintaining optimum quality of care for the patient. We take this behavior into account in the behavioral offset. Thus, the purpose of the offset is not just to account for the behavior of inefficient providers but also to account for the behavior of other providers who, due to the new incentives, provide more efficient care. Since providing more efficient care would have lowered reimbursement under the old payment system, the offset does not just account for inefficient behavior, but also accounts for what the costs will be under the new payment system as compared to the old one. For these reasons, we believe that such a minimal behavioral offset will not adversely affect efficient providers.

Prior to BIPA, section 1886(j)(3)(B) of the Act specified that, for prospective payment units during FYs 2001 and 2002, the amount of total payments, including any payment adjustments under sections 1886(j)(4) and 1886(j)(6) of the Act, must be projected to equal 98 percent of the amount of payments that would have been made during these fiscal years for operating and capital-related costs of rehabilitation facilities had section 1886(j) of the Act not been enacted. Section 305(a) of BIPA amended section 1886(j)(3)(B) of the Act to delete the 2-percent reduction of the budget neutrality provision for FY 2002. This statutory change results in higher payment rates for IRFs; these additional monies can be used by IRFs to better assist them with the costs associated with completing patient assessment instruments.

As we previously discussed, we believe including a behavioral offset is appropriate to ensure a budget neutral payment system for the IRF prospective payment system. We derived the low behavioral offset of the IRF prospective payment system through careful consideration of many factors, including the estimated impacts among the facilities and the analysis of the incentives inherent in the new payment system, as well as the recognition that, as more prospective payment systems evolve, there is a reduction in the extent to which providers can modify their behavior to influence payment.

In summary, in this final rule, we are maintaining the methodology used to calculate the behavioral offset as specified in the proposed rule.

F. Development of the Federal Prospective Payment

Once we calculate the relative weights for each CMG and the budget neutral conversion factor, we can determine the Federal prospective payments. In accordance with § 412.624(c)(4) of these final regulations, we calculate these CMG payments by multiplying the budget neutral conversion factor by each of the CMG relative weights. The equation is as follows:

Federal Prospective Payment = CMG Relative Weight*Budget Neutral Conversion Factor

Table 2 in the Addendum to this final rule displays the CMGs, the comorbidity tiers, and the corresponding Federal prospective payments.

G. Examples of Computing the Adjusted Facility Prospective Payments

We will adjust the Federal prospective payments, described above, to account for geographic wage variation, low-income patients and, if applicable, facilities located in rural areas.

To illustrate the methodology that we will use for adjusting the Federal prospective payments, we provide the following example. One beneficiary is in rehabilitation facility A and another beneficiary is in rehabilitation facility B. Rehabilitation facility A's DSH is 5 percent, with a LIP adjustment of 1.0239 and a wage index of 0.987, and the facility is located in a rural area. Rehabilitation facility B's DSH is 15 percent, with a LIP adjustment of 1.0700 and a wage index of 1.234, and the facility is located in an urban area. Both Medicare beneficiaries are classified to CMG 0111 (without comorbidities). This CMG represents a stroke with motor scores in the 27 to 33 range and the patient is between 82 and 88 years old. To calculate the facility's total adjusted Federal prospective payment, we compute the wage adjusted Federal prospective payment and multiply the result by: the appropriate disproportionate share adjustment and the rural adjustment (if applicable). The following table illustrates the components of the adjusted payment calculation.

EXAMPLES OF COMPUTING A FACILITY'S FEDERAL PROSPECTIVE PAYMENT

	Facility A	Facility B
Federal Prospective Payment	$20,033.81	$20,033.81
Labor Share	× .72395	× .72395
Labor Portion of Federal Payment	= $14,503.48	= $14,503.48
Wage Index	× 0.987	× 1.234
Wage Adjusted Amount	= $14,314.93	$17,897.29
Non-Labor Amount	+ $5,530.33	+ $5,530.33
Wage Adjusted Federal Payment	$19,845.26	$23,427.62
Rural Adjustment	× 1.1914	× 1.000.0
Subtotal	23,643.65	= $23,427.62
DSH Adjustment	× 1.0239	× 1.070
Total Adjusted Federal Prospective Payment	$24,208.73	$25,067.56

Thus, the adjusted payment for facility A will be $24,208.73 and the adjusted payment for facility B will be $25,067.56.

H. Computing Total Payments Under the IRF Prospective Payment System

Under the BBA, section 1886(j)(1) of the Act describes how to compute a facility's payment during a transition period. Under the transition period, the prospective payment amount consists of a portion of the amount the facility would have been paid if the prospective payment system had not been implemented (facility-specific payment) and a portion of the adjusted facility Federal prospective payment. The transition period specifically covers cost reporting periods beginning on or after October 1, 2000 and before October 1, 2003. During the first transition period, for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2001 (FY 2001), payment would consist of 66⅔ percent of the amount of the facility-specific payment and 33⅓ percent of the IRF adjusted facility Federal prospective payment. During the second transition period, for cost reporting periods beginning on or after October 1, 2001 and before October 1, 2002 (FY 2002), payment would consist of 33⅓ percent of the amount of the facility-specific payment and 66⅔ percent of the IRF adjusted facility

Federal prospective payment. For cost reporting periods beginning on or after October 1, 2002 (FY 2003), payment would be 100 percent of the adjusted facility Federal prospective payment.

Section 305(b)(1)(C) of the BIPA added section 1886(j)(1)(F) to the Act, which allows an IRF to elect to be paid 100 percent of the adjusted facility Federal prospective payment for each cost reporting period to which the blended payment methodology would otherwise apply. This provision of the BIPA is effective as though it were included in the enactment of the BBA.

1. Payments Based on the Transition Period for Cost Reporting Periods Beginning During FY 2002

In the proposed rule, we described how the application of the transition period percentages would be affected by the delay in implementation of the IRF prospective payment system. Specifically, as proposed, a facility with a cost reporting period beginning on or after October 1, 2000 and before April 1, 2001 (the planned implementation date as stated in the proposed rule) would not be paid under the IRF prospective payment system for that cost reporting period. For a facility with a cost reporting period beginning on or after April 1, 2001 and before October 1, 2001, the prospective payment during that period would be comprised of the blended rate for FY 2001 as specified by the statute (66⅔ percent of the facility specific payment and 33⅓ percent of the adjusted facility Federal prospective payment). For a facility with a cost reporting period beginning on or after October 1, 2001 and before October 1, 2002 (FY 2002), the prospective payment during that period would be comprised of the blended rate for FY 2002 as specified by the statute (33⅓ percent of the facility specific payment and 66⅔ percent of the adjusted facility Federal prospective payment). For cost reporting periods beginning on or after October 1, 2002, the prospective payment would be 100 percent of the adjusted facility Federal prospective payment.

Comment: Many commenters suggested that it would be unfair for the transition period to apply to two cost reporting periods for some facilities while other facilities have the transition period apply to only one cost reporting period. In addition, some commenters believed that the law intended for all facilities to be afforded a 2-year transition period.

Response: We recognize that the statute contemplated a 2-year transition period, but the statute (at section 1886(j)(1)(B) of the Act) also provides that the IRF prospective payment system must be fully implemented for cost reporting periods beginning on or after October 1, 2002. In other words, the statute provides that, for cost reporting periods beginning on or after October 1, 2002, payment will no longer be based on a blend of the Federal prospective payment and the facility-specific payment. As stated earlier, the earliest feasible date for implementation of the IRF prospective payment system is for cost reporting periods beginning on or after January 1, 2002, and we are adhering to the statutory payment formula applicable beginning January 1, 2002.

We recognize that the delayed implementation of the IRF prospective payment system means that hospitals will be paid under the blend methodology for a period of less than 2 years (under section 1886(d)(1)(F) of the Act, as added by section 305 of Public Law 106–554, hospitals may elect to not be paid under the blend methodology at all). But we believe that a shortened transition period caused by a delay in implementation of the IRF prospective payment system is not inequitable. One purpose of the transition period is to give hospitals time to adjust before a prospective payment system is fully implemented. Hospitals have been on notice since the enactment of Public Law 105–33 that the IRF prospective payment system would be fully implemented for cost reporting period beginning on or after October 1, 2002. We did not shorten the timetable for full implementation of the prospective payment system payment rates, and hospitals have had ample time to prepare. Also, we note that, presumably, hospitals that would be ''disadvantaged'' by a shortened transition period (hospitals whose facility-specific rate is higher than the Federal prospective payment rate) have been ''advantaged'' by the delay in implementation.

Accordingly, we are adhering to the statutory payment formula applicable for cost reporting periods beginning on January 1, 2002. In § 412.626(a)(1)(i) of this final rule, we are specifying that payment to an IRF for cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002 consists of 33⅓ percent of the facility-specific payment and 66⅔ percent of the adjusted Federal prospective payment. For cost reporting periods beginning on or after October 1, 2002, payment will be based entirely on the Federal prospective payment.

2. Payments Based on the Election To Apply the Full Prospective Payment for Cost Reporting Periods Beginning During FY 2002

Under § 412.626(b) of the final regulations, we are specifying that a provider may elect not to be paid under the transition period described in section VI.H.I. above. Payment to IRFs making this election will be based on 100 percent of the adjusted Federal prospective payment in effect for cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002.

An IRF must request this election no later than 30 days before the start of its first cost reporting period for which payment is based on the IRF prospective payment system. The IRF must make its request in writing to its Medicare fiscal intermediary. The intermediary must receive the request on or before the 30th day before the start of the cost reporting period, regardless of any postmarks or anticipated delivery dates. Requests received (whether mailed or delivered by other means) later than the 30th day before the cost reporting period will not be approved. If the 30th day before the start of the cost reporting period falls on a day on which the postal service or other delivery sources are not open for business, the IRF is responsible to ensure that enough time is allowed for the delivery of the request before the deadline. If an IRF's request is not received timely or is otherwise not approved, payment will be based on the transition period methodology.

3. Payments Based on the Full Prospective Payment for Cost Reporting Periods Beginning During FY 2003 and After

Under § 412.626(a)(l)(ii) of the final regulations, we are specifying that payment made to IRFs with cost reporting periods beginning on or after October 1, 2002 (FY 2003 and after) will consist of 100 percent of the adjusted Federal prospective payment. We described the basis of payments made for fiscal years after FY 2002 in § 412.624 of the final regulations.

I. Method of Payment

We will base a beneficiary's classification into a CMG on data obtained during the initial patient assessment. The CMG will determine the Federal prospective payment that the IRF receives for the Medicare-covered Part-A services furnished during the Medicare beneficiary's episode of care. However, under § 412.632(a) of these final regulations, the payment arises from the submission

of a discharge bill. This will allow us to pay for comorbidities diagnosed during the stay, classify cases appropriately to one of the five special CMGs (for cases in which the patient expires or has a very short length of stay), adjust the payment to reflect an early transfer, and determine if the case qualifies for an outlier payment. Accordingly, the IRF will record the CMG and other information on the beneficiary's discharge bill, and will submit the bill to its Medicare fiscal intermediary for processing. The payment made represents payment in full, under § 412.622(b) of these final regulations, for inpatient operating and capital-related costs, but not for the costs of an approved medical education program, bad debts, blood clotting factors provided to patients with hemophilia, or other costs not paid for under the IRF prospective payment system.

Under the existing payment system, (1) an IRF may be paid using the periodic interim payment (PIP) method described in § 413.64(h) of the existing regulations; (2) rehabilitation units are paid under the PIP method if the hospital of which they are a part is paid under existing § 412.116(b); (3) IRFs may be eligible to receive accelerated payments as described in existing § 413.64(g); or (4) rehabilitation units are eligible for accelerated payments under existing § 412.116(f). The statute does not preclude the continuation of PIP. We presently see no reason to discontinue our existing policy of allowing the PIP and accelerated payment methods under the prospective payment system for qualified IRFs, although we may choose to evaluate its continuing need in the future. Therefore, we will permit the continued availability of PIP and accelerated payments for services of IRFs paid under the prospective payment system at paragraphs (b) and (e) of § 412.632 of the final regulations.

For those services paid under the PIP method, the amount reflects the estimated prospective payments for the year rather than estimated cost reimbursement. An IRF receiving prospective payments, whether or not it received a PIP prior to receiving prospective payments, may receive a PIP if it meets the requirements in § 412.632 and receives approval by its intermediary. Similarly, if an intermediary determines that an IRF that received a PIP prior to receiving prospective payments is no longer entitled to receive a PIP, it will remove the IRF from the PIP method. As provided in § 412.632, intermediary approval of a PIP is conditioned upon the intermediary's best judgment as to whether making payment under the PIP method would not entail undue risk of resulting in an overpayment to the provider.

Excluded from the PIP amount are outlier payments that are paid in final upon the submission of a discharge bill. In addition, Part A costs that are not paid for under the IRF prospective payment system, including Medicare bad debts and costs of an approved educational program, will be subject to the interim payment provisions of the existing regulations at § 413.64.

Under the prospective payment system, if an IRF is not paid under the PIP method, it may qualify to receive an accelerated payment. Under § 412.632, the IRF must be experiencing financial difficulties due to a delay by the intermediary in making payment to the IRF, or there is a temporary delay in the IRF's preparation and submittal of bills to the intermediary beyond its normal billing cycle because of an exceptional situation. The IRF must make a request for an accelerated payment, which is subject to approval by the intermediary and by us. The amount of an accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services. Recoupment of an accelerated payment occurs as bills are processed or through direct payment by the IRF.

J. Update to the Adjusted Facility Federal Prospective Payment

Under section 1886(j)(3)(C) of the Act and under § 412.624(c)(3)(ii) of the final regulations, future updates, for FY 2003 and subsequent fiscal years, to the adjusted facility Federal prospective payments (budget neutral conversion factor) will include the use of an increase factor based on an appropriate percentage increase in a market basket of goods and services comprising services for which the IRF prospective payment system makes payment. This increase factor may be the market basket percentage increase described in section 1886(b)(3)(B)(iii) of the Act. We include in Appendix D of this final rule a description of the IRF market basket that we used in developing an increase factor under section 1886(j)(3)(C) of the Act.

K. Publication of the Federal Prospective Payment Rates

In accordance with section 1886(j)(5) of the Act, we will publish in the **Federal Register**, on or before August 1 prior to the beginning of each fiscal year, the classifications and weighting factors for the IRF case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year (§ 412.628 of these final regulations).

L. Limitation on Administrative or Judicial Review

In accordance with sections 1886(j)(7)(A), (B), and (C) of the Act, we are specifying under § 412.630 of these final regulations that administrative or judicial review under sections 1869 or 1878 of the Act, or otherwise, is prohibited with regard to the establishment of the methodology to classify a patient into the case-mix groups and the associated weighting factors, the unadjusted Federal per discharge payment rates, additional payments for outliers and special payments, and the area wage index.

VII. Provisions of the Final Regulations

After careful consideration of the public comments received on the November 3, 2000 proposed rule, we are adopting as final, with the modifications discussed throughout this preamble and summarized below, the proposed regulations set forth in 42 CFR Part 412, Subpart P, to implement the prospective payment system for IRFs, and the proposed technical and conforming changes to §§ 412.1, 412.20, 412.22, 412.23, 412.25, 412.29, 412.116, 412.130, 413.1, 413.40, and 413.64. The table of contents for Subpart P is as follows:

Subpart P—Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

Sec.
412.600 Basis and scope of subpart.
412.602 Definitions.
412.604 Conditions for payment under the prospective payment system for inpatient rehabilitation facilities.
412.606 Patient assessment.
412.608 Patients' rights regarding the collection of patient assessment data.
412.610 Assessment schedule.
412.612 Coordination of the collection of patient assessment data.
412.614 Transmission of patient assessment data.
412.616 Release of information collected using the patient assessment instrument.
412.618 Assessment process for interrupted stays.
412.620 Patient classification system.
412.622 Basis of payment.
412.624 Methodology for calculating the Federal prospective payment rates.
412.626 Transition period.
412.628 Publication of the Federal prospective payment rates.
412.630 Limitation on review.
412.632 Method of payment under the inpatient rehabilitation facility prospective payment system.

- Throughout Subpart P and in §§ 412.1, 412.20, 412.116, 412.130,

413.1, and 413.40, we are changing the date and any related references for implementation of the IRF prospective payment system from ''April 1, 2001'' to ''January 1, 2002''. Effective for cost reporting periods beginning on or after January 1, 2002, IRFs must meet the conditions specified in the Subpart P for payment of all covered inpatient hospital services furnished to beneficiaries under the IRF prospective payment system.

• Throughout Subpart P, we are changing all references to the MDS–PAC to either the CMS inpatient rehabilitation facility patient assessment instrument or deleting reference to the MDS–PAC, as appropriate, including deletion of the definition in § 412.602. We are adding a new definition of ''patient assessment instrument'' to conform to the replacement of the MDS–PAC.

• Use of Authorized Clinician in Patient Assessments (§§ 412.602—Definitions; 412.606—Patient assessment; 412.608—Patients' rights regarding the collection of patient assessment data; and 412.612—Coordination of the collection of patient assessment data). As explained in section IV.A.3. of this final rule, we are deleting the definition of ''authorized clinician'' in proposed § 412.602. In addition, we are revising proposed §§ 412.606(c) and 412.612 to specify that any IRF clinician may perform the patient assessment and any clinician who is employed or contracted by the IRF and who is trained on how to conduct a patient assessment using our inpatient rehabilitation facility patient assessment instrument may complete items on the assessment instrument. We are deleting the provisions under proposed §§ 412.606(c)(4) and 412.612(b) and (c) that an authorized clinician must sign the patient assessment instrument attesting to its completion and accuracy. We are revising proposed § 412.606(c)(3) to clarify one of the other sources, in addition to direct patient observation, from which patient data may be obtained for the assessment process when appropriate and to the extent feasible. We are deleting the ''friends'' source and adding instead ''someone personally knowledgeable about the patient's clinical condition or capabilities''.

We are revising proposed § 412.612(d) (§ 412.612(b) in this final rule) to specify that a person who knowingly and willfully completes or causes another person to complete a false patient assessment is subject to a civil money penalty. We are making conforming changes to proposed § 412.608 to indicate that an IRF clinician must inform inpatients of their patient rights relating to the collection of patient assessment data.

• Patient Assessment Schedule and Data Transmission (§§ 412.602—Definitions; 412.610—Assessment schedule; 412.614—Transmission of patient assessment data; and 412.624—Methodology for calculating the Federal prospective payment rates). We are revising proposed §§ 412.610(c) to specify that the patient assessment instrument is to be completed only twice, at the time of the patient's admission and at discharge. We are revising the definition of ''discharge'' in § 412.602 to add a provision that a Medicare patient in an IRF is also considered discharged when the patient stops receiving Medicare-covered Part A inpatient rehabilitation services.

In addition, we are specifying the time period the admission assessment must cover; the assessment reference date for the admission and discharge assessments; and the dates by which the admission and discharge assessments must be completed. As conforming changes, we are revising the definition of ''assessment reference date'' in proposed § 412.602; we are deleting the contents of proposed § 412.610(d), which described the late assessment reference dates and related penalties for late completion of the patient assessment, which are no longer applicable; and we are deleting from proposed § 412.610(e) the provisions on assessment completion dates, which are now specified in § 412.610(c).

We are revising proposed § 412.610(e) (paragraph (d) in this final rule) to specify that admission and discharge assessments must be encoded by the 7th calendar day from the applicable assessment completion dates. (As conforming changes, proposed §§ 412.610(f) and (g) are now §§ 412.610(e) and (f), respectively.)

We are revising proposed § 412.614(c) to specify data transmission dates to us that are adjusted to reflect changes in the completion dates for admission and discharge assessments and for encoding data under §§ 412.610(c) and (d).

We are revising proposed § 412.614(d)(2) to specify the date by which transmission of the assessment data is considered late (late transmission means more than 10 days after the 7th calendar day in the period beginning with the last permitted patient assessment encoding date) and to modify the penalties associated with late transmission of the patient assessment data. We also are revising proposed § 412.624(e)(5) to specify the adjustment to the prospective payment to the IRF for late transmission of patient assessment data to reflect the provisions in § 412.614(d)(2).

These changes from the proposed rule are discussed in detail in sections IV.B. and IV.D. of this preamble.

• Interrupted Stays (§§ 412.602—Definitions; 412.618—Assessment process for interrupted stays; and 412.624—Methodology for calculating the prospective payment rates). We are revising the proposed definition of ''interrupted stay'' in proposed § 412.602 to clarify that an interruption in a stay in an IRF is 3 consecutive calendar days that begins with the day of discharge and ends at midnight of the third day.

We are revising proposed §§ 412.618(a)(1) and (a)(3) (paragraphs (a)(1) and (a)(2) in this final rule) to specify that the initial case-mix classification from the admission assessment remains in effect during the interrupted stay(s); and to specify that a discharge assessment must be completed when the patient stay (that includes one or more interrupted stays) is completed. We are deleting proposed § 412.618(a)(2), which referenced the proposed multiple patient assessments that we are not adopting in this final rule; and deleting proposed § 412.618(c), which discussed the transmission of data from the interrupted stay tracking form.

In addition, we are revising proposed § 412.618(d)(1) through (d)(4) (paragraphs (c)(1) and (c)(2) in this final rule) to specify the adjustment to dates to be used if an interrupted stay occurs before the patient admission assessment is completed or after the admission assessment is completed but before the discharge assessment is completed.

We are adding new § 412.624(g) to codify in this regulation text the policy on the adjustment to the IRF prospective payment for interrupted stays.

These changes from the proposed rule are discussed in detail in sections IV.D. and VI.C.3. of this preamble.

• Patient Classification (§ 412.620—Patient classification system). We are revising proposed § 412.620(a)(3) to specify that we will use the data from the admission assessment to classify the patient into the appropriate case-mix group as opposed to proposed data from the Day 4 assessment (the assessment schedule has been revised to specify only two assessments as discussed earlier).

We are adding a definition of ''comorbidity'' in § 412.602 and adding new paragraphs (a)(4) and (b)(4) under § 412.620 to specify that we will determine a weighting factor(s) to account for the presence of a

comorbidity that is relevant to resource use in the classification system in determining payment rates under the IRF prospective payment system, and that we will use data from the discharge assessment to determine this weighting factor. These changes are discussed in detail in section VI.A. of the preamble in relation to our use in this final rule of a 3-tiered approach to determining adjustments in payment rates for CMGs based on differences in costs among relevant comorbidities.

• Payment Rates (§ 412.624—Methodology for calculating the prospective payment rates). We are revising the budget neutrality provision of proposed § 412.624(d)(2) to reflect the deletion of the 2-percent reduction as specified in section 305(a) of BIPA.

We are revising proposed § 412.624(e) to specify that the prospective payment rate for each IRF discharge will be based on whether the IRF's cost reporting period begins on or after January 1, 2002 and before October 1, 2002 or begins after October 1, 2002.

We are revising proposed §§ 412.624(f)(2)(ii) and (f)(2)(iii) (paragraph (f)(2)(v) in this final rule) and adding new §§ 412.624(f)(2)(iii) and (f)(2)(iv) to specify the adjustment to the prospective payment to the IRF for patients who are transferred to another site of care.

These changes from the proposed rule are discussed in detail in sections VI.B., VI.D., and VI.E. of this preamble.

• Transition Period (§§ 412.622—Basis of payment and 412.626—Transition period). We are revising proposed §§ 412.622(a)(2) and 412.626(a)(1) and adding new § 412.626(b) to reflect the provisions under section 305(b) of BIPA that provide that, during the transition period, facilities may elect to be paid the full prospective payment rather than the payment determined under the transition period methodology.

These changes from the proposed rule are discussed in detail in section VI.H. of this preamble.

Technical Changes

• Noncovered Items and Services (§ 412.604—Conditions for payment under the prospective payment system for inpatient rehabilitation facilities). We are revising proposed § 412.604(d) to specify that in addition to the applicable deductible and coinsurance amounts, a facility may charge Medicare beneficiaries and other individuals on their behalf only for items and services as provided under existing regulations at § 489.20(a).

We are revising proposed § 412.604(e)(1) to conform it to the provisions of existing § 412.50 which lists the types of services that are not included as inpatient hospital services.

We also are adding to § 412.604(e)(1) a citation to the provisions of § 412.622(b) to clarify that payments for certain services are not included in the full prospective payment to IRFs for inpatient rehabilitation services (that is, payment for approved educational activities, bad debts, and blood clotting factors).

These changes from the proposed rule are discussed in detail in section II.B. of this preamble.

VIII. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this final rule as required by Executive Order 12866, the Unfunded Mandate Reform Act of 1995 (Public Law 104–4), the Regulatory Flexibility Act (RFA) (Public Law 96–354), and Executive Order 13132 (Federalism).

1. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if 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).

We estimate that the impact of this final rule that implements section 1886(j) of the Act will result in a total cost to the Medicare program. Section 305(a) of BIPA eliminated the 2-percent reduction to the budget neutral adjustment. Under the amendments made by section 305(a) of BIPA, then, we set payment amounts under the prospective payment system for FY 2002 so that payments under the IRF prospective payment system for FY 2002 are projected to equal ''100 percent * * * of the amount of payments that would have been made under this title * * * for operating and capital costs of rehabilitation facilities had this subsection not been enacted,'' but under the amendments made by section 305(b) of BIPA, in calculating the budget neutrality adjustment, we do not take into account payment adjustments resulting from elections by hospitals under section 1886(j)(1)(F) of the Act (as added by section 305(b)(1)(C) of BIPA) to not be paid under the transition period methodology described in section VI.H. of this final rule. Because elections under section 1886(j)(1)(F) of the Act are not taken into account in calculating the budget adjustment requirement, the implementation of the prospective payment system results in a cost.

Payment to facilities that elect not to be paid under the transition period methodology will be based on 100 percent of the adjusted facility Federal prospective payment in effect for cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002. Providers that will be paid more under the IRF prospective payment system than they would have been paid had the system not been in effect will likely elect to be paid based on 100 percent of the Federal prospective payment rate. We estimate that, of the 1024 IRFs used to simulate the impacts among the various classes of IRFs, approximately 48 percent or 496 of these IRFs will elect not to be paid under the transition period methodology. For cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002, we estimate that the IRF prospective payment system will cost $60 million, and for FY 2003, the costs will be $10 million. Because cost reporting periods can begin in one fiscal year and end in the next fiscal year, the FY 2002 estimated costs of $60 million are associated with the portion of IRF cost reporting periods between January 1, 2002 and September 30, 2002. The FY 2003 estimated costs of $10 million are associated with the portion of IRF cost reporting periods between October 1, 2002, and September 30, 2003.

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze the economic impact of our regulations on small entities. If we determine that the regulation will impose a significant burden on a substantial number of small entities, we must examine options for reducing the burden. For purposes of the RFA, businesses include small businesses, nonprofit organizations, and governmental agencies. Most hospitals are considered small entities, either by nonprofit status or by having receipt of less than $25 million per year. Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary rehabilitation hospitals. Therefore, the analysis that follows is based on all rehabilitation facilities doing business with Medicare. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

3. Unfunded Mandate

Section 202 of the Unfunded Mandate Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of at least $110 million. This final rule will not have an effect on the governments mentioned nor will it affect private sector costs.

4. Executive Order 13132

We examined this final rule in accordance with Executive Order 13132 and determined that it will not have any negative impact on the rights, roles, or responsibilities of State, local, or tribal governments.

5. Impact on Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that will have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

6. Overall Impact

For the reasons stated above, we have prepared an analysis under the RFA and section 1102(b) of the Act because we have determined that this final rule will have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small a rural hospitals. As discussed earlier in this preamble, we are adjusting payments for IRFs located in rural areas. Therefore, the impacts shown below reflect the adjustments that are designed to minimize or eliminate the negative impact that the IRF prospective payment system would otherwise have on rural facilities.

This final rule sets forth the factors used to determine prospective payments under the Medicare program for IRFs. While section 1886(j) of the Act specifies the basic methodology of constructing a case-mix adjusted prospective payment system, the statute does allow us some discretion in designing the key elements of the system, and we did consider alternatives for patient classification methodology based on functional-related groups, and adjustments to the prospective payments. We have included a detailed discussion of these elements and the alternatives that we considered in sections IV., V., and VI., respectively, of the preamble of this final rule.

B. Anticipated Effects of the Final Rule

We discuss below the impacts of this final rule on the budget and on IRFs.

1. Budgetary Impact

Section 1886(j)(3)(B) of the Act, as amended by section 305(a) of BIPA, requires us to set the payment rates contained in this final rule at levels such that total payments under the IRF prospective payment system are projected to equal the amount that would have been paid for operating and capital-related costs of rehabilitation facilities if this prospective payment system had not been implemented, but under the amendments made by section 305(b) of BIPA, in calculating budget neutrality, we do not take into account elections by facilities to receive the full Federal prospective payment rather than the payment determined under the transition period methodology. We project that implementing the IRF prospective payment system (as amended by section 305(b) of BIPA) for cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002 will cost the Medicare program $70 million over 2 years, as follows:

$60 million for FY 2002
$10 million for FY 2003

2. Impact on Providers

In order to understand the impact of the new IRF prospective payment system on different categories of facilities, it is necessary to compare estimated payments under the current payment system (current payments) to estimated payments under the prospective payment system as set forth in this final rule (new prospective payments). To estimate the impact among the various classes of IRFs, it is imperative that the estimates of current payments and new prospective payments contain similar inputs. More specifically, we simulate new prospective payments only for those IRFs for which we are able to calculate current payment, and vice versa.

As previously stated in section VI.D. of this preamble, we have both case-mix and cost data for 714 rehabilitation facilities. We used data from these facilities to analyze the appropriateness of various adjustments to the Federal unadjusted payment rates. However, for the impact analyses shown in the following tables, we simulate payments for 1024 facilities. As we previously stated in section VI. of this final rule, we estimate the case-mix index for those IRFs and cases for which we do not have FIM data to match corresponding Medicare bills. Therefore, in this final rule, we are able to include more facilities in the impact analysis among the various classes of IRFs. Table I below reflect the estimated ''losses/gains'' among the various classifications of IRFs for cost reporting periods that begin on or after January 1, 2002 and before October 1, 2002. Table II below reflects the estimated ''losses/gains'' among the various classifications of IRFs for cost reporting periods that begin on or after October 1, 2002 and before October 1, 2003.

3. Calculation of Current Payments

To calculate current payments, we trend cost report data forward from the midpoint of the cost reporting period to the midpoint of FY 2002, using the methodology set forth in section VI.E.2. of this preamble. To estimate current payments, we calculate operating payments for each rehabilitation facility in accordance with section 1886(b) of the Act. Further, we compute capital payments by reducing reasonable costs by 15 percent, consistent with section 1886(g)(4) of the Act, as added by section 4412 of the BBA. To determine each facility's average per discharge payment amount under the current payment system, we add operating and capital-related payments together, and then divide the total payment by the number of Medicare discharges from the cost reports. We compute total payments for each facility by multiplying the number of discharges from the Medicare bills by the average per discharge payment amount.

4. Calculation of New Prospective Payments

To estimate payments under the IRF prospective payment system as set forth in this final rule, we multiply each facility's case-mix index by the facility's number of Medicare discharges, the budget neutral conversion factor, the applicable wage index, a low income patient adjustment, and a rural adjustment (if applicable). We include a detailed description of the following specific adjustments in section VI.D. of the preamble of this final rule.

- The wage adjustment, calculated as follows: (.27605(.72395 × Wage Index)).
- The disproportionate share adjustment, calculated as follows:

(1 + Disproportionate Share Percentage) raised to the power of .4838).

- The rural adjustment, if applicable, calculated by multiplying payments by 1.1914.

After calculating the new Federal rate payments for each facility, we blend

together the appropriate percentages of the current payments and the new Federal rate payments to determine the appropriate amount for the first year of implementation of the IRF prospective payment system. Specifically, for cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002 we combine 33⅓ percent of the current payment amount with 66⅔ percent of the new Federal rate payment amount as shown in Table I below. However, for those providers that will receive higher payments under the IRF prospective payment system than they would have if the system had not been in effect, we simulate their payments in Table I as though they chose not to be paid under the transition payment methodology. (We estimate that 48 percent of the IRFs will elect not to be paid under the transition payment methodology.) For cost reporting periods beginning in FY 2003, we show the impact of the fully phased-in IRF prospective payment amount. All payment simulations reflect data trended to the midpoint of FY 2002. These data were not trended out to the midpoint of FY 2003.

Tables I and II below illustrate the aggregate impact of the new payment system among various classifications of facilities. The first column, Facility Classifications, identifies the type of facility. The second column identifies the number of cases. The third column lists the number of facilities of each classification type, and the fourth column is the ratio of new prospective payments to current payments. The impact reflects the adjustments that we are making, including the specific geographic wage adjustment, the adjustment for rural facilities (if applicable), and a low-income patient adjustment for all facilities.

TABLE I.—PROJECTED IMPACT REFLECTING 2/3 OF NEW PROSPECTIVE PAYMENTS PLUS 1/3 OF CURRENT PAYMENTS AND OPTION TO DECLINE THE BLENDED PAYMENT METHOD

Facility Classifications	Number of cases	Number of facilities	New payment to current payment ratio
All facilities	347,809	1,024	1.03
Geographic location			
Large Urban	163,970	489	1.04
Other Urban	152,647	392	1.01
Rural	31,192	143	1.03
Region			
New England	15,868	36	1.00
Middle Atlantic	66,466	143	1.05
South Atlantic	59,172	132	1.06
East North Central	60,223	200	1.02
East South Central	27,024	51	1.05
West North Central	21,907	92	1.03
West South Central	59,663	186	0.97
Mountain	15,697	65	1.04
Pacific	21,789	119	1.04
Urban by Region			
Urban-New England	15,039	32	1.01
Urban-Middle Atlantic	64,042	133	1.04
Urban-South Atlantic	52,980	112	1.06
Urban-East North Central	55,071	171	1.02
Urban-East South Central	23,434	41	1.07
Urban-West North Central	18,087	70	1.03
Urban-West South Central	52,346	154	0.96
Urban-Mountain	14,655	56	1.04
Urban-Pacific	20,963	112	1.04
Rural by Region			
Rural-New England	829	4	0.95
Rural-Middle Atlantic	2,424	10	1.16
Rural-South Atlantic	6,192	20	1.09
Rural-East North Central	5,152	29	1.01
Rural-East South Central	3,590	10	0.98
Rural-West North Central	3,820	22	1.04
Rural-West South Central	7,317	32	1.01
Rural-Mountain	1,042	9	1.05
Rural-Pacific	826	7	1.00
Type and Size of Facility			
Unit of acute hospital	233,433	856	1.04
Average Daily Census<10	39,123	289	1.00
Average Daily Census 10–25	122,904	436	1.05
Average Daily Census>25	71,406	131	1.06
Freestanding hospital	114,376	168	0.99
Average Daily Census<25	8,437	36	0.92
Average Daily Census 25–50	41,626	71	0.98
Average Daily Census>50	64,313	61	1.01
Disproportionate Share			
Disproportionate Share<10%	121,046	329	1.05
Disproportionate Share 10%–19%	101,405	261	1.02
Disproportionate Share 20%–29%	24,216	70	1.01
Disproportionate Share>= 30%	14,851	72	1.05
Disproportionate Share Missing	86,291	292	1.01

TABLE I.—PROJECTED IMPACT REFLECTING 2/3 OF NEW PROSPECTIVE PAYMENTS PLUS 1/3 OF CURRENT PAYMENTS AND OPTION TO DECLINE THE BLENDED PAYMENT METHOD—Continued

Facility Classifications	Number of cases	Number of facilities	New payment to current payment ratio
Teaching Status			
Non-Teaching	285,112	872	1.03
Resident to Average Daily Census < 10%	41,944	86	1.02
Resident to Average Daily Census 10%–19%	15,741	38	1.00
Resident to Average Daily Census>19%	5,012	28	1.02
Alaska/Hawaii	991	4	0.99

TABLE II.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROSPECTIVE PAYMENTS

Facilities classifications	Number of cases	Number of facility	New payment to current payment ratio
All facilities	347,809	1,024	1.00
Geographic Location			
Large Urban	163,970	489	1.01
Other Urban	152,647	392	0.99
Rural	31,192	143	1.00
Region			
New England	15,868	36	0.98
Middle Atlantic	66,466	143	1.02
South Atlantic	59,172	132	1.04
East North Central	60,223	200	0.99
East South Central	27,024	51	1.03
West North Central	21,907	92	1.01
West South Central	59,663	186	0.93
Mountain	15,697	65	1.01
Pacific	21,789	119	1.02
Urban by Region			
Urban-New England	15,039	32	0.99
Urban-Middle Atlantic	64,042	133	1.02
Urban-South Atlantic	52,980	112	1.03
Urban-East North Central	55,071	171	0.99
Urban-East South Central	23,434	41	1.05
Urban-West North Central	18,087	70	1.01
Urban-West South Central	52,346	154	0.92
Urban-Mountain	14,655	56	1.01
Urban-Pacific	20,963	112	1.02
Rural by Region			
Rural-New England	829	4	0.91
Rural-Middle Atlantic	2,424	10	1.14
Rural-South Atlantic	6,192	20	1.07
Rural-East North Central	5,152	29	0.98
Rural-East South Central	3,590	10	0.94
Rural-West North Central	3,820	22	1.02
Rural-West South Central	7,317	32	0.97
Rural-Mountain	1,042	9	1.04
Rural-Pacific	826	7	0.97
Type and Size of Facility			
Unit of acute hospital	233,433	856	1.02
Average Daily Census<10	39,123	289	0.96
Average Daily Census 10–25	122,904	436	1.03
Average Daily Census>25	71,406	131	1.04
Freestanding hospital	114,376	168	0.96
Average Daily Census< 25	8,437	36	0.86
Average Daily Census 25–50	41,626	71	0.95
Average Daily Census>50	64,313	61	0.99
Disproportionate Share			
Disproportionate Share<10%	121,046	329	1.02
Disproportionate Share 10%-19%	101,405	261	0.99
Disproportionate Share 20%-29%	24,216	70	0.98
Disproportionate Share >= 30%	14,851	72	1.03
Disproportionate Share Missing	86,291	292	0.98
Teaching Status			
Non-Teaching	285,112	872	1.00
Resident to Average Daily Census < 10%	41,944	86	1.00
Resident to Average Daily Census 10%-19%	15,741	38	0.97

TABLE II.—PROJECTED IMPACT REFLECTING THE FULLY PHASED-IN PROSPECTIVE PAYMENTS—Continued

Facilities classifications	Number of cases	Number of facility	New payment to current payment ratio
Resident to Average Daily Census >19%	5,012	28	0.98
Alaska/Hawaii	991	4	0.97

5. Costs Associated With the Patient Assessment Instrument

In this final rule, it is specified that an IRF must assess its Medicare Part A fee-for-service patients using the CMS IRF patient assessment instrument. Costs associated with the collection of the patient assessment data using the CMS IRF patient assessment instrument, and the associated reporting of data, are related to both personnel and equipment. These two classes of costs include the costs associated with using the CMS IRF patient assessment instrument to assess patients (data collection costs), the IRF's costs to start the patient assessment process using our patient assessment instrument, and the IRF's ongoing costs after the patient assessment process has been initiated. We note that many of the components of the costs associated with initiation of the patient assessment process specified in this final rule and the IRF's ongoing costs are the same.

a. Patient Assessment Instrument Data Collection Costs

As stated in section IV. of this preamble, in this final rule we are using a modified version of the UDSmr patient assessment instrument that is frequently referred to as the FIM, as the CMS IRF patient assessment instrument. We are permitting any clinician who is employed or contracted by the IRF, and is trained on how to complete a patient assessment using our patient assessment instrument, to complete the data items on our patient assessment instrument (§ 412.606(c)).

For this final rule, we calculated the cost to collect the patient assessment data using the CMS IRF patient assessment instrument by using the wage data and assumptions below. Although we are only specifying wage data for nine different types of clinicians, this should not be interpreted as meaning that these nine types are the only types of clinicians permitted to complete our patient assessment instrument.

Note: The 2000–2001 version of the Occupational Outlook Handbook of the Bureau of Labor Statistics, U.S. Department of Labor, is still our most current source of salary data available.

• The hourly wage data for the nine specific types of clinicians, according to the Occupational Outlook Handbook of the Bureau of Labor Statistics, U.S. Department of Labor, are as follows (presented in ascending order):

(1) The median earnings of social work assistants, which is included in the human service workers and assistants category, in 1998 were $21,360. That is equivalent to a median hourly wage of $10.27. ($21,360/52 weeks = $410.77/week. $410.77/40 hours = $10.27).

(2) The median earnings of licensed practical nurses (licensed vocational nurses) in 1998 were $26,940. That is equivalent to a median hourly wage of $12.95. ($26,940/52 weeks = $518.07/week. $518.07/40 hours = $12.95).

(3) The median earnings of recreational therapists in 1998 were $27,760. That is equivalent to a median hourly wage of $13.35. ($27,760/52 weeks = $533.84/week. $533.84/40 hours = $13.35).

(4) The median earnings of social workers in 1998 were $30,590. That is equivalent to a median hourly wage of $14.71. ($30,590/52 weeks = $588.27/week. $588.27/40 hours = $14.7067).

(5) The median earnings of dietitians and nutritionists in 1998 were $35,020. That is equivalent to a median hourly wage of $16.84. ($35,020/52 weeks = $673.46/week.$673.46/40 hours = $16.8365).

(6) The median earnings of registered nurses in 1998 were $40,690. That is equivalent to a median hourly wage of $19.56. ($40,690/52 weeks = $782.50/week. $782.50/40 hours = $19.5625).

(7) The median earnings of speech-language pathologists and audiologists in 1998 were $43,080. That is equivalent to a median hourly wage of $20.71. ($43,080/52 weeks = $828.46/week. $828.46/40 hours = $20.7115).

(8) The median earnings of occupational therapists in 1998 were $48,230. That is equivalent to a median hourly wage of $23.19. ($48,230/52 weeks = $927.50/week. $927.50/40 hours = $23.1875).

(9) The median earnings of physical therapists in 1998 were $56,600. That is equivalent to a median hourly wage of $27.21. ($56,600/52 weeks = $1088.46/week. $1088.46/40 hours = $27.2115).

• IRF staff familiar with the MDS–PAC that was the product of our pilot and field testing required a median of 85 minutes to complete an admission intake assessment.

• IRF staff familiar with the MDS–PAC that was the product of our pilot and field testing required a median of 48 minutes to complete an update assessment.

• Our data indicate that in 1999 there were 390,048 IRF admissions and 1,165 IRFs, an average of 334.8 admissions per IRF. (For the calculations in the tables that follow, 334.8 admissions was rounded to 335 admissions.)

We stated in the proposed rule that data from a non-HCFA associated source indicated that it could take a maximum of 45 minutes to complete an admission assessment using the FIM. However, according to information obtained from UDSmr, it takes an estimated combined time of 25 minutes to collect both the admission and discharge patient assessment data using the UDSmr patient assessment instrument. We believe that the UDSmr estimated combined time of 25 minutes to collect both the admission and discharge data is the more accurate span of time estimate to use. Although in 2000 both the other non-HCFA source and UDSmr performed surveys to obtain instrument completion data, there is more precise data from the UDSmr survey results. Specifically, for the surveys that both performed: (1) The other non-HCFA associated source did not state its sample size or the numerical size of the universe from which the sample was obtained, while UDSmr had a sample size of 303 facilities out of a universe of 600 to 700 IRFs; (2) the other non-HCFA associated source only gave ranges of the span of times it took experienced or inexperienced personnel to complete the UDSmr instrument, while UDSmr provided the mean and median spans of times it took experienced and inexperienced personnel to complete the UDSmr instrument. In addition, we believe that UDSmr, instead of the other non-HCFA source, is more knowledgeable of the span of time it takes to complete its own instrument. We estimate that it will take a combined time of 45 minutes to collect both the

admission and discharge patient assessment data using our patient assessment instrument.

We believe that IRFs that currently use the UDSmr patient assessment instrument to collect admission and discharge data, which we believe is 85 percent of the 1,165 IRFs (990 IRFs), are completing the entire UDSmr patient assessment instrument when collecting the admission and discharge data. Therefore, for IRFs currently using the UDSmr patient assessment instrument, we believe that the estimated additional time to collect both the admission and discharge patient assessment data using our patient assessment instrument

For IRFs that are not currently using the UDSmr patient assessment instrument, or a similar instrument, which we believe is 15 percent of the 1,165 IRFs (175 IRFs), we estimate an additional assessment time burden of 45 minutes.

The 1998 median hourly wages from the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2000–2001 Edition,* specified above have been updated, using our Occupational Compensation Index from the excluded hospital market basket. The update factor is 1.159. Using the updated 1998 median hourly wages, we show in Table III below the range of the costs of the estimated additional patient assessment time burden by clinician discipline. In addition, we show in Table III the range of the costs of the minimum and maximum additional time burden by clinician discipline using the 1999 data of 390,048 IRF admissions and 1,165 IRFs (an average of approximately 335 admissions per IRF).

TABLE III.—RANGE OF THE INCREMENTAL COSTS, TO COLLECT BOTH THE A RGE PATIENT ASSESSMENT DATA USING THE CMS IRF PATIENT ASSESSMENT INSTRUMENT

(Column 1) Updated hourly wages for each clinician discipline	(Column 2) Range of incremental time of 20 minutes—incremental cost per clinician discipline column 1 times 0.333333	(Column 3) Range of incremental cost per clinical discipline per IRF—column 2 times 335 admissions	(Column 4) Range of incremental time of 45 minutes—incremental cost per clinicial discipline column 1 times 0.75	(Column 5) Range of incremental cost per clinicial discipline per IRF column 4 times 335 admissions
$11.90	$3.97	$1,328.83	$8.93	$2,989.88
15.01	5.00	1,676.11	11.26	3,771.26
15.47	5.16	1,727.48	11.60	3,886.84
17.05	5.68	1,903.91	12.79	4,283.81
19.52	6.51	2,179.73	14.64	4,904.40
22.67	7.56	2,531.48	17.00	5,695.84
24.00	8.00	2,680.00	18.00	6,030.00
26.88	8.96	3,001.60	20.16	6,753.60
31.54	10.51	3,521.96	23.66	7,924.43

Table IV below compares the average estimated time to complete the inpatient rehabilitation facility patient assessment instrument as specified in this final rule to the average estimated time to complete the MDS–PAC in the proposed rule, assuming that the expanded list of clinicians could complete the proposed MDS–PAC. We are only comparing the costs to perform the combined admission and discharge assessment using the CMS IRF patient assessment instrument in this final rule to the cost to perform the admission MDS–PAC assessment because the best time span data we have is how long it takes to do the admission MDS–PAC assessment. The admission MDS–PAC assessment took 85 minutes to perform, that is, to collect the data, (85 minutes divided by 60 minutes is 1.412 (rounded)). Table IV is based on the assumption that all 1,165 IRFs would collect the assessment data.

TABLE IV.—COMPARISON OF THE COSTS OF PERFORMING THE PATIENT ASSESSMENT USING THE CMS IRF PATIENT ASSESSMENT INSTRUMENT TO COSTS USING THE PROPOSED MDS–PAC

(Column 1) Updated Hourly Wages for each clinical discipline	Costs to perform the combined admission and discharge assessments using the CMS IFR patient assessment instrument			Costs to perform only the admission assessment using the MDS–PAC		
	(Column 2) Range of incremental time of 45 minutes—incremental cost per clinician discipline column 1 times 0.75 Hour)	(Column 3) Range of incremental cost per clinical discipline per IRF—column 2 times 335 admissions	(Column 4) National costs—(column 3 times 1,165 IRFs)	(Column 5) Range of maximum incremental time of 85 minutes per clinical discipline (column 1 times 1.412)	(Column 6) Range of maximum incremental cost per clinical discipline per IRF (column 5 times 335 admissions)	(Column 7) National costs (column 6 Times 1,165 IRFs)
$11.90	8.93	$2,990	$3,483,204	$16.80	$5,629	$6,557,713
$15.01	11.26	3,771	4,393,521	21.19	7,100	8,271,535
$15.47	11.60	3,887	4,528,166	21.84	7,318	8,525,027
$17.05	12.79	4,284	4,990,642	24.07	8,065	9,395,715
$19.52	14.64	4,904	5,713,626	27.56	9,233	10,756,853

TABLE IV.—COMPARISON OF THE COSTS OF PERFORMING THE PATIENT ASSESSMENT USING THE CMS IRF PATIENT ASSESSMENT INSTRUMENT TO COSTS USING THE PROPOSED MDS–PAC—Continued

(Column 1) Updated Hourly Wages for each clinical discipline	Costs to perform the combined admission and discharge assessments using the CMS IFR patient assessment instrument			Costs to perform only the admission assessment using the MDS–PAC		
	(Column 2) Range of incremental time of 45 minutes—incremental cost per clinician discipline column 1 times 0.75 Hour)	(Column 3) Range of incremental cost per clinical discipline per IRF—column 2 times 335 admissions	(Column 4) National costs—(column 3 times 1,165 IRFs)	(Column 5) Range of maximum incremental time of 85 minutes per clinical discipline (column 1 times 1.412)	(Column 6) Range of maximum incremental cost per clinical discipline per IRF (column 5 times 335 admissions)	(Column 7) National costs (column 6 Times 1,165 IRFs)
$22.67	17.00	5,696	6,635,651	32.01	10,723	12,492,718
$24.00	18.00	6,030	7,024,950	33.89	11,352	13,225,639
$26.88	20.16	6,754	7,867,944	37.95	12,715	14,812,716
$31.54	23.66	7,924	9,231,955	44.53	14,919	17,380,694

b. Start-Up Costs

The costs that an IRF will incur to start the patient assessment process using our assessment instrument consist of material costs and personnel costs. Our data indicate that in 1999 there were 1,165 IRFs.

(1) Start-Up Hardware Costs

We believe that all IRFs have the hardware computer capability (that is, hard drive, printer, RAM memory, modem) and the related software (that is, Internet Browser software) to be able to handle the computerization, data transmission, and GROUPER software requirements associated with our patient assessment instrument. Our belief is based on indications that (a) approximately 99 percent of all hospital inpatient claims currently are submitted electronically; (b) approximately 100 percent of IRFs submit their cost reports electronically; and (c) approximately 85 percent of IRFs that use the FIM subscribe to the full UDSmr FIM system and submit their data to UDSmr electronically.

Because we will supply to the IRFs free of charge the software that performs the electronic functions associated with our patient assessment instrument, the IRFs will incur no software costs to purchase that software. Although we will supply the software version of our patient assessment instrument, which includes the GROUPER software and the data transmission software, IRFs may incur costs, which we are not able to estimate, associated with making changes to their information management systems to incorporate our patient assessment process software.

IRFs have the option of purchasing data collection software that can be used to support other clinical or operational needs (for example, care planning, quality assurance, or billing), or other regulatory requirements for reporting patient information. However, the software associated with our patient assessment instrument will be available to IRFs at no charge through our IRF prospective payment system website. That website is: www.hcfa.gov/medicare/irfpps.htm. Our patient assessment instrument software will allow users to computerize their assessment data and transmit the data in a standard format specified by us to the CMS patient data system. Therefore, IRFs that plan to use our patient assessment instrument software will need Internet access and a dial-up Internet Service Provider account in order to be able to download and install our software into their computer system. We believe that all IRFs currently have the capability to access the Internet.

(2) Start-Up Training Costs

IRF staff will require training in performing assessments with the CMS IRF patient assessment instrument, encoding assessment data, preparing the assessment data for electronic submission, and actually transmitting the data. We believe that the initial training of IRF clinical and data entry personnel will require about 129.5 hours of staff time.

We expect that the IRF will send one discipline-specific lead clinician to a training session of 16 hours sponsored by us, and then have that individual train the other IRF clinicians. We estimate that, on average, nine nonlead clinicians per IRF will require 12 hours of training. These nonlead clinicians will be trained at their respective IRF. As stated in section IV. of this preamble, in this final rule we are permitting any clinician who is employed or contracted by the IRF and who is trained on how to perform a patient assessment using the CMS IRF patient assessment instrument to complete the data items on the CMS IRF patient assessment instrument.

We also estimate that one data entry staff person will require approximately 5.5 hours of training. The estimated hourly wage cost of the data entry staff person from the proposed rule is $12.50. Using the update factor for hourly wages of the 1.159 cited earlier, we estimate that the updated hourly wage for the data entry staff person is $14.49 (rounded). Using this updated hourly wage rate, we estimate that the 5.5 hours of training will cost approximately $79.70 (5.5 hours × $14.49) per IRF, for an estimated cost of $92,844 nationally ($79.70 × 1,165 IRFs).

(3) Start-Up Data Entry and Data Transmission Costs

We do not know the time span it takes to enter the UDSmr data into the UDSmr patient assessment software, or the time span it takes to perform a data entry audit on those data. Our patient assessment data will be collected for the admission and discharge assessments. The estimated wage cost of the data entry staff person is $14.49 per hour. We estimate 6 minutes for data entry and data review per assessment, for approximately 335 assessments per IRF, which equals 2,010 minutes (34 hours) per IRF per year. We estimate the associated data entry cost per IRF per year to be $493 (34 hours × $14.49), and the national costs to be $573,949 ($493 × 1,165 IRFs).

We estimate that an IRF will perform a 15-minute monthly data entry audit for quality assurance purposes, equaling

3 hours per IRF per year (15 minutes per month × 12 months). We estimate the cost per IRF per year to be $43 (3 hours × $14.49), and the national costs to be $50,643 ($43 × 1,165 IRFs).

We believe that the combination of checking all the data prior to transmission of the data, and actual transmission of the data, will take an IRF 1 hour per month. Although we believe that approximately 85 percent of the IRFs already transmit data to UDSmr, we do not know if these 85 percent of IRFs will stop transmitting data to UDSmr after they start transmitting data to us. Therefore, we are estimating for all 1,165 IRFs the same additional burden of 1 hour per month for the combination of checking all the data prior to transmission of the data and the actual transmission of the data. We estimate the cost per IFR per year to be $174 (rounded) (12 months × $14.49/hour), and the national costs to be $202,570 ($174 × 1,165 IRFs).

IRFs will have flexibility in choosing the data entry software used to computerize the patient assessment data, but the software must, at a minimum, perform the same functions as our patient assessment software. In addition, when IRFs are performing data entry functions themselves, or contracting for the performance of these functions, the IRFs must ensure that the performance of data entry complies with our requirement for safeguarding the confidentiality of clinical records.

IRFs must collect and transmit the patient assessment data to the CMS patient data system in accordance with the assessment schedule and transmission requirements specified in section IV. of this final rule. The data may be entered into the computerized version of the CMS IRF patient assessment instrument by an IRF staff member, using a paper version that has been completed by a clinical staff member who has been trained to perform a patient assessment using our patient assessment instrument according to this final rule, or by a data entry operator under contract to the IRF to key in data. The patient assessment data will be transmitted to the CMS patient data system. This system is similar to the systems that HHAs use to report OASIS data and that SNFs use to report MDS 2.0 data. IRFs will transmit the patient assessment data using the toll-free MDCN line.

(4) Start-Up Systems Maintenance and Supplies Costs

There are costs associated with normal maintenance related to computer equipment. Typically, this maintenance is provided through warranty agreements with the original equipment manufacturer, system retailer, or a firm that provides computer support. These maintenance costs are estimated to average no more than $100 per year per IRF. Although we believe that approximately 85 percent of the IRFs already have systems maintenance costs associated with transmitting data to UDSmr, we do not know if these 85 percent of IRFs will stop transmitting data to UDSmr after they start transmitting data to us. Therefore, we estimate for all 1,165 IRFs the same additional systems maintenance costs of $100 per IRF per year, for an estimated $116,500 national yearly cost ($100 × 1,165 IRFs).

Supplies necessary for collection and transmission of data, including forms, diskettes, computer paper, and toner, will vary according to the size of the IRF, the number of patients served, and the number of assessments conducted. Although we believe that approximately 85 percent of the IRFs already have supplies costs associated with transmitting data to UDSmr, we do not know if these 85 percent of IRFs will stop transmitting data to UDSmr after they start transmitting data to us. Therefore, we estimate for all 1,165 IRFs the same additional supplies costs of $200 per IRF per year, for an estimated national yearly cost of $233,000 ($200 × 1,165 IRFs).

Tables V–A, V–B, V–C, and V–D below illustrate our estimates of the different categories of start-up costs that we have discussed above. In addition, in the proposed rule we proposed to only allow four types of clinicians to collect patient assessment data. Table V illustrates the effect of allowing more types of clinicians to collect patient assessment data on IRF start-up costs. Also, instead of averaging the hourly wages of the nonlead clinicians, as we did in the proposed rule, in order to better specify costs in Table Va–A, we are illustrating a range of the nonlead clinicians' hourly wages and, thus, presenting a range of the training start-up costs for these nonlead clinicians. Due to the changes in illustrating and estimating the start-up costs, particularly the range of costs for training the nonlead clinicians, we estimate the total start-up costs to be approximately $2,988,580 to $5,825,775, which equal approximately $2,565 to $5,001 per IRF.

TABLE V–A.—IRF START-UP COSTS ASSOCIATED WITH THE CMS IRF PATIENT ASSESSMENT INSTRUMENT: TRAINING COSTS PER IRF1 [1]

(Column 1) Type of cost	(Column 2) Hours per IRF	(Column 3) Hourly Wages per staff member	(Column 4) Number of staff	(Column 5) Range of the costs per IRF (column 2 times column 3 times column 4)	(Column 6) Range of national costs
Training on data collection for lead clinicians for the admission and discharge assessments.	16	$11.90	1	$190	Column 5 Low and High Times 1,165 $221,816 to $587,906
	16	15.01	1	240	
	16	15.47	1	248	
	16	17.05	1	273	
	16	19.52	1	312	
	16	22.67	1	363	
	16	24.00	1	384	
	16	26.88	1	430	
	16	31.54	1	505	
Training on data collection for other IRF clinicians for the admission and discharge assessments.	12	11.90	9	1,285	Column 5 Low and High Times 1,165 $1,497,258 to $3,968,363
	12	15.01	9	1,621	
	12	15.47	9	1,671	
	12	17.05	9	1,841	

TABLE V–A.—IRF START-UP COSTS ASSOCIATED WITH THE CMS IRF PATIENT ASSESSMENT INSTRUMENT: TRAINING COSTS PER IRF1 [1]—Continued

(Column 1) Type of cost	(Column 2) Hours per IRF	(Column 3) Hourly Wages per staff member	(Column 4) Number of staff	(Column 5) Range of the costs per IRF (column 2 times column 3 times column 4)	(Column 6) Range of national costs
	12	19.52	9	2,108	
	12	22.67	9	2,448	
	12	24.00	9	2,592	
	12	26.88	9	2,903	
	12	31.54	9	3,406	
Data Entry (encoding and Transmission) training	5.5	14.49	1	79.70	Column 5 Times 1,165 $92,844
Total					$1,811,919 to $4,649,113

[1] Excludes the incremental clinician labor costs associated with collecting the patient assessment data.

TABLE V–B.—IRF START-UP COSTS ASSOCIATED WITH THE CMS IRF PATIENT ASSESSMENT INSTRUMENT: DATA ENTRY AND DATA TRANSMISSION COSTS PER IRF

(Column 1) Type of Cost	(Column 2) Hours per IRF per year	(Column 3) Hourly wage	(Column 4) Cost per IRF (column 2 times column 3)	(Column 5) Number of IRFs	(Column 6) National costs (column 4 times Column 5)
Data Entry	34	$14.49	$493	1,165	$573,949
Data Entry Audits	3	14.49	43	1.165	50,643
Data Transmissions	12	14.49	174	1,165	202,570
Total					827,162

TABLE V–C.—IRF START-UP COSTS ASSOCIATED WITH THE CMS IRF PATIENT ASSESSMENT INSTRUMENT: SYSTEM MAINTENANCE AND SUPPLIES COSTS

(Column 1) Type of Cost	(Column 2) Cost per IRF per year	(Column 3) Number of IRFs	(Column 4) National costs (column 2 times column 3)
Systems Maintenance	$100	1,165	$116,500
Supplies	200	1,165	233,000
Total			349,500

TABLE V–D.—IRF START-UP COSTS ASSOCIATED WITH THE CMS IRF PATIENT ASSESSMENT INSTRUMENT: TOTAL RANGE OF START-UP COSTS

Range of Start-up Training-Low to High (From Table V–A)	$1,811,919
	$4,649,113
Start-up Data Entry and Data Transmission Costs (From Table V–B)	$827,162
Start-up Systems Maintenance and Supplies Costs (From Table V–C)	$349,500
Grand Total Range of Start-up Costs Per IRF	$2,988,580 to $5,825,775
Low Start-Up Cost per IRF ($2,988,580 Divided by 1,165 IRFs)	$2,565.31
High Start-Up Cost per IRF ($5,825,775 Divided by 1,165 IRFs)	$5,000.67
High Start-Up Costs Per Admission ($4,971.69 Divided by 335 Admissions)	$14.93

c. Ongoing Costs

We want to differentiate between the one-time start-up costs the IRF will incur and costs we believe the IRFs will incur on a regular, yearly basis. Therefore, using the same cost concepts discussed above for the startup costs, we illustrate in Tables VI–A, VI–B, VI–C, and VI–D below the different categories of costs an IRF will incur on an ongoing basis.

TABLE VI–A.—IRF ONGOING COSTS ASSOCIATED WITH THE CMS IRF PATIENT ASSESSMENT INSTRUMENT: ONGOING TRAINING COSTS PER IRF [1]

(Column 1) Type of cost	(Column 2) Hours per IRF	(Column 3) Hourly wages	(Column 4) Number of staff	(Column 5) Range of costs per IRF column 2 times column 3 times column 4)	(Column 6) Range of national costs
Clinician training on data collection for lead clinician.	12	$11.90	1	$143	Column 5 Low and High Times 1,165. $166,362 to $440,929.
	12	15.01	1	180	
	12	15.47	1	186	
	12	17.05	1	205	
	12	19.52	1	234	
	12	22.67	1	272	
	12	24.00	1	288	
	12	26.88	1	323	
	12	31.54	1	378	
Clinician training on data collection for non-lead clinicians.	2	11.90	9	214	$249,543 to $661,394.
	2	15.01	9	270	
	2	15.47	9	278	
	2	17.05	9	307	
	2	19.52	9	351	
	2	22.67	9	408	
	2	24.00	9	432	
	2	26.88	9	484	
	2	31.54	9	568	
Data entry (encoding and transmission) training.	5	14.49	1	72.45	Column 5 times 1,165. $84,404.
Total					$500,309 to $1,186,727.

[1] Excludes the incremental clinician labor costs associated with collecting the patient assessment data.

TABLE VI–B.—IRF ONGOING COSTS ASSOCIATED WITH THE CMS IRF PATIENT ASSESSMENT INSTRUMENT: DATA ENTRY AND DATA TRANSMISSION COSTS PER IRF

(Column 1) Type of cost	(Column 2) Hours per IRF per year	(Column 3) Hourly wage	(Column 4) Cost per IRF (column 2 times column 3)	(Column 5) Number of IRFs	(Column 6) National costs (column 4 times column 5)
Data entry	34	$14.49	$493	1,165	$573,949
Data entry audits	3	14.49	43	1,165	50,643
Data transmissions	12	14.49	174	1,165	202,570
Total					827,162

TABLE VI–C.—IRF ONGOING COSTS ASSOCIATED WITH THE CMS IRF PATIENT ASSESSMENT INSTRUMENT: SYSTEM MAINTENANCE AND SUPPLIES COSTS

(Column 1) Type of cost	(Column 2) Cost per IRF per year	(Column 3) Number of IRFs	(Column 4) National costs (column 2 times column 3)
Systems maintenance	$100	1,165	$116,500
Supplies	200	1,165	233,000
Total			349,500

TABLE VI–D.—IRF ONGOING COSTS ASSOCIATED WITH THE CMS IRF PATIENT ASSESSMENT INSTRUMENT: TOTAL RANGE OF ONGOING COSTS

Range of ongoing training—low to high (from Table VI–A)	$500,309 to $1,186,727.
Ongoing data entry and data transmission costs (from Table VI–B)	$827,162.
Ongoing systems maintenance and supplies cost (from Table VI–C)	$349,500.
Grand total range of ongoing costs per IRF	$1,676,971 to $2,363,389.

d. Clinical Labor Data Collection Costs

As stated more fully in section VIII.B.5.a. of this final rule, we estimate that it will take a combined time of 45 minutes to collect both the admission and discharge patient assessment data using our patient assessment instrument. In addition, we stated more fully that it currently takes 25 minutes for 85 percent of 1,165 IRFs (990 IRFs) to complete the admission and discharge UDSmr patient assessment instrument, and that we believe that 15 percent of the IRFs (175 IRFs) are not currently using the UDSmr patient assessment instrument or a similar instrument.

Table VII below illustrates the costs of the data collection burden for all IRFs.

TABLE VII.—CLINICIAN INCREMENTAL LABOR DATA COLLECTION COSTS FOR ALL IRFS

(Column 1) Incremental data collection time	(Column 2) Hours per IRF per year (column 1 times 335; admissions divided by 60 minutes)	(Column 3) Hourly wages per clinician (from Table III)	(Column 4) Range of the costs per IRF (column 2 times column 3)	(Column 5) Number of IRFs	(Column 6) Range of national costs (column 4 times column 5)
20	111.67	$11.90	$1,328.83	990.25	$1,315,877 to $3,487,627.
		15.01	1,676.12		
		15.47	1,727.48		
		17.05	1,903.92		
		19.52	2,179.73		
		22.67	2,531.48		
		24.00	2,680.00		
		26.88	3,001.60		
		31.54	3,521.97		
45	251.25	11.90	2,989.88	174.75	$522,481 to $1,384,793.
		15.01			
		15.47			
		17.05			
		19.52			
		22.67			
		24.00			
		26.88			
		31.54	7,924.43		
Total for All IRFs					$1,838,358 to $3,487,656.

e. Conclusion

As discussed above, IRFs will incur costs associated with the patient assessment process. In section IV. of this preamble, we specified each item of the CMS IRF patient assessment instrument that must be collected on either the admission or discharge assessment. In order to complete our analysis, we summarize in Table VIII below, by category of data, the data items of the CMS IRF patient assessment instrument. Table VIII illustrates the possible maximum number of items collected on the admission and discharge assessment. The term ''possible maximum'' means that an item may allow for recording up to 10 separate pieces of information. For example, the item that collects data on a patient's comorbid conditions allows the clinician to record up to 10 separate comorbid conditions. However, due to the patient's clinical status, the patient may only have 5 comorbid conditions, so only 5 comorbid conditions will be recorded. The combined total of all possible maximum admission and discharge items is 83 + 72, which equals 155. Therefore, as is illustrated in Table VIII, 53.5 percent (83 divided by 155) of the items may be collected during the admission assessment, and 46.5 percent (72 divided by 155) of the items may be collected during the discharge assessment.

TABLE VIII.—NUMBER OF ADMISSION AND DISCHARGE ITEMS BY ITEM CATEGORY

Item category	Admission items	Discharge items
Identification Information	17	0
Admission Information	8	0
Payer Information	2	0
Medical Information	13	11
Medical Needs	4	2
Function Modifiers	10	10
FIM Instrument	18	18
Discharge Information	0	19
Quality Indicators	11	12
Total	83	72

Table IX below reflects an analysis of the per case costs for the approximately 85 percent of IRFs that we believe currently use the UDSmr patient assessment instrument to collect admission and discharge data. In Table IX, the time to complete each patient assessment instrument item is weighted equally at 1.000, which means that each data item

takes the same span of time to collect. The percentages in Table IX, column 2, are based on the data in Table VIII above. The maximum costs shown in Table IX will decrease after the first year of implementation because the greatest costs are in the first year.

TABLE IX.—MAXIMUM PATIENT ASSESSMENT COSTS PER CASE FOR 85 PERCENT OF THE IRFS

(Column 1) Assessment type	(Column 2) Percent of patient assessment instrument items completed (see Table VIII)	(Column 3) Maximum incremental clinician (physical therapist) cost per IRF (from Table III)	(Column 4) Total incremental maximum cost per IRF (column 2 times column 3)	(Column 5) Average maximum incremental cost per case (column 4 divided by 335 average admissions per IRF)
Admission	0.535	$3,521.96	$1,884.25	$5.62
Discharge	0.465	3,521.96	1,637.71	4.89
Total Average Maximum Costs Per Case				$10.51

The estimated maximum start-up cost per IRF is approximately $5,001. We estimate a start-up cost per case of $14.93 ($5,001 by 335 average admissions per IRF). Therefore, when we add the $10.51 average maximum incremental cost per case from column 5 of Table IX above to the $14.93 start-up costs per case, we arrive at an estimated total average maximum first year cost per case of $25.44 for 85 percent of the IRFs.

Table X below reflects an analysis of the per case costs for the approximately 15 percent of IRFs that we believe do not currently use the UDSmr patient assessment instrument or a similar patient assessment instrument to collect admission and discharge data.

TABLE X.—MAXIMUM PATIENT ASSESSMENT COSTS PER CASE FOR 15 PERCENT OF THE IRFS

(Column 1) Assessment type	(Column 2) Percent of patient assessment instrument items completed (see Table VIII)	(Column 3) Maximum incremental clinician (physical therapist) cost per IRF (from Table III)	(Column 4) Total incremental maximum cost per IRF (column 2 times column 3)	(Column 5) Average maximum incremental cost per case (column 4 divided by 335 average admissions per IRF)
Admission	0.535	$7,924.43	$4,239.57	$12.66
Discharge	0.465	7,924.43	3,684.86	11.00
Total Average Maximum Cost Per Case				23.66

As stated above, we estimate the maximum start-up cost per IRF is approximately $5,001. We estimate a start-up cost per case of $14.93 ($5,001 divided by 335 average admissions per IRF). Therefore, when we add the $23.66 average maximum incremental cost per case from column 5 of Table X above to the $14.93 start-up costs per case, we arrive at a total average maximum first year cost per case of $38.59 for 15 percent of the IRFs.

Table XI below illustrates the maximum national incremental start-up costs when 85 percent of IRFs have an average maximum cost of $25.44 per case, and 15 percent of IRFs have an average maximum cost of $38.59 per case.

TABLE XI.—TOTAL MAXIMUM PATIENT ASSESSMENT START-UP COSTS FOR ALL IRFS

(Column 1) Cost per case per IRF	(Column 2) Average admissions per IRF	(Column 3) Number of IRFs	(Column 4) Average maximum national costs (column 1 times column 2 times column 3)
$25.44 (for 85 Percent of IRFs)	335	990.25	$8,437,176
$38.59 (for 15 Percent of IRFs)	335	174.75	2,262,339
Total Maximum Start-up Costs			10,699,515

We believe that the estimated costs of administering our patient assessment instrument are justified when considered within the context of the statutory requirement and the methodology needed to implement the IRF prospective payment system, the probability that our patient assessment process will lead to increased quality of care for IRF patients, as well as the potential uses of the automated data by the IRFs themselves, States, fiscal intermediaries, and us. Our cost estimates may actually overstate anticipated costs, because they do not take into account cost savings that IRFs may achieve by improving their management information systems, as well as potential improvements in the quality of patients' clinical care resulting from improved care planning under the patient assessment process.

C. Alternatives Considered

In the proposed rule, we proposed to use the MDS-PAC as the patient assessment instrument. However, as

more fully explained in section IV. of this preamble, we have decided to use a modified version of the UDSmr patient assessment instrument as the CMS IRF patient assessment instrument. We agree with the vast majority of the commenters who stated that a patient assessment instrument and patient assessment schedule patterned after the UDSmr patient assessment instrument and assessment schedule will achieve our goals of paying IRFs appropriately and monitoring the quality of the care the IRFs furnish. Our payment system was in part determined by using both UDSmr and COS patient admission and discharge assessment data. Therefore, we believe that using a modified version of the UDSmr patient assessment instrument that retains the basic UDSmr items used by RAND in its data analysis to determine the CMGs and payment rates (our payment system) is appropriate. (Note: COS has ceased its IRF patient assessment data business operations, so we are patterning our assessment system after the UDSmr system.)

D. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IX. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-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 PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In the November 3, 2000 proposed rule, we solicited public comment for 60 days on each of these issues for the sections that contain information collection requirements.

Section 412.23 Excluded hospitals: Classifications

- Section 412.23(b)(2) requires that, except in the case of a newly participating hospital seeking classification as a rehabilitation hospital for its first 12-month cost reporting period, the entity show that during its most recent 12-month cost reporting period it served an inpatient population of whom at least 75 percent required intensive rehabilitative services for treatment of one or more specified conditions.
- Section 412.23(b)(8) requires that a hospital seeking classification as a rehabilitation hospital for the first 12-month cost reporting period that occurs after it becomes a Medicare-participating hospital may provide a written certification that the inpatient population it intends to serve meets the requirements of § 412.23(b)(2), instead of showing that it has treated this population during its most recent 12-month cost reporting period.

The information collection requirements of these two paragraphs of this section are currently approved under OMB approval number 0938–0358 (Psychiatric Unit Criteria Work Sheet, Rehabilitation Hospital Criteria Work Sheet, Rehabilitation Unit Criteria Work Sheet) through November 30, 2003. Any changes to these two paragraphs and the work sheets will be submitted to OMB for approval.

Sections 412.116(a)(3) Method of Payment and 412.632(b) Method of Payment Under Inpatient Rehabilitation Facility Prospective Payment System: Periodic Interim Payments

Under § 412.116(a)(3), for cost reporting periods beginning on or after January 1, 2002, payment to a rehabilitation hospital or rehabilitation unit for inpatient hospital services under the prospective payment system will be made as described in § 412.632. Section 412.632(b) provides that a rehabilitation hospital or unit under the prospective payment system may receive periodic interim payments for Part A services subject to the provisions of § 413.64(h). Section 413.64(h)(3) specifies that the request for periodic interim payments must be made to the fiscal intermediary.

The burden associated with this provision is the time it takes a hospital to prepare and submit its request for periodic interim payments. We estimate that 34 IRFs will request periodic interim payments under the prospective payment system and that it will take each 1 hour to prepare and make the request.

Sections 412.604(c) Completion of Patient Assessment Instrument, 412.606(a) Patient Assessment, 412.606(c) Comprehensive Assessments, and 412.610(c) Assessment Schedule

- Section 412.604(c) requires an IRF to complete the CMS IRF patient assessment instrument for each Medicare fee-for-service patient who is admitted to or discharged (or who stopped receiving Medicare Part A inpatient rehabilitation services) from the IRF on or after January 1, 2002. Section 412.606(c) requires that an IRF clinician perform a comprehensive, accurate, standardized, and reproducible assessment of each Medicare fee-for-service patient using the CMS IRF patient assessment instrument as part of his or her assessment. The assessment must include direct patient observation and communication with the patient, and, when appropriate and to the extent feasible, patient data from the patient's physician(s), family, someone personally knowledgeable about the patient's clinical condition or capabilities, the patient's clinical record, and other sources. Section 412.610(c) provides for an assessment upon admission, an assessment upon discharge, and, if the patient is not discharged but stops receiving Medicare Part A covered inpatient rehabilitation services, an assessment at the time he or she stops receiving these services.

For the proposed rule, we used 1997 data that showed that there were approximately 359,000 admissions to 1,123 IRFs, averaging 320 admissions annually. For the final rule, we are using more recent 1999 data that showed that there were approximately 390,000 admissions to 1,165 IRFs, averaging 335 admissions annually. We estimate that it will take 45 minutes to complete both the admission and discharge assessments. The costs associated with the IRF patient assessment instrument are discussed in detail in section VIII.B.5. of this preamble. The IRF patient assessment instrument has been submitted to OMB for approval and was published in the **Federal Register** on July 13, 2001 (66 FR 36795), in which the information collection is referred to as ''Request to Use Inpatient Rehabilitation Assessment Instrument and Data Set for PPS for Inpatient Rehabilitation Facilities.''

We are furnishing an estimate that assumes that no facility is currently completing all items of the FIM instrument. With that in mind, we estimate a national burden of 292,500 hours (390,000 admissions x 45 minutes/60 minutes).

We also are including training in our burden estimates: 16 hours to train the lead clinician and 12 hours to train the other clinicians (an average of 9 hours). This totals 144,460 hours nationally for a one-time burden. In addition, we estimate an ongoing burden for training of 14 hours per IRF per year (16,310 hours nationally).

- Section 412.606(a) requires that, at the time each Medicare patient is admitted, the facility must have physician orders for the patient's care during the time the patient is hospitalized.

This requirement is subject to the PRA. However, we believe that the burden associated with it is exempt as defined in 5 CFR 1320.3(b)(2), because the time, effort, and financial resources necessary to comply with the requirement are incurred by persons in the normal course of their activities.

Section 412.608 Patients' Rights Regarding the Collection of Patient Assessment Data

Under § 412.608(a), before performing an assessment of a Medicare inpatient using the IRF patient assessment instrument, an IRF clinician must inform the Medicare inpatient of the following patient rights:

(1) The right to be informed of the purpose of the collection of the patient assessment data;

(2) The right to have the patient assessment information collected kept confidential and secure;

(3) The right to be informed that the patient assessment information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;

(4) The right to refuse to answer patient assessment questions; and

(5) The right to see, review, and request changes on his or her patient assessment.

Under § 412.608(b), the IRF must ensure that a clinician documents in the patient's clinical record that the patient was informed of these patient rights. The patient rights in § 412.608(a) are in addition to the patient rights specified under the conditions of participation for hospitals in § 482.13.

The burden of disclosure to IRF patients and documenting that disclosure is in addition to the burden in § 482.13 on hospitals furnishing a patient rights statement. The hospitals will easily be able to give both statements to patients upon admission, along with other required notifications. The burden for the general patient rights statement has not yet been approved but is under development. We estimate that it takes each hospital 5 minutes to disclose the general hospital statement to each patient on admission. The disclosure of the IRF patient rights statement will increase that time by an estimated 2 minutes. Since this disclosure will occur for each admission and there are, on average, an estimated 335 admissions annually per IRF, we are estimating that this disclosure will occur, on average, 335 times annually per IRF.

Section 412.610(f) Patient Assessment Instrument Record Retention

Section 412.610(f) requires an IRF to maintain all patient assessment data sets completed within the previous 5 years either in a paper format in the patient's clinical record or in an electronic computer file format that the IRF can easily obtain.

We estimate that, for IRFs that choose to file a paper copy, it will take the IRF 5 minutes to print out, or copy, each assessment and file it in the patient's record. On average, we estimate that each IRF will need to obtain a copy of and file 670 assessments per year, for a burden of 56 hours. We cannot estimate how many facilities will choose to file paper copies. However, we are assuming that most facilities will choose to retain the assessments in an electronic format, which would not add to the paperwork burden.

Section 412.614 Transmission of Patient Assessment

Section 412.614(a) requires each IRF to encode and transmit data using the computer program(s) available from us; or using a computer program(s) that conforms to our standard electronic record layout, data specifications, and data dictionary, includes the required patient assessment data set, and meets our other specifications. Section 412.614(b) requires each IRF to electronically transmit complete, accurate, and encoded data to our patient data system using electronic communications software that provides a direct telephone connection from the IRF to our system.

The patient assessment data may be entered into the computerized system by an IRF staff member from a paper document completed by an IRF clinician or by a data entry operator under contract to the IRF to key in data. Also, IRFs will have to allow time for data validation, preparation of data for transmission, and correction of returned records that failed checks by the inpatient rehabilitation facility patient assessment system.

We estimate that an average IRF with 335 admissions per year will require 3 minutes for data review and entry per assessment for up-front review and another 3 minutes for data entry review, for a total of 6 minutes. The burden of entering and reviewing the data is contained in that 6 minutes. We estimate the yearly burden will be 34 hours per facility.

In addition, we estimate that an IRF will perform a 15-minute monthly data entry audit for quality assurance purposes. We estimate the yearly burden will be 3 hours per facility.

Other Data Transmission Functions

We estimate that it will take about one additional hour of staff time to perform data transmission-related tasks each month. With 1,165 facilities, we estimate the national burden will be 13,980 hours.

We estimate that it will require a one-time burden of 5.5 hours per hospital to train the personnel to be able to complete data transmission tasks. With 1,165 facilities, we estimate the national burden will be 6,408 hours.

Section 412.616 Release of Information Collected Using the Patient Assessment Instrument

Under § 412.616(b), an IRF may release information that is patient-identifiable to an agent only in accordance with a written contract under which the agent agrees not to use or disclose the information except for the purposes specified in the contract and to the extent the facility itself is permitted to do so.

The burden associated with this information collection requirement is the time required to include the necessary information in the contract. While this requirement is subject to the PRA, we believe the burden associated with it is exempt as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement will be incurred by persons in the normal course of their activities.

Section 412.618(b) Assessment Process for Interrupted Stay: Recording and Encoding the Data

Section 412.618(b) requires that if a patient has an interrupted stay, the IRF must record the interrupted stay data on the patient assessment instrument.

We currently have no data on the incidence of interrupted stays. We estimate, however, that it will take no more than 5 minutes to record the interrupted stay data.

Section 412.626(b) Transition Period: Election Not To Be Paid Under the Transition Period Methodology

Under § 412.626(b), an IRF may elect a payment that is based entirely on the adjusted Federal prospective payment for cost reporting periods beginning on or after January 1, 2002, and before October 1, 2002 without regard to the transition period percentages. Section 412.626(b)(2) specifies that the request to make the election must be made in writing to the Medicare fiscal intermediary for the facility.

We estimate that 580 IRFs will make a request under this section and that it will take each IRF 1 hour to complete the request.

Public Comments Received and Departmental Responses

Comment: Many commenters stated that the length and complexity of the MDS–PAC patient assessment instrument in the proposed rule create an unreasonable burden for performing patient assessments and result in excessive IRF patient assessment costs.

Response: As indicated in section IV. of this final rule, we are changing the patient assessment instrument from the MDS–PAC to the CMS IRF patient assessment instrument that is similar to the UDSmr patient assessment instrument, FIM. Because the patient assessment instrument we are adopting in this final rule is based upon the FIM, we have estimated the burden hours based upon the actual estimate contained in the special study completed by RAND. In the study entitled ''Assessment Instruments for PPS,'' two tests of administration times were performed (that is, institutional teams and calibration teams). The institutional and calibration teams were not familiar with the MDS–PAC and, therefore, they were trained to complete it. The institutional teams were familiar with the FIM and had previously completed the instrument. The calibration teams were not familiar with the FIM instrument and, therefore, they were trained to complete it. The study found that the average time to complete the admission FIM (the instrument we will be using for the purposes of payment) was 25 minutes for the institutional team. For the calibration team, the FIM burden was 148 minutes for a small number of cases. The estimated burden hours for the MDS–PAC were 145 minutes for the institutional team and 221 minutes for the calibration team.

We have expanded the UDSmr patient assessment instrument to include a minimal number of questions related to quality of care. For the purposes of estimating the burden, we are maintaining the burden estimates for the assessment stated in the proposed rule. In that proposed rule, we estimated that there was a range of 30 to 45 minutes to complete the UDSmr patient assessment instrument. For the purpose of the estimate in this final rule, we are using the maximum number of 45 minutes to calculate the burden required to complete the admission and discharge assessments associated with our IRF patient assessment instrument. In addition, because the majority of IRFs currently use the UDSmr patient assessment instrument, we have used the experience from the institutional teams in our time burden estimates.

The burden estimate for this final rule represents a considerable reduction in the burden that we had estimated using the MDS–PAC in the proposed rule.

Submission to OMB

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in §§ 412.23, 412.116, 412.604 through 412.610, 412.614 through 412.618, and 412.626. These requirements are not effective until they have been approved by OMB. As stated earlier, the information collection requirements under § 412.23 are already approved by OMB through November 30, 2003 (OMB approval number 0938–0358).

X. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, and it incorporates a statement of the finding and its reasons in the rule issued.

On November 3, 2000, we published a proposed rule addressing proposed policies for establishment of the Medicare prospective payment system for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation unit of a hospital (65 FR 66304). On December 21, 2000, Public Law 106–554 was enacted. Section 305 of Public Law 106–554 amends section 1886(j) of the Act, and this final rule incorporates the amendments made by section 305 of Public Law 106–554. We find good cause to waive notice and comment procedures with respect to the provisions of this final rule implementing the amendments made to section 305 of Public Law 106–554 because the amendments do not require an exercise of discretion and therefore publishing a notice of proposed rulemaking with respect to the amendments is unnecessary.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. Part 412 is amended as follows:

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

2. Section § 412.1 is revised to read as follows:

§ 412.1 Scope of part.

(a) *Purpose.* (1) This part implements sections 1886(d) and (g) of the Act by establishing a prospective payment system for the operating costs of inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983 and a prospective payment system for the capital-related costs of inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1991. Under these prospective payment systems, payment for the operating and capital-related costs of inpatient hospital services furnished by hospitals subject to the systems (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (organ acquisition costs incurred by hospitals with approved organ transplantation centers, the costs of qualified nonphysician anesthetist's services, as described in § 412.113(c), and direct

costs of approved nursing and allied health educational programs) is made on a reasonable cost basis. Payment for the direct costs of graduate medical education is made on a per resident amount basis in accordance with § 413.86 of this chapter. Additional payments are made for outlier cases, bad debts, indirect medical education costs, and for serving a disproportionate share of low-income patients. Under either prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating or capital-related costs incurred in furnishing inpatient services, and the hospital is at risk for inpatient operating or inpatient capital-related costs that exceed its payment rate.

(2) This part implements section 1886(j) of the Act by establishing a prospective payment system for the inpatient operating and capital costs of inpatient hospital services furnished to Medicare beneficiaries by a rehabilitation hospital or rehabilitation unit that meets the conditions of § 412.604.

(b) *Summary of content.* (1) This subpart describes the basis of payment for inpatient hospital services under the prospective payment systems specified in paragraph (a)(1) of this section and sets forth the general basis of these systems.

(2) Subpart B sets forth the classifications of hospitals that are included in and excluded from the prospective payment systems specified in paragraph (a)(1) of this section, and sets forth requirements governing the inclusion or exclusion of hospitals in the systems as a result of changes in their classification.

(3) Subpart C sets forth certain conditions that must be met for a hospital to receive payment under the prospective payment systems specified in paragraph (a)(1) of this section.

(4) Subpart D sets forth the basic methodology by which prospective payment rates for inpatient operating costs are determined under the prospective payment system specified in paragraph (a)(1) of this section.

(5) Subpart E describes the transition ratesetting methods that are used to determine transition payment rates for inpatient operating costs during the first 4 years of the prospective payment system specified in paragraph (a)(1) of this section.

(6) Subpart F sets forth the methodology for determining payments for outlier cases under the prospective payment system specified in paragraph (a)(1) of this section.

(7) Subpart G sets forth rules for special treatment of certain facilities under the prospective payment system specified in paragraph (a)(1) of this section for inpatient operating costs.

(8) Subpart H describes the types, amounts, and methods of payment to hospitals under the prospective payment system specified in paragraph (a)(1) of this section for inpatient operating costs.

(9) Subpart K describes how the prospective payment system specified in paragraph (a)(1) of this section for inpatient operating costs is implemented for hospitals located in Puerto Rico.

(10) Subpart L sets forth the procedures and criteria concerning applications from hospitals to the Medicare Geographic Classification Review Board for geographic redesignation under the prospective payment systems specified in paragraph (a)(1) of this section.

(11) Subpart M describes how the prospective payment system specified in paragraph (a)(1) of this section for inpatient capital-related costs is implemented effective with reporting periods beginning on or after October 1, 1991.

(12) Subpart P describes the prospective payment system specified in paragraph (a)(2) of this section for rehabilitation hospitals and rehabilitation units and sets forth the general methodology for paying for the operating and capital-related costs of inpatient hospital services furnished by rehabilitation hospitals and rehabilitation units effective with cost reporting periods beginning on or after January 1, 2002.

Subpart B—Hospital Services Subject to and Excluded from the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

3. Section 412.20 is amended by:

A. Revising paragraph (a).

B. Redesignating paragraph (b) as paragraph (c).

C. Adding a new paragraph (b).

D. Revising the introductory text of the redesignated paragraph (c).

§ 412.20 Hospital services subject to the prospective payment systems.

(a) Except for services described in paragraphs (b) and (c) of this section, all covered inpatient hospital services furnished to beneficiaries during subject cost reporting periods are paid under the prospective payment systems specified in § 412.1(a)(1).

(b) Effective for cost reporting periods beginning on or after January 1, 2002, covered inpatient hospital services furnished to Medicare beneficiaries by a rehabilitation hospital or rehabilitation unit that meet the conditions of § 412.604 are paid under the prospective payment system described in subpart P of this part.

(c) Inpatient hospital services will not be paid under the prospective payment systems specified in § 412.1(a)(1) under any of the following circumstances:

* * * * *

4. Section 412.22 is amended by:

A. Revising paragraphs (a) and (b).

B. Revising the introductory text of paragraph (e).

C. Revising introductory text of paragraph (h)(2).

§ 412.22 Excluded hospitals and hospital units: General rules.

(a) *Criteria.* Subject to the criteria set forth in paragraph (e) of this section, a hospital is excluded from the prospective payment systems specified in § 412.1(a)(1) of this part if it meets the criteria for one or more of the excluded classifications described in § 412.23.

(b) *Cost reimbursement.* Except for those hospitals specified in paragraph (c) of this section and § 412.20(b), all excluded hospitals (and excluded hospital units, as described in §§ 412.23 through 412.29) are reimbursed under the cost reimbursement rules set forth in part 413 of this subchapter, and are subject to the ceiling on the rate of hospital cost increases described in § 413.40 of this subchapter.

* * * * *

(e) *Hospitals within hospitals.* Except as provided in paragraph (f) of this section, for cost reporting periods beginning on or after October 1, 1997, a hospital that occupies space in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital, must meet the following criteria in order to be excluded from the prospective payment systems specified in § 412.1(a)(1):

* * * * *

(h) *Satellite facilities.* * * *

(2) Except as provided in paragraph (h)(3) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the prospective payment systems specified in § 412.1(a)(1) for any period:

* * * * *

5. Section 412.23 is amended by:

A. Revising the introductory text of the section.

B. Revising the introductory text of paragraph (b).

C. Revising paragraphs (b)(2) introductory text, (b)(8), and (b)(9).

§ 412.23 Excluded hospitals: Classifications.

Hospitals that meet the requirements for the classifications set forth in this section are not reimbursed under the prospective payment systems specified in § 412.1(a)(1):

* * * * *

(b) *Rehabilitation hospitals.* A rehabilitation hospital must meet the following requirements to be excluded from the prospective payment systems specified in § 412.1(a)(1) and to be paid under the prospective payment system specified in § 412.1(a)(2) and in Subpart P of this part:

* * * * *

(2) Except in the case of a newly participating hospital seeking classification under this paragraph as a rehabilitation hospital for its first 12-month cost reporting period, as described in paragraph (b)(8) of this section, show that during its most recent 12-month cost reporting period, it served an inpatient population of whom at least 75 percent required intensive rehabilitative services for treatment of one or more of the following conditions:

* * * * *

(8) A hospital that seeks classification under this paragraph as a rehabilitation hospital for the first full 12-month cost reporting period that occurs after it becomes a Medicare-participating hospital may provide a written certification that the inpatient population it intends to serve meets the requirements of paragraph (b)(2) of this section, instead of showing that it has treated that population during its most recent 12-month cost reporting period. The written certification is also effective for any cost reporting period of not less than one month and not more than 11 months occurring between the date the hospital began participating in Medicare and the start of the hospital's regular 12-month cost reporting period.

(9) For cost reporting periods beginning on or after October 1, 1991, if a hospital is excluded from the prospective payment systems specified in § 412.1(a)(1) or is paid under the prospective payment system specified in § 412.1(a)(2) for a cost reporting period under paragraph (b)(8) of this section, but the inpatient population it actually treated during that period does not meet the requirements of paragraph (b)(2) of this section, we adjust payments to the hospital retroactively in accordance with the provisions in § 412.130.

* * * * *

6. In § 412.25, paragraph (a) introductory text and paragraph (e)(2) introductory text are revised to read as follows:

§ 412.25 Excluded hospital units: Common requirements.

(a) *Basis for exclusion.* In order to be excluded from the prospective payment systems specified in § 412.1(a)(1), a psychiatric or rehabilitation unit must meet the following requirements.

* * * * *

(e) Satellite facilities. * * *

(2) Except as provided in paragraph (e)(3) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital unit that establishes a satellite facility must meet the following requirements in order to be excluded from the prospective payment systems specified in § 412.1(a)(1) for any period:

* * * * *

7. In § 412.29, the introductory text is revised to read as follows:

§ 412.29 Excluded rehabilitation units: Additional requirements.

In order to be excluded from the prospective payment systems described in § 412.1(a)(1) and to be paid under the prospective payment system specified in § 412.1(a)(2), a rehabilitation unit must meet the following requirements:

* * * * *

Subpart H—Payments to Hospitals Under the Prospective Payment Systems

8. In § 412.116, paragraph (a) is revised to read as follows:

§ 412.116 Method of payment.

(a) *General rule.* (1) Unless the provisions of paragraphs (b) and (c) of this section apply, hospitals are paid for hospital inpatient operating costs and capital-related costs for each discharge based on the submission of a discharge bill.

(2) Payments for inpatient hospital services furnished by an excluded psychiatric unit of a hospital (or by an excluded rehabilitation unit of a hospital for cost reporting periods beginning before January 1, 2002) are made as described in §§ 413.64(a), (c), (d), and (e) of this chapter.

(3) For cost reporting periods beginning on or after January 1, 2002, payments for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation unit that meets the conditions of § 412.604 are made as described in § 412.632.

* * * * *

9. In § 412.130, paragraphs (a)(1), (a)(2), and (b) are revised to read as follows:

§ 412.130 Retroactive adjustments for incorrectly excluded hospitals and units.

(a) *Hospitals for which adjustment is made.** * *

(1) A hospital that was excluded from the prospective payment systems specified in § 412.1(a)(1) or paid under the prospective payment system specified in § 412.1(a)(2), as a new rehabilitation hospital for a cost reporting period beginning on or after October 1, 1991 based on a certification under § 412.23(b)(8) of this part regarding the inpatient population the hospital planned to treat during that cost reporting period, if the inpatient population actually treated in the hospital during that cost reporting period did not meet the requirements of § 412.23(b)(2).

(2) A hospital that has a unit excluded from the prospective payment systems specified in § 412.1(a)(1) or paid under the prospective payment system specified in § 412.1(a)(2), as a new rehabilitation unit for a cost reporting period beginning on or after October 1, 1991, based on a certification under § 412.30(a) regarding the inpatient population the hospital planned to treat in that unit during the period, if the inpatient population actually treated in the unit during that cost reporting period did not meet the requirements of § 412.23(b)(2).

* * * * *

(b) *Adjustment of payment.* (1) For cost reporting periods beginning before January 1, 2002, the intermediary adjusts the payment to the hospitals described in paragraph (a) of this section as follows:

(i) The intermediary calculates the difference between the amounts actually paid during the cost reporting period for which the hospital, unit, or beds were first excluded as a new hospital, new unit, or newly added beds under subpart B of this part, and the amount that would have been paid under the prospective payment systems specified in § 412.1(a)(1) for services furnished during that period.

(ii) The intermediary makes a retroactive adjustment for the difference between the amount paid to the hospital based on the exclusion and the amount that would have been paid under the prospective payment systems specified in § 412.1(a)(1).

(2) For cost reporting periods beginning on or after January 1, 2002,

the intermediary adjusts the payment to the hospitals described in paragraph (a) of this section as follows:

(i) The intermediary calculates the difference between the amounts actually paid under subpart P of this part during the cost reporting period for which the hospital, unit, or beds were first classified as a new hospital, new unit, or newly added beds under subpart B of this part, and the amount that would have been paid under the prospective payment systems specified in § 412.1(a)(1) for services furnished during that period.

(ii) The intermediary makes a retroactive adjustment for the difference between the amount paid to the hospital under subpart P of this part and the amount that would have been paid under the prospective payment systems specified in § 412.1(a)(1).

Subparts N and O—[Reserved]

10. Subparts N and O are added and reserved.

11. A new subpart P, consisting of §§ 412.600, 412.602, 412.604, 412.606, 412.608, 412.610, 412.612, 412.614, 412.616, 412.618, 412.620, 412.622, 412.624, 412.626, 412.628, 412.630, and 412.632, is added to read as follows:

Subpart P—Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

Sec.

412.600 Basis and scope of subpart.
412.602 Definitions.
412.604 Conditions for payment under the prospective payment system for inpatient rehabilitation facilities.
412.606 Patient assessments.
412.608 Patients' rights regarding the collection of patient assessment data.
412.610 Assessment schedule.
412.612 Coordination of the collection of patient assessment data.
412.614 Transmission of patient assessment data.
412.616 Release of information collected using the patient assessment instrument.
412.618 Assessment process for interrupted stays.
412.620 Patient classification system.
412.622 Basis of payment.
412.624 Methodology for calculating the Federal prospective payment rates.
412.626 Transition period.
412.628 Publication of the Federal prospective payment rates.
412.630 Limitation on review.
412.632 Method of payment under the inpatient rehabilitation facility prospective payment system.

Subpart P—Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

§ 412.600 Basis and scope of subpart.

(a) *Basis.* This subpart implements section 1886(j) of the Act, which provides for the implementation of a prospective payment system for inpatient rehabilitation hospitals and rehabilitation units (in this subpart referred to as ''inpatient rehabilitation facilities'').

(b) *Scope.* This subpart sets forth the framework for the prospective payment system for inpatient rehabilitation facilities, including the methodology used for the development of payment rates and associated adjustments, the application of a transition phase, and related rules. Under this system, for cost reporting periods beginning on or after January 1, 2002, payment for the operating and capital costs of inpatient hospital services furnished by inpatient rehabilitation facilities to Medicare Part A fee-for-service beneficiaries is made on the basis of prospectively determined rates and applied on a per discharge basis.

§ 412.602 Definitions.

As used in this subpart—

Assessment reference date means the specific calendar day in the patient assessment process that sets the designated endpoint of the common patient observation period, with most patient assessment items usually referring back in time from this endpoint.

CMS stands for the Centers for Medicare & Medicaid Services.

Comorbidity means a specific patient condition that is secondary to the patient's principal diagnosis that is the primary reason for the inpatient rehabilitation stay.

Discharge. A Medicare patient in a inpatient rehabilitation facility is considered discharged when—

(1) The patient is formally released;

(2) The patient stops receiving Medicare-covered Part A inpatient rehabilitation services; or

(3) The patient dies in the inpatient rehabilitation facility.

Encode means entering data items into the fields of the computerized patient assessment software program.

Functional-related groups refers to the distinct groups under which inpatients are classified using proxy measurements of inpatient rehabilitation relative resource usage.

Interrupted stay means a stay at an inpatient rehabilitation facility during which a Medicare inpatient is discharged from the inpatient rehabilitation facility and returns to the same inpatient rehabilitation facility within 3 consecutive calendar days. The duration of the interruption of the stay of 3 consecutive calendar days begins with the day of discharge from the inpatient rehabilitation facility and ends on midnight of the third day.

Outlier payment means an additional payment beyond the standard Federal prospective payment for cases with unusually high costs.

Patient assessment instrument refers to a document that contains clinical, demographic, and other information on a patient.

Rural area means an area as defined in § 412.62(f)(1)(iii).

Transfer means the release of a Medicare inpatient from an inpatient rehabilitation facility to another inpatient rehabilitation facility, a short-term, acute-care prospective payment hospital, a long-term care hospital as described in § 412.23(e), or a nursing home that qualifies to receive Medicare or Medicaid payments.

Urban area means an area as defined in § 412.62(f)(1)(ii).

§ 412.604 Conditions for payment under the prospective payment system for inpatient rehabilitation facilities.

(a) *General requirements.* (1) Effective for cost reporting periods beginning on or after January 1, 2002, an inpatient rehabilitation facility must meet the conditions of this section to receive payment under the prospective payment system described in this subpart for inpatient hospital services furnished to Medicare Part A fee-for-service beneficiaries.

(2) If an inpatient rehabilitation facility fails to comply fully with these conditions with respect to inpatient hospital services furnished to one or more Medicare Part A fee-for-service beneficiaries, we may, as appropriate—

(i) Withhold (in full or in part) or reduce Medicare payment to the inpatient rehabilitation facility until the facility provides adequate assurances of compliance; or

(ii) Classify the inpatient rehabilitation facility as an inpatient hospital that is subject to the conditions of subpart C of this part and is paid under the prospective payment systems specified in § 412.1(a)(1).

(b) *Inpatient rehabilitation facilities subject to the prospective payment system.* Subject to the special payment provisions of § 412.22(c), an inpatient rehabilitation facility must meet the criteria to be classified as a rehabilitation hospital or rehabilitation unit set forth in §§ 412.23(b), 412.25, and 412.29 for exclusion from the

inpatient hospital prospective payment systems specified in § 412.1(a)(1).

(c) *Completion of patient assessment instrument.* For each Medicare Part A fee-for-service patient admitted to or discharged from an IRF on or after January 1, 2002, the inpatient rehabilitation facility must complete a patient assessment instrument in accordance with § 412.606.

(d) *Limitation on charges to beneficiaries*—(1) *Prohibited charges.* Except as provided in paragraph (d)(2) of this section, an inpatient rehabilitation facility may not charge a beneficiary for any services for which payment is made by Medicare, even if the facility's costs of furnishing services to that beneficiary are greater than the amount the facility is paid under the prospective payment system.

(2) *Permitted charges.* An inpatient rehabilitation facility receiving payment under this subpart for a covered hospital stay (that is, a stay that includes at least one covered day) may charge the Medicare beneficiary or other person only for the applicable deductible and coinsurance amounts under §§ 409.82, 409.83, and 409.87 of this subchapter and for items or services as specified under § 489.20(a) of this chapter.

(e) *Furnishing of inpatient hospital services directly or under arrangement.* (1) Subject to the provisions of § 412.622(b), the applicable payments made under this subpart are payment in full for all inpatient hospital services, as defined in § 409.10 of this subchapter. Inpatient hospital services do not include the following:

(i) Physicians' services that meet the requirements of § 415.102(a) of this subchapter for payment on a fee schedule basis).

(ii) Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act.

(iii) Nurse practitioners and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act.

(iv) Certified nurse midwife services, as defined in section 1861(gg) of the Act.

(v) Qualified psychologist services, as defined in section 1861(ii) of the Act.

(vi) Services of an anesthetist, as defined in § 410.69 of this chapter.

(2) Medicare does not pay any provider or supplier other than the inpatient rehabilitation facility for services furnished to a Medicare beneficiary who is an inpatient of the inpatient rehabilitation facility, except for services described in paragraphs (e)(1)(i) through (e)(1)(vi) of this section.

(3) The inpatient rehabilitation facility must furnish all necessary covered services to the Medicare beneficiary either directly or under arrangements (as defined in § 409.3 of this subchapter).

(f) *Reporting and recordkeeping requirements.* All inpatient rehabilitation facilities participating in the prospective payment system under this subpart must meet the recordkeeping and cost reporting requirements of §§ 413.20 and 413.24 of this subchapter.

§ 412.606 Patient assessments.

(a) *Admission orders.* At the time that each Medicare Part A fee-for-service patient is admitted, the inpatient rehabilitation facility must have physician orders for the patient's care during the time the patient is hospitalized.

(b) *Patient assessment instrument.* An inpatient rehabilitation facility must use the CMS inpatient rehabilitation facility patient assessment instrument to assess Medicare Part A fee-for-service inpatients who—

(1) Are admitted on or after January 1, 2002; or

(2) Were admitted before January 1, 2002, and are still inpatients as of January 1, 2002.

(c) *Comprehensive assessments.* (1) A clinician of the inpatient rehabilitation facility must perform a comprehensive, accurate, standardized, and reproducible assessment of each Medicare Part A fee-for-service inpatient using the inpatient rehabilitation facility patient assessment instrument specified in paragraph (b) of this section as part of his or her patient assessment in accordance with the schedule described in § 412.610.

(2) A clinician employed or contracted by an inpatient rehabilitation facility who is trained on how to perform a patient assessment using the inpatient rehabilitation facility patient assessment instrument specified in paragraph (b) of the section must record appropriate and applicable data accurately and completely for each item on the patient assessment instrument.

(3) The assessment process must include—

(i) Direct patient observation and communication with the patient; and

(ii) When appropriate and to the extent feasible, patient data from the patient's physician(s), family, someone personally knowledgeable about the patient's clinical condition or capabilities, the patient's clinical record, and other sources.

§ 412.608 Patients' rights regarding the collection of patient assessment data.

(a) Before performing an assessment using the patient assessment instrument, a clinician of the IRF must inform the Medicare Part A fee-for-service inpatient of the following patient rights:

(1) The right to be informed of the purpose of the collection of the patient assessment data;

(2) The right to have the patient assessment information collected be kept confidential and secure;

(3) The right to be informed that the patient assessment information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;

(4) The right to refuse to answer patient assessment questions; and

(5) The right to see, review, and request changes on his or her patient assessment.

(b) The inpatient rehabilitation facility must ensure that a clinician documents in the Medicare Part A fee-for-service inpatient's clinical record that the patient was informed of the patient rights specified in paragraph (a) of this section.

(c) The patient rights specified in paragraph (a) of this section are in addition to the patient rights specified under the conditions of participation for hospitals in § 482.13 of this chapter.

§ 412.610 Assessment schedule.

(a) *General.* For each Medicare Part A fee-for-service inpatient, an inpatient rehabilitation facility must complete a patient assessment instrument as specified in § 412.606 that covers a time period that is in accordance with the assessment schedule specified in paragraph (c) of this section.

(b) *Starting the assessment schedule day count.* The first day that the Medicare Part A fee-for-service inpatient is furnished Medicare-covered services during his or her current inpatient rehabilitation facility hospital stay is counted as day one of the patient assessment schedule.

(c) *Assessment schedules and reference dates.* The inpatient rehabilitation facility must complete a patient assessment instrument upon the Medicare Part A fee-for-service patient's admission and discharge as specified in paragraphs (c)(1) and (c)(2) of this section.

(1) *Admission assessment.*

(i) *General rule.* The admission assessment—

(A) Time period is a span of time that covers calendar days 1 through 3 of the patient's current Medicare Part A fee-for-service hospitalization;

(B) Has an admission assessment reference date that is the third calendar day of the span of time specified in

paragraph (c)(1)(i)(A) of this section; and

(C) Must be completed on the calendar day that follows the admission assessment reference day.

(ii) *Exception to the general rule.* We may specify in the patient assessment instrument item-by-item guide and in other issued instructions, items that have a different admission assessment time period to most appropriately capture patient information for payment and quality of care monitoring objectives.

(2) *Discharge assessment.*

(i) *General rule.* The discharge assessment—

(A) Time period is a span of time that covers 3 calendar days, and is the discharge assessment reference date itself specified in paragraph (c)(2)(ii) of this section and the 2 calendar days prior to the discharge assessment reference date; and

(B) Must be completed on the 5th calendar day that follows the discharge assessment reference date specified in paragraph (c)(2)(ii) of this section with the discharge assessment reference date itself being counted as the first day of the 5 calendar day time span.

(ii) *Discharge assessment reference date.* The discharge assessment reference date is the actual day that the first of either of the following two events occurs:

(A) The patient is discharged from the IRF; or

(B) The patient stops being furnished Medicare Part A fee-for-service inpatient rehabilitation services.

(iii) *Exception to the general rule.* We may specify in the patient assessment instrument item-by-item guide and in other issued instructions, items that have a different discharge assessment time period to most appropriately capture patient information for payment and quality of care monitoring objectives.

(d) *Encoding dates.* The admission and discharge patient assessments must be encoded by the 7th calendar day from the completion dates specified in paragraph (c) of this section.

(e) *Accuracy of the patient assessment data.* The encoded patient assessment data must accurately reflect the patient's clinical status at the time of the patient assessment.

(f) *Patient assessment instrument record retention.* An inpatient rehabilitation facility must maintain all patient assessment data sets completed on Medicare Part A fee-for-service patients within the previous 5 years either in a paper format in the patient's clinical record or in an electronic computer file format that the inpatient rehabilitation facility can easily obtain.

§ 412.612 Coordination of the collection of patient assessment data.

(a) *Responsibilities of the clinician.* A clinician of an inpatient rehabilitation facility who has participated in performing the patient assessment must have responsibility for—

(1) The accuracy and thoroughness of the specific data recorded by that clinician on the patient's assessment instrument; and

(2) The accuracy of the assessment reference date inserted on the patient assessment instrument completed under § 412.610(c).

(b) *Penalty for falsification.*

(1) Under Medicare, an individual who knowingly and willfully—

(i) Completes a material and false statement in a patient assessment is subject to a civil money penalty of not more than $1,000 for each assessment; or

(ii) Causes another individual to complete a material and false statement in a patient assessment is subject to a civil money penalty of not more than $5,000 for each assessment.

(2) Clinical disagreement does not constitute a material and false statement.

§ 412.614 Transmission of patient assessment data.

(a) *Data format.* The inpatient rehabilitation facility must encode and transmit data for each Medicare Part A fee-for-service inpatient—

(1) Using the computerized version of the patient assessment instrument available from us; or

(2) Using a computer program(s) that conforms to our standard electronic record layout, data specifications, and data dictionary, includes the required patient assessment instrument data set, and meets our other specifications.

(b) *How to transmit data.* The inpatient rehabilitation facility must—

(1) Electronically transmit complete, accurate, and encoded data from the patient assessment instrument for each Medicare Part A fee-for-service inpatient to our patient data system in accordance with the data format specified in paragraph (a) of this section; and

(2) Transmit data using electronic communications software that provides a direct telephone connection from the inpatient rehabilitation facility to the our patient data system.

(c) *Transmission dates.* The inpatient rehabilitation facility must transmit both the admission patient assessment and the discharge patient assessments at the same time to the our patient data system by the 7th calendar day in the period beginning with the applicable patient assessment instrument encoding date specified in § 412.610(d).

(d) *Late transmission penalty.* (1) We assess a penalty when an inpatient rehabilitation facility does not transmit the required data from the patient assessment instrument to the our patient data system in accordance with the transmission timeframe in paragraph (c) of this section.

(2) If the actual patient assessment data transmission date is later than 10 calendar days from the transmission date specified in paragraph (c) of this section, the patient assessment data is considered late and the inpatient rehabilitation facility receives a payment rate that is 25 percent less than the payment rate associated with a case-mix group.

§ 412.616 Release of information collected using the patient assessment instrument.

(a) *General.* An inpatient rehabilitation facility may release information from the patient assessment instrument only as specified in § 482.24(b)(3) of this chapter.

(b) *Release to the inpatient rehabilitation facility's agent.* An inpatient rehabilitation facility may release information that is patient-identifiable to an agent only in accordance with a written contract under which the agent agrees not to use or disclose the information except for the purposes specified in the contract and only to the extent the facility itself is permitted to do so under paragraph (a) of this section.

§ 412.618 Assessment process for interrupted stays.

For purposes of the patient assessment process, if a Medicare Part A fee-for-service patient has an interrupted stay, as defined under § 412.602, the following applies:

(a) *Assessment requirements.* (1) The initial case-mix group classification from the admission assessment remains in effect (that is, no new admission assessment is performed).

(2) When the patient has completed his or her entire rehabilitation episode stay, a discharge assessment must be performed.

(b) *Recording and encoding of data.* The clinician must record the interruption of the stay on the patient assessment instrument.

(c) *Revised assessment schedule.* (1) If the interruption in the stay occurs before the admission assessment, the assessment reference date, completion dates, encoding dates, and data transmission dates for the admission

and discharge assessments are advanced by the same number of calendar days as the length of the patient's interruption in the stay.

(2) If the interruption in the stay occurs after the admission assessment and before the discharge assessment, the completion date, encoding date, and data transmission date for the admission assessment are advanced by the same number of calendar days as the length of the patient's interruption in the stay.

§ 412.620 Patient classification system.

(a) *Classification methodology.*

(1) A patient classification system is used to classify patients in inpatient rehabilitation facilities into mutually exclusive case-mix groups.

(2) For purposes of this subpart, case-mix groups are classes of Medicare patient discharges by functional-related groups that are based on a patient's impairment, age, comorbidities, functional capabilities, and other factors that may improve the ability of the functional-related groups to estimate variations in resource use.

(3) Data from admission assessments under § 412.610(c)(1) are used to classify a Medicare patient into an appropriate case-mix group.

(4) Data from the discharge assessment under § 412.610(c)(2) are used to determine the weighting factors under paragraph (b)(4) of this section.

(b) *Weighting factors.*

(1) *General.* An appropriate weight is assigned to each case-mix group that measures the relative difference in facility resource intensity among the various case-mix groups.

(2) *Short-stay outliers.* We will determine a weighting factor or factors for patients that are discharged and not transferred (as defined in § 412.602) within a number of days from admission as specified by us.

(3) *Patients who expire.* We will determine a weighting factor or factors for patients who expire within a number of days from admission as specified by us.

(4) *Comorbidities.* We will determine a weighting factor or factors to account for the presence of a comorbidity, as defined in § 412.602, that is relevant to resource use in the classification system.

(c) *Revision of case-mix group classifications and weighting factors.* We may periodically adjust the case-mix groups and weighting factors to reflect changes in—

(1) Treatment patterns;

(2) Technology;

(3) Number of discharges; and

(4) Other factors affecting the relative use of resources.

§ 412.622 Basis of payment.

(a) *Method of payment.*

(1) Under the prospective payment system, inpatient rehabilitation facilities receive a predetermined amount per discharge for inpatient services furnished to Medicare Part A fee-for-service beneficiaries.

(2) The amount of payment under the prospective payment system is based on the Federal payment rate, including adjustments described in § 412.624 and, if applicable, during a transition period, on a blend of the Federal payment rate and the facility-specific payment rate described in § 412.626.

(b) *Payment in full.* (1) The payment made under this subpart represents payment in full (subject to applicable deductibles and coinsurance as described in subpart G of part 409 of this subchapter) for inpatient operating and capital-related costs associated with furnishing Medicare covered services in an inpatient rehabilitation facility, but not for the cost of an approved medical education program described in §§ 413.85 and 413.86 of this chapter.

(2) In addition to payments based on prospective payment rates, inpatient rehabilitation facilities receive payments for the following:

(i) Bad debts of Medicare beneficiaries, as provided in § 413.80 of this chapter; and

(ii) A payment amount per unit for blood clotting factor provided to Medicare inpatients who have hemophilia.

§ 412.624 Methodology for calculating the Federal prospective payment rates.

(a) *Data used.* To calculate the prospective payment rates for inpatient hospital services furnished by inpatient rehabilitation facilities, we use—

(1) The most recent Medicare data available, as of the date of establishing the inpatient rehabilitation facility prospective payment system, to estimate payments for inpatient operating and capital-related costs made under part 413 under this subchapter;

(2) An appropriate wage index to adjust for area wage differences;

(3) An increase factor to adjust for the most recent estimate of increases in the prices of an appropriate market basket of goods and services included in covered inpatient rehabilitation services; and

(4) Patient assessment data described in § 412.606 and other data that account for the relative resource utilization of different patient types.

(b) *Determining the average costs per discharge for fiscal year 2001.* We determine the average inpatient operating and capital costs per discharge for which payment is made to each inpatient rehabilitation facility using the available data specified under paragraph (a)(1) of this section. The cost per discharge is adjusted to fiscal year 2001 by an increase factor, described in paragraph (a)(3) of this section, under the update methodology described in section 1886(b)(3)(B)(ii) of the Act for each year through the midpoint of fiscal year 2001.

(c) *Determining the Federal prospective payment rates.* (1) *General.* The Federal prospective payment rates will be established using a standard payment amount referred to as the budget neutral conversion factor. The budget neutral conversion factor is a standardized payment amount based on average costs from a base year which reflects the combined aggregate effects of the weighting factors, various facility and case level adjustments, and other adjustments.

(2) *Update the cost per discharge.* We apply the increase factor described in paragraph (a)(3) of this section to the facility's cost per discharge determined under paragraph (b) of this section to compute the cost per discharge for fiscal year 2002. Based on the updated cost per discharge, we estimate the payments that would have been made to the facility for fiscal year 2002 under part 413 of this chapter without regard to the prospective payment system implemented under this subpart.

(3) *Computation of the budget neutral conversion factor.* The budget neutral conversion factor is computed as follows:

(i) *For fiscal year 2002.* Based on the updated costs per discharge and estimated payments for fiscal year 2002 determined in paragraph (c)(2) of this section, we compute a budget neutral conversion factor for fiscal year 2002, as specified by us, that reflects, as appropriate, the adjustments described in paragraph (d) of this section.

(ii) *For fiscal years after 2002.* The budget neutral conversion factor for fiscal years after 2002 will be the standardized payments for the previous fiscal year updated by the increase factor described in paragraph (a)(3) of this section, including adjustments described in paragraph (d) of this section as appropriate.

(4) *Determining the Federal prospective payment rate for each case-mix group.* The Federal prospective payment rates for each case-mix group is the product of the weighting factors described in § 412.620(b) and the budget neutral conversion factor described in paragraph (c)(3) of this section.

(d) *Adjustments to the budget neutral conversion factor.* The budget neutral

conversion factor described in paragraph (c)(3) of this section will be adjusted for the following:

(1) *Outlier payments.* We determine a reduction factor equal to the estimated proportion of additional outlier payments described in paragraph (e)(4) of this section.

(2) *Budget neutrality.* We adjust the Federal prospective payment rates for fiscal year 2002 so that aggregate payments under the prospective payment system, excluding any additional payments associated with elections not to be paid under the transition period methodology under § 412.626(b), are estimated to equal the amount that would have been made to inpatient rehabilitation facilities under part 413 of this subchapter without regard to the prospective payment system implemented under this subpart.

(3) *Coding and classification changes.* We adjust the budget neutral conversion factor for a given year if we determine that revisions in case-mix classifications or weighting factors for a previous fiscal year (or estimates that such revisions for a future fiscal year) did result in (or would otherwise result in) a change in aggregate payments that are a result of changes in the coding or classification of patients that do not reflect real changes in case-mix.

(e) *Calculation of the adjusted Federal prospective payment.* For each discharge, an inpatient rehabilitation facility's Federal prospective payment is computed on the basis of the Federal prospective payment rate that is in effect for its cost reporting period that begins in a Federal fiscal year specified under paragraph (c) of this section. A facility's Federal prospective payment rate will be adjusted, as appropriate, to account for area wage levels, payments for outliers and transfers, and for other factors as follows:

(1) *Adjustment for area wage levels.* The labor portion of a facility's Federal prospective payment is adjusted to account for geographical differences in the area wage levels using an appropriate wage index. The application of the wage index is made on the basis of the location of the facility in an urban or rural area as defined in § 412.602.

(2) *Adjustments for low-income patients.* We adjust the Federal prospective payment, on a facility basis, for the proportion of low-income patients that receive inpatient rehabilitation services as determined by us.

(3) *Adjustments for rural areas.* We adjust the Federal prospective payment by a factor, as specified by us for facilities located in rural areas, as defined in § 412.602.

(4) *Adjustment for high-cost outliers.* We provide for an additional payment to a facility if its estimated costs for a patient exceeds a fixed dollar amount (adjusted for area wage levels and factors to account for treating low-income patients and for rural locations) as specified by us. The additional payment equals 80 percent of the difference between the estimated cost of the patient and the sum of the adjusted Federal prospective payment computed under this section and the adjusted fixed dollar amount.

(5) *Adjustments related to the patient assessment instrument.* An adjustment to a facility's Federal prospective payment amount for a given discharge will be made, as specified under § 412.614(d), if the transmission of data from a patient assessment instrument is late.

(f) *Special payment provision for patients that are transferred.*

(1) A facility's Federal prospective payment will be adjusted to account for a discharge of a patient who—

(i) Is transferred from the inpatient rehabilitation facility to another site of care, as defined in § 412.602; and

(ii) Stays in the facility for a number of days that is less than the average length of stay for nontransfer cases in the case-mix group to which the patient is classified.

(2) We calculate the adjusted Federal prospective payment for patients who are transferred in the following manner:

(i) By dividing the Federal prospective payment by the average length of stay for nontransfer cases in the case-mix group to which the patient is classified to equal the payment per day.

(ii) By multiplying the payment per day under paragraph (f)(2)(i) of this section by the number of days the patient stayed in the facility prior to being discharged to equal the per day payment amount.

(iii) By multiplying the payment per day under paragraph (f)(2)(i) by 0.5 to equal an additional one half day payment for the first day of the stay before the discharge.

(iv) By adding the per day payment amount under paragraph (f)(2)(ii) and the additional one-half day payment under paragraph (f)(2)(iii) to equal the unadjusted payment amount.

(v) By applying the adjustments described in paragraphs (e)(1), (e)(2), and (e)(3) of this section to the unadjusted payment amount determined in paragraph (f)(2)(iv) of this section to equal the adjusted transfer payment amount.

(g) *Special payment provision for interrupted stays.* When a patient in an inpatient rehabilitation facility has one or more interruptions in the stay, as defined in § 412.602 and as indicated on the patient assessment instrument in accordance with § 412.618(b), we will make payments in the following manner:

(1) *Interruption of one day or less.* Payment for a patient stay with an interruption of one day or less will be the adjusted Federal prospective payment under paragraph (e) of this section that is based on the patient assessment data specified in § 412.618(a)(1). Payment for an interruption of one day or less will only be made to the inpatient rehabilitation facility.

(2) *Interruption of more than one day.* Payment for a patient stay with an interruption of more than one day but less than 3 consecutive days, as defined in § 412.602, will be—

(i) The adjusted Federal prospective payment under paragraph (e) of this section that is based on the patient assessment data specified in § 412.618(a)(1) made to the inpatient rehabilitation facility; and

(ii) If the reason for the interrupted patient stay is to receive inpatient acute care hospital services, an amount based on the prospective payment systems described in § 412.1(a)(1) made to the acute care hospital.

§ 412.626 Transition period.

(a) *Duration of transition period and proportion of the blended transition rate.* (1) Except for a facility that makes an election under paragraph (b) of this section, for cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002, an inpatient rehabilitation facility receives a payment comprised of a blend of the adjusted Federal prospective payment, as determined under § 412.624(e) or § 412.624(f) and a facility-specific payment as determined under paragraph (a)(2) of this section.

(i) For cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002, payment is based on 33⅓ percent of the facility-specific payment and 66⅔ percent of the adjusted FY 2002 Federal prospective payment.

(ii) For cost reporting periods beginning on or after October 1, 2002, payment is based entirely on the adjusted Federal prospective payment.

(2) *Calculation of the facility-specific payment.* The facility-specific payment is equal to the payment for each cost reporting period in the transition period that would have been made without regard to this subpart. The facility's Medicare fiscal intermediary calculates

the facility-specific payment for inpatient operating costs and capital-related costs in accordance with part 413 of this chapter.

(b) *Election not to be paid under the transition period methodology.* An inpatient rehabilitation facility may elect a payment that is based entirely on the adjusted Federal prospective payment for cost reporting periods beginning before fiscal year 2003 without regard to the transition period percentages specified in paragraph (a)(1)(i) of this section.

(1) *General requirement.* An inpatient rehabilitation facility will be required to request the election under this paragraph (b) within 30 days of its first cost reporting period for which payment is based on the IRF prospective payment system for cost reporting periods beginning on or after January 1, 2002 and before October 1, 2002.

(2) *Notification requirement to make election.* The request by the inpatient rehabilitation facility to make the election under this paragraph (b) must be made in writing to the Medicare fiscal intermediary. The intermediary must receive the request on or before the 30th day before the applicable cost reporting period begins, regardless of any postmarks or anticipated delivery dates. Requests received, postmarked, or delivered by other means after the 30th day before the cost reporting period begins will not be approved. If the 30th day before the cost reporting period begins falls on a day that the postal service or other delivery sources are not open for business, the inpatient rehabilitation facility is responsible for allowing sufficient time for the delivery of the request before the deadline. If an inpatient rehabilitation facility's request is not received or not approved, payment will be based on the transition period rate specified in paragraph (a)(1)(i) of this section.

§ 412.628 Publication of the Federal prospective payment rates.

We publish information pertaining to the inpatient rehabilitation facility prospective payment system effective for each fiscal year in the **Federal Register**. This information includes the unadjusted Federal payment rates, the patient classification system and associated weighting factors, and a description of the methodology and data used to calculate the payment rates. This information is published on or before August 1 prior to the beginning of each fiscal year.

§ 412.630 Limitation on review.

Administrative or judicial review under sections 1869 or 1878 of the Act, or otherwise, is prohibited with regard to the establishment of the methodology to classify a patient into the case-mix groups and the associated weighting factors, the unadjusted Federal per discharge payment rates, additional payments for outliers and special payments, and the area wage index.

§ 412.632 Method of payment under the inpatient rehabilitation facility prospective payment system.

(a) *General rule.* Subject to the exceptions in paragraphs (b) and (c) of this section, an inpatient rehabilitation facility receives payment under this subpart for inpatient operating costs and capital-related costs for each discharge only following submission of a discharge bill.

(b) *Periodic interim payments.*

(1) *Criteria for receiving periodic interim payments.*

(i) An inpatient rehabilitation facility receiving payment under this subpart may receive periodic interim payments (PIP) for Part A services under the PIP method subject to the provisions of § 413.64(h) of this subchapter.

(ii) To be approved for PIP, the inpatient rehabilitation facility must meet the qualifying requirements in § 413.64(h)(3) of this subchapter.

(iii) Payments to a rehabilitation unit are made under the same method of payment as the hospital of which it is a part as described in § 412.116.

(iv) As provided in § 413.64(h)(5) of this chapter, intermediary approval is conditioned upon the intermediary's best judgment as to whether payment can be made under the PIP method without undue risk of its resulting in an overpayment to the provider.

(2) *Frequency of payment.* For facilities approved for PIP, the intermediary estimates the inpatient rehabilitation facility's Federal prospective payments net of estimated beneficiary deductibles and coinsurance and makes biweekly payments equal to 1/26 of the total estimated amount of payment for the year. If the inpatient rehabilitation facility has payment experience under the prospective payment system, the intermediary estimates PIP based on that payment experience, adjusted for projected changes supported by substantiated information for the current year. Each payment is made 2 weeks after the end of a biweekly period of service as described in § 413.64(h)(6) of this subchapter. The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if an inpatient rehabilitation facility receives interim payments for less than a full reporting period. These payments are subject to final settlement.

(3) *Termination of PIP.* (i) *Request by the inpatient rehabilitation facility.* Subject to the provisions of paragraph (b)(1)(iii) of this section, an inpatient rehabilitation facility receiving PIP may convert to receiving prospective payments on a non-PIP basis at any time.

(ii) *Removal by the intermediary.* An intermediary terminates PIP if the inpatient rehabilitation facility no longer meets the requirements of § 413.64(h) of this chapter.

(c) *Interim payments for Medicare bad debts and for Part A costs not paid under the prospective payment system.* For Medicare bad debts and for costs of an approved education program and other costs paid outside the prospective payment system, the intermediary determines the interim payments by estimating the reimbursable amount for the year based on the previous year's experience, adjusted for projected changes supported by substantiated information for the current year, and makes biweekly payments equal to 1/26 of the total estimated amount. Each payment is made 2 weeks after the end of a biweekly period of service as described in § 413.64(h)(6) of this chapter. The interim payments are reviewed at least twice during the reporting period and adjusted if necessary. Fewer reviews may be necessary if an inpatient rehabilitation facility receives interim payments for less than a full reporting period. These payments are subject to final cost settlement.

(d) *Outlier payments.* Additional payments for outliers are not made on an interim basis. The outlier payments are made based on the submission of a discharge bill and represent final payment.

(e) *Accelerated payments.* (1) *General rule.* Upon request, an accelerated payment may be made to an inpatient rehabilitation facility that is receiving payment under this subpart and is not receiving PIP under paragraph (b) of this section if the inpatient rehabilitation facility is experiencing financial difficulties because of the following:

(i) There is a delay by the intermediary in making payment to the inpatient rehabilitation facility.

(ii) Due to an exceptional situation, there is a temporary delay in the inpatient rehabilitation facility's preparation and submittal of bills to the intermediary beyond its normal billing cycle.

(2) *Approval of payment.* An inpatient rehabilitation facility's request for an

accelerated payment must be approved by the intermediary and us.

(3) *Amount of payment.* The amount of the accelerated payment is computed as a percentage of the net payment for unbilled or unpaid covered services.

(4) *Recovery of payment.* Recovery of the accelerated payment is made by recoupment as inpatient rehabilitation facility bills are processed or by direct payment by the inpatient rehabilitation facility.

B. Part 413 is amended as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart A—Introduction and General Rules

2. Section 413.1 is amended by:

A. Revising paragraph (d)(2)(ii).

B. Adding paragraphs (d)(2)(iv) and (d)(2)(v).

§ 413.1 Introduction.

* * * * *

(d) * * *

(2) * * *

(ii) Payment to children's, psychiatric, and long-term hospitals (as well as separate psychiatric units (distinct parts) of short-term general hospitals), that are excluded from the prospective payment systems under subpart B of part 412 of this subchapter, and hospitals outside the 50 States and the District of Columbia is on a reasonable cost basis, subject to the provisions of § 413.40.

* * * * *

(iv) For cost reporting periods beginning before January 1, 2002, payment to rehabilitation hospitals (as well as separate rehabilitation units (distinct parts) of short-term general hospitals), that are excluded under subpart B of part 412 of this subchapter from the prospective payment systems is on a reasonable cost basis, subject to the provisions of § 413.40.

(v) For cost reporting periods beginning on or after January 1, 2002, payment to rehabilitation hospitals (as well as separate rehabilitation units (distinct parts) of short-term general hospitals) that meet the conditions of § 412.604 of this chapter is based on prospectively determined rates under subpart P of part 412 of this subchapter.

* * * * *

Subpart C— Limits on Cost Reimbursement

3. Section 413.40 is amended by:

A. Republishing the introductory text of paragraph (a)(2)(i).

B. Adding a new paragraph (a)(2)(i)(C).

C. Revising paragraph (a)(2)(ii).

D. Adding a new paragraph (a)(2)(iii).

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

(a) *Introduction.* * * *

(2) *Applicability.* (i) This section is not applicable to—

* * * * *

(C) Rehabilitation hospitals and rehabilitation units that are paid under the prospective payment system for inpatient hospital services in accordance with section 1886(j) of the Act and subpart P of part 412 of this subchapter for cost reporting periods beginning on or after January 1, 2002.

(ii) For cost reporting periods beginning on or after October 1, 1983, this section applies to—

(A) Hospitals excluded from the prospective payment systems described in § 412.1(a)(1) of this subchapter; and

(B) Psychiatric and rehabilitation units excluded from the prospective payment systems, as described in § 412.1(a)(1) of this chapter and in accordance with §§ 412.25 through 412.30 of this chapter, except as limited by paragraph (a)(2)(iii) of this section with respect to rehabilitation hospitals and rehabilitation units specified in §§ 412.23(b), 412.27, and 412.29 of this subchapter.

(iii) For cost reporting periods beginning on or after October 1, 1983 and before January 1, 2002, this section applies to rehabilitation hospitals and rehabilitation units that are excluded from the prospective payment systems described in § 412.1(a)(1) of this subchapter.

* * * * *

Subpart E— Payments to Providers

4. In § 413.64, paragraph (h)(2)(i) is revised to read as follows:

§ 413.64 Payment to providers: Specific rules.

* * * * *

(h) *Periodic interim payment method of reimbursement*— * * *

(2) * * *

(i) Part A inpatient services furnished in hospitals that are excluded from the prospective payment systems, described in § 412.1(a)(1) of this chapter, under subpart B of part 412 of this chapter or are paid under the prospective payment system described in subpart P of part 412 of this chapter.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: June 11, 2001.

Thomas A. Scully,

Administrator, Centers for Medicare &, Medicaid Services.

Dated: July 23, 2001.

Tommy G. Thompson,

Secretary.

Editorial Note: The following Addendum and Appendix A through Appendix D to the preamble will not appear in the Code of Federal Regulations.

Addendum—Tables

This section contains tables referred to throughout the preamble to this final rule. The tables presented below are as follows:

Table 1—Relative Weights for Case-Mix Groups (CMGs)

Table 2—Federal Prospective Payments for Case-Mix Groups

Table 3A—Wage Index for Urban Areas

Table 3B—Wage Index for Rural Areas

TABLE 1.—RELATIVE WEIGHTS FOR CASE-MIX GROUPS (CMGS)

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weights				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0101	Stroke; M=69–84 and C=23–35	0.4778	0.4279	0.4078	0.3859	10	9	6	8
0102	Stroke; M=59–68 and C=23–35	0.6506	0.5827	0.5553	0.5255	11	12	10	10
0103	Stroke; M=59–84 and C=5–22	0.8296	0.7430	0.7080	0.6700	14	12	12	12
0104	Stroke; M=53–58	0.9007	0.8067	0.7687	0.7275	17	13	12	13
0105	Stroke; M=47–52	1.1339	1.0155	0.9677	0.9158	16	17	15	15

TABLE 1.—RELATIVE WEIGHTS FOR CASE-MIX GROUPS (CMGS)—Continued

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weights				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0106	Stroke; M=42–46	1.3951	1.2494	1.1905	1.1267	18	18	18	18
0107	Stroke; M=39–41	1.6159	1.4472	1.3790	1.3050	17	20	21	21
0108	Stroke; M=34–38 and A≧83	1.7477	1.5653	1.4915	1.4115	25	27	22	23
0109	Stroke; M=34–38 and A≦82	1.8901	1.6928	1.6130	1.5265	24	24	22	24
0110	Stroke; M=12–33 and A≧89	2.0275	1.8159	1.7303	1.6375	29	25	27	26
0111	Stroke; M=27–33 and A=82–88	2.0889	1.8709	1.7827	1.6871	29	26	24	27
0112	Stroke; M=12–26 and A=82–88	2.4782	2.2195	2.1149	2.0015	40	33	30	31
0113	Stroke; M=27–33 and A≦81	2.2375	2.0040	1.9095	1.8071	30	27	27	28
0114	Stroke; M=12–26 and A≦81	2.7302	2.4452	2.3300	2.2050	37	34	32	33
0201	Traumatic brain injury; M=52–84 and C=24–35	0.7689	0.7276	0.6724	0.6170	13	14	14	11
0202	Traumatic brain injury; M=40–51 and C=24–35	1.1181	1.0581	0.9778	0.8973	18	16	17	16
0203	Traumatic brain injury; M=40–84 and C=5–23	1.3077	1.2375	1.1436	1.0495	19	20	19	18
0204	Traumatic brain injury; M=30–39	1.6534	1.5646	1.4459	1.3269	24	23	22	22
0205	Traumatic brain injury; M=12–29	2.5100	2.3752	2.1949	2.0143	44	36	35	31
0301	Non-traumatic brain injury; M=51–84	0.9655	0.8239	0.7895	0.7195	14	14	12	13
0302	Non-traumatic brain injury; M=41–50	1.3678	1.1672	1.1184	1.0194	19	17	17	16
0303	Non-traumatic brain injury; M=25–40	1.8752	1.6002	1.5334	1.3976	23	23	22	22
0304	Non-traumatic brain injury; M=12–24	2.7911	2.3817	2.2824	2.0801	44	32	34	31
0401	Traumatic spinal cord injury; M=50–84	0.9282	0.8716	0.8222	0.6908	15	15	16	14
0402	Traumatic spinal cord injury; M=36–49	1.4211	1.3344	1.2588	1.0576	21	18	22	19
0403	Traumatic spinal cord injury; M=19–35	2.3485	2.2052	2.0802	1.7478	32	32	31	30
0404	Traumatic spinal cord injury; M=12–18	3.5227	3.3078	3.1203	2.6216	46	43	62	40
0501	Non-traumatic spinal cord injury; M=51–84 and C=30–35	0.7590	0.6975	0.6230	0.5363	12	13	10	10
0502	Non-traumatic spinal cord injury; M=51–84 and C=5–29	0.9458	0.8691	0.7763	0.6683	15	17	10	12
0503	Non-traumatic spinal cord injury; M=41–50	1.1613	1.0672	0.9533	0.8206	17	17	15	14
0504	Non-traumatic spinal cord injury; M=34–40	1.6759	1.5400	1.3757	1.1842	23	21	21	19
0505	Non-traumatic spinal cord injury; M=12–33	2.5314	2.3261	2.0778	1.7887	31	31	29	28
0601	Neurological; M=56–84	0.8794	0.6750	0.6609	0.5949	14	13	12	12
0602	Neurological; M=47–55	1.1979	0.9195	0.9003	0.8105	15	15	14	15
0603	Neurological; M=36–46	1.5368	1.1796	1.1550	1.0397	21	18	18	18
0604	Neurological; M=12–35	2.0045	1.5386	1.5065	1.3561	31	24	25	23
0701	Fracture of lower extremity; M=52–84	0.7015	0.7006	0.6710	0.5960	13	13	12	11
0702	Fracture of lower extremity; M=46–51	0.9264	0.9251	0.8861	0.7870	15	15	16	14
0703	Fracture of lower extremity; M=42–45	1.0977	1.0962	1.0500	0.9326	18	17	17	16
0704	Fracture of lower extremity; M=38–41	1.2488	1.2471	1.1945	1.0609	14	20	19	18
0705	Fracture of lower extremity; M=12–37	1.4760	1.4740	1.4119	1.2540	20	22	22	21
0801	Replacement of lower extremity joint; M=58–84	0.4909	0.4696	0.4518	0.3890	9	9	8	8
0802	Replacement of lower extremity joint; M=55–57	0.5667	0.5421	0.5216	0.4490	10	10	9	9
0803	Replacement of lower extremity joint; M=47–54	0.6956	0.6654	0.6402	0.5511	9	11	11	10
0804	Replacement of lower extremity joint; M=12–46 and C=32–35	0.9284	0.8881	0.8545	0.7356	15	14	14	12
0805	Replacement of lower extremity joint; M=40–46 and C=5–31	1.0027	0.9593	0.9229	0.7945	16	16	14	14
0806	Replacement of lower extremity joint; M=12–39 and C=5–31	1.3681	1.3088	1.2592	1.0840	21	20	19	18
0901	Other orthopedic; M=54–84	0.6988	0.6390	0.6025	0.5213	12	11	11	11
0902	Other orthopedic; M=47–53	0.9496	0.8684	0.8187	0.7084	15	15	14	13
0903	Other orthopedic; M=38–46	1.1987	1.0961	1.0334	0.8942	18	18	17	16
0904	Other orthopedic; M=12–37	1.6272	1.4880	1.4029	1.2138	23	23	23	21
1001	Amputation, lower extremity; M=61–84	0.7821	0.7821	0.7153	0.6523	13	13	12	13
1002	Amputation, lower extremity; M=52–60	0.9998	0.9998	0.9144	0.8339	15	15	14	15
1003	Amputation, lower extremity; M=46–51	1.2229	1.2229	1.1185	1.0200	18	17	17	18
1004	Amputation, lower extremity; M=39–45	1.4264	1.4264	1.3046	1.1897	20	20	19	19
1005	Amputation, lower extremity; M=12–38	1.7588	1.7588	1.6086	1.4670	21	25	23	23
1101	Amputation, non-lower extremity; M=52–84	1.2621	0.7683	0.7149	0.6631	18	11	13	12
1102	Amputation, non-lower extremity; M=38–51	1.9534	1.1892	1.1064	1.0263	25	18	17	18
1103	Amputation, non-lower extremity; M=12–37	2.6543	1.6159	1.5034	1.3945	33	23	22	25
1201	Osteoarthritis; M=55–84 and C=34–35	0.7219	0.5429	0.5103	0.4596	13	10	11	9
1202	Osteoarthritis; M=55–84 and C=5–33	0.9284	0.6983	0.6563	0.5911	16	11	13	13
1203	Osteoarthritis M=48–54	1.0771	0.8101	0.7614	0.6858	18	15	14	13
1204	Osteoarthritis M=39–47	1.3950	1.0492	0.9861	0.8882	22	19	16	17
1205	Osteoarthritis M=12–38	1.7874	1.3443	1.2634	1.1380	27	21	21	20
1301	Rheumatoid, other arthritis M=54–84	0.7719	0.6522	0.6434	0.5566	13	14	13	11
1302	Rheumatoid, other arthritis M=47–53	0.9882	0.8349	0.8237	0.7126	16	14	14	14
1303	Rheumatoid, other arthritis M=36–46	1.3132	1.1095	1.0945	0.9469	20	18	16	17
1304	Rheumatoid, other arthritis M=12–35	1.8662	1.5768	1.5555	1.3457	25	25	29	22
1401	Cardiac; M=56–84	0.7190	0.6433	0.5722	0.5156	15	12	11	11
1402	Cardiac; M=48–55	0.9902	0.8858	0.7880	0.7101	13	15	13	13
1403	Cardiac; M=38–47	1.2975	1.1608	1.0325	0.9305	21	19	16	16
1404	Cardiac; M=12–37	1.8013	1.6115	1.4335	1.2918	30	24	21	20
1501	Pulmonary; M=61–84	0.8032	0.7633	0.6926	0.6615	15	13	13	13
1502	Pulmonary; M=48–60	1.0268	0.9758	0.8855	0.8457	17	17	14	15
1503	Pulmonary; M=36–47	1.3242	1.2584	1.1419	1.0906	21	20	18	18
1504	Pulmonary; M=12–35	2.0598	1.9575	1.7763	1.6965	30	28	30	26
1601	Pain syndrome; M=45–84	0.8707	0.8327	0.7886	0.6603	15	14	13	13
1602	Pain syndrome; M=12–44	1.3320	1.2739	1.2066	1.0103	21	20	20	18
1701	Major multiple trauma without brain or spinal cord injury; M=46–84	0.9996	0.9022	0.8138	0.7205	16	14	11	13
1702	Major multiple trauma without brain or spinal cord injury; M=33–45	1.4755	1.3317	1.2011	1.0634	21	21	20	18
1703	Major multiple trauma without brain or spinal cord injury; M=12–32	2.1370	1.9288	1.7396	1.5402	33	28	27	24
1801	Major multiple trauma with brain or spinal cord injury; M=45–84 and C=33–35.	0.7445	0.7445	0.6862	0.6282	12	12	12	10
1802	Major multiple trauma with brain or spinal cord injury; M=45–84 and C=5–32.	1.0674	1.0674	0.9838	0.9007	16	16	16	16

TABLE 1.—RELATIVE WEIGHTS FOR CASE-MIX GROUPS (CMGS)—Continued

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weights				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
1803	Major multiple trauma with brain or spinal cord injury; M=26–44	1.6350	1.6350	1.5069	1.3797	22	25	20	22
1804	Major multiple trauma with brain or spinal cord injury; M=12–25	2.9140	2.9140	2.6858	2.4589	41	29	40	40
1901	Guillian Barre; M=47–84	1.1585	1.0002	0.9781	0.8876	15	15	16	15
1902	Guillian Barre; M=31–46	2.1542	1.8598	1.8188	1.6505	27	27	27	24
1903	Guillian Barre; M=12–30	3.1339	2.7056	2.6459	2.4011	41	35	30	40
2001	Miscellaneous; M=54–84	0.8371	0.7195	0.6705	0.6029	12	13	11	12
2002	Miscellaneous; M=45–53	1.1056	0.9502	0.8855	0.7962	15	15	14	14
2003	Miscellaneous; M=33–44	1.4639	1.2581	1.1725	1.0543	20	18	18	18
2004	Miscellaneous; M=12–32 and A≧82	1.7472	1.5017	1.3994	1.2583	30	22	21	22
2005	Miscellaneous; M=12–32 and A≦81	2.0799	1.7876	1.6659	1.4979	33	25	24	24
2101	Burns; M=46–84	1.0357	0.9425	0.8387	0.8387	18	18	15	16
2102	Burns; M=12–45	2.2508	2.0482	1.8226	1.8226	31	26	26	29
5001	Short-stay cases, length of stay is 3 days or fewer				0.1651				3
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.4279				8
5102	Expired, orthopedic, length of stay is 14 days or more				1.2390				23
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.5436				9
5104	Expired, not orthopedic, length of stay is 16 days or more				1.7100				28

TABLE 2.—FEDERAL PROSPECTIVE PAYMENTS FOR CASE-MIX GROUPS (CMGS)

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidities
0101	$5,656.20	$5,065.48	$4,827.54	$4,568.28
0102	7,701.80	6,898.00	6,573.64	6,220.87
0103	9,820.80	8,795.63	8,381.30	7,931.46
0104	10,662.49	9,549.71	9,099.87	8,612.15
0105	13,423.11	12,021.49	11,455.63	10,841.24
0106	16,515.19	14,790.40	14,093.14	13,337.87
0107	19,129.02	17,131.95	16,324.60	15,448.59
0108	20,689.27	18,530.02	17,656.38	16,709.34
0109	22,375.00	20,039.37	19,094.69	18,070.71
0110	24,001.55	21,496.62	20,483.29	19,384.73
0111	24,728.40	22,147.71	21,103.60	19,971.89
0112	29,336.93	26,274.44	25,036.19	23,693.76
0113	26,487.53	23,723.35	22,604.66	21,392.45
0114	32,320.11	28,946.28	27,582.54	26,102.79
0201	9,102.24	8,613.33	7,959.87	7,304.05
0202	13,236.07	12,525.79	11,575.20	10,622.24
0203	15,480.55	14,649.53	13,537.94	12,423.98
0204	19,572.95	18,521.73	17,116.56	15,707.84
0205	29,713.38	28,117.62	25,983.23	23,845.28
0301	11,429.59	9,753.33	9,346.10	8,517.44
0302	16,192.02	13,817.31	13,239.62	12,067.66
0303	22,198.62	18,943.17	18,152.39	16,544.79
0304	33,041.04	28,194.56	27,019.05	24,624.22
0401	10,988.03	10,318.00	9,733.20	8,177.69
0402	16,822.98	15,796.63	14,901.67	12,519.87
0403	27,801.54	26,105.16	24,625.41	20,690.46
0404	41,701.72	39,157.74	36,938.11	31,034.50
0501	8,985.04	8,257.01	7,375.07	6,348.72
0502	11,196.38	10,288.41	9,189.84	7,911.34
0503	13,747.47	12,633.51	11,285.17	9,714.26
0504	19,839.30	18,230.52	16,285.54	14,018.56
0505	29,966.71	27,536.37	24,597.00	21,174.63
0601	10,410.34	7,990.65	7,823.73	7,042.43
0602	14,180.74	10,885.04	10,657.75	9,594.70
0603	18,192.64	13,964.10	13,672.89	12,307.97
0604	23,729.27	18,213.95	17,833.95	16,053.51
0701	8,304.36	8,293.70	7,943.30	7,055.45
0702	10,966.72	10,951.33	10,489.65	9,316.51
0703	12,994.57	12,976.82	12,429.90	11,040.12
0704	14,783.29	14,763.17	14,140.49	12,558.93
0705	17,472.89	17,449.21	16,714.07	14,844.85
0801	5,811.27	5,559.12	5,348.41	4,604.98
0802	6,708.59	6,417.38	6,174.70	5,315.26
0803	8,234.51	7,877.01	7,578.69	6,523.92
0804	10,990.40	10,513.33	10,115.57	8,708.03
0805	11,869.96	11,356.19	10,925.29	9,405.29
0806	16,195.57	15,493.57	14,906.41	12,832.39
0901	8,272.39	7,564.48	7,132.40	6,171.15

TABLE 2.—FEDERAL PROSPECTIVE PAYMENTS FOR CASE-MIX GROUPS (CMGS)—Continued

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidities
0902	11,241.36	10,280.12	9,691.77	8,386.04
0903	14,190.21	12,975.63	12,233.39	10,585.54
0904	19,262.79	17,614.94	16,607.53	14,368.96
1001	9,258.50	9,258.50	8,467.72	7,721.93
1002	11,835.63	11,835.63	10,824.67	9,871.71
1003	14,476.69	14,476.69	13,240.80	12,074.76
1004	16,885.72	16,885.72	15,443.85	14,083.67
1005	20,820.67	20,820.67	19,042.61	17,366.35
1101	14,940.74	9,095.14	8,462.99	7,849.78
1102	23,124.35	14,077.75	13,097.56	12,149.34
1103	31,421.60	19,129.02	17,797.25	16,508.09
1201	8,545.85	6,426.85	6,040.93	5,440.74
1202	10,990.40	8,266.48	7,769.28	6,997.44
1203	12,750.71	9,589.96	9,013.45	8,118.50
1204	16,514.01	12,420.43	11,673.45	10,514.51
1205	21,159.24	15,913.82	14,956.13	13,471.64
1301	9,137.75	7,720.74	7,616.57	6,589.03
1302	11,698.31	9,883.55	9,750.96	8,435.76
1303	15,545.66	13,134.26	12,956.69	11,209.40
1304	22,092.08	18,666.16	18,414.01	15,930.40
1401	8,511.52	7,615.39	6,773.70	6,103.67
1402	11,721.99	10,486.10	9,328.34	8,406.16
1403	15,359.81	13,741.55	12,222.74	11,015.26
1404	21,323.79	19,076.94	16,969.77	15,292.33
1501	9,508.28	9,035.95	8,199.00	7,830.84
1502	12,155.26	11,551.52	10,482.55	10,011.40
1503	15,675.88	14,896.94	13,517.81	12,910.52
1504	24,383.91	23,172.89	21,027.84	20,083.17
1601	10,307.35	9,857.50	9,335.45	7,816.63
1602	15,768.22	15,080.43	14,283.73	11,959.93
1701	11,833.26	10,680.24	9,633.76	8,529.28
1702	17,466.97	15,764.66	14,218.62	12,588.53
1703	25,297.81	22,833.13	20,593.38	18,232.89
1801	8,813.39	8,813.39	8,123.24	7,436.63
1802	12,635.88	12,635.88	11,646.22	10,662.49
1803	19,355.13	19,355.13	17,838.68	16,332.89
1804	34,495.93	34,495.93	31,794.50	29,108.46
1901	13,714.32	11,840.37	11,578.75	10,507.41
1902	25,501.42	22,016.31	21,530.95	19,538.62
1903	37,099.11	32,028.89	31,322.16	28,424.22
2001	9,909.59	8,517.44	7,937.38	7,137.13
2002	13,088.09	11,248.47	10,482.55	9,425.42
2003	17,329.65	14,893.39	13,880.06	12,480.80
2004	20,683.35	17,777.12	16,566.10	14,895.76
2005	24,621.86	21,161.61	19,720.92	17,732.14
2101	12,260.62	11,157.32	9,928.53	9,928.53
2102	26,644.97	24,246.59	21,575.94	21,575.94
5001				1,954.45
5101				5,065.48
5102				14,667.28
5103				6,435.14
5104				20,242.98

TABLE 3A.—WAGE INDEX FOR URBAN AREAS

MSA—Urban area (constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.8240
Taylor, TX	
0060 Aguadilla, PR	0.4391
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9541
Portage, OH	
Summit, OH	
0120 Albany, GA	0.9893

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8480
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
0200 Albuquerque, NM	0.9146
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8121
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9839
Carbon, PA	
Lehigh, PA	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
Northampton, PA	
0280 Altoona, PA	0.9317
Blair, PA	
0320 Amarillo, TX	0.8673
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2775
Anchorage, AK	
0440 Ann Arbor, MI	1.1093
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston,AL	0.8284
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.9052
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4525
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9479
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9739
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0097
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ.	1.1167
Atlantic City, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8079
Lee, AL	
0600 Augusta-Aiken, GA-SC	0.9127
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9540
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9684
Kern, CA	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
0720 Baltimore, MD	0.9223
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9550
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3801
Barnstable, MA	
0760 Baton Rouge, LA	0.8796
Ascension, LA	
East Baton Rouge	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8734
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1439
Whatcom, WA	
0870 Benton Harbor, MI	0.8671
Berrien, MI	
0875 Bergen-Passaic, NJ	1.1818
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9604
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8236
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8600
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.8360
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7625
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8733
Monroe, IN	
1040 Bloomington-Normal, IL	0.9095
McLean, IL	
1080 Boise City, ID	0.9006
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1086
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	0.9731
Boulder, CO	
1145 Brazoria, TX	0.8658
Brazoria, TX	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
1150 Bremerton, WA	1.0975
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8714
Cameron, TX	
1260 Bryan-College Station, TX	0.8237
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9455
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0840
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4548
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8480
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.8724
Natrona, WY	
1360 Cedar Rapids, IA	0.8716
Linn, IA	
1400 Champaign-Urbana, IL	0.9189
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9029
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.9235
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC	0.9321
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0581
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.9790
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8308
Laramie, WY	
1600 Chicago, IL	1.1092
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
1620 Chico-Paradise, CA	0.9918
Butte, CA	
1640 Cincinnati, OH-KY-IN	0.9349
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8173
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9528
Ashtabula, OH	
Geauga, OH	
Cuyahoga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9698
El Paso, CO	
1740 Columbia MO	0.8920
Boone, MO	
1760 Columbia, SC	0.9557
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL	0.8531
Russell,AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9573
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8746
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1326
Benton, OR	
1900 Cumberland, MD-WV	0.8369
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9792
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8589
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA-IL	0.8897
Scott, IA	
Henry, IL	
Rock Island, IL	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
2000 Dayton-Springfield, OH	0.9384
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9165
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8534
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8095
Macon, IL	
2080 Denver, CO	1.0120
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.9073
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0364
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7943
Dale, AL	
Houston, AL	
2190 Dover, DE	1.0078
Kent, DE	
2200 Dubuque, IA	0.8746
Dubuque, IA	
2240 Duluth-Superior, MN-WI	1.0032
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0187
Dutchess, NY	
2290 Eau Claire, WI	0.8761
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9332
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9145
Elkhart, IN	
2335 Elmira, NY	0.8546
Chemung, NY	
2340 Enid, OK	0.8610
Garfield, OK	
2360 Erie, PA	0.8892
Erie, PA	
2400 Eugene-Springfield, OR	1.0960
Lane, OR	
2440 Evansville-Henderson, IN-KY	0.8137
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND-MN	0.8750
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8655
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7910

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	1.0681
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1153
Genesee, MI	
2650 Florence, AL	0.7616
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8737
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0620
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0118
Broward, FL	
2700 Fort Myers-Cape Coral, FL.	0.9247
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9538
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.8052
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9607
Okaloosa, FL	
2760 Fort Wayne, IN	0.8647
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Fort Worth-Arlington, TX	0.9392
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0057
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8423
Etowah, AL	
2900 Gainesville, FL	0.9741
Alachua, FL	
2920 Galveston-Texas City, TX	0.9796
Galveston, TX	
2960 Gary, IN	0.9451
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8361
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8423
Wayne, NC	
2985 Grand Forks, ND-MN	0.8774
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.8947
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	1.0070
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
3040 Great Falls, MT	0.9065
Cascade, MT	
3060 Greeley, CO	0.9664
Weld, CO	
3080 Green Bay, WI	0.9207
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9068
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9402
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.8894
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9409
Washington, MD	
3200 Hamilton-Middletown, OH	0.9061
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9338
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1236
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7490
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9008
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1865
Honolulu, HI	
3350 Houma, LA	0.8100
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9663
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV-KY-OH	0.9876
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8932
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9747
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9537
Johnson, IA	
3520 Jackson, MI	0.9134
Jackson, MI	
3560 Jackson, MS	0.8749
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8796
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.9186
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.7777
Onslow, NC	
3610 Jamestown, NY	0.7818
Chautaqua, NY	
3620 Janesville-Beloit, WI	0.9587
Rock, WI	
3640 Jersey City, NJ	1.1440
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8272
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8767
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7831
Craighead, AR	
3710 Joplin, MO	0.8148
Jasper, MO	
Newton, MO	
3720 Kalmazoo-Battlecreek, MI	1.0440
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.9902
Kankakee, IL	
3760 Kansas City, KS-MO	0.9458
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	0.9611
Kenosha, WI	
3810 Killeen-Temple, TX	1.0164
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8221
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9518
Howard, IN	
Tipton, IN	
3870 La Crosse, WI-MN	0.9197
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8390
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.8834
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7399
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.9239
Polk, FL	
4000 Lancaster, PA	0.9247
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9880
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8168
Webb, TX	
4100 Las Cruces, NM	0.8639
Dona Ana, NM	
4120 Las Vegas, NV-AZ	1.0796
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8190
Douglas, KS	
4200 Lawton, OK	0.8996
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9003
Androscoggin, ME	
4280 Lexington, KY	0.8774
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9320
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9619
Lancaster, NE	
4400 Little Rock-North Little, AR	0.8908
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
4420 Longview-Marshall, TX	0.8922
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.1984
Los Angeles, CA	
4520 Louisville, KY-IN	0.9261
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8848
Lubbock, TX	
4640 Lynchburg, VA	0.8851
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8848
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0316
Dane, WI	
4800 Mansfield, OH	0.8690
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4577
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8566
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0344
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9688
Brevard, FL	
4920 Memphis, TN-AR-MS	0.8688
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9559
Merced, CA	
5000 Miami, FL	1.0110
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.0987
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9664
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN-WI	1.0971
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	0.9274
Missoula, MT	
5160 Mobile, AL	0.8006
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0401
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.1293
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8316
Ouachita, LA	
5240 Montgomery, AL	0.7642
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	1.0683
Delaware, IN	
5330 Myrtle Beach, SC	0.8440
Horry, SC	
5345 Naples, FL	0.9661
Collier, FL	
5360 Nashville, TN	0.9327
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3784
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2192
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2061
New London, CT	
5560 New Orleans, LA	0.9235
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	1.4483
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1828
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.0847
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA-NC	0.8374
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	1.5029
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9243
Marion, FL	
5800 Odessa-Midland, TX	0.9206
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8774
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0689
Thurston, WA	
5920 Omaha, NE-IA	0.9470
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1453
Orange, CA	
5960 Orlando, FL	0.9550
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8159
Daviess, KY	
6015 Panama City, FL	0.9010
Bay, FL	
6020 Parkersburg-Marietta, WV-OH	0.8258
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8176
Escambia, FL	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8494
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA-NJ	1.0753
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9628
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7771
Jefferson, AR	
6280 Pittsburgh, PA	0.9570
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0130
Berkshire, MA	
6340 Pocatello, ID	0.9076
Bannock, ID	
6360 Ponce, PR	0.4993
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9687
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR-WA	1.0913
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0771
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	1.0014
Utah, UT	
6560 Pueblo, CO	0.8783
Pueblo, CO	
6580 Punta Gorda, FL	0.9602
Charlotte, FL	
6600 Racine, WI	0.9231
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9583
Chatham, NC	
Durham, NC	
Franklin, NC	

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8779
Pennington, SD	
6680 Reading, PA	0.9105
Berks, PA	
6690 Redding, CA	1.1641
Shasta, CA	
6720 Reno, NV	1.0550
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1460
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9618
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	1.1229
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8663
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1334
Olmsted, MN	
6840 Rochester, NY	0.8991
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.8819
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.8849
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1932
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9557
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9994
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9071
Andrews, MO	
Buchanan, MO	
7040 St. Louis, MO-IL	0.8947

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
Sullivan City, MO	
7080 Salem, OR	1.0189
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4518
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9782
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8083
Tom Green, TX	
7240 San Antonio, TX	0.8540
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1784
San Diego, CA	
7360 San Francisco, CA	1.4250
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.3759
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4651
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.0673

TABLE 3A.—WAGE INDEX FOR URBAN AREAS—Continued

MSA—Urban area (constituent counties or county equivalents)	Wage index
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0580
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.4040
Santa Cruz, CA	
7490 Santa Fe, NM	1.0538
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2649
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9809
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9601
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8401
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.0985
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.7900
Mercer, PA	
7620 Sheboygan, WI	0.8379
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8694
Grayson, TX	
7680 Shreveport-Bossier City, LA.	0.8705
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.8471
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.8790
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9848
St. Joseph, IN	
7840 Spokane, WA	1.0496
Spokane, WA	
7880 Springfield, IL	0.8656
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8484
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0485
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9022
Centre, PA	
8080 Steubenville-Weirton, OH-WV	0.8548
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0606
San Joaquin, CA	
8140 Sumter, SC	0.8271
Sumter, SC	
8160 Syracuse, NY	0.9378
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1553
Pierce, WA	
8240 Tallahassee, FL	0.8482
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.8960
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8268
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8341
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9742
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9051
Shawnee, KS	
8480 Trenton, NJ	1.0113
Mercer, NJ	
8520 Tucson, AZ	0.8785
Pima, AZ	
8560 Tulsa, OK	0.8480
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8064
Tuscaloosa, AL	
8640 Tyler, TX	0.9340
Smith, TX	
8680 Utica-Rome, NY	0.8547
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.2849
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1040
Ventura, CA	
8750 Victoria, TX	0.8154
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0501
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9551
Tulare, CA	
8800 Waco, TX	0.8253
McLennan, TX	
8840 Washington, DC-MD-VA-WV	1.0711
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8404
Black Hawk, IA	
8940 Wausau, WI	0.9418
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9699
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7665
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9502
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7647
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8332
Lycoming, PA	
9160 Wilmington-Newark, DE–MD.	
New Castle, DE	1.0826
Cecil, MD	
9200 Wilmington, NC	0.9394
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	0.9876
Yakima, WA	
9270 Yolo, CA	1.0199
Yolo, CA	
9280 York, PA	0.9196
York, PA	
9320 Youngstown-Warren, OH	0.9477
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0706
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9529
Yuma, AZ	

TABLE 3B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7483

TABLE 3B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Alaska	1.2380
Arizona	0.8309
Arkansas	0.7444
California	0.9857
Colorado	0.8967
Connecticut	1.1715
Delaware	0.9058
Florida	0.8918
Georgia	0.8326
Guam	.....
Hawaii	1.1053
Idaho	0.8650
Illinois	0.8152
Indiana	0.8602
Iowa	0.8000
Kansas	0.7574
Kentucky	0.7921
Louisiana	0.7655
Maine	0.8736
Maryland	0.8651
Massachusetts	1.1205
Michigan	0.8969
Minnesota	0.8864
Mississippi	0.7481
Missouri	0.7693
Montana	0.8679
Nebraska	0.8055
Nevada	0.9228
New Hampshire	0.9741
New Jersey [1]	.....
New Mexico	0.8495

TABLE 3B.—WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
New York	0.8472
North Carolina	0.8437
North Dakota	0.7676
Ohio	0.8663
Oklahoma	0.7484
Oregon	1.0124
Pennsylvania	0.8535
Puerto Rico	0.4264
Rhode Island [1]	.....
South Carolina	0.8369
South Dakota	0.7550
Tennessee	0.7836
Texas	0.7490
Utah	0.9029
Vermont	0.9266
Virginia	0.8181
Virgin Islands	.....
Washington	1.0422
West Virginia	0.8206
Wisconsin	0.8865
Wyoming	0.8805

[1] All counties within the State are classified urban.

Appendix A—Technical Discussion of Cases and Providers Used in RAND Analysis

This Appendix explains the methodology used to create the data files used to develop the final IRF prospective payment system. A general description of the process to create this data file is contained in section III.B. of this final rule. RAND has performed the following analysis to match FIM data (that is, collectively, patient assessment data from the Uniform Data System for medical rehabilitation (UDSmr) (1996 through 1999); the Caredata Data System (COS) for medical rehabilitation (1996 and 1997); and the HealthSouth Corporation (HS) (1998 and 1999)) and our Medicare data files.

Table A shows that, for 1996 through 1999, the MedPAR files had over 12 million records per year. We are interested in a subset of these records: Cases paid by Medicare as rehabilitation stays that were excluded from the acute care hospital prospective payment system.

TABLE A.—NUMBER OF MEDPAR CASES AND FACILITIES

Calendar year	Number of cases	Number of facilities
1996	12,231,275	6,339
1997	12,263,463	6,257
1998	12,266,445	6,235
1999	12,073,949	6,223

Table B shows total 1996 through 1999 rehabilitation stays by type of provider (freestanding rehabilitation facility versus excluded unit of an acute care hospital). This was the ''sampling'' frame. In order to describe the IRF prospective payment system case-mix, RAND attached information from FIM instruments to each record in this frame, thereby obtaining ''complete'' records. To the extent that RAND was unable to add information to some records, it was important to know both how to and whether to weight the complete records so they would be representative of the 1996 through 1999 rehabilitation stays in the ''sampling'' frames.

TABLE B.—NUMBER OF REHABILITATION MEDPAR CASES AND FACILITIES

Calendar year	Type	Number of cases	Number of facilities	Total number of cases	Total number of facilities
1996	Excluded Unit	229,193	877	344,126	1,081
	Freestanding	114,933	204	.....	.....
1997	Excluded Unit	240,491	911	359,032	1,123
	Freestanding	118,541	212	.....	.....
1998	Excluded Unit	248,015	941	370,352	1,155
	Freestanding	122,337	214	.....	.....
1999	Excluded Unit	260,745	961	390,048	1,165
	Freestanding	129,303	204	.....	.....

Note: Freestanding facilities have characters 3–6 of the Medicare provider number in the range 3025–3099. Patients receiving rehabilitation care in excluded units of acute care hospitals have a ''provider code'' of T in their MedPAR records.

Table C shows the number of facilities and the number of FIM records for calendar years 1996 through 1999. Our sources for 1996 and 1997 were UDSmr and COS. For 1998 and 1999, we used UDSmr data and data from Caredata's principal client, HealthSouth Corporation. (Caredata ceased to exist prior to our getting its 1998 and 1999 data.) Our tables combine data from the different sources to preserve confidentiality.

TABLE C.—NUMBER OF FIM RECORDS AND FACILITIES, BY YEAR

Calendar year	Sources	Number of Records	Number of Facilities*
1996	UDSmr/COS	269,547	692
1997	UDSmr/COS	326,265	759
1998	UDSmr/HS	343,004	751

TABLE C.—NUMBER OF FIM RECORDS AND FACILITIES, BY YEAR—Continued

Calendar year	Sources	Number of Records	Number of Facilities *
1999	UDSmr/HS	381,453	766

* For the discussion that follows, consider facilities as distinct entities within a FIM source. We adjust our counts later for possible overlap and double counting.

Matching MedPAR and FIM Facilities

The first step in the matching process is to link MedPAR facilities to FIM facilities. For each of these combinations, RAND counted the number of exact matches of MedPAR and FIM records based on admission date, discharge date, and zip code. Table D summarizes the results of this stage of the linking process. The number of facilities represented in our FIM data sets is slightly more than half of all IRFs.

TABLE D.—NUMBERS OF FIM FACILITIES LINKED TO MEDPAR FACILITIES

Calendar year	Sources	MedPAR unique [a]	MedPAR multiple [b]	MedPAR nonmatch [c]	Total
1996	UDSmr/COS	568	18	106	692
1997	UDSmr/COS	625	33	101	759
1998	UDSmr/HS	730	19	2	751
1999	UDSmr/HS	729	35	2	766

[a] FIM IRFs that appear to have a single MedPAR provider.
[b] FIM IRFs that appear to have more than one MedPAR provider.
[c] FIM IRFs that did not link to our Medicare files. The large drop between 1997 and 1998 is because SNF and long-term care hospital data were excluded from our 1998/1999 request.

The FIM data do not contain the Medicare beneficiary identifier and, therefore, it was necessary to use a probabilistic matching algorithm based on characteristics of the beneficiary and the hospitalization. The matching was accomplished in a series of four steps:

(1) Identify match variables;

(2) Recode certain FIM variables to be consistent with MedPAR, create additional records for UDSmr interrupted stays, and eliminate duplicate cases;

(3) Run a match algorithm to link FIM and MedPAR records; and

(4) Choose a single MedPAR case if it matches multiple UDSmr or COS cases.

Step 1: Identify Match Variables

A further search for matches only within the provider number and facility identifier pairings was performed. An attempt was made to match all MedPAR records to a FIM record for all facilities.

For MedPAR, in addition to facility identity, six variables were used to link the records: admission date, discharge date, zip code, age at admission, sex, and race. For FIM, the same information in a slightly recoded form was available (for example, birth date). An indicator of whether Medicare was the primary payer was used to determine how to set certain parameters for the matching algorithm.

Step 2: Create/Delete FIM Records

COS and HS coded interrupted stays in a manner similar to Medicare: one record per rehabilitation discharge episode. Therefore, these records did not require any additional processing. However, UDSmr codes multiple stays via a series of ''transfer/return'' dates on a single UDSmr record. To facilitate matching UDSmr and MedPAR records, multiple records for interrupted stays were created with admission and discharge dates corresponding to the beginning and ending of each stay. The additional records were then given the same chance of matching MedPAR records as any noninterrupted stay.

For UDSmr, COS, and HS files, there were some duplicate cases that had to be eliminated.

Table E shows the number of records present at the various stages of processing. The last column shows the number of cases that would be matched to MedPAR.

TABLE E.—NUMBER OF FIM RECORDS AT VARIOUS STAGES OF PROCESSING

Calendar year	Source	Number of records		
		Original	After expansion	After duplicate elimination
1996	UDSmr/COS	269,547	276,554	275,378
1997	UDSmr/COS	326,265	334,794	333,370
1998	UDSmr/HS	343,004	352,602	352,469
1999	UDSmr/HS	381,453	391,820	391,627

Step 3: Match Discharges from MedPAR and FIM Facilities

A match algorithm similar to the one used in Carter, Relles, et al. (1997) was run assuming that links are imperfect—any variable can be in error. A scoring function was developed, based on Bayes' Theorem, which gives the odds of a match based on how consistent variables tend to be for true matching and nonmatching cases.

The scoring function selects pairs with the greatest likelihood of being correct matches. A cutoff under which

scores below are considered ''nonmatches'' and scores above are considered ''matches'' is chosen empirically. We sorted the pairings by score, and examined candidate matches as a function of this score. We wanted a conservative criterion—agreement between two ''matched'' records not likely to be resulting from chance. We noticed that cases in the 3.2 range and above appeared to be the same: race and sex agreeing, mild disagreement between usually at most one of the other match variables (admission date, discharge date, age, and zip code). We also looked at additional variables not employed in the matching process. For cases above the 3.2 threshold, a FIM variable tended to indicate that Medicare was the ''primary payer,'' and the Medicare provider code tended to be ''T'' in acute care hospitals; both were less likely below 3.2. Thus, we chose 3.2 as our cutoff.

Step 4: Choose a Single MedPAR Case for Multiple FIM Matches

While the matching was unique within a facility/provider pair, some MedPAR providers were paired with different facilities, as shown in Table F. Also, some UDSmr and COS/HS facilities were the same: 6 overlaps in 1996, 7 in 1997, 26 in 1998, and 1 in 1999.

TABLE F.—MEDPAR FACILITIES PAIRED WITH MULTIPLE FACILITIES

Calendar year	Sources	Number of Facilities
1996	UDSmr	5
	COS	5
1997	UDSmr	8
	COS	10
1998	UDSmr	10
	HS	0
1999	UDSmr	18
	HS	0

Each nonunique pairing had the potential of creating multiple matches to a single MedPAR record. We eliminated these matches in two steps. First, working within each UDSmr, COS, and HS file, we eliminated MedPAR duplicate links, keeping the match with the highest score. Then we checked for duplicate links between UDSmr and the corresponding COS/HS files within the same year, again keeping the match with the highest score. Table G provides results for cutoff score 3.2, as discussed in Step 3.

TABLE G.—NUMBER OF LINKED RECORDS AFTER DUPLICATES ELIMINATION

Calendar year	Sources	Number of records		
		Total records	Duplicates eliminated [1]	Overlap eliminated [2]
1996	UDSmr/COS	191,173	190,480	188,889
1997	UDSmr/COS	227,696	226,411	222,682
1998	UDSmr/HS	252,662	247,296	246,450
1999	UDSmr/HS	281,230	273,772	273,548

[1] Multiple pairings can link the same MedPAR record to more than one FIM case. This step eliminates those multiple links, keeping the link with the highest match score.
[2] The same MedPAR provider might show up in both UDSmr and COS, again allowing the same MedPAR record to match more than one FIM case.

Quality of the Match

There are two aspects to evaluating the quality of the match. The first is whether we actually matched all of the cases. To evaluate this, we computed match rates for each of our populations: FIM and MedPAR, by year. The second aspect is the representativeness of the match for the entire population. To evaluate this, we compared patient and facility characteristics to both linked and full population, and considered whether some form of weighting would make those populations look sufficiently the same.

Match Rates

Table H suggests overall match rates in these FIM facilities for the eligible population in the IRF prospective payment system to be almost 90 percent. This was slightly higher than expected—the Carter, Relles, et al. (1997) match rates were about 86 percent.

TABLE H.—MEDPAR MATCH RATES, PROVIDERS WITH A FULL YEAR OF DATA

Calendar year	Sources	MedPAR cases	Matched cases	Percent matched
1996	UDSmr/COS	162,659	142,410	87.6
1997	UDSmr/COS	212,581	190,069	89.4
1998	UDSmr/HS	234,623	208,769	89.0
1999	UDSmr/HS	263,785	237,568	90.1

Note: Tabulations are for patients eligible for IRF prospective payment system.

The FIM files contain many cases not paid by Medicare, but the files provide an indication of whether Medicare is the primary payer. Accordingly, restricting our attention to Medicare cases, we obtain the percentages shown in Table I.

TABLE I.—FIM MATCH RATES FOR MEDICARE AS THE PRIMARY PAYER

Calendar year	Sources	FIM cases	Matched cases	Percent matched
1996	UDSmr/COS	188,892	180,783	95.7
1997	UDSmr/COS	223,351	213,053	95.4
1998	UDSmr/HS	246,727	235,261	95.4
1999	UDSmr/HS	273,303	261,969	95.9

Note: FIM cases matching any Medicare case.

These match rates are also slightly higher than reported in Carter and Relles (1997), where a 93.7 percent rate was achieved for 1994 UDSmr data. We consider these match rates to be acceptable, within the limitations of information available.

Representativeness of Linked MedPAR

For analytical purposes, lack of representativeness is most important for characteristics that are related to outcomes we are trying to model. For example, if costs for treating a patient in freestanding facilities differed from costs in excluded units of acute care hospitals, we would consider re-weighting the sample of linked cases to adjust our total cost estimates.

Tables J through N present an analysis of the characteristics of the facilities and cases in the matched sample described in the previous tables. The data in Tables J through N are the latest data available for the purposes of constructing a data file used to develop the IRF prospective payment system in this final rule.

Representativeness of Linked MedPAR Hospital Characteristics

This section addresses the extent to which the facilities present in the FIM file are representative of the set of all facilities that provide inpatient rehabilitation care to Medicare beneficiaries, and the extent to which FIM patients are representative of all Medicare eligible patients under the IRF prospective payment system. This analysis reflects the effects of the partial-year sample available for some FIM facilities as well as the sampling of MedPAR facilities. The MedPAR records contain data from over 1,000 IRFs in each year. Table J divides these facilities into freestanding rehabilitation facilities (freestanding rehabilitation) and excluded rehabilitation units of acute care hospitals (excluded units). It presents the number of facilities in the linked MedPAR sample, along with the total MedPAR counts of rehabilitation patients at these facilities.

TABLE J.—COMPARISON OF NUMBER OF FIM AND MEDPAR REHABILITATION FACILITIES, BY TYPE

Year	Type of facility	Number of facilities			Number of rehabilitation patients		
		FIM [a]	Total MedPAR [b]	Percent FIM	FIM [a]	Total MedPAR [b]	Percent FIM
1996	Freestanding rehabilitation	130	204	64	86,301	114,933	75
	Excluded unit	435	877	50	130,623	229,193	57
	Total	565	1,081	42	216,924	344,126	63
1997	Freestanding rehabilitation	142	212	67	94,327	118,541	80
	Excluded unit	489	911	54	150,787	240,491	63
	Total	631	1,123	56	245,114	359,032	68
1998	Freestanding rehabilitation	171	214	80	111,503	122,337	91
	Excluded unit	515	941	55	157,483	248,015	63
	Total	686	1,155	59	268,986	370,352	73
1999	Freestanding rehabilitation	170	204	83	120,284	129,303	93
	Excluded unit	554	961	58	171,886	260,745	66
	Total	724	1,165	62	292,170	390,048	75

[a] Hospitals with at least one linked MedPAR/ FIM rehabilitation record.
[b] Total (matched and unmatched) rehabilitation cases.

As shown in Table J, for 1999, FIM facilities represented 62 percent of the facilities, but served almost 75 percent of all MedPAR IRF cases. Based on data found in the table, in 1999, FIM freestanding facilities had an average of 708 patients, 442 more than other-MedPAR freestanding facilities; and FIM excluded units had an average of 310 patients, 92 more than other-MedPAR excluded units.

Table K shows the distribution of FIM IRFs by size. This shows both that freestanding facilities are larger than excluded units and that FIM IRFs tend to be larger than other MedPAR facilities within type of facility.

TABLE K.—COMPARISON OF SIZES OF FIM AND MEDPAR FACILITIES, BY TYPE OF FACILITY

Number of MedPAR patients	Freestanding		Excluded unit		Freestanding		Excluded unit	
	FIM	Other MedPAR	FIM	Other MedPAR	FIM	Other MedPAR	FIM	Other MedPAR
	1996				1997			
1–100	2	23	30	97	4	24	33	105
101–200	14	9	139	140	14	7	143	126
201–300	14	2	105	102	11	5	123	103
301–400	14	10	59	48	17	9	65	40
401–500	8	8	38	27	12	7	52	29
501–1000	56	16	58	26	59	15	67	18
1001–2000	20	6	6	2	24	3	6	1
2001–3000	1	0	0	0	0	0	0	0
3001–4000	1	0	0	0	1	0	0	0
Total	130	74	435	442	142	70	489	422
	1998				1999			
1–100	6	19	50	115	3	13	57	100
101–200	14	9	136	125	10	9	148	115
201–300	11	5	130	82	12	5	130	85
301–400	18	2	78	52	15	1	79	63
401–500	17	2	51	28	20	1	66	26
501–1000	80	3	60	24	76	2	62	17
1001–2000	24	3	10	0	33	3	12	1
2001–3000	0	0	0	0	0	0	0	0
3001–4000	1	0	0	0	1	0	0	0
Total	171	43	515	426	170	34	554	407

Table L shows the percentage of cases in FIM facilities in each State.

TABLE L.—NUMBER AND PERCENTAGE OF MEDPAR REHABILITATION CASES FOR FIM SAMPLE HOSPITALS, BY STATE

State	MedPAR rehabilitation cases				Percent of cases in FIM hospital sample			
	1996	1997	1998	1999	1996	1997	1998	1999
AL	7,839	8,654	8,855	8,667	91	96	79	81
AK	247	302	280	301	55	51	56	55
AR	6,581	6,973	8,349	9,626	43	48	63	65
AZ	3,672	4,084	4,436	5,244	62	57	63	67
CA	15,294	15,559	15,579	16,936	53	51	56	58
CO	4,757	4,263	4,035	3,946	27	65	33	69
CT	2,217	2,290	1,901	1,989	69	88	90	89
DC	1,097	996	1,076	1,167	12	10	8	20
DE	1,399	1,361	1,375	1,628	76	72	70	66
FL	23,021	23,630	24,058	24,741	74	79	91	90
GA	9,615	10,716	10,874	11,062	64	65	66	68
HI	1,087	1,016	831	696	100	100	100	100
IA	1,264	1,404	1,324	1,579	100	100	98	100
ID	1,829	1,807	1,782	1,903	97	98	97	97
IL	14,953	14,894	14,720	16,111	54	62	60	62
IN	8,943	8,884	9,301	9,683	60	60	83	86
KS	3,224	3,333	3,647	4,074	27	24	64	72
KY	5,198	5,201	5,653	6,489	74	79	86	80
LA	9,206	10,061	10,292	11,079	36	50	68	67
MA	8,765	8,631	8,973	9,582	52	67	77	78
MD	867	715	767	782	77	80	80	86
ME	1,255	1,460	1,629	1,873	10	72	79	80
MI	16,523	17,255	18,157	18,797	82	82	80	81
MN	2,048	2,112	2,508	2,594	54	74	49	49
MO	9,788	10,513	10,677	11,009	34	42	58	62
MS	1,968	2,021	2,050	2,442	86	86	85	83
MT	878	766	652	681	100	100	100	100
NC	7,123	8,771	9,588	9,912	89	88	97	98
ND	1,821	1,636	1,627	1,697	86	83	73	71
NE	1,195	1,107	1,143	1,083	92	91	89	88
NH	2,310	2,505	2,435	2,375	57	58	77	75
NJ	11,234	11,083	11,172	11,988	89	96	93	99
NM	1,283	1,277	1,355	1,537	28	35	40	45

TABLE L.—NUMBER AND PERCENTAGE OF MEDPAR REHABILITATION CASES FOR FIM SAMPLE HOSPITALS, BY STATE—Continued

State	MedPAR rehabilitation cases				Percent of cases in FIM hospital sample			
	1996	1997	1998	1999	1996	1997	1998	1999
NV	2,230	2,303	2,855	3,471	0	0	52	51
NY	21,431	22,875	25,755	26,271	37	51	58	72
OH	11,837	13,888	13,683	13,938	76	73	75	71
OK	6,356	6,949	7,757	8,716	51	59	58	54
OR	1,179	1,184	1,198	1,173	70	61	74	75
PA	36,989	35,700	34,201	35,552	63	69	71	73
RI	2,247	2,307	1,771	1,460	61	66	100	100
SC	4,536	4,878	5,691	6,182	83	86	83	82
SD	2,096	2,101	2,031	2,071	80	81	79	78
TN	10,731	11,917	12,317	12,744	71	71	72	76
TX	33,619	36,616	38,871	40,387	58	62	70	72
UT	858	984	1,044	1,673	43	62	57	65
VA	6,738	7,235	7,544	7,671	73	78	70	73
VT	603	567	582	691	74	73	68	75
WA	3,753	3,608	3,598	3,918	99	99	99	91
WI	6,591	6,690	6,468	6,643	87	93	89	89
WV	3,497	3,574	3,467	3,899	100	99	99	100
WY	334	376	418	315	31	75	23	49
Total	344,126	359,032	370,352	390,048	63	68	73	75

Representativeness of Patient and Stay Characteristics

Table M compares demographic characteristics of all Medicare rehabilitation patients with the matched FIM sample. Of all the characteristics examined, the FIM sample of discharges appears very similar.

TABLE M.—PATIENT CHARACTERISTICS FOR MEDPAR REHABILITATION INPATIENTS, BY FIM STATUS

Patient characteristic	FIM	Other MedPAR	Total MedPAR	FIM	Other MedPAR	Total MedPAR
	1996			1997		
Sample Size	171,626	172,500	344,126	206,032	153,000	359,032
Average Age	75.4	75.6	75.5	75.4	75.6	75.5
Age 0–50	2.6%	2.8%	2.7%	2.8%	3.0%	2.8%
Age 51–60	3.1%	3.1%	3.1%	3.2%	3.2%	3.2%
Age 61–70	20.1%	19.3%	19.7%	19.5%	18.9%	19.2%
Age 71–80	44.2%	42.8%	43.5%	43.9%	42.8%	43.4%
Age 81–90	26.9%	28.1%	27.5%	27.4%	28.2%	27.7%
Age 91+	3.2%	3.9%	3.5%	3.2%	4.0%	3.6%
Male	37.9%	37.3%	37.6%	38.0%	37.6%	37.8%
White	86.7%	85.8%	86.3%	86.6%	85.3%	86.1%
Black	9.8%	10.6%	10.2%	10.1%	10.9%	10.4%
In-hospital death	0.2%	0.6%	0.4%	0.3%	0.7%	0.4%
	1998			1999		
Sample Size	232,691	137,661	370,352	257,024	133,024	390,048
Average Age	75.5	75.7	75.6	75.8	76.0	75.9
Age 0–50	2.8%	2.9%	2.8%	2.8%	2.8%	2.8%
Age 51–60	3.4%	3.5%	3.5%	3.5%	3.5%	3.5%
Age 61–70	18.9%	18.4%	18.7%	18.1%	17.8%	18.0%
Age 71–80	43.6%	42.1%	43.0%	42.8%	41.5%	42.3%
Age 81–90	27.8%	28.8%	28.2%	28.9%	29.9%	29.2%
Age 91+	3.6%	4.2%	3.8%	3.9%	4.5%	4.1%
Male	37.9%	37.3%	37.7%	37.6%	37.2%	37.4%
White	86.5%	84.8%	85.9%	86.6%	84.8%	86.0%
Black	10.1%	10.8%	10.4%	9.8%	10.8%	10.2%
In-hospital death	0.3%	0.6%	0.4%	0.3%	0.7%	0.4%

Table N compares resources used for linked FIM stays with those for other Medicare rehabilitation patients. Average length of stay for FIM cases is the same as for non-FIM patients in 1996 and 1997, but is higher for FIM patients in 1998 and 1999. For cases in freestanding hospitals, FIM stays consume fewer resources in the first half of the data period, but not in the second half. During this time, the FIM database grew from 75 percent to 93 percent of all freestanding cases.

TABLE N.—COMPARISON OF RESOURCE USE FOR MEDICARE REHABILITATION INPATIENTS, BY FIM STATUS

Year	Hospitalization characteristic	All hospitals			Freestanding hospitals		
		FIM	Other MedPAR	Total MedPAR	FIM	Other MedPAR	Total MedPAR
1996	Sample size	171,626	172,500	344,126	65,349	49,584	114,933
	Length of stay (days)	16.2	16.2	16.2	18.0	18.9	18.4
	Daily therapy charges	$360	$351	$355	$360	$387	$371
	Total therapy charges	$5,960	$5,829	$5,894	$6,652	$7,605	$7,063
	Total charges	$18,013	$18,790	$18,403	$19,443	$21,214	$20,207
1997	Sample size	206,032	153,000	359,032	82,393	36,148	118,541
	Length of stay (days)	15.7	15.7	15.7	17.8	19.2	18.2
	Daily therapy charges	$379	$368	$374	$384	$406	$391
	Total therapy charges	$6,064	$5,924	$6,004	$7,002	$8,064	$7,325
	Total charges	$18,348	$19,287	$18,748	$20,202	$22,541	$20,915
1998	Sample size	232,691	137,661	370,352	96,262	26,075	122,337
	Length of stay (days)	15.8	14.6	15.3	18.2	17.1	18.0
	Daily therapy charges	$396	$383	$391	$398	$414	$402
	Total therapy charges	$6,361	$5,676	$6,106	$7,458	$7,285	$7,421
	Total charges	$19,230	$19,090	$19,178	$21,129	$21,558	$21,220
1999	Sample size	257,024	133,024	390,048	108,290	21,013	129,303
	Length of stay (days)	15.4	14.0	14.9	17.8	16.1	17.5
	Daily therapy charges	$425	$409	$419	$428	$436	$430
	Total therapy charges	$6,621	$5,843	$6,355	$7,789	$7,231	$7,698
	Total charges	$20,000	$19,359	$19,781	$21,821	$21,449	$21,761

Note: FIM case totals count matched cases; hence, they differ from the total in Table J, which counts matched and unmatched cases.

BILLING CODE 4120–01–P

Appendix B—CMS Inpatient Rehabilitation Facility Patient Assessment Instrument

INPATIENT REHABILITATION FACILITY - PATIENT ASSESSMENT INSTRUMENT

Identification Information*

1. Facility Information
   A. Facility Name
   _____
   _____
   _____
   B. Facility Medicare Provider Number _____
2. Patient Medicare Number _____
3. Patient Medicaid Number _____
4. Patient First Name _____
5. Patient Last Name _____
6. Birth Date _____ MM/DD/YYYY
7. Social Security Number _____
8. Gender (*1 - Male; 2 - Female*) _____
9. Race/Ethnicity *(Check all that apply)*
   American Indian or Alaska Native A. _____
   Asian B. _____
   Black or African American C. _____
   Hispanic or Latino D. _____
   Native Hawaiian or Other Pacific Islander E. _____
   White F. _____
10. Marital Status _____
    (*1 - Never Married; 2 - Married; 3 - Widowed; 4 - Separated; 5 - Divorced*)
11. Zip Code of Patient's Pre-Hospital Residence: _____

Admission Information*

12. Admission Date _____ MM/DD/YYYY
13. Assessment Reference Date _____ MM/DD/YYYY
14. Admission Class _____
    (*1 - Initial Rehab; 2 - Evaluation; 3 - Readmission; 4 - Unplanned Discharge; 5 - Continuing Rehabilitation)*
15. Admit From _____
    (*01 - Home; 02 - Board & Care; 03 - Transitional Living; 04 - Intermediate Care; 05 - Skilled Nursing Facility; 06 - Acute Unit of Own Facility; 07 - Acute Unit of Another Facility; 08 - Chronic Hospital; 09 - Rehabilitation Facility; 10 - Other; 12 - Alternate Level of Care Unit; 13 - Subacute Setting; 14 - Assisted Living Residence*)
16. Pre-Hospital Living Setting
    (*Use codes from item 15 above*) _____
17. Pre-Hospital Living With _____
    (*Code only if item 16 is 01 - Home; Score using 1 - Alone; 2 - Family/Relatives; 3 - Friends; 4 - Attendant; 5 - Other*)
18. Pre-Hospital Vocational Category _____
    (*1 - Employed; 2 - Sheltered; 3 - Student; 4 - Homemaker; 5 - Not Working; 6 - Retired for Age; 7 - Retired for Disability*)
19. Pre-Hospital Vocational Effort _____
    (*Code only if item 18 is coded 1 - 4; Score using 1 - Full-time; 2 - Part-time; 3 - Adjusted Workload*)

Payer Information*

20. Payment Source
    A. Primary Source _____
    B. Secondary Source _____
    (*Score using 01 - Blue Cross; 02 - Medicare non-MCO; 03 - Medicaid non-MCO; 04 - Commercial Insurance; 05 - MCO HMO; 06 - Workers Compensation; 07 - Crippled Children's Service; 08 - Developmental Disabilities Service; 09 - State Vocational Rehabilitation; 10 - Private Pay; 11 - Employee Courtesy; 12 - Unreimbursed; 13 - CHAMPUS; 14 - Other; 15 - None; 16 - No Fault auto insurance; 51 - Medicare MCO; 52 - Medicaid MCO)*

Medical Information*

21. Impairment Group _____ Admission _____ Discharge
    Condition requiring admission to rehabilitation.
22. Etiologic Diagnosis: _____
    (*Use ICD-9 codes to indicate the etiologic problem that led to the condition for which the patient is receiving rehabilitation*)
23. Date of Onset of Etiologic Diagnosis _____ (MM/DD/YYYY)
24. Comorbid Conditions; Use ICD-9 Codes to enter up to ten medical conditions
    A. _____ B. _____
    C. _____ D. _____
    E. _____ F. _____
    G. _____ H. _____
    I. _____ J. _____

Medical Needs

25. Is patient comatose at admission? _____ 0 - No, 1 - Yes
26. Is patient delirious at admission? _____ 0 - No, 1 - Yes
27. Swallowing Status: Admission _____ Discharge _____
    3 - Regular Diet: solids and liquids swallowed safely without supervision or modified diet
    2 - Modified Diet/ Supervision: subject requires modified diet and/or needs supervision for safety
    1 - Tube /Parenteral Feeding: tube / parenteral feeding used wholly or partially as a means of sustenance
28. Clinical signs of dehydration Admission _____ Discharge _____
    (*Evidence of oliguria, dry skin, orthostatic hypotension, somnolence, agitation; Score 0 - No; 1 - Yes*)

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INPATIENT REHABILITATION FACILITY - PATIENT ASSESSMENT INSTRUMENT

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Function Modifiers*

Complete the following specific functional items prior to scoring the FIM™ Instrument:

	ADMISSION	DISCHARGE
29. Bladder Level of Assistance (Score using FIM Levels 1 - 7; 8 if unable to assess)	☐	☐
30. Bladder Freq. of Accidents (Score as below)	☐	☐

7 - Continent
6 - Continent; uses device such as catheter
5 - Incontinent every 8 days or more
4 - Incontinent every 4 - 7 days
3 - Incontinent every 2 - 3 days; not daily
2 - Incontinent daily; some control
1 - Incontinent with every void
8 - Does not void (e.g., due to dialysis)

Score Item 39G (Bladder) as the lowest (most dependent) score from Items 29 and 30 above.

	ADMISSION	DISCHARGE
31. Bowel Level of Assistance (Score using FIM Levels 1 - 7; 8 if unable to assess)	☐	☐
32. Bowel Freq. of Accidents (Score as below)	☐	☐

7 - Continent
6 - Continent; uses device such as ostomy
5 - Incontinent every 8 days or more
4 - Incontinent every 4 - 7 days
3 - Incontinent every 2 - 3 days; not daily
1 - Incontinent daily
8 - Could not assess, no bowel movement in 8 days

Score Item 39H (Bowel) as the lowest (most dependent) score of Items 31 and 32.

	ADMISSION	DISCHARGE
33. Tub Transfer	☐	☐
34. Shower Transfer	☐	☐

(Score using FIM Levels 1 - 7; 8 if unable to assess)
Score Item 39K (Tub/Shower Transfer) as the lowest (most dependent) score of Items 33 and 34.

	ADMISSION	DISCHARGE
35. Distance Walked (feet)	☐	☐
36. Distance Traveled in Wheelchair (feet)	☐	☐

(Score Items 35 and 36 using the following scale: 3 - 150 feet; 2 - 50 to 149 feet; 1 - Less than 50 feet or unable; 8 - Not applicable)

	ADMISSION	DISCHARGE
37. Walk	☐	☐
38. Wheelchair	☐	☐

(Score using FIM Levels 1 - 7; 8 if not applicable)
Score Item 39L (Walk/Wheelchair) as the lowest (most dependent) score of Items 37 and 38)

39. FIM™ Instrument*

	ADMISSION	DISCHARGE	GOAL
SELF-CARE			
A. Eating	☐	☐	☐
B. Grooming	☐	☐	☐
C. Bathing	☐	☐	☐
D. Dressing - Upper	☐	☐	☐
E. Dressing - Lower	☐	☐	☐
F. Toileting	☐	☐	☐
SPHINCTER CONTROL			
G. Bladder	☐	☐	☐
H. Bowel	☐	☐	☐
TRANSFERS			
I. Bed, Chair, Whichair	☐	☐	☐
J. Toilet	☐	☐	☐
K. Tub, Shower	☐	☐	☐
LOCOMOTION (W - Walk; C - wheelChair; B - Both)			
L. Walk/Wheelchair	☐ ☐	☐ ☐	☐
M. Stairs	☐	☐	☐
COMMUNICATION (A - Auditory; V - Visual; B - Both)			
N. Comprehension	☐ ☐	☐ ☐	☐
O. Expression (V - Vocal; N - Nonvocal; B - Both)	☐ ☐	☐ ☐	☐
SOCIAL COGNITION			
P. Social Interaction	☐	☐	☐
Q. Problem Solving	☐	☐	☐
R. Memory	☐	☐	☐

FIM LEVELS

No Helper
7 Complete Independence (Timely, Safely)
6 Modified Independence (Device)

Helper - Modified Dependence
5 Supervision (Subject = 100%)
4 Minimal Assistance (Subject = 75% or more)
3 Moderate Assistance (Subject = 50% or more)

Helper - Complete Dependence
2 Maximal Assistance (Subject = 25% or more)
1 Total Assistance (Subject less than 25%)

8 Activity does not occur; Use this code only at admission

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INPATIENT REHABILITATION FACILITY - PATIENT ASSESSMENT INSTRUMENT

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Discharge Information*

40. Discharge Date _____ (MM/DD/YYYY)

41. Patient discharge against medical advice: _____ *(0 - No, 1 -Yes)*

42. Program Interruptions _____ *(0 - No; 1 - Yes)*

43. Program Interruption Dates
(Score only if Item 42 is 1 - Yes)

A. 1st Transfer Date [ ] MM/DD/YYYY
B. 1st Return Date [ ] MM/DD/YYYY
C. 2nd Transfer Date [ ] MM/DD/YYYY
D. 2nd Return Date [ ] MM/DD/YYYY
E. 3rd Transfer Date [ ] MM/DD/YYYY
F. 3rd Return Date [ ] MM/DD/YYYY

44A. Discharge to Living Setting: _____
01 - Home; 02 - Board and Care; 03 - Transitional Living; 04 - Intermediate Care; 05 - Skilled Nursing Facility; 06 - Acute unit of own facility; 07 - Acute unit of another facility; 08 - Chronic Hospital; 09 - Rehabilitation Facility; 10 - Other; 11 - Died; 12 - Alternate Level of Care Unit; 13 - Subacute Setting; 14 - Assisted Living Residence

44B. Was patient discharged with Home Health Services? _____ *(0 - No; 1 - Yes)*
(Code only if Item 44A is 01 - Home, 02 - Board and Care, 03 - Transitional Living, or 14 - Assisted Living Residence)

45. Discharge to Living With: _____
(Code only if Item 44A is 01 - Home)
Score using 1 - Alone; 2 - Family / Relatives; 3 - Friends; 4 - Attendant; 5 - Other

46. Diagnosis for Transfer or Death: _____
(Score using ICD-9 code)

47. Complications during rehabilitation stay
(Use ICD-9 codes to specify up to six conditions that began with this rehabilitation stay)
A. _____ B. _____
C. _____ D. _____
E. _____ F. _____

Quality Indicators

RESPIRATORY STATUS	Admission	Discharge
48. Shortness of breath with exertion	_____	_____
49. Shortness of breath at rest	_____	_____
50. Difficulty coughing and clearing airway	_____	_____

(Score items 48 to 50 as 0 - No; 1 - Yes)

Quality Indicators

PAIN

51. Rate the highest level of pain reported by the patient within the assessment period:
Admission: _____ Discharge: _____

(Score using the scale below; report whole numbers only)

0	1	2	3	4	5	6	7	8	9	10
No Pain					Moderate Pain					Worst Possible Pain

PUSH SCALE©

Pressure Ulcers

52A. Highest current pressure ulcer stage
Admission _____ Discharge _____

(Score as: 0 - No pressure ulcer; 1 - Any area of persistent skin redness (Stage 1); 2 - Partial loss of skin layers (Stage 2); 3 - Deep craters in the skin (Stage 3); 4 - Breaks in skin exposing muscle or bone (Stage 4); 5 - Not stageable (necrotic eschar predominant; no prior staging available)

52B. Number of current pressure ulcers
Admission _____ Discharge _____

SELECT THE CURRENT LARGEST PRESSURE ULCER TO CODE THE FOLLOWING. Calculate three components (c through e) and code total score in f.

52C. Length multiplied by width (open wound surface area)
Admission _____ Discharge _____

(Score as 0 - 0 cm^2; 1 - < 0.3 cm^2; 2 - 0.3 to 0.6 cm^2; 3 - 0.7 to 1.0 cm^2; 4 - 1.1 to 2.0 cm^2; 5 - 2.1 to 3.0 cm^2; 6 - 3.1 to 4.0 cm^2; 7 - 4.1 to 8.0 cm^2; 8 - 8.1 to 12.0 cm^2; 9 - 12.1 to 24.0 cm^2; 10 - > 24 cm^2)

52D. Exudate amount
Admission _____ Discharge _____
0 - None; 1 - Light; 2 - Moderate; 3 - Heavy

52E. Tissue type
Admission _____ Discharge _____
0 - Closed/resurfaced: The wound is completely covered with epithelium (new skin); 1 - Epithelial tissue: For superficial ulcers, new pink or shiny tissue (skin) that grows in from the edges or as islands on the ulcer surface. 2 - Granulation tissue: Pink or beefy red tissue with a shiny, moist, granular appearance. 3- Slough: Yellow or white tissue that adheres to the ulcer bed in strings or thick clumps or is mucinous. 4 - Necrotic tissue (eschar): Black, brown, or tan tissue that adheres firmly to the wound bed or ulcer edges.

52F. TOTAL PUSH SCORE (Sum of above three items – C, D and E)
Admission _____ Discharge _____

SAFETY

53. Total number of falls during the rehabilitation stay _____ Discharge

	Admission	Discharge
54. Balance problem	_____	_____

(0 - No; 1 - Yes; e.g., dizziness, vertigo, or light-headedness)

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APPENDIX C—LIST OF COMORBIDITIES

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
112.4	CANDIDIASIS OF LUNG	1	0	0	15
112.5	DISSEMINATED CANDIDIASIS	1	0	0	
112.81	CANDIDAL ENDOCARDITIS	1	0	0	14
112.83	CANDIDAL MENINGITIS	1	0	0	03, 05
112.84	CANDIDAL ESOPHAGITIS	1	0	0	
235.1	UNC BEHAV NEO ORAL/PHAR	1	0	0	
260.	KWASHIORKOR	1	0	0	
261.	NUTRITIONAL MARASMUS	1	0	0	
262.	OTH SEVERE MALNUTRITION	1	0	0	
478.30	VOCAL CORD PARALYSIS NOS	1	0	0	15
478.31	VOCAL PARAL UNILAT PART	1	0	0	15
478.32	VOCAL PARAL UNILAT TOTAL	1	0	0	15
478.33	VOCAL PARAL BILAT PART	1	0	0	15
478.34	VOCAL PARAL BILAT TOTAL	1	0	0	15
478.6	EDEMA OF LARYNX	1	0	0	15
579.3	INTEST POSTOP NONABSORB	1	0	0	
933.1	FOREIGN BODY IN LARYNX	1	0	0	15
934.1	FOREIGN BODY BRONCHUS	1	0	0	15
V440	TRACHEOSTOMY STATUS	1	0	0	15
V461	DEPENDENCE ON RESPIRATOR	1	0	0	15
008.42	PSEUDOMONAS ENTERITIS	0	1	0	
008.45	INT INF CLSTRDIUM DFCILE	0	1	0	
011.	PULMONARY TUBERCULOSIS*	0	1	0	15
011.0	TB OF LUNG, INFILTRATIVE*	0	1	0	15
011.00	TB LUNG INFILTR-UNSPEC	0	1	0	15
011.01	TB LUNG INFILTR-NO EXAM	0	1	0	15
011.02	TB LUNG INFILTR-EXM UNKN	0	1	0	15
011.03	TB LUNG INFILTR-MICRO DX	0	1	0	15
011.04	TB LUNG INFILTR-CULT DX	0	1	0	15
011.05	TB LUNG INFILTR-HISTO DX	0	1	0	15
011.06	TB LUNG INFILTR-OTH TEST	0	1	0	15
011.1	TB OF LUNG, NODULAR*	0	1	0	15
011.10	TB LUNG NODULAR-UNSPEC	0	1	0	15
011.11	TB LUNG NODULAR-NO EXAM	0	1	0	15
011.12	TB LUNG NODUL-EXAM UNKN	0	1	0	15
011.13	TB LUNG NODULAR-MICRO DX	0	1	0	15
011.14	TB LUNG NODULAR-CULT DX	0	1	0	15
011.15	TB LUNG NODULAR-HISTO DX	0	1	0	15
011.16	TB LUNG NODULAR-OTH TEST	0	1	0	15
011.2	TB OF LUNG W CAVITATION*	0	1	0	15
011.20	TB LUNG W CAVITY-UNSPEC	0	1	0	15
011.21	TB LUNG W CAVITY-NO EXAM	0	1	0	15
011.22	TB LUNG CAVITY-EXAM UNKN	0	1	0	15
011.23	TB LUNG W CAVIT-MICRO DX	0	1	0	15
011.24	TB LUNG W CAVITY-CULT DX	0	1	0	15
011.25	TB LUNG W CAVIT-HISTO DX	0	1	0	15
011.26	TB LUNG W CAVIT-OTH TEST	0	1	0	15
011.3	TUBERCULOSIS OF BRONCHUS*	0	1	0	15
011.30	TB OF BRONCHUS-UNSPEC	0	1	0	15
011.31	TB OF BRONCHUS-NO EXAM	0	1	0	15
011.32	TB OF BRONCHUS-EXAM UNKN	0	1	0	15
011.33	TB OF BRONCHUS-MICRO DX	0	1	0	15
011.34	TB OF BRONCHUS-CULT DX	0	1	0	15
011.35	TB OF BRONCHUS-HISTO DX	0	1	0	15
011.36	TB OF BRONCHUS-OTH TEST	0	1	0	15
011.4	TB FIBROSIS OF LUNG*	0	1	0	15
011.40	TB LUNG FIBROSIS-UNSPEC	0	1	0	15
011.41	TB LUNG FIBROSIS-NO EXAM	0	1	0	15
011.42	TB LUNG FIBROS-EXAM UNKN	0	1	0	15
011.43	TB LUNG FIBROS-MICRO DX	0	1	0	15
011.44	TB LUNG FIBROSIS-CULT DX	0	1	0	15
011.45	TB LUNG FIBROS-HISTO DX	0	1	0	15
011.46	TB LUNG FIBROS-OTH TEST	0	1	0	15
011.5	TB BRONCHIECTASIS*	0	1	0	15
011.50	TB BRONCHIECTASIS-UNSPEC	0	1	0	15
011.51	TB BRONCHIECT-NO EXAM	0	1	0	15
011.52	TB BRONCHIECT-EXAM UNKN	0	1	0	15
011.53	TB BRONCHIECT-MICRO DX	0	1	0	15
011.54	TB BRONCHIECT-CULT DX	0	1	0	15
011.55	TB BRONCHIECT-HISTO DX	0	1	0	15
011.56	TB BRONCHIECT-OTH TEST	0	1	0	15

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
011.6	TUBERCULOUS PNEUMONIA*	0	1	0	15
011.60	TB PNEUMONIA-UNSPEC	0	1	0	15
011.61	TB PNEUMONIA-NO EXAM	0	1	0	15
011.62	TB PNEUMONIA-EXAM UNKN	0	1	0	15
011.63	TB PNEUMONIA-MICRO DX	0	1	0	15
011.64	TB PNEUMONIA-CULT DX	0	1	0	15
011.65	TB PNEUMONIA-HISTO DX	0	1	0	15
011.66	TB PNEUMONIA-OTH TEST	0	1	0	15
011.7	TUBERCULOUS PNEUMOTHORAX*	0	1	0	15
011.70	TB PNEUMOTHORAX-UNSPEC	0	1	0	15
011.71	TB PNEUMOTHORAX-NO EXAM	0	1	0	15
011.72	TB PNEUMOTHORX-EXAM UNKN	0	1	0	15
011.73	TB PNEUMOTHORAX-MICRO DX	0	1	0	15
011.74	TB PNEUMOTHORAX-CULT DX	0	1	0	15
011.75	TB PNEUMOTHORAX-HISTO DX	0	1	0	15
011.76	TB PNEUMOTHORAX-OTH TEST	0	1	0	15
011.8	PULMONARY TB NEC*	0	1	0	15
011.80	PULMONARY TB NEC-UNSPEC	0	1	0	15
011.81	PULMONARY TB NEC-NO EXAM	0	1	0	15
011.82	PULMON TB NEC-EXAM UNKN	0	1	0	15
011.83	PULMON TB NEC-MICRO DX	0	1	0	15
011.84	PULMON TB NEC-CULT DX	0	1	0	15
011.85	PULMON TB NEC-HISTO DX	0	1	0	15
011.86	PULMON TB NEC-OTH TEST	0	1	0	15
011.9	PULMONARY TB NOS*	0	1	0	15
011.90	PULMONARY TB NOS-UNSPEC	0	1	0	15
011.91	PULMONARY TB NOS-NO EXAM	0	1	0	15
011.92	PULMON TB NOS-EXAM UNKN	0	1	0	15
011.93	PULMON TB NOS-MICRO DX	0	1	0	15
011.94	PULMON TB NOS-CULT DX	0	1	0	15
011.95	PULMON TB NOS-HISTO DX	0	1	0	15
011.96	PULMON TB NOS-OTH TEST	0	1	0	15
012.	OTHER RESPIRATORY TB*	0	1	0	15
012.0	TUBERCULOUS PLEURISY*	0	1	0	15
012.00	TB PLEURISY-UNSPEC	0	1	0	15
012.01	TB PLEURISY-NO EXAM	0	1	0	15
012.02	TB PLEURISY-EXAM UNKN	0	1	0	15
012.03	TB PLEURISY-MICRO DX	0	1	0	15
012.04	TB PLEURISY-CULT DX	0	1	0	15
012.05	TB PLEURISY-HISTOLOG DX	0	1	0	15
012.06	TB PLEURISY-OTH TEST	0	1	0	15
012.1	TB THORACIC LYMPH NODES*	0	1	0	15
012.10	TB THORACIC NODES-UNSPEC	0	1	0	15
012.11	TB THORAX NODE-NO EXAM	0	1	0	15
012.12	TB THORAX NODE-EXAM UNKN	0	1	0	15
012.13	TB THORAX NODE-MICRO DX	0	1	0	15
012.14	TB THORAX NODE-CULT DX	0	1	0	15
012.15	TB THORAX NODE-HISTO DX	0	1	0	15
012.16	TB THORAX NODE-OTH TEST	0	1	0	15
012.2	ISOLATED TRACH/BRONCH TB*	0	1	0	15
012.20	ISOL TRACHEAL TB-UNSPEC	0	1	0	15
012.21	ISOL TRACHEAL TB-NO EXAM	0	1	0	15
012.22	ISOL TRACH TB-EXAM UNKN	0	1	0	15
012.23	ISOLAT TRACH TB-MICRO DX	0	1	0	15
012.24	ISOL TRACHEAL TB-CULT DX	0	1	0	15
012.25	ISOLAT TRACH TB-HISTO DX	0	1	0	15
012.26	ISOLAT TRACH TB-OTH TEST	0	1	0	15
012.3	TUBERCULOUS LARYNGITIS*	0	1	0	15
012.30	TB LARYNGITIS-UNSPEC	0	1	0	15
012.31	TB LARYNGITIS-NO EXAM	0	1	0	15
012.32	TB LARYNGITIS-EXAM UNKN	0	1	0	15
012.33	TB LARYNGITIS-MICRO DX	0	1	0	15
012.34	TB LARYNGITIS-CULT DX	0	1	0	15
012.35	TB LARYNGITIS-HISTO DX	0	1	0	15
012.36	TB LARYNGITIS-OTH TEST	0	1	0	15
012.8	RESPIRATORY TB NEC*	0	1	0	15
012.80	RESP TB NEC-UNSPEC	0	1	0	15
012.81	RESP TB NEC-NO EXAM	0	1	0	15
012.82	RESP TB NEC-EXAM UNKN	0	1	0	15
012.83	RESP TB NEC-MICRO DX	0	1	0	15
012.84	RESP TB NEC-CULT DX	0	1	0	15

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
012.85	RESP TB NEC-HISTO DX	0	1	0	15
012.86	RESP TB NEC-OTH TEST	0	1	0	15
013.	CNS TUBERCULOSIS*	0	1	0	03, 05
013.0	TUBERCULOUS MENINGITIS*	0	1	0	03, 05
013.00	TB MENINGITIS-UNSPEC	0	1	0	03, 05
013.01	TB MENINGITIS-NO EXAM	0	1	0	03, 05
013.02	TB MENINGITIS-EXAM UNKN	0	1	0	03, 05
013.03	TB MENINGITIS-MICRO DX	0	1	0	03, 05
013.04	TB MENINGITIS-CULT DX	0	1	0	03, 05
013.05	TB MENINGITIS-HISTO DX	0	1	0	03, 05
013.06	TB MENINGITIS-OTH TEST	0	1	0	03, 05
013.1	TUBERCULOMA OF MENINGES*	0	1	0	03, 05
013.10	TUBRCLMA MENINGES-UNSPEC	0	1	0	03, 05
013.11	TUBRCLMA MENING-NO EXAM	0	1	0	03, 05
013.12	TUBRCLMA MENIN-EXAM UNKN	0	1	0	03, 05
013.13	TUBRCLMA MENING-MICRO DX	0	1	0	03, 05
013.14	TUBRCLMA MENING-CULT DX	0	1	0	03, 05
013.15	TUBRCLMA MENING-HISTO DX	0	1	0	03, 05
013.16	TUBRCLMA MENING-OTH TEST	0	1	0	03, 05
013.2	TUBERCULOMA OF BRAIN*	0	1	0	03
013.20	TUBERCULOMA BRAIN-UNSPEC	0	1	0	03
013.21	TUBRCLOMA BRAIN-NO EXAM	0	1	0	03
013.22	TUBRCLMA BRAIN-EXAM UNKN	0	1	0	03
013.23	TUBRCLOMA BRAIN-MICRO DX	0	1	0	03
013.24	TUBRCLOMA BRAIN-CULT DX	0	1	0	03
013.25	TUBRCLOMA BRAIN-HISTO DX	0	1	0	03
013.26	TUBRCLOMA BRAIN-OTH TEST	0	1	0	03
013.3	TB ABSCESS OF BRAIN*	0	1	0	03
013.30	TB BRAIN ABSCESS-UNSPEC	0	1	0	03
013.31	TB BRAIN ABSCESS-NO EXAM	0	1	0	03
013.32	TB BRAIN ABSC-EXAM UNKN	0	1	0	03
013.33	TB BRAIN ABSC-MICRO DX	0	1	0	03
013.34	TB BRAIN ABSCESS-CULT DX	0	1	0	03
013.35	TB BRAIN ABSC-HISTO DX	0	1	0	03
013.36	TB BRAIN ABSC-OTH TEST	0	1	0	03
013.4	TUBERCULOMA SPINAL CORD*	0	1	0	05
013.40	TUBRCLMA SP CORD-UNSPEC	0	1	0	05
013.41	TUBRCLMA SP CORD-NO EXAM	0	1	0	05
013.42	TUBRCLMA SP CD-EXAM UNKN	0	1	0	05
013.43	TUBRCLMA SP CRD-MICRO DX	0	1	0	05
013.44	TUBRCLMA SP CORD-CULT DX	0	1	0	05
013.45	TUBRCLMA SP CRD-HISTO DX	0	1	0	05
013.46	TUBRCLMA SP CRD-OTH TEST	0	1	0	05
013.5	TB ABSCESS SPINAL CORD*	0	1	0	05
013.50	TB SP CRD ABSCESS-UNSPEC	0	1	0	05
013.51	TB SP CRD ABSC-NO EXAM	0	1	0	05
013.52	TB SP CRD ABSC-EXAM UNKN	0	1	0	05
013.53	TB SP CRD ABSC-MICRO DX	0	1	0	05
013.54	TB SP CRD ABSC-CULT DX	0	1	0	05
013.55	TB SP CRD ABSC-HISTO DX	0	1	0	05
013.56	TB SP CRD ABSC-OTH TEST	0	1	0	05
013.6	TB ENCEPHALITIS/MYELITIS*	0	1	0	03
013.60	TB ENCEPHALITIS-UNSPEC	0	1	0	03
013.61	TB ENCEPHALITIS-NO EXAM	0	1	0	03
013.62	TB ENCEPHALIT-EXAM UNKN	0	1	0	03
013.63	TB ENCEPHALITIS-MICRO DX	0	1	0	03
013.64	TB ENCEPHALITIS-CULT DX	0	1	0	03
013.65	TB ENCEPHALITIS-HISTO DX	0	1	0	03
013.66	TB ENCEPHALITIS-OTH TEST	0	1	0	03
013.8	CNS TUBERCULOSIS NEC*	0	1	0	03, 05
013.80	CNS TB NEC-UNSPEC	0	1	0	03, 05
013.81	CNS TB NEC-NO EXAM	0	1	0	03, 05
013.82	CNS TB NEC-EXAM UNKN	0	1	0	03, 05
013.83	CNS TB NEC-MICRO DX	0	1	0	03, 05
013.84	CNS TB NEC-CULT DX	0	1	0	03, 05
013.85	CNS TB NEC-HISTO DX	0	1	0	03, 05
013.86	CNS TB NEC-OTH TEST	0	1	0	03, 05
013.9	CNS TUBERCULOSIS NOS*	0	1	0	03, 05
013.90	CNS TB NOS-UNSPEC	0	1	0	03, 05
013.91	CNS TB NOS-NO EXAM	0	1	0	03, 05
013.92	CNS TB NOS-EXAM UNKN	0	1	0	03, 05

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
013.93	CNS TB NOS-MICRO DX	0	1	0	03, 05
013.94	CNS TB NOS-CULT DX	0	1	0	03, 05
013.95	CNS TB NOS-HISTO DX	0	1	0	03, 05
013.96	CNS TB NOS-OTH TEST	0	1	0	03, 05
014.	INTESTINAL TB*	0	1	0	
014.0	TUBERCULOUS PERITONITIS*	0	1	0	
014.00	TB PERITONITIS-UNSPEC	0	1	0	
014.01	TB PERITONITIS-NO EXAM	0	1	0	
014.02	TB PERITONITIS-EXAM UNKN	0	1	0	
014.03	TB PERITONITIS-MICRO DX	0	1	0	
014.04	TB PERITONITIS-CULT DX	0	1	0	
014.05	TB PERITONITIS-HISTO DX	0	1	0	
014.06	TB PERITONITIS-OTH TEST	0	1	0	
014.8	INTESTINAL TB NEC*	0	1	0	
014.80	INTESTINAL TB NEC-UNSPEC	0	1	0	
014.81	INTESTIN TB NEC-NO EXAM	0	1	0	
014.82	INTEST TB NEC-EXAM UNKN	0	1	0	
014.83	INTESTIN TB NEC-MICRO DX	0	1	0	
014.84	INTESTIN TB NEC-CULT DX	0	1	0	
014.85	INTESTIN TB NEC-HISTO DX	0	1	0	
014.86	INTESTIN TB NEC-OTH TEST	0	1	0	
015.	TB OF BONE AND JOINT*	0	1	0	03, 09
015.0	TB OF VERTEBRAL COLUMN*	0	1	0	03, 09
015.00	TB OF VERTEBRA-UNSPEC	0	1	0	03, 09
015.01	TB OF VERTEBRA-NO EXAM	0	1	0	03, 09
015.02	TB OF VERTEBRA-EXAM UNKN	0	1	0	03, 09
015.03	TB OF VERTEBRA-MICRO DX	0	1	0	03, 09
015.04	TB OF VERTEBRA-CULT DX	0	1	0	03, 09
015.05	TB OF VERTEBRA-HISTO DX	0	1	0	03, 09
015.06	TB OF VERTEBRA-OTH TEST	0	1	0	03, 09
015.1	TB OF HIP*	0	1	0	09
015.10	TB OF HIP-UNSPEC	0	1	0	09
015.11	TB OF HIP-NO EXAM	0	1	0	09
015.12	TB OF HIP-EXAM UNKN	0	1	0	09
015.13	TB OF HIP-MICRO DX	0	1	0	09
015.14	TB OF HIP-CULT DX	0	1	0	09
015.15	TB OF HIP-HISTO DX	0	1	0	09
015.16	TB OF HIP-OTH TEST	0	1	0	09
015.2	TB OF KNEE*	0	1	0	09
015.20	TB OF KNEE-UNSPEC	0	1	0	09
015.21	TB OF KNEE-NO EXAM	0	1	0	09
015.22	TB OF KNEE-EXAM UNKN	0	1	0	09
015.23	TB OF KNEE-MICRO DX	0	1	0	09
015.24	TB OF KNEE-CULT DX	0	1	0	09
015.25	TB OF KNEE-HISTO DX	0	1	0	09
015.26	TB OF KNEE-OTH TEST	0	1	0	09
015.5	TB OF LIMB BONES*	0	1	0	09, 10, 11
015.50	TB OF LIMB BONES-UNSPEC	0	1	0	09, 10, 11
015.51	TB LIMB BONES-NO EXAM	0	1	0	09, 10, 11
015.52	TB LIMB BONES-EXAM UNKN	0	1	0	09, 10, 11
015.53	TB LIMB BONES-MICRO DX	0	1	0	09, 10, 11
015.54	TB LIMB BONES-CULT DX	0	1	0	09, 10, 11
015.55	TB LIMB BONES-HISTO DX	0	1	0	09, 10, 11
015.56	TB LIMB BONES-OTH TEST	0	1	0	
015.6	TB OF MASTOID*	0	1	0	
015.60	TB OF MASTOID-UNSPEC	0	1	0	
015.61	TB OF MASTOID-NO EXAM	0	1	0	
015.62	TB OF MASTOID-EXAM UNKN	0	1	0	
015.63	TB OF MASTOID-MICRO DX	0	1	0	
015.64	TB OF MASTOID-CULT DX	0	1	0	
015.65	TB OF MASTOID-HISTO DX	0	1	0	
015.66	TB OF MASTOID-OTH TEST	0	1	0	
015.7	TB OF BONE NEC*	0	1	0	09
015.70	TB OF BONE NEC-UNSPEC	0	1	0	09

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
015.71	TB OF BONE NEC-NO EXAM	0	1	0	09
015.72	TB OF BONE NEC-EXAM UNKN	0	1	0	09
015.73	TB OF BONE NEC-MICRO DX	0	1	0	09
015.74	TB OF BONE NEC-CULT DX	0	1	0	09
015.75	TB OF BONE NEC-HISTO DX	0	1	0	09
015.76	TB OF BONE NEC-OTH TEST	0	1	0	09
015.8	TB OF JOINT NEC*	0	1	0	09
015.80	TB OF JOINT NEC-UNSPEC	0	1	0	09
015.81	TB OF JOINT NEC-NO EXAM	0	1	0	09
015.82	TB JOINT NEC–EXAM UNKN	0	1	0	09
015.83	TB OF JOINT NEC–MICRO DX	0	1	0	09
015.84	TB OF JOINT NEC–CULT DX	0	1	0	09
015.85	TB OF JOINT NEC–HISTO DX	0	1	0	09
015.86	TB OF JOINT NEC–OTH TEST	0	1	0	09
015.9	TB OF BONE & JOINT NOS*	0	1	0	09
015.90	TB BONE/JOINT NOS–UNSPEC	0	1	0	09
015.91	TB BONE/JT NOS–NO EXAM	0	1	0	09
015.92	TB BONE/JT NOS–EXAM UNKN	0	1	0	09
015.93	TB BONE/JT NOS–MICRO DX	0	1	0	09
015.94	TB BONE/JT NOS–CULT DX	0	1	0	09
015.95	TB BONE/JT NOS–HISTO DX	0	1	0	09
015.96	TB BONE/JT NOS–OTH TEST	0	1	0	09
016.	GENITOURINARY TB*	0	1	0	
016.0	TB OF KIDNEY*	0	1	0	
016.00	TB OF KIDNEY–UNSPEC	0	1	0	
016.01	TB OF KIDNEY–NO EXAM	0	1	0	
016.02	TB OF KIDNEY–EXAM UNKN	0	1	0	
016.03	TB OF KIDNEY–MICRO DX	0	1	0	
016.04	TB OF KIDNEY–CULT DX	0	1	0	
016.05	TB OF KIDNEY–HISTO DX	0	1	0	
016.06	TB OF KIDNEY–OTH TEST	0	1	0	
016.1	TB OF BLADDER*	0	1	0	
016.10	TB OF BLADDER–UNSPEC	0	1	0	
016.11	TB OF BLADDER–NO EXAM	0	1	0	
016.12	TB OF BLADDER–EXAM UNKN	0	1	0	
016.13	TB OF BLADDER–MICRO DX	0	1	0	
016.14	TB OF BLADDER–CULT DX	0	1	0	
016.15	TB OF BLADDER–HISTO DX	0	1	0	
016.16	TB OF BLADDER–OTH TEST	0	1	0	
016.2	TB OF URETER*	0	1	0	
016.20	TB OF URETER–UNSPEC	0	1	0	
016.21	TB OF URETER–NO EXAM	0	1	0	
016.22	TB OF URETER–EXAM UNKN	0	1	0	
016.23	TB OF URETER–MICRO DX	0	1	0	
016.24	TB OF URETER–CULT DX	0	1	0	
016.25	TB OF URETER–HISTO DX	0	1	0	
016.26	TB OF URETER–OTH TEST	0	1	0	
016.3	TB OF URINARY ORGAN NEC*	0	1	0	
016.30	TB URINARY NEC–UNSPEC	0	1	0	
016.31	TB URINARY NEC–NO EXAM	0	1	0	
016.32	TB URINARY NEC–EXAM UNKN	0	1	0	
016.33	TB URINARY NEC–MICRO DX	0	1	0	
016.34	TB URINARY NEC–CULT DX	0	1	0	
016.35	TB URINARY NEC–HISTO DX	0	1	0	
016.36	TB URINARY NEC–OTH TEST	0	1	0	
016.4	TB OF EPIDIDYMIS*	0	1	0	
016.40	TB EPIDIDYMIS–UNSPEC	0	1	0	
016.41	TB EPIDIDYMIS–NO EXAM	0	1	0	
016.42	TB EPIDIDYMIS–EXAM UNKN	0	1	0	
016.43	TB EPIDIDYMIS–MICRO DX	0	1	0	
016.44	TB EPIDIDYMIS–CULT DX	0	1	0	
016.45	TB EPIDIDYMIS–HISTO DX	0	1	0	
016.46	TB EPIDIDYMIS–OTH TEST	0	1	0	
016.5	TB MALE GENITAL ORG NEC*	0	1	0	
016.50	TB MALE GENIT NEC–UNSPEC	0	1	0	
016.51	TB MALE GEN NEC–NO EXAM	0	1	0	
016.52	TB MALE GEN NEC–EX UNKN	0	1	0	
016.53	TB MALE GEN NEC–MICRO DX	0	1	0	
016.54	TB MALE GEN NEC–CULT DX	0	1	0	
016.55	TB MALE GEN NEC–HISTO DX	0	1	0	
016.56	TB MALE GEN NEC–OTH TEST	0	1	0	

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
016.6	TB OF OVARY AND TUBE*	0	1	0	
016.60	TB OVARY & TUBE–UNSPEC	0	1	0	
016.61	TB OVARY & TUBE–NO EXAM	0	1	0	
016.62	TB OVARY/TUBE–EXAM UNKN	0	1	0	
016.63	TB OVARY & TUBE–MICRO DX	0	1	0	
016.64	TB OVARY & TUBE–CULT DX	0	1	0	
016.65	TB OVARY & TUBE–HISTO DX	0	1	0	
016.66	TB OVARY & TUBE–OTH TEST	0	1	0	
016.7	TB FEMALE GENIT ORG NEC*	0	1	0	
016.70	TB FEMALE GEN NEC–UNSPEC	0	1	0	
016.71	TB FEM GEN NEC–NO EXAM	0	1	0	
016.72	TB FEM GEN NEC–EXAM UNKN	0	1	0	
016.73	TB FEM GEN NEC–MICRO DX	0	1	0	
016.74	TB FEM GEN NEC–CULT DX	0	1	0	
016.75	TB FEM GEN NEC–HISTO DX	0	1	0	
016.76	TB FEM GEN NEC–OTH TEST	0	1	0	
016.9	GENITOURINARY TB NOS*	0	1	0	
016.90	GU TB NOS–UNSPEC	0	1	0	
016.91	GU TB NOS–NO EXAM	0	1	0	
016.92	GU TB NOS–EXAM UNKN	0	1	0	
016.93	GU TB NOS–MICRO DX	0	1	0	
016.94	GU TB NOS–CULT DX	0	1	0	
016.95	GU TB NOS–HISTO DX	0	1	0	
016.96	GU TB NOS–OTH TEST	0	1	0	
017.	TUBERCULOSIS NEC*	0	1	0	
017.0	TB SKIN & SUBCUTANEOUS*	0	1	0	
017.00	TB SKIN/SUBCUTAN–UNSPEC	0	1	0	
017.01	TB SKIN/SUBCUT–NO EXAM	0	1	0	
017.02	TB SKIN/SUBCUT–EXAM UNKN	0	1	0	
017.03	TB SKIN/SUBCUT–MICRO DX	0	1	0	
017.04	TB SKIN/SUBCUT–CULT DX	0	1	0	
017.05	TB SKIN/SUBCUT–HISTO DX	0	1	0	
017.06	TB SKIN/SUBCUT–OTH TEST	0	1	0	
017.1	ERYTHEMA NODOSUM IN TB*	0	1	0	
017.10	ERYTHEMA NODOS TB–UNSPEC	0	1	0	
017.11	ERYTHEM NODOS TB–NO EXAM	0	1	0	
017.12	ERYTHEM NOD TB–EXAM UNKN	0	1	0	
017.13	ERYTHEM NOD TB–MICRO DX	0	1	0	
017.14	ERYTHEM NODOS TB–CULT DX	0	1	0	
017.15	ERYTHEM NOD TB–HISTO DX	0	1	0	
017.16	ERYTHEM NOD TB–OTH TEST	0	1	0	
017.2	TB OF PERIPH LYMPH NODE*	0	1	0	
017.20	TB PERIPH LYMPH–UNSPEC	0	1	0	
017.21	TB PERIPH LYMPH–NO EXAM	0	1	0	
017.22	TB PERIPH LYMPH–EXAM UNK	0	1	0	
017.23	TB PERIPH LYMPH–MICRO DX	0	1	0	
017.24	TB PERIPH LYMPH–CULT DX	0	1	0	
017.25	TB PERIPH LYMPH–HISTO DX	0	1	0	
017.26	TB PERIPH LYMPH–OTH TEST	0	1	0	
017.3	TB OF EYE*	0	1	0	
017.30	TB OF EYE–UNSPEC	0	1	0	
017.31	TB OF EYE–NO EXAM	0	1	0	
017.32	TB OF EYE–EXAM UNKN	0	1	0	
017.33	TB OF EYE–MICRO DX	0	1	0	
017.34	TB OF EYE–CULT DX	0	1	0	
017.35	TB OF EYE–HISTO DX	0	1	0	
017.36	TB OF EYE–OTH TEST	0	1	0	
017.4	TB OF EAR*	0	1	0	
017.40	TB OF EAR–UNSPEC	0	1	0	
017.41	TB OF EAR–NO EXAM	0	1	0	
017.42	TB OF EAR–EXAM UNKN	0	1	0	
017.43	TB OF EAR–MICRO DX	0	1	0	
017.44	TB OF EAR–CULT DX	0	1	0	
017.45	TB OF EAR–HISTO DX	0	1	0	
017.46	TB OF EAR–OTH TEST	0	1	0	
017.5	TB OF THYROID GLAND*	0	1	0	
017.50	TB OF THYROID–UNSPEC	0	1	0	
017.51	TB OF THYROID–NO EXAM	0	1	0	
017.52	TB OF THYROID–EXAM UNKN	0	1	0	
017.53	TB OF THYROID–MICRO DX	0	1	0	
017.54	TB OF THYROID–CULT DX	0	1	0	

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
017.55	TB OF THYROID–HISTO DX	0	1	0	
017.56	TB OF THYROID–OTH TEST	0	1	0	
017.6	TB OF ADRENAL GLAND*	0	1	0	
017.60	TB OF ADRENAL–UNSPEC	0	1	0	
017.61	TB OF ADRENAL–NO EXAM	0	1	0	
017.62	TB OF ADRENAL–EXAM UNKN	0	1	0	
017.63	TB OF ADRENAL–MICRO DX	0	1	0	
017.64	TB OF ADRENAL–CULT DX	0	1	0	
017.65	TB OF ADRENAL–HISTO DX	0	1	0	
017.7	TB OF SPLEEN*	0	1	0	
017.70	TB OF SPLEEN–UNSPEC	0	1	0	
017.71	TB OF SPLEEN–NO EXAM	0	1	0	
017.72	TB OF SPLEEN–EXAM UNKN	0	1	0	
017.73	TB OF SPLEEN–MICRO DX	0	1	0	
017.74	TB OF SPLEEN–CULT DX	0	1	0	
017.75	TB OF SPLEEN–HISTO DX	0	1	0	
017.76	TB OF SPLEEN–OTH TEST	0	1	0	
017.8	TB OF ESOPHAGUS*	0	1	0	
017.80	TB ESOPHAGUS–UNSPEC	0	1	0	
017.81	TB ESOPHAGUS–NO EXAM	0	1	0	
017.82	TB ESOPHAGUS–EXAM UNKN	0	1	0	
017.83	TB ESOPHAGUS–MICRO DX	0	1	0	
017.84	TB ESOPHAGUS–CULT DX	0	1	0	
017.85	TB ESOPHAGUS–HISTO DX	0	1	0	
017.86	TB ESOPHAGUS–OTH TEST	0	1	0	
017.9	TB OF ORGAN NEC*	0	1	0	
017.90	TB OF ORGAN NEC–UNSPEC	0	1	0	
017.91	TB OF ORGAN NEC–NO EXAM	0	1	0	
017.92	TB ORGAN NEC–EXAM UNKN	0	1	0	
017.93	TB OF ORGAN NEC–MICRO DX	0	1	0	
017.94	TB OF ORGAN NEC–CULT DX	0	1	0	
017.95	TB OF ORGAN NEC–HISTO DX	0	1	0	
017.96	TB OF ORGAN NEC–OTH TEST	0	1	0	
018.	MILIARY TUBERCULOSIS*	0	1	0	
018.0	ACUTE MILIARY TB*	0	1	0	
018.00	ACUTE MILIARY TB–UNSPEC	0	1	0	
018.01	ACUTE MILIARY TB–NO EXAM	0	1	0	
018.02	AC MILIARY TB–EXAM UNKN	0	1	0	
018.03	AC MILIARY TB–MICRO DX	0	1	0	
018.04	ACUTE MILIARY TB–CULT DX	0	1	0	
018.05	AC MILIARY TB–HISTO DX	0	1	0	
018.06	AC MILIARY TB–OTH TEST	0	1	0	
018.8	MILIARY TB NEC*	0	1	0	
018.80	MILIARY TB NEC–UNSPEC	0	1	0	
018.81	MILIARY TB NEC–NO EXAM	0	1	0	
018.82	MILIARY TB NEC–EXAM UNKN	0	1	0	
018.83	MILIARY TB NEC–MICRO DX	0	1	0	
018.84	MILIARY TB NEC–CULT DX	0	1	0	
018.85	MILIARY TB NEC–HISTO DX	0	1	0	
018.86	MILIARY TB NEC–OTH TEST	0	1	0	
018.9	MILIARY TUBERCULOSIS NOS*	0	1	0	
018.90	MILIARY TB NOS–UNSPEC	0	1	0	
018.91	MILIARY TB NOS–NO EXAM	0	1	0	
018.92	MILIARY TB NOS–EXAM UNKN	0	1	0	
018.93	MILIARY TB NOS–MICRO DX	0	1	0	
018.94	MILIARY TB NOS–CULT DX	0	1	0	
018.95	MILIARY TB NOS–HISTO DX	0	1	0	
018.96	MILIARY TB NOS–OTH TEST	0	1	0	
027.0	LISTERIOSIS	0	1	0	
027.1	ERYSIPELOTHRIX INFECTION	0	1	0	
027.2	PASTEURELLOSIS	0	1	0	
027.8	ZOONOTIC BACT DIS NEC	0	1	0	
027.9	ZOONOTIC BACT DIS NOS	0	1	0	
036.0	MENINGOCOCCAL MENINGITIS	0	1	0	03, 05
038.0	STREPTOCOCCAL SEPTICEMIA	0	1	0	
038.1	STAPHYLOCOCC SEPTICEMIA*	0	1	0	
038.10	STAPHYLCOCC SEPTICEM NOS	0	1	0	
038.11	STAPH AUREUS SEPTICEMIA	0	1	0	
038.19	STAPHYLCOCC SEPTICEM NEC	0	1	0	
038.2	PNEUMOCOCCAL SEPTICEMIA	0	1	0	
038.3	ANAEROBIC SEPTICEMIA	0	1	0	

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
038.4	GRAM–NEG SEPTICEMIA NEC*	0	1	0	
038.40	GRAM–NEG SEPTICEMIA NOS	0	1	0	
038.41	H. INFLUENAE SEPTICEMIA	0	1	0	
038.42	E COLI SEPTICEMIA	0	1	0	
038.43	PSEUDOMONAS SEPTICEMIA	0	1	0	
038.44	SERRATIA SEPTICEMIA	0	1	0	
038.49	GRAM–NEG SEPTICEMIA NEC	0	1	0	
038.8	SEPTICEMIA NEC	0	1	0	
038.9	SEPTICEMIA NOS	0	1	0	
041.7	PSEUDOMONAS INFECT NOS	0	1	0	
042.	HUMAN IMMUNO VIRUS DIS	0	1	0	
047.8	VIRAL MENINGITIS NEC	0	1	0	03, 05
047.9	VIRAL MENINGITIS NOS	0	1	0	03, 05
048.	OTH ENTEROVIRAL CNS DIS	0	1	0	03, 05
049.0	LYMPHOCYTIC CHORIOMENING	0	1	0	03, 05
049.9	VIRAL ENCEPHALITIS NOS	0	1	0	03
052.0	POSTVARICELLA ENCEPHALIT	0	1	0	03
053.0	HERPES ZOSTER MENINGITIS	0	1	0	03, 05
053.13	POSTHERPES POLYNEUROPATH	0	1	0	06
054.3	HERPETIC ENCEPHALITIS	0	1	0	03
054.5	HERPETIC SEPTICEMIA	0	1	0	03
054.72	H SIMPLEX MENINGITIS	0	1	0	03, 05
055.0	POSTMEASLES ENCEPHALITIS	0	1	0	03
072.1	MUMPS MENINGITIS	0	1	0	03, 05
072.2	MUMPS ENCEPHALITIS	0	1	0	03
079.50	RETROVIRUS–UNSPECIFIED	0	1	0	
079.51	HTLV–1 INFECTION OTH DIS	0	1	0	06
079.52	HTLV–II INFECTN OTH DIS	0	1	0	06
079.53	HIV–2 INFECTION OTH DIS	0	1	0	
079.59	OTH SPECFIED RETROVIRUS	0	1	0	
090.42	CONGEN SYPH MENINGITIS	0	1	0	03, 05
094.2	SYPHILITIC MENINGITIS	0	1	0	03, 05
098.89	GONOCOCCAL INF SITE NEC	0	1	0	
114.2	COCCIDIOIDAL MENINGITIS	0	1	0	03, 05
115.	HISTOPLASMOSIS*	0	1	0	15
115.0	HISTOPLASMA CAPSULATUM*	0	1	0	15
115.00	HISTOPLASMA CAPSULAT NOS	0	1	0	15
115.01	HISTOPLASM CAPSUL MENING	0	1	0	03, 05
115.02	HISTOPLASM CAPSUL RETINA	0	1	0	
115.03	HISTOPLASM CAPS PERICARD	0	1	0	14
115.04	HISTOPLASM CAPS ENDOCARD	0	1	0	14
115.05	HISTOPLASM CAPS PNEUMON	0	1	0	15
115.09	HISTOPLASMA CAPSULAT NEC	0	1	0	15
115.1	HISTOPLASMA DUBOISII*	0	1	0	15
115.10	HISTOPLASMA DUBOISII NOS	0	1	0	
115.11	HISTOPLASM DUBOIS MENING	0	1	0	03, 05
115.12	HISTOPLASM DUBOIS RETINA	0	1	0	
115.13	HISTOPLASM DUB PERICARD	0	1	0	14
115.14	HISTOPLASM DUB ENDOCARD	0	1	0	14
115.15	HISTOPLASM DUB PNEUMONIA	0	1	0	15
115.19	HISTOPLASMA DUBOISII NEC	0	1	0	15
115.9	HISTOPLASMOSIS UNSPEC *	0	1	0	15
115.90	HISTOPLASMOSIS NOS	0	1	0	15
115.91	HISTOPLASMOSIS MENINGIT	0	1	0	03, 05
115.92	HISTOPLASMOSIS RETINITIS	0	1	0	
115.93	HISTOPLASMOSIS PERICARD	0	1	0	14
115.94	HISTOPLASMOSIS ENDOCARD	0	1	0	14
115.95	HISTOPLASMOSIS PNEUMONIA	0	1	0	15
115.99	HISTOPLASMOSIS NEC	0	1	0	15
130.0	TOXOPLASM MENINGOENCEPH	0	1	0	03, 05
139.0	LATE EFF VIRAL ENCEPHAL	0	1	0	03
320.0	HEMOPHILUS MENINGITIS	0	1	0	03, 05
320.1	PNEUMOCOCCAL MENINGITIS	0	1	0	03, 05
320.2	STREPTOCOCCAL MENINGITIS	0	1	0	03, 05
320.3	STAPHYLOCOCC MENINGITIS	0	1	0	03, 05
320.7	MENING IN OTH BACT DIS	0	1	0	03, 05
320.81	ANAEROBIC MENINGITIS	0	1	0	03, 05
320.82	MNINGTS GRAM–NEG BCT NEC	0	1	0	03, 05
320.89	MENINGITIS OTH SPCF BACT	0	1	0	03, 05
320.9	BACTERIAL MENINGITIS NOS	0	1	0	03, 05
321.0	CRYPTOCOCCAL MENINGITIS	0	1	0	03, 05

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
321.1	MENING IN OTH FUNGAL DIS	0	1	0	03, 05
321.2	MENING IN OTH VIRAL DIS	0	1	0	03, 05
321.3	TRYPANOSOMIASIS MENINGIT	0	1	0	03, 05
321.4	MENINGIT D/T SARCOIDOSIS	0	1	0	03, 05
321.8	MENING IN OTH NONBAC DIS	0	1	0	03, 05
322.0	NONPYOGENIC MENINGITIS	0	1	0	03, 05
322.2	CHRONIC MENINGITIS	0	1	0	03, 05
322.9	MENINGITIS NOS	0	1	0	03, 05
323.6	POSTINFECT ENCEPHALITIS	0	1	0	03
323.8	ENCEPHALITIS NEC	0	1	0	03
323.9	ENCEPHALITIS NOS	0	1	0	03
356.4	IDIO PROG POLYNEUROPATHY	0	1	0	03, 06, 19
376.01	ORBITAL CELLULITIS	0	1	0	.....
438.82	LATE EF CV DIS DYSPHAGIA	0	1	0	01
528.3	CELLULITIS/ABSCESS MOUTH	0	1	0	.....
682.	OTHER CELLULITIS/ABSCESS*	0	1	0	.....
682.0	CELLULITIS OF FACE	0	1	0	.....
682.1	CELLULITIS OF NECK	0	1	0	.....
682.2	CELLULITIS OF TRUNK	0	1	0	.....
682.3	CELLULITIS OF ARM	0	1	0	.....
682.4	CELLULITIS OF HAND	0	1	0	.....
682.5	CELLULITIS OF BUTTOCK	0	1	0	.....
682.6	CELLULITIS OF LEG	0	1	0	10
682.7	CELLULITIS OF FOOT	0	1	0	10
682.8	CELLULITIS SITE NEC	0	1	0	.....
785.4	GANGRENE	0	1	0	10, 11
787.2	DYSPHAGIA	0	1	0	01
799.4	CACHEXIA	0	1	0	.....
998.5	POSTOPERATIVE INFECTION*	0	1	0	.....
998.51	INFECTED POSTOP SEROMA	0	1	0	.....
998.59	OTHER POSTOP INFECTION	0	1	0	.....
V451	RENAL DIALYSIS STATUS	0	1	0	.....
036.2	MENINGOCOCCEMIA	0	0	1	03, 05
036.3	MENINGOCOCC ADRENAL SYND	0	0	1	05
036.40	MENINGOCOCC CARDITIS NOS	0	0	1	14
036.42	MENINGOCOCC ENDOCARDITIS	0	0	1	14
036.43	MENINGOCOCC MYOCARDITIS	0	0	1	14
037.	TETANUS	0	0	1	06
052.1	VARICELLA PNEUMONITIS	0	0	1	15
054.79	H SIMPLEX COMPLICAT NEC	0	0	1	.....
055.1	POSTMEASLES PNEUMONIA	0	0	1	15
070.20	HPT B ACTE COMA WO DLTA	0	0	1	03
070.21	HPT B ACTE COMA W DLTA	0	0	1	03
070.22	HPT B CHRN COMA WO DLTA	0	0	1	03
070.23	HPT B CHRN COMA W DLTA	0	0	1	03
070.41	HPT C ACUTE W HEPAT COMA	0	0	1	03
070.42	HPT DLT WO B W HPT COMA	0	0	1	03
070.43	HPT E W HEPAT COMA	0	0	1	03
070.44	CHRNC HPT C W HEPAT COMA	0	0	1	03
070.49	OTH VRL HEPAT W HPT COMA	0	0	1	03
070.6	VIRAL HEPAT NOS W COMA	0	0	1	03
072.3	MUMPS PANCREATITIS	0	0	1	.....
093.20	SYPHIL ENDOCARDITIS NOS	0	0	1	14
093.82	SYPHILITIC MYOCARDITIS	0	0	1	14
094.87	SYPH RUPT CEREB ANEURYSM	0	0	1	01, 03
130.3	TOXOPLASMA MYOCARDITIS	0	0	1	14
130.4	TOXOPLASMA PNEUMONITIS	0	0	1	15
136.3	PNEUMOCYSTOSIS	0	0	1	15
204.00	ACT LYM LEUK W/O RMSION	0	0	1	.....
205.00	ACT MYL LEUK W/O RMSION	0	0	1	.....
206.00	ACT MONO LEUK W/O RMSION	0	0	1	.....
207.00	ACT ERTH/ERYLK W/O RMSON	0	0	1	.....
208.00	ACT LEUK UNS CL W/O RMSN	0	0	1	.....
250.40	DMII RENL NT ST UNCNTRLD	0	0	1	.....
250.41	DMI RENL NT ST UNCNTRLD	0	0	1	.....
250.42	DMII RENAL UNCNTRLD	0	0	1	.....
250.43	DMI RENAL UNCNTRLD	0	0	1	.....
250.50	DMII OPHTH NT ST UNCNTRL	0	0	1	.....
250.51	DMI OPHTH NT ST UNCNTRLD	0	0	1	.....
250.52	DMII OPHTH UNCNTRLD	0	0	1	.....

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
250.53	DMI OPHTH UNCNTRLD	0	0	1	
250.60	DMII NEURO NT ST UNCNTRL	0	0	1	06
250.61	DMI NEURO NT ST UNCNTRLD	0	0	1	06
250.62	DMII NEURO UNCNTRLD	0	0	1	06
250.63	DMI NEURO UNCNTRLD	0	0	1	06
250.70	DMII CIRC NT ST UNCNTRLD	0	0	1	
250.71	DMI CIRC NT ST UNCNTRLD	0	0	1	
250.72	DMII CIRC UNCNTRLD	0	0	1	
250.73	DMI CIRC UNCNTRLD	0	0	1	
250.80	DMII OTH NT ST UNCNTRLD	0	0	1	
250.81	DMI OTH NT ST UNCNTRLD	0	0	1	
250.82	DMII OTH UNCNTRLD	0	0	1	
250.83	DMI OTH UNCNTRLD	0	0	1	
250.90	DMII UNSPF NT ST UNCNTRL	0	0	1	
250.91	DMI UNSPF NT ST UNCNTRLD	0	0	1	
250.92	DMII UNSPF UNCNTRLD	0	0	1	
250.93	DMI UNSPF UNCNTRLD	0	0	1	
277.00	CYSTIC FIBROS W/O ILEUS	0	0	1	15
277.01	CYSTIC FIBROSIS W ILEUS	0	0	1	15
278.01	MORBID OBESITY	0	0	1	
282.60	SICKLE-CELL ANEMIA NOS	0	0	1	
282.61	HB-S DISEASE W/O CRISIS	0	0	1	
282.62	HB-S DISEASE WITH CRISIS	0	0	1	
282.63	SICKLE-CELL/HB-C DISEASE	0	0	1	
282.69	SICKLE-CELL ANEMIA NEC	0	0	1	
284.0	CONGEN APLASTIC ANEMIA	0	0	1	
284.8	APLASTIC ANEMIAS NEC	0	0	1	
284.9	APLASTIC ANEMIA NOS	0	0	1	
286.0	CONG FACTOR VIII DIORD	0	0	1	
286.1	CONG FACTOR IX DISORDER	0	0	1	
286.6	DEFIBRINATION SYNDROME	0	0	1	
324.0	INTRACRANIAL ABSCESS	0	0	1	03
324.1	INTRASPINAL ABSCESS	0	0	1	03
324.9	CNS ABSCESS NOS	0	0	1	03
342.00	FLCCD HMIPLGA UNSPF SIDE	0	0	1	01
342.01	FLCCD HMIPLGA DOMNT SIDE	0	0	1	01
342.02	FLCCD HMIPLG NONDMNT SDE	0	0	1	01
342.10	SPSTC HMIPLGA UNSPF SIDE	0	0	1	01
342.11	SPSTC HMIPLGA DOMNT SIDE	0	0	1	01
342.12	SPSTC HMIPLG NONDMNT SDE	0	0	1	01
342.80	OT SP HMIPLGA UNSPF SIDE	0	0	1	01
342.81	OT SP HMIPLGA DOMNT SIDE	0	0	1	01
342.82	OT SP HMIPLG NONDMNT SDE	0	0	1	01
342.90	UNSP HEMIPLGA UNSPF SIDE	0	0	1	01
342.91	UNSP HEMIPLGA DOMNT SIDE	0	0	1	01
342.92	UNSP HMIPLGA NONDMNT SDE	0	0	1	01
345.11	GEN CNV EPIL W INTR EPIL	0	0	1	02, 03
345.3	GRAND MAL STATUS	0	0	1	02, 03
348.1	ANOXIC BRAIN DAMAGE	0	0	1	02, 03
357.2	NEUROPATHY IN DIABETES	0	0	1	06
376.02	ORBITAL PERIOSTITIS	0	0	1	
376.03	ORBITAL OSTEOMYELITIS	0	0	1	
398.0	RHEUMATIC MYOCARDITIS	0	0	1	14
403.01	MAL HYP REN W RENAL FAIL	0	0	1	
404.01	MAL HYPER HRT/REN W CHF	0	0	1	14
404.03	MAL HYP HRT/REN W CHF&RF	0	0	1	14
410.01	AMI ANTEROLATERAL, INIT	0	0	1	14
410.11	AMI ANTERIOR WALL, INIT	0	0	1	14
410.21	AMI INFEROLATERAL, INIT	0	0	1	14
410.31	AMI INFEROPOST, INITIAL	0	0	1	14
410.41	AMI INFERIOR WALL, INIT	0	0	1	14
410.51	AMI LATERAL NEC, INITIAL	0	0	1	14
410.61	TRUE POST INFARCT, INIT	0	0	1	14
410.71	SUBENDO INFARCT, INITIAL	0	0	1	14
410.81	AMI NEC, INITIAL	0	0	1	14
410.91	AMI NOS, INITIAL	0	0	1	14
415.1	PULMON EMBOLISM/INFARCT*	0	0	1	15
415.11	IATROGEN PULM EMB/INFARC	0	0	1	15
415.19	PULM EMBOL/INFARCT NEC	0	0	1	15
421.0	AC/SUBAC BACT ENDOCARD	0	0	1	14
421.1	AC ENDOCARDIT IN OTH DIS	0	0	1	14

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
421.9	AC/SUBAC ENDOCARDIT NOS	0	0	1	14
422.0	AC MYOCARDIT IN OTH DIS	0	0	1	14
422.90	ACUTE MYOCARDITIS NOS	0	0	1	14
422.91	IDIOPATHIC MYOCARDITIS	0	0	1	14
422.92	SEPTIC MYOCARDITIS	0	0	1	14
422.93	TOXIC MYOCARDITIS	0	0	1	14
422.99	ACUTE MYOCARDITIS NEC	0	0	1	14
427.41	VENTRICULAR FIBRILLATION	0	0	1	14
427.5	CARDIAC ARREST	0	0	1	14
430.	SUBARACHNOID HEMORRHAGE	0	0	1	01, 02, 03
431.	INTRACEREBRAL HEMORRHAGE	0	0	1	01, 02, 03
432.0	NONTRAUM EXTRADURAL HEM	0	0	1	01, 02, 03
432.1	SUBDURAL HEMORRHAGE	0	0	1	01, 02, 03
433.01	OCL BSLR ART W INFRCT	0	0	1	01
433.11	OCL CRTD ART W INFRCT	0	0	1	01
433.21	OCL VRTB ART W INFRCT	0	0	1	01
433.31	OCL MLT BI ART W INFRCT	0	0	1	01
433.81	OCL SPCF ART W INFRCT	0	0	1	01
433.91	OCL ART NOS W INFRCT	0	0	1	01
434.01	CRBL THRMBS W INFRCT	0	0	1	01
434.11	CRBL EMBLSM W INFRCT	0	0	1	01
434.91	CRBL ART OCL NOS W INFRC	0	0	1	01
436.	CVA	0	0	1	01
440.23	ATH EXT NTV ART ULCRTION	0	0	1	10, 11
440.24	ATH EXT NTV ART GNGRENE	0	0	1	10, 11
441.0	DISSECTING ANEURYSM*	0	0	1	.....
441.00	DSCT OF AORTA UNSP SITE	0	0	1	.....
441.01	DSCT OF THORACIC AORTA	0	0	1	05
441.02	DSCT OF ABDOMINAL AORTA	0	0	1	05
441.03	DSCT OF THORACOABD AORTA	0	0	1	05
441.1	RUPTUR THORACIC ANEURYSM	0	0	1	05
441.3	RUPT ABD AORTIC ANEURYSM	0	0	1	05
441.5	RUPT AORTIC ANEURYSM NOS	0	0	1	05
441.6	THORACOABD ANEURYSM RUPT	0	0	1	05
446.3	LETHAL MIDLINE GRANULOMA	0	0	1	.....
452.	PORTAL VEIN THROMBOSIS	0	0	1	.....
453.	OTH VENOUS THROMBOSIS*	0	0	1	.....
453.0	BUDD-CHIARI SYNDROME	0	0	1	.....
453.1	THROMBOPHLEBITIS MIGRANS	0	0	1	.....
453.2	VENA CAVA THROMBOSIS	0	0	1	.....
453.3	RENAL VEIN THROMBOSIS	0	0	1	.....
464.11	AC TRACHEITIS W OBSTRUCT	0	0	1	15
464.21	AC LARYNGOTRACH W OBSTR	0	0	1	15
464.31	AC EPIGLOTTITIS W OBSTR	0	0	1	15
466.1	ACUTE BRONCHIOLITIS*	0	0	1	15
480.0	ADENOVIRAL PNEUMONIA	0	0	1	15
480.1	RESP SYNCYT VIRAL PNEUM	0	0	1	15
480.2	PARINFLUENZA VIRAL PNEUM	0	0	1	15
480.8	VIRAL PNEUMONIA NEC	0	0	1	15
480.9	VIRAL PNEUMONIA NOS	0	0	1	15
481.	PNEUMOCOCCAL PNEUMONIA	0	0	1	15
482.0	K. PNEUMONIAE PNEUMONIA	0	0	1	15
482.1	PSEUDOMONAL PNEUMONIA	0	0	1	15
482.2	H.INFLUENZAE PNEUMONIA	0	0	1	15
482.30	STREPTOCOCCAL PNEUMN NOS	0	0	1	15
482.31	PNEUMONIA STRPTOCOCCUS A	0	0	1	15
482.32	PNEUMONIA STRPTOCOCCUS B	0	0	1	15
482.39	PNEUMONIA OTH STREP	0	0	1	15
482.40	STAPHYLOCOCCAL PNEU NOS	0	0	1	15
482.41	STAPH AUREUS PNEUMONIA	0	0	1	15
482.49	STAPH PNEUMONIA NEC	0	0	1	15
482.8	BACTERIAL PNEUMONIA NEC*	0	0	1	15
482.81	PNEUMONIA ANAEROBES	0	0	1	15
482.82	PNEUMONIA E COLI	0	0	1	15
482.83	PNEUMO OTH GRM-NEG BACT	0	0	1	15
482.84	LEGIONNAIRES' DISEASE	0	0	1	15
482.89	PNEUMONIA OTH SPCF BACT	0	0	1	15

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
482.9	BACTERIAL PNEUMONIA NOS	0	0	1	15
483.0	PNEU MYCPLSM PNEUMONIAE	0	0	1	15
483.1	PNEUMONIA D/T CHLAMYDIA	0	0	1	15
483.8	PNEUMON OTH SPEC ORGNSM	0	0	1	15
484.1	PNEUM W CYTOMEG INCL DIS	0	0	1	15
484.3	PNEUMONIA IN WHOOP COUGH	0	0	1	15
484.5	PNEUMONIA IN ANTHRAX	0	0	1	15
484.6	PNEUM IN ASPERGILLOSIS	0	0	1	15
484.7	PNEUM IN OTH SYS MYCOSES	0	0	1	15
484.8	PNEUM IN INFECT DIS NEC	0	0	1	15
485.	BRONCHOPNEUMONIA ORG NOS	0	0	1	15
486.	PNEUMONIA, ORGANISM NOS	0	0	1	15
487.0	INFLUENZA WITH PNEUMONIA	0	0	1	15
506.0	FUM/VAPOR BRONC/PNEUMON	0	0	1	15
506.1	FUM/VAPOR AC PULM EDEMA	0	0	1	15
507.0	FOOD/VOMIT PNEUMONITIS	0	0	1	15
507.1	OIL/ESSENCE PNEUMONITIS	0	0	1	15
507.8	SOLID/LIQ PNEUMONIT NEC	0	0	1	15
510.0	EMPYEMA WITH FISTULA	0	0	1	15
510.9	EMPYEMA W/O FISTULA	0	0	1	15
511.1	BACT PLEUR/EFFUS NOT TB	0	0	1	15
513.0	ABSCESS OF LUNG	0	0	1	15
513.1	ABSCESS OF MEDIASTINUM	0	0	1	15
514.	PULM CONGEST/HYPOSTASIS	0	0	1	15
515.	POSTINFLAM PULM FIBROSIS	0	0	1	15
518.3	PULMONARY EOSINOPHILIA	0	0	1	15
518.5	POST TRAUM PULM INSUFFIC	0	0	1	15
518.81	ACUTE RESPIRATRY FAILURE	0	0	1	15
519.2	MEDIASTINITIS	0	0	1	15
530.0	ACHALASIA & CARDIOSPASM	0	0	1	
530.3	ESOPHAGEAL STRICTURE	0	0	1	
530.4	PERFORATION OF ESOPHAGUS	0	0	1	15
530.6	ACQ ESOPHAG DIVERTICULUM	0	0	1	
530.82	ESOPHAGEAL HEMORRHAGE	0	0	1	
531.00	AC STOMACH ULCER W HEM	0	0	1	
531.01	AC STOMAC ULC W HEM-OBST	0	0	1	
531.10	AC STOMACH ULCER W PERF	0	0	1	
531.11	AC STOM ULC W PERF-OBST	0	0	1	
531.20	AC STOMAC ULC W HEM/PERF	0	0	1	
531.21	AC STOM ULC HEM/PERF-OBS	0	0	1	
531.40	CHR STOMACH ULC W HEM	0	0	1	
531.41	CHR STOM ULC W HEM-OBSTR	0	0	1	
531.50	CHR STOMACH ULCER W PERF	0	0	1	
531.51	CHR STOM ULC W PERF-OBST	0	0	1	
531.60	CHR STOMACH ULC HEM/PERF	0	0	1	
531.61	CHR STOM ULC HEM/PERF-OB	0	0	1	
532.00	AC DUODENAL ULCER W HEM	0	0	1	
532.01	AC DUODEN ULC W HEM-OBST	0	0	1	
532.10	AC DUODENAL ULCER W PERF	0	0	1	
532.11	AC DUODEN ULC PERF-OBSTR	0	0	1	
532.20	AC DUODEN ULC W HEM/PERF	0	0	1	
532.21	AC DUOD ULC HEM/PERF-OBS	0	0	1	
532.40	CHR DUODEN ULCER W HEM	0	0	1	
532.41	CHR DUODEN ULC HEM-OBSTR	0	0	1	
532.50	CHR DUODEN ULCER W PERF	0	0	1	
532.51	CHR DUODEN ULC PERF-OBST	0	0	1	
532.60	CHR DUODEN ULC HEM/PERF	0	0	1	
532.61	CHR DUOD ULC HEM/PERF-OB	0	0	1	
533.00	AC PEPTIC ULCER W HEMORR	0	0	1	
533.01	AC PEPTIC ULC W HEM-OBST	0	0	1	
533.10	AC PEPTIC ULCER W PERFOR	0	0	1	
533.11	AC PEPTIC ULC W PERF-OBS	0	0	1	
533.20	AC PEPTIC ULC W HEM/PERF	0	0	1	
533.21	AC PEPT ULC HEM/PERF-OBS	0	0	1	
533.40	CHR PEPTIC ULCER W HEM	0	0	1	
533.41	CHR PEPTIC ULC W HEM-OBS	0	0	1	
533.50	CHR PEPTIC ULCER W PERF	0	0	1	
533.51	CHR PEPTIC ULC PERF-OBST	0	0	1	
533.60	CHR PEPT ULC W HEM/PERF	0	0	1	
533.61	CHR PEPT ULC HEM/PERF-OB	0	0	1	
534.00	AC MARGINAL ULCER W HEM	0	0	1	

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
534.01	AC MARGIN ULC W HEM-OBST	0	0	1	
534.10	AC MARGINAL ULCER W PERF	0	0	1	
534.11	AC MARGIN ULC W PERF-OBS	0	0	1	
534.20	AC MARGIN ULC W HEM/PERF	0	0	1	
534.21	AC MARG ULC HEM/PERF-OBS	0	0	1	
534.40	CHR MARGINAL ULCER W HEM	0	0	1	
534.41	CHR MARGIN ULC W HEM-OBS	0	0	1	
534.50	CHR MARGINAL ULC W PERF	0	0	1	
534.51	CHR MARGIN ULC PERF-OBST	0	0	1	
534.60	CHR MARGIN ULC HEM/PERF	0	0	1	
534.61	CHR MARG ULC HEM/PERF-OB	0	0	1	
535.01	ACUTE GASTRITIS W HMRHG	0	0	1	
535.11	ATRPH GASTRITIS W HMRHG	0	0	1	
535.21	GSTR MCSL HYPRT W HMRG	0	0	1	
535.31	ALCHL GSTRITIS W HMRHG	0	0	1	
535.41	OTH SPF GASTRT W HMRHG	0	0	1	
535.51	GSTR/DDNTS NOS W HMRHG	0	0	1	
535.61	DUODENITIS W HMRHG	0	0	1	
537.4	GASTRIC/DUODENAL FISTULA	0	0	1	
537.83	ANGIO STM/DUDN W HMRHG	0	0	1	
540.0	AC APPEND W PERITONITIS	0	0	1	
557.0	AC VASC INSUFF INTESTINE	0	0	1	
562.02	DVRTCLO SML INT W HMRHG	0	0	1	
562.03	DVRTCLI SML INT W HMRHG	0	0	1	
562.12	DVRTCLO COLON W HMRHG	0	0	1	
562.13	DVRTCLI COLON W HMRHG	0	0	1	
567.0	PERITONITIS IN INFEC DIS	0	0	1	
567.1	PNEUMOCOCCAL PERITONITIS	0	0	1	
567.2	SUPPURAT PERITONITIS NEC	0	0	1	
567.8	PERITONITIS NEC	0	0	1	
567.9	PERITONITIS NOS	0	0	1	
569.60	COLSTOMY/ENTER COMP NOS	0	0	1	
569.61	COLOSTY/ENTEROST INFECTN	0	0	1	
569.69	COLSTMY/ENTEROS COMP NEC	0	0	1	
569.83	PERFORATION OF INTESTINE	0	0	1	
569.85	ANGIO INTES W HMRHG	0	0	1	
570.	ACUTE NECROSIS OF LIVER	0	0	1	
572.0	ABSCESS OF LIVER	0	0	1	
572.4	HEPATORENAL SYNDROME	0	0	1	
573.4	HEPATIC INFARCTION	0	0	1	
575.4	PERFORATION GALLBLADDER	0	0	1	
576.3	PERFORATION OF BILE DUCT	0	0	1	
577.2	PANCREAT CYST/PSEUDOCYST	0	0	1	
580.0	AC PROLIFERAT NEPHRITIS	0	0	1	
580.4	AC RAPIDLY PROGR NEPHRIT	0	0	1	
580.81	AC NEPHRITIS IN OTH DIS	0	0	1	
580.89	ACUTE NEPHRITIS NEC	0	0	1	
580.9	ACUTE NEPHRITIS NOS	0	0	1	
583.4	RAPIDLY PROG NEPHRIT NOS	0	0	1	
584.5	LOWER NEPHRON NEPHROSIS	0	0	1	
584.6	AC RENAL FAIL, CORT NECR	0	0	1	
584.7	AC REN FAIL, MEDULL NECR	0	0	1	
584.8	AC RENAL FAILURE NEC	0	0	1	
584.9	ACUTE RENAL FAILURE NOS	0	0	1	
590.2	RENAL/PERIRENAL ABSCESS	0	0	1	
596.6	BLADDER RUPT, NONTRAUM	0	0	1	
659.30	SEPTICEMIA IN LABOR-UNSP	0	0	1	
659.31	SEPTICEM IN LABOR-DELIV	0	0	1	
665.00	PRELABOR RUPT UTER-UNSP	0	0	1	
665.01	PRELABOR RUPT UTERUS-DEL	0	0	1	
665.03	PRELAB RUPT UTER-ANTEPAR	0	0	1	
665.10	RUPTURE UTERUS NOS-UNSP	0	0	1	
665.11	RUPTURE UTERUS NOS-DELIV	0	0	1	
669.10	OBSTETRIC SHOCK-UNSPEC	0	0	1	03
669.11	OBSTETRIC SHOCK-DELIVER	0	0	1	03
669.12	OBSTET SHOCK-DELIV W P/P	0	0	1	03
669.13	OBSTETRIC SHOCK-ANTEPAR	0	0	1	03
669.14	OBSTETRIC SHOCK-POSTPART	0	0	1	03
669.30	AC REN FAIL W DELIV-UNSP	0	0	1	
669.32	AC REN FAIL-DELIV W P/P	0	0	1	
669.34	AC RENAL FAILURE-POSTPAR	0	0	1	

APPENDIX C—LIST OF COMORBIDITIES—Continued

ICD–9–CM code	Abbreviated code title	Tier 1**	Tier 2**	Tier 3**	Excluded RIC***
673.00	OB AIR EMBOLISM-UNSPEC	0	0	1	01
673.01	OB AIR EMBOLISM-DELIVER	0	0	1	01
673.02	OB AIR EMBOL-DELIV W P/P	0	0	1	01
673.03	OB AIR EMBOLISM-ANTEPART	0	0	1	01
673.04	OB AIR EMBOLISM-POSTPART	0	0	1	01
673.10	AMNIOTIC EMBOLISM-UNSPEC	0	0	1	01
673.11	AMNIOTIC EMBOLISM-DELIV	0	0	1	01
673.12	AMNIOT EMBOL-DELIV W P/P	0	0	1	01
673.13	AMNIOTIC EMBOL-ANTEPART	0	0	1	01
673.14	AMNIOTIC EMBOL-POSTPART	0	0	1	01
673.20	OB PULM EMBOL NOS-UNSPEC	0	0	1	15
673.22	PULM EMBOL NOS-DEL W P/P	0	0	1	15
673.23	PULM EMBOL NOS-ANTEPART	0	0	1	15
673.24	PULM EMBOL NOS-POSTPART	0	0	1	15
673.30	OB PYEMIC EMBOL-UNSPEC	0	0	1	03
673.31	OB PYEMIC EMBOL-DELIVER	0	0	1	03
673.32	OB PYEM EMBOL-DEL W P/P	0	0	1	03
673.33	OB PYEMIC EMBOL-ANTEPART	0	0	1	03
673.34	OB PYEMIC EMBOL-POSTPART	0	0	1	03
673.80	OB PULMON EMBOL NEC-UNSP	0	0	1	15
673.81	PULMON EMBOL NEC-DELIVER	0	0	1	15
673.82	PULM EMBOL NEC-DEL W P/P	0	0	1	15
673.83	PULMON EMBOL NEC-ANTEPAR	0	0	1	15
673.84	PULMON EMBOL NEC-POSTPAR	0	0	1	15
674.00	PUERP CEREBVASC DIS-UNSP	0	0	1	01, 03
765.01	EXTREME IMMATUR <500G	0	0	1	.....
765.02	EXTREME IMMATUR 500–749G	0	0	1	.....
765.03	EXTREME IMMATUR 750–999G	0	0	1	.....
781.7	TETANY	0	0	1	06
785.51	CARDIOGENIC SHOCK	0	0	1	14
785.59	SHOCK W/O TRAUMA NEC	0	0	1	.....
799.1	RESPIRATORY ARREST	0	0	1	15
958.0	AIR EMBOLISM	0	0	1	02, 03
958.1	FAT EMBOLISM	0	0	1	02, 03
958.5	TRAUMATIC ANURIA	0	0	1	.....
996.02	MALFUNC PROSTH HRT VALVE	0	0	1	14
996.61	REACT-CARDIAC DEV/GRAFT	0	0	1	14
996.62	REACT-OTH VASC DEV/GRAFT	0	0	1	.....
996.63	REACT-NERV SYS DEV/GRAFT	0	0	1	.....
996.66	REACT-INTER JOINT PROST	0	0	1	08
996.67	REACT-OTH INT ORTHO DEV	0	0	1	09
996.69	REACT-INT PROS DEVIC NEC	0	0	1	09
997.62	INFECTION AMPUTAT STUMP	0	0	1	09, 10, 11
998.0	POSTOPERATIVE SHOCK	0	0	1	.....
998.3	POSTOP WOUND DISRUPTION	0	0	1	.....
998.6	PERSIST POSTOP FISTULA	0	0	1	.....
999.1	AIR EMBOL COMP MED CARE	0	0	1	03
V4975	STATUS AMPUT BELOW KNEE	0	0	1	10
V4976	STATUS AMPUT ABOVE KNEE	0	0	1	10
V4977	STATUS AMPUT HIP	0	0	1	10

* Denotes this is a category rather than a code.
** A "1" identifies the particular tier to which the ICD–9–CM code belongs.
*** This column identifies those RICs for which the ICD–9–CM code is excluded from the associated tiers.

Appendix D—The IRF Market Basket

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor (for purposes of setting prospective payment system rates) based on a market basket index. The market basket needs to include both operating and capital costs of rehabilitation facilities (that is, freestanding rehabilitation hospitals). Under the reasonable cost-based reimbursement system, the excluded hospital market basket was used to update limits on payment for operating costs for rehabilitation facilities. The excluded hospital market basket is based on operating costs from 1992 cost report data and includes Medicare-participating rehabilitation, long-term care, psychiatric, cancer, and children's hospitals. Since freestanding rehabilitation hospital costs are reflected as a component of the excluded hospital market basket, this index in part reflects the cost shares of rehabilitation facilities. In order to capture total costs (operating and capital), we added a capital component to the excluded hospital market basket. We refer to this index as the excluded hospital with capital market basket. In the following discussion, we describe the methodology used to determine the operating portion of the market basket, the methodology used to determine the capital portion of the market basket, and

additional analyses that help support the extent to which rehabilitation cost shares are reflected in the excluded hospital with capital market basket.

The operating portion of the excluded hospital with capital market basket consists of major cost categories and their respective weights. The major cost categories include wages and salaries, employee benefits, professional fees, pharmaceuticals, and a residual. The weights for the major cost categories are developed from the Medicare cost reports for FY 1992. The cost report data used include those hospitals excluded from the inpatient hospital prospective payment system where the Medicare average length of stay is within 15 percent (higher or lower) of the total facility average length of stay. Using the 15-percent threshold resulted in a subset of hospitals that had a significant amount of Medicare days and costs compared to using no adjustment or using a different threshold. Limiting the sample in this way provides a more accurate reflection of the structure of costs for Medicare. To the extent possible, we used total reimbursable facility costs to determine the weights for Medicare costs. We believe that total facility costs for facilities with high shares of Medicare patients are more representative of the Medicare population. We chose to compare the average length of stay for all patients to that of Medicare beneficiaries as the test of the similarity of the practice patterns for non-Medicare patients versus Medicare patients. Our goal was to measure cost shares that were reflective of case mix and practice patterns associated with providing services to Medicare beneficiaries (61 FR 46196, August 30, 1996). We chose to do this because we had to use facility-wide data to calculate the cost shares, but did not want to use facilities that did not reflect the Medicare population. By limiting the reports we used to those with similar length of stays for the Medicare and total facility populations we accomplished this goal. The detailed cost categories under the residual are derived from the Asset and Expenditure Survey, 1992 Census of Service Industries, by the Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce. This survey is used in conjunction with the 1992 Input-Output Tables published by the Bureau of Economic Analysis, U.S. Department of Commerce. A more detailed description of the development of the operating portion of this index can be found in the final rule, Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates published in the **Federal Register** on August 29, 1997 (62 FR 45993 through 45997).

As previously stated, the market basket needs to reflect both operating and capital costs. Capital costs include depreciation, interest, and other capital-related costs. The cost categories for the capital portion of the excluded hospital with capital market basket are developed in a similar manner as those for the inpatient hospital prospective payment system capital input price index, which is explained in the August 30, 1996 **Federal Register** (61 FR 46196–46197). We calculated weights for capital costs, using the same set of Medicare cost reports used to develop the operating share. The resulting capital weight for the FY 1992 base year is 9.080 percent.

Because capital is consumed over time, depreciation and interest costs in the current year reflect both current and previous capital purchases. We use vintage weighting to capture this effect. Vintage weighting, which is explained in the August 30, 1996 **Federal Register** (61 FR 46197 through 46203), is the process of weighting price changes for individual years in proportion to that year's share of total purchases still being consumed.

In order to vintage weight the capital portion of the index as described above, the average useful life of both assets and debt instruments (for example, a loan, bond, or promissory note) needs to be developed. For depreciation expenses, the useful life of fixed and movable assets is calculated from the Medicare cost reports for excluded hospitals, including freestanding rehabilitation hospitals. The average useful life for fixed assets is 21 years and the average useful life for movable assets is 13 years. For interest expenses, we use the same useful life of debt instruments used in the inpatient hospital prospective payment system capital input price index. We believe that this useful life is appropriate, because it reflects the average useful life of hospital issuances of commercial and municipal bonds from all hospitals, including rehabilitation facilities. The average useful life of interest expense is determined to be 22 years (61 FR 46199). After the useful life is determined, a set of weights is calculated by determining the average proportion of depreciation and interest expense incurred in any given year during the useful life. This information is developed using the Medicare cost reports. These calculations are the same as those described for the inpatient hospital prospective payment system capital input price index in the August 30, 1996 **Federal Register** (61 FR 46196 through 46198). The price proxies for each of the capital cost categories are the same as those used for the inpatient hospital prospective payment system capital input price index. The cost categories, price proxies, and base-year FY 1992 weights for the excluded hospital with capital market basket are presented in Table 1 below. The vintage weights for the index are presented in Table 2 below.

TABLE 1.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) STRUCTURE AND WEIGHTS

Cost category	Price/wage variable	Weights (%) base-year: 1992
Total		100.000
Compensation		57.935
Wages and Salaries	HCFA Occupational Wage Proxy	47.417
Employee Benefits	HCFA Occupational Benefit Proxy	10.519
Professional fees: Non-Medical	ECI—Compensation: Prof. & Technical	1.908
Utilities		1.524
Electricity	WPI—Commercial Electric Power	0.916
Fuel Oil, Coal, etc.	WPI—Commercial Natural Gas	0.365
Water and Sewerage	CPI–U—Water & Sewage	0.243
Professional Liability Insurance	HCFA—Professional Liability Premiums	0.983
All Other Products and Services		28.571
All Other Products		22.027
Pharmaceuticals	WPI—Prescription Drugs	2.791

TABLE 1.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) STRUCTURE AND WEIGHTS—Continued

Cost category	Price/wage variable	Weights (%) base-year: 1992
Food: Direct Purchase	WPI—Processed Foods	2.155
Food: Contract Service	CPI–U—Food Away from Home	0.998
Chemicals	WPI—Industrial Chemicals	3.413
Medical Instruments	WPI—Med. Inst. & Equipment	2.868
Photographic Supplies	WPI—Photo Supplies	0.364
Rubber and Plastics	WPI—Rubber & Plastic Products	4.423
Paper Products	WPI—Convert. Paper and Paperboard	1.984
Apparel	WPI—Apparel	0.809
Machinery and Equipment	WPI—Machinery & Equipment	0.193
Miscellaneous Products	WPI—Finished Goods	2.029
All Other Services		6.544
Telephone	CPI–U—Telephone Services	0.574
Postage	CPI–U—Postage	0.268
All Other: Labor	ECI—Compensation: Service Workers	4.945
All Other: Non-Labor Intensive	CPI–U—All Items (Urban)	0.757
Capital-Related Costs		9.080
Depreciation		5.611
Fixed Assets	Boeckh-Institutional Construction: 21 Year Useful Life	3.570
Movable Equipment	WPI—Machinery & Equipment: 13 Year Useful life	2.041
Interest Costs		3.212
Non-profit	Avg. Yield Municipal Bonds: 22 Year Useful Life	2.730
For-profit	Avg. Yield AAA Bonds: 22 Year Useful Life	0.482
Other Capital-Related Costs	CPI–U—Residential Rent	0.257

*The wage and benefit proxies are a blend of 10 employment cost indices (ECI). A detailed discussion of the price proxies can be found in the August 30, 1996 and August 29, 1997 FEDERAL REGISTER final rules (61 FR 46197 and 62 FR 45993). The operating cost categories in the excluded market basket described in the August 29, 1997 FEDERAL REGISTER (62 FR 45993 through 45996) had weights that added to 100.0. When we add an additional set of cost category weights (capital weight= 9.08 percent) to this original group, the sum of the weights in the new index must still add to 100.0. If capital cost category weights sum to 9.08, then operating cost category weights must add to 90.92 percent. Each weight in the excluded hospital market basket from the August 29, 1997 FEDERAL REGISTER (62 FR 45996 through 45997) was multiplied by 0.9092 to determine its weight in the excluded hospital with capital market basket.

TABLE 2.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992) VINTAGE WEIGHTS

Year	Fixed assets (21–year weights)	Movable assets (13–year weights)	Interest: capital-related (22–year weights)
1	0.0201	0.0454	0.0071
2	0.0225	0.0505	0.0082
3	0.0225	0.0562	0.0100
4	0.0285	0.0620	0.0119
5	0.0301	0.0660	0.0139
6	0.0321	0.0710	0.0161
7	0.0336	0.0764	0.0185
8	0.0353	0.0804	0.0207
9	0.0391	0.0860	0.0244
10	0.0431	0.0923	0.0291
11	0.0474	0.0987	0.0350
12	0.0513	0.1047	0.0409
13	0.0538	0.1104	0.0474
14	0.0561		0.0525
15	0.0600		0.0590
16	0.0628		0.0670
17	0.0658		0.0742
18	0.0695		0.0809
19	0.0720		0.0875
20	0.0748		0.0931
21	0.0769		0.0993
22			0.1034
Total	1.0000	1.0000	1.0000

We further analyzed the extent to which the weights in the excluded hospital with capital market basket reflect the cost weights in rehabilitation hospitals, particularly since more than 50 percent of excluded hospitals are psychiatric hospitals. For this purpose, we conducted an analysis comparing the major cost weights for rehabilitation hospitals to the same set of cost weights for excluded hospitals. We analyzed the variations of wages, drugs, and capital

for rehabilitation and all excluded hospitals. This analysis showed that while these weights differed slightly between rehabilitation hospitals and all excluded hospitals, the difference was very small. When the rehabilitation hospital weights were substituted into the market basket structure for sensitivity analysis, the effect was less than 0.2 percentage points in any given year. This difference is less than the 0.25 percentage point criterion that determines whether a forecast error adjustment under the inpatient hospital prospective payment system is warranted. We conducted this analysis for both the base year (FY 1992) and for FY 1997 to determine if the difference in weights changed over time. Again, the differences were very small. Based on this analysis, we concluded that using the excluded hospital with capital market basket for the IRF prospective payment system will provide a reasonable measure of the price changes facing rehabilitation hospitals.

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Federal Register

Tuesday,
August 7, 2001

Part III

Department of Housing and Urban Development

Notice Inviting Applications: Designation of Forty Renewal Communities

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4663–N–02]

Notice Inviting Applications: Designation of Forty Renewal Communities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice inviting applications.

SUMMARY: The Community Renewal Tax Relief Act of 2000 (CRTR Act) authorizes HUD to designate up to 40 Renewal Communities within which special tax incentives would be available. This Notice invites applications for designation of nominated areas as Renewal Communities (RCs) in accordance with the designation process described in this Notice.

APPLICATION DUE DATE: To be eligible, a complete application (one original and 2 copies) must be received no later than October 12, 2001. See below for specific procedures applicable to the type of delivery used (e.g., mailed, express mail, overnight delivery). No facsimile (FAX) applications will be accepted for consideration by HUD.

Delivered Applications. Complete applications (one original and two copies) must be received no later than 5:00 PM eastern time, on October 12, 2001. Up until 5:00 PM on the deadline date, completed applications will be accepted at the address and room number specified below.

Mailed Applications. Applications will be considered timely if postmarked on or before October 12, 2001.

Applications Sent by Overnight Delivery. Overnight delivery items will be considered filed on time if received on or before October 12, 2001.

Electronic Submission of Application Information. Information submitted electronically using the RC/EZ On-line Application System must be submitted not later than 5 PM, Eastern Time on October 12, 2001. This is done by hitting the ''Submit'' button at the appropriate location in the software. The system will not be available after the deadline.

ADDRESSES: *Address for submitting applications.* All paper application materials (one original and two copies) must be submitted to: Department of Housing and Urban Development, Office of Community Planning and Development, c/o Processing and Control Unit, Room 7255, 451 Seventh Street, SW, Washington, DC 20410. Some information may also be submitted electronically, as provided elsewhere in this notice.

For Application and Other Materials. For a copy of all RC publications, including the Application Guide, Nomination Forms, and the interim rule (24 CFR part 599, published July 9, 2001, 66 FR 35850), please call the Community Connections Information Clearinghouse at (800) 998–9999. The RC publications are also available from HUD's web site at: http://www.hud.gov/offices/cpd/ezec. Requests for application materials should be made immediately to allow sufficient time for application preparation. Hearing- or speech-impaired persons should use the Federal Information Relay Service telephone number, (800) 877–8339, to obtain application materials.

The Renewal Community publications consist of:

(1) This Notice Inviting Applications;

(2) The Renewal Communities Interim Rule (24 CFR part 599, published July 9, 2001, 66 FR 35850);

(3) Renewal Communities Application Guide, 2001 (RC Application Guide); and

(4) Tax Incentive Guide for Businesses in the Renewal Communities, Empowerment Zones, and Enterprise Communities.

FOR FURTHER INFORMATION: For technical questions, contact John Haines, Renewal Community Initiative, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7130, Washington, DC 20410, (202) 708–6339. Hearing- or speech-impaired individuals may call (800) 877–8339 (the Federal Information Relay Service-TTY). HUD prefers to receive technical questions by email to john_haines@hud.gov or by facsimile (FAX) to (202) 401–7615 or (202) 708–3363, since email or FAX enables the questions and answers to be communicated as rapidly as possible in writing.

SUPPLEMENTARY INFORMATION:

I. General Background

A. Purpose and Authority

Section 1400E of the Internal Revenue Code of 1986 authorizes HUD to designate up to 40 Renewal Communities and provides the process by which the designations are to be made. Section 1400E was enacted by section 101 of the Community Renewal Tax Relief Act of 2000 (CRTR Act), which was part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 2001 (Omnibus Act) (Pub. L. 106–554, 114 Stat. 2763, approved December 21, 2000). Section 101 adds a new Subchapter X (26 U.S.C. 1400E through 1400J) to Chapter 1 of the Internal Revenue Code of 1986. Although HUD is responsible for the designation process, the Federal tax incentives available in Renewal Communities are administered by the Treasury Department.

Section 1400E establishes population and economic parameters for urban and rural areas to be eligible for designation, and requires that at least 12 of the 40 Renewal Community designations must be rural areas. The size of an area nominated for designation as a Renewal Community is not limited, as long as it has a continuous boundary and meets the population and economic condition requirements provided in the CRTR Act.

B. General Description of Tax Benefits

The tax incentives available in Renewal Communities, administered by the Treasury Department, are authorized in secs. 1400F through 1400J of the Internal Revenue Code, and are generally available during the period beginning January 1, 2002 and ending December 31, 2009. A brief description of these incentives follows:

1. *Zero-percent capital gains rate.* A zero-percent capital gains rate applies with respect to gain from the sale of a qualified community asset acquired after December 31, 2001, and before January 1, 2010, and held for more than five years.

2. *Renewal community employment credit.* A 15-percent wage credit is available to employers for the first $10,000 of qualified wages paid to each employee who is a resident of the renewal community and also performs substantially all employment services within the renewal community in a trade or business for the employer.

3. *Commercial revitalization deduction.* Each State is permitted to allocate up to $12 million of ''commercial revitalization expenditures'' to each renewal community located within the State. A ''commercial revitalization expenditure'' means the cost of a new building or the cost of substantially rehabilitating an existing building. A taxpayer can elect either to deduct one-half of the commercial revitalization expenditures for the taxable year the building is placed in service or amortize all the expenditures ratably over the 120-month period beginning with the month the building is placed in service.

4. *Additional section 179 expensing.* A Renewal Community business is allowed an additional $35,000 of section 179 expensing for ''qualified renewal property.'' The term ''qualified renewal

property'' is similar to the definition of ''qualified zone property'' used in connection with Empowerment Zones.

5. *Extension of work opportunity tax credit (WOTC).* The high-risk youth and qualified summer youth categories in the WOTC are expanded to include qualified individuals who live in a Renewal Community.

C. Notice of Intent To Apply

Contact persons for State and local governments considering application for designation of an area as a Renewal Community are urged to notify HUD as soon as possible. Follow the instructions for the Notice of Intent to Apply available through HUD's RC/EZ On-line Application System. The system is located within HUD's web site at www.ezrc/hud.gov. Submission of the Notice of Intent to Apply is not mandatory, but it will enable HUD to estimate how many applications to expect and to plan accordingly. Use of the electronic approach for submitting this notice is strongly recommended, since it will enable an applicant to receive a User ID and password so that part of the application can be submitted on line. Contact persons also may submit their contact information (see bottom of page A–3 or A–9 of the RC Application Guide) by facsimile (FAX) to 202–401–7615 or 202–708–3363 or by mail to the following address: U.S. Department of Housing and Urban Development, Mr. John Haines, RC/EZ Team, Room 7130, 451 Seventh St., SW, Washington, D.C. 20410.

D. Overview of Application and Selection Process

The HUD rule at 24 CFR part 599 that implements section 1400E as authorized in the CRTR Act provides a streamlined, two-step process for the designation of nominated areas as RCs. First, the application for RC designation must demonstrate that a number of threshold requirements are met. These threshold requirements concern the location, population and economic characteristics of the area nominated for RC designation, and required certifications made by the nominating State and local governments of actions they have taken or will take in the nominated area. Every application that meets the threshold requirements moves on to the second step, rating and ranking. The rating and ranking is an objective process, based on census data for the nominated area.

The selection of RCs is made in rank order, with two exceptions required by the statute: (1) Of the 40 RC designations that HUD is authorized to make, a preference with respect to the first 20 designations must be provided to nominated areas that include one or more census tracts from areas that are Enterprise Communities (ECs) or Empowerment Zones (EZs) and, (2) at least 12 RC designations must be in rural areas.

The following sections of this notice provide detailed information on the application requirements and selection procedures for designating an area as a Renewal Community. Individual sections discuss who must submit the application; identifying the area to be nominated; cooperation among the nominating governments and community-based organizations; required certifications; submission requirements; completeness and sufficiency review; threshold requirements; rating; ranking; number of communities to be designated; selection of communities; and notification of designations.

II. Application Requirements

A. Who Must Submit an Application

1. *Each State and local government in which the nominated area is located.* Except as provided in section II.A.2. of this notice, immediately below, an application nominating an area for RC designation must be submitted by one or more local governments and the State or States in which the nominated area is located.

2. *The governing body of an Indian reservation in which the nominated area is located.* In the case of a nominated area located on an Indian reservation, only the reservation governing body must submit the nomination. Any requirements in this notice that would apply to a State and/or local government in which a nominated area is located apply only to the reservation governing body for nominated areas within Indian reservations.

3. *Discussion.* An area that is nominated for RC designation is not limited to being within the jurisdiction of a single local government or a single State. As long as the nominated area meets the requirements of section II.B. of this notice, below, under the heading ''Identifying the Area to Be Nominated,'' it can be located entirely in one State within the jurisdiction of a single local government, or it may cross State and local government boundaries. A ''local government'' is defined as any county, city, town, township, parish, village, or other general-purpose political subdivision of a State. If a nominated area is entirely within the jurisdiction of a single local government, the application must be submitted by both that local government and its State government. This does not mean that a nominated area located entirely within the jurisdiction of a city, which in turn is located in a county, must be nominated by the city, the county and the State. In such a case, only the city and State would have to submit the nomination. However, a nominated area that overlapped jurisdictions and was located partially within a city and partially in the county outside the city limits would have to be nominated by the city, county and State.

Areas within Indian reservations are also eligible to be nominated as RCs. For nominated areas that are located on Indian reservations, only the reservation governing body has to submit the application; no other government body, State or local, has authority or responsibility over nominated areas within Indian reservations.

For purposes of submitting the application and the certifications that are part of the application, a responsible official must sign on behalf of each nominating government. A responsible official is someone with the authority to sign the application and certifications on behalf of the nominating government. For example, in the case of a State government, the responsible official could be the governor of the State, or any official or employee with the duly delegated authority to submit and sign the application or certification on behalf of the State. In the case of a tribal government, the responsible official could be the head of the tribal council, or a tribal official or employee that has been authorized to submit and sign the application and certifications on behalf of the tribal government. In every case, the person signing on behalf of the State, tribal or local nominating government must have the authority to do so.

B. Identifying the Area To Be Nominated

1. *Census tracts.* Census tracts are the basic building blocks of RC nominated areas. The first step in identifying an area to nominate for RC designation is to identify the census tracts that will make up the nominated area. Block groups may be used instead of census tracts for Alaska and Hawaii, and block numbering areas are to be used where census tracts are not delineated.

2. *Continuous boundary.* A nominated area must have one continuous boundary, although it may enclose areas that are not included in the nomination.

3. *Population cap.* The total population of any area nominated for RC designation may not be more than 200,000.

4. *Two types of nominated areas.* An RC nominated area may be urban or rural, as defined in sections II.B.5. and II.B.6., immediately following. At least 12 of the 40 available RC designations will be made for rural areas.

5. *Urban area.* To qualify as an urban area, the nominated area must meet the following requirements:

a. The nominated area must have a population of not more than 200,000 and not less than 4,000; and

b. The nominated area is not a rural area.

6. *Rural area.* To qualify as a rural area, the nominated area must meet the following requirements:

a. The nominated area must have a population of not more than 200,000 and not less than 1,000; and

i. If the nominated area is located entirely within a single local government jurisdiction, the jurisdiction must either have a population of less than 50,000 or be located outside a metropolitan area; or

ii. If the nominated area crosses jurisdictional boundaries and is located within several local government jurisdictions, each of those local government jurisdictions either must have a population of less than 50,000 or must be located outside a metropolitan area; or

iii. If the nominated area does not meet the requirements of either sections II.B.6.i. or II.B.6.ii., immediately above, of this notice, the nominated area is determined by HUD on a case-by-case basis, after consultation with the Secretary of Commerce, to be a rural area based on information submitted in the application to demonstrate that the nominated area should be considered as a rural area.

b. The nominated area must be located entirely within an Indian reservation. A nominated area that is entirely within an Indian reservation is not subject to the eligibility requirements of paragraph II.B.6.a., immediately above, of this notice.

7. *Economic condition requirements.*

a. *All nominated areas.* Every nominated area, urban or rural, must meet each the following economic condition requirements:

i. The area must be one of pervasive poverty, unemployment, and general distress. An explanation of how this requirement can be met is in section II.B.8., below, of this notice.

ii. The unemployment rate in the area must be at least one and one-half times (150% of) the national unemployment rate based on 1990 census data.

iii. The poverty rate for each population census tract within the nominated area must be at least 20 percent based on 1990 census data, i.e., at least 9.401 percent.

b. *Urban areas only.* In addition to meeting each of the economic condition requirements of paragraph II.B.7.a., immediately above, of this notice, in an urban nominated area, at least 70 percent of the households living in the nominated area must have incomes below 80 percent of the median income of households within the jurisdiction of the local government, based on 1990 census data.

8. *Pervasive poverty, unemployment and general distress.*

a. *Pervasive poverty.* Pervasive poverty is demonstrated by evidence that:

i. Poverty, as indicated by the number of persons listed as being in poverty in the 1990 Decennial Census, is widespread throughout the nominated area; or

ii. Poverty, as described above, has become entrenched over time (through comparison of 1980 and 1990 census data or other relevant evidence).

b. *Unemployment.* Unemployment is demonstrated by:

i. The most recent data available indicating that the annual rate of unemployment for the nominated area is not less than the national annual average rate of unemployment; or

ii. Evidence of especially severe economic conditions, such as military base or plant closings or other conditions that have brought about significant job dislocation within the nominated area.

c. *General distress.* General distress is evidenced by describing adverse conditions within the nominated urban area other than those of pervasive poverty and unemployment. Below average or decline in per capita income, earnings per worker, number of persons on welfare, per capita property tax base, average years of school completed, substantial population decline, and a high or rising incidence of crime, narcotics use, homelessness, high incidence of AIDS, abandoned housing, deteriorated infrastructure, school dropouts, teen pregnancy, incidence of domestic violence, incidence of certain health conditions and illiteracy are examples of appropriate indicators of general distress. This information may be presented in narrative form, through the use of tables or charts, or through any combination of these options.

9. *Nominated areas in Empowerment Zones (EZs) or Enterprise Communities (ECs).* A local government with an Empowerment Zone or an Enterprise Community designation within its jurisdiction may apply for one of the 40 Renewal Community designations. If, however, the Renewal Community nominated area contains any census tracts already included in the local government's Empowerment Zone or Enterprise Community, then its Empowerment Zone or Enterprise Community designation ceases to be in effect as of the date that its Renewal Community designation takes effect. In addition, a preference is given for the first 20 Renewal Community designations to nominated areas that are, or that contain portions of, Empowerment Zones or Enterprise Communities, but the nominated area must meet all the Renewal Community requirements as well.

C. Cooperation Among the Nominating Governments and Community Organizations

Every application for RC designation must contain a course of action describing the commitment to cooperation in the nominated area by the nominating governments and community organizations that meets the requirements of this section II.C. listed immediately below.

1. *Commitment to a course of action.* A course of action is a written document, signed by the nominated area's State and local governments, or in the case of a nominated area located within an Indian reservation, the reservation governing body, and community-based organizations which commits each signatory to undertake and achieve measurable goals and actions within the nominated area upon its designation as a Renewal Community.

2. *Community-based organizations.* For purposes of the course of action, ''community-based organizations'' includes for-profit and non-profit private entities, businesses and business organizations, neighborhood organizations, and community groups. Community-based organizations are not required to be located in the nominated area as long as they commit to achieving the goals of the course of action in the Renewal Community.

3. *Timetable.* The course of action must include a timetable that identifies the significant steps and target dates for implementing the goals and actions.

4. *Performance measures.* The course of action must include a description of how the performance of the course of action will be measured and evaluated.

5. *Required goals and actions.* The course of action must include at least four of the following:

a. A reduction of tax rates or fees applying within the Renewal Community;

b. An increase in the level of efficiency of local services within the Renewal Community, such as services for residents funded through the Federal Temporary Assistance for Needy Families program and related Federal programs including, for example, job support services, child care and after school care for children of working residents, employment training, transportation services and other services that help residents become economically self-sufficient;

c. Crime reduction strategies, such as crime prevention, including the provision of crime prevention services by nongovernmental entities;

d. Actions to reduce, remove, simplify, or streamline governmental requirements applying within the Renewal Community, such as:

i. *Density bonus.* Permission to develop or redevelop real property at a higher density level than otherwise permitted under the zoning ordinance, e.g., increased height or increased number of residential or business units;

ii. *Incentive zoning.* Providing a density bonus or other real property-related incentive for the development, redevelopment, or preservation of a parcel in the designated area;

iii. *Comprehensive or one-stop permit.* Streamlining construction or other development permitting processes, rather than requiring multiple applications for multiple permits, e.g., for demolition, site preparation, and construction, the developer or redeveloper submits asingle application that is circulated for the necessary reviews by the various planning, engineering, and other departments in the county or municipality;

iv. *Variance and exception policies.* Counties or municipalities may pass ordinances that permit variances to or exceptions from certain zoning or other land use limitations. Examples include a reduced building set-back requirement or a reduced requirement for the provision of parking. The policy may be limited to a particular geographic area.

v. *Voluntary environmental compliance program.* A shared or limited environmental liability program, with limited liability from certain legal or administrative action in exchange for undertaking an approved program of environmental investigation, hazard control, and on-going risk reduction activities. Typically, the liability limitation is for future environmental cleanup (and not against lawsuit for damages). Risk of cleanup may be shared by the developer or property owner and the government;

e. Involvement in economic development activities by private entities, organizations, neighborhood organizations, and community groups, particularly those in the Renewal Community, including a commitment from such private entities to provide jobs and job training for, and technical, financial, or other assistance to, employers, employees, and residents from the Renewal Community;

f. The gift or sale at below fair market value of surplus real property held by State or local governments, such as land, homes, and commercial or industrial structures in the Renewal Community to neighborhood organizations, community development corporations, or private companies.

6. *Recognition of past efforts.* The course of action is not limited to future goals and actions. Past efforts within the previous eight years, either completed or on-going, of the nominating State or local governments in reducing the various burdens borne by employers and employees in the nominated area by undertaking any of the goals or actions listed in section II.C.5., above, of this notice may be used to meet the course of action requirement. If past efforts are used, the course of action must identify which of the required goals and actions listed in section II.C.5. they address; the timetable for their continued implementation, if on-going; the community-based organizations involved, if any; and an evaluation of their performance and the performance measures used.

D. Required Certifications

Every application for RC designation must include certifications in accordance with the requirements of this section II.D. listed immediately below. Each certification must be signed by a responsible official from each of the nominating governments, that is, a person with the authority to sign the certifications on behalf of the nominating government. The documents with the original signatures must be delivered to HUD. To meet the certification requirements, applicants should use the forms that are provided in the RC Application Guide. Note that Form 1 in the Guide differs for urban and rural nominated areas. Also, the Form 1 in the Guide requires that certain data be attached. This data identifies the nominated census tracts and demonstrates to HUD that the nominated area meets the threshold poverty, unemployment, and in the case of urban areas, income level requirements. This data may be submitted electronically if the applicant uses HUD's RC/EZ On-line Application System. Form 1 also provides for the submission of information to demonstrate that the nominated area meets the threshold requirement of being an area of ''pervasive poverty, unemployment, and general distress.''

1. *Certification for economic requirements.* The State and the local governments, or in the case of a nominated area located within an Indian reservation, the reservation governing body, in which a nominated area is located must certify in writing for HUD's acceptance that:

i. The nominated area is an area of pervasive poverty, unemployment, and general distress;

ii. The nominated area has an unemployment rate at least one and one-half times (150% of) the national unemployment rate, based on 1990 census data, i.e., at least 9.401 percent;

iii. The poverty rate for each population census tract within the nominated area is at least 20 percent, based on 1990 census data. In the case of a nominated area that is within an Indian reservation, and cannot equivalently be described with census tracts, the poverty rate of the nominated area taken as a whole is considered for purposes of making this determination; and

iv. In the case of a nominated urban area only, at least 70 percent of the households living in the nominated area have incomes below 80 percent of the median income, as determined by HUD, of households within the jurisdiction of the local government or governments in which the nominated area is located.

2. *Economic growth promotion certification.* The State and local governments, or the reservation governing body, in whose jurisdiction the nominated area is located must certify that they have repealed or reduced, will not enforce, or will reduce within the nominated area, except to the extent that a regulation of businesses and occupations is necessary for and well-tailored to the protection of health and safety, at least four of the following actions in paragraphs II.D.2.a. through e., below.

With respect to past actions taken, the eight year period described in section II.C.6., above, applies. In addition, the nominating governments may modify the Certification of Economic Growth Promotion Incentives in the Application Guide by striking out '', for at least the period that the area is designated as a RC''. The certification will often refer to efforts that will be taken in the future, and the ''period that the area is designated as an RC'' applies to the entire process involved in such efforts, which may take years, and not just the

end result. Also with respect to future actions to be taken, HUD fully expects that these actions will be completed, but also recognizes the practical difficulties of guaranteeing future events, and the interim rule at § 599.509 provides for requests to HUD to modify the State and local commitments made at the time of application. Such requests must provide evidence to support the proposed modifications. HUD will review the proposed modification for consistency with regulatory and statutory requirements and approve, suggest additional or alternate modifications or deny the request within 30 days:

a. Licensing requirements for occupations that do not ordinarily require a professional degree;

b. Zoning restrictions on home-based businesses which do not create a public nuisance;

c. Permit requirements for street vendors who do not create a public nuisance;

d. Zoning or other restrictions that impede the formation of schools or child care centers; and

e. Franchises or other restrictions on competition for businesses providing public services, including taxicabs, jitneys, cable television, or trash hauling.

3. *Public notice of RC application certification.* An application must include a certification, signed by a responsible official or employee of each nominating State and local government or reservation governing body in whose jurisdiction the nominated area is located, that the public was provided notice of, and an opportunity to participate in, the application development process. For the purposes of this certification, notice and opportunity to participate may include procedures such as placing announcements in newspapers or other media, holding public meetings, and soliciting comments.

4. *Certification requirement for crime incidence.* If preference points are being sought for the nominated area because it qualifies for preference points in accordance with section II.E.2.a., below, of this notice, each nominating State and local government must certify to the 1999 Local Crime Index rate per 100,000 inhabitants (LCI) determined for the nominated area.

E. Submission Requirements

1. *Identification of nominated area.* HUD must receive a listing of the census tracts that identify the area nominated for RC designation. To assist applicants, HUD's RC/EZ On-line Application System allows for the electronic identification and submission of nominated areas. The RC/EZ On-line Application System can also be used as a tool to plan areas for potential nomination. The system is located within HUD's web site at www.ezrc.hud.gov. HUD strongly urges prospective applicants to use the system to electronically prepare and submit the data for the application, since this will reduce the potential for errors. Use of the electronic approach is recommended but not required. The RC Application Guide also contains paper forms for listing the census tracts to be nominated and for determining whether the nominated area meets the requirements described in this notice, but the submission of this information to HUD electronically is preferred and permits HUD to confirm that the nominated area is eligible more quickly. In addition, a map showing the boundaries of the nominated area must be submitted with the application. If the nominated area is being nominated as a rural area under a case-by-case HUD determination procedure in accordance with section II.B.6.iii., above, because it does not meet the requirements of either sections II.B.6.i. or II.B.6.ii., the application must include information to demonstrate that the nominated area should be considered as a rural area.

a. *Certification to economic condition requirements.* Two of the three economic condition requirements that a rural nominated area must meet (poverty rate and unemployment rate), and three of the four economic condition requirements that an urban nominated area must meet (poverty rate, unemployment, and income levels) under section II.B.7., above, are addressed by submitting the certification for economic requirements in accordance with section II.D.1., above.

b. *Response for pervasive poverty, unemployment and general distress.* To meet the economic condition requirement that a nominated area is an area of pervasive poverty, unemployment and general distress, applicable to both urban and rural areas, the application must include a response using narrative, tables or charts, or any combination of these, that demonstrates the area is one of pervasive poverty, unemployment, and general distress in accordance with section II.B.8., above, of this notice.

c. *More than one nominated area.* Only one area may be nominated for RC designation by the same State and local governments. If the nominating governments submit more than one application, HUD will request the responsible officials to designate which application they want HUD to review and rate and rank in accordance with the procedure for corrections to deficient applications under section III.A. of this notice. If a single application is not designated within the correction period, all of the applications will be ineligible for further consideration.

2. *Course of action.* HUD must receive a course of action for the nominated area that meets the requirements of section II.C., above, of this notice.

3. *Certifications.* HUD must receive at least the certifications described in sections II.D.1., II.D.2. and II.D.3., above, of this notice.

III. Selection Procedures

HUD will select nominated areas for RC designation in accordance with the following procedures:

A. Corrections To Deficient Applications

HUD will notify an applicant in writing, or by FAX, of any technical deficiencies in the application, and HUD will maintain a log of such communications.

The notification will specify the date by which HUD must receive the applicant's correction of all technical deficiencies, which shall be within five (5) calendar days from the date of HUD's notification. If the fifth day falls on a Saturday, Sunday, or holiday, the correction must be received by HUD on the next business day. The date and time of receipt of corrections by HUD shall be determined in the same way as the receipt of the application.

Technical deficiencies relate to items that are not necessary for HUD review under the rating factors and that would not improve the substantive quality of the proposal. Examples of technical deficiencies would be a failure to submit proper certifications or failure to submit an application containing an original signature by an authorized official.

If any of the items identified in HUD's written notification of technical deficiencies are not corrected and submitted within the correction period, the application will be ineligible for further consideration.

B. Threshold Requirements

To qualify for rating and ranking, an application must demonstrate that all of the RC application threshold requirements are met. These threshold requirements are:

1. *Submission by all necessary parties.* In accordance with section II.A., above, of this notice, the application must be submitted by one or more local governments and the State or States in which the nominated area is located or,

in the case of a nominated area located within an Indian reservation, by the reservation governing body.

2. *Nominated area meets all necessary requirements.* The nominated area must meet all of the applicable boundary, population and economic condition requirements, depending upon whether the nominated area is rural or urban, of section II.B., above, of this notice.

3. *Submission of course of action.* A course of action that meets the requirements of section II.C., above, for the nominated area must be submitted by the application due date.

4. *Submission of all necessary certifications.* The certifications described in sections II.D.1., II.D.2., and II.D.3., above, of this notice must be submitted by the application due date. The crime incidence certification described in section II.D.4 is optional, and is only required if the application wants to qualify for crime incidence preference points as described in section II.F.2.a., above, of this notice.

C. Rating

Each application that meets the threshold requirements identified in section III.B., above, of this notice, by the application due date will be rated and receive a final score consisting of its ranking score plus any preference points, as described below in this section:

1. *Ranking score.* Each nominated area meeting the thresholds will be ranked from highest to lowest according to the area poverty rate, area unemployment rate, and for urban areas, the percentage of families below 80 percent of area median income. Urban nominated areas will be ranked separately from rural nominated areas. The *percentile rank* will be determined by dividing these rankings by the total number of nominated areas ranked and multiplying the result by 100. The *average ranking* will be determined by computing the simple average of the percentile ranks for each nominated area. To create a 100 point scale, the average rankings will be subtracted from 100.

2. *Preference points.* Preference points will be added in accordance with sections III.C.3. and III.C.4., below, to the ranking score determined under section III.C.1., above, to determine the final score of a nominated area.

3. *Incidence of crime.* A nominated area may receive a maximum of 1, 2, or 4 crime incidence preference points as follows:

a. *One point awarded.* A nominated area will receive 1 additional point if its 1999 Local Crime Index per 100,000 inhabitants (LCI), as determined on the basis of data from one or more State and local law enforcement authorities with jurisdiction in the nominated area, does not exceed by more than 25% the nation-wide 1999 Crime Index rate per 100,000 inhabitants (CI) prepared as part of the FBI's Uniform Crime Reporting (UCR) Program. The CI is 4,266.8. To meet this requirement, the LCI must be more than 4,693.48 and less than 5,334.

b. *Two points awarded.* A preference of 2 points will be added to the score of a nominated area with an LCI that does not exceed the CI by more than 10 percent. To meet this requirement, the LCI for the nominated area must be at least 4,266.8 and not more than 4,693.48.

c. *Four points awarded.* A nominated area that has an LCI that is less than the CI will receive 4 preference points. To meet this requirement, the LCI for the nominated area must be less than 4,266.8.

d. *Qualifying for crime incidence preference points.* To qualify for preference points based on the incidence of crime, the nominating governments must determine and then certify to the LCI determined for the nominated area, in accordance with section II.D.4., above, of this notice. The LCI for the nominated area is determined as follows:

i. Since the nominated area is made up of census tracts, the number of LCI crimes for 1999 in each census tract of the nominated area is counted and then added together to get the total number of LCI crimes for the nominated area.

ii. To make a valid comparison of the LCI and the CI, the same types of crimes must be counted. The offenses used in determining the CI, and which therefore must be used in determining the LCI, are the violent crimes of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault, and the property crimes of burglary, larceny-theft, motor vehicle theft, and arson.

iii. Once the total number of LCI crimes for the nominated area is determined, that total number must be converted to the rate per 100,000 population. For example, if the number of LCI crimes for the nominated area is 500, and the population of the nominated area (the population of each census tract in the nominated area added together) is 50,000, the LCI for the nominated area is 1000 per 100,000.

4. *Preference points for certain census tracts.* A nominated area will receive one preference point if any of its census tracts is a census tract identified in GAO Report RCED–98–158R, dated May 12, 1998. This list of tracts is available from HUD's website at www.hud.gov/offices/cpd/ezec.

D. Ranking

1. *Initial ranking order.* Rural and urban applications will be ranked separately according to their final scores as determined in accordance with section III.C., immediately above, with the highest scoring applications ranked first.

2. *Separate ranking categories.* After initial ranking, both rural and urban applications will be separated into two ranking categories:

a. *Category 1.* Applications for designation of nominated areas that include one or more census tracts from areas that are Enterprise Communities or Empowerment Zones will be placed into Category 1 in rank order.

b. *Category 2.* Applications for designation of nominated areas that are not placed into or selected from Category 1 will be placed into Category 2 in rank order.

E. Number of Renewal Communities To Be Designated

The total number of Renewal Communities to be designated, and the distribution of designations between urban and rural areas are as follows:

1. *Total number.* The total number of nominated areas to be selected for designation as Renewal Communities is 40.

2. *Rural areas.* HUD will select at least 12 rural areas for designation as Renewal Communities. If HUD does not receive at least 12 eligible rural area applications for Renewal Community designation, the number of rural area designations will be the number of eligible rural area applications received by HUD.

3. *Urban areas.* The number of urban areas selected for designation as Renewal Communities will be the number remaining after subtracting the number of rural areas selected from 40.

4. *Less than 40 eligible applications.* If HUD receives fewer than 40 eligible applications nominating areas, the total number of nominated areas to be selected for designation as Renewal Communities will be the total number of eligible applications.

F. Selection of Renewal Communities

1. *Selection of Category 1 applications.*

a. *Six or less rural nominations.* If there are six or fewer Category 1 rural area nominations, HUD will select all of the nominated rural areas in Category 1 for designation as Renewal Communities. HUD will then select the highest ranking Category 1 urban area

nominations, but will not exceed a total of 20 Category 1 designations.

b. If there are more than six Category 1 rural area nominations, HUD will select the six highest ranked Category 1 rural applications, and will then select, in rank order, the highest ranking Category 1 area nominations, whether urban or rural, until not more than a total of 20 Category 1 designations is made.

2. *Selection of Category 2 applications.* After not more than 20 Category 1 designations are made in accordance with paragraph (a) of this section, any remaining Category 1 applications will be placed back in rank order into Category 2, with selections for a combined Category 1 and Category 2 total of not more than 40 designations made as follows:

a. *Less than six Category 1 rural applications.* If the number of rural area applications selected in Category 1 is less than six, HUD will select the highest ranking rural area applications in Category 2 until the total number of rural areas selected is 12. The remaining designations will be made from both rural and urban areas in rank order. If there are fewer than 12 eligible rural applications overall, counting both Category 1 and Category 2, all of the eligible rural applications will be selected.

b. *Six or more Category 1 rural applications.* If the number of rural area applications selected in Category 1 is six or more, HUD will select the six highest Category 2 rural applications. The remaining designations will be made from both rural and urban areas in rank order.

G. Notification of Renewal Community Designations

1. *Notification and effective date.* HUD will notify each applicant of the designation of its nominated area as a Renewal Community. The effective date of designation as a Renewal Community is the date a nominated area is selected in accordance with section III.F., above, of this notice.

2. *Federal Register* publication. In addition to any other form of notification, HUD will publish a notice of the designation of Renewal Communities in the **Federal Register**.

IV. Findings and Certifications

A. Paperwork Reduction Act

The information collection requirements contained in this notice have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0173. This approval has been granted on an emergency basis through July 31, 2001. In addition, HUD is seeking regular, non-emergency approval for these information collections. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

B. Catalog

The Catalog of Federal Domestic Assistance Program number assigned to this program is 14.244.

C. Environmental Impact

This notice provides for the designation of Renewal Communities under 24 CFR part 599 which does not contain environmental review provisions because it concerns activities that are listed in 24 CFR 50.19(b) as categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA). Accordingly, under 24 CFR 50.19(c)(5)(ii), this notice is categorically excluded from environmental review under NEPA.

D. Documentation and Public Access Policy

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this Notice are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this Notice. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Dated: August 1, 2001.

Mel Martinez,

Secretary.

[FR Doc. 01–19652 Filed 8–6–01; 8:45 am]

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S. 468/P.L. 107–23

To designate the Federal building located at 6230 Van Nuys Boulevard in Van Nuys, California, as the "James C. Corman Federal Building". (Aug. 3, 2001; 115 Stat. 198)

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ILSA Extension Act of 2001 (Aug. 3, 2001; 115 Stat. 199)

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