8-31-84
Vol. 49 No. 171
Pages 34439-34798

federal register

Friday
August 31, 1984

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Banks, Banking
Federal Reserve System

Blood
Food and Drug Administration

Cemeteries
Veterans Administration

Endangered and Threatened Species
Fish and Wildlife Service

Excise Taxes
Internal Revenue Service

Government Contracts
Immigration and Naturalization Service

Government Procurement
Defense Department
General Services Administration
National Aeronautics and Space Administration

Health Care
Veterans Administration

Highway Safety
Federal Highway Administration

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Selected Subjects

Contents

Federal Register
Vol. 49, No. 171
Friday, August 31, 1984

Separate Parts in This Issue

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 49, No. 171
Friday, August 31, 1984

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 932 and 944

Olives Grown in California; Interim Amendment of Subpart—Rules and Regulations; and Fruits: Import Regulations, Ripe Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule would amend the administrative rules and regulations to change or delete outdated or incorrect material. These changes are necessary to conform order provisions to current U.S. Standards for Grades of Canned Ripe Olives and industry grading practices. Changes are also made to reference the current committee name, and revise the names of administrative reports. This rule also provides for the establisment of grade and size requirements for 1984–85 crop year olives for limited use, as well as providing for a revision of the Olive Import Regulations to conform to a previous amendment made effective in 1983. These changes are designed to clarify and improve marketing order operations.

EFFECTIVE DATE: August 31, 1984. Comments due by 30 days after **Federal Register** publication date.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This interim final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of California olives for the benefit of producers, and will not substantially affect costs for those persons directly regulated.

This amendment is issued under the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932), regulating the handling of olives grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the California Olive Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

On July 30, 1982, § 932.18 was amended to provide that the "Committee" means the California Olive Committee which locally administers the order. The committee recommended that references to the former committee name (Olive Administrative Committee) are no longer applicable and should be amended to reference the current Committee name, or its abbreviation (COC). Thus, provisions with respect to incoming regulations and handler transfers and reports should be amended to redesignate all applicable forms from "OAC" to "COC". In addition §§ 932.151 and 932.154 should be amended to change the names of the forms used for lot identification and certification of natural condition olives, and disposition of noncanning olives. Such amendments recognize the name of form change, but in no way modify the forms' contents or corresponding burdens.

Section 932.52(a)(3) provides that use of processed olives smaller than the sizes prescribed for whole and pitted styles may be established annually for limited use and the subparagraph further provides that such minimum sizes may also include a size tolerance as recommended by the Committee and approved by the Secretary. It appears that the requirements of the past marketing season will continue to be appropriate. Thus, § 932.153 should be revised to provide for the establishment of minimum sizes contained in § 932.52(a)(3) for olives from the 1984–85 crop. These requirements are the same as have been established in 12 of the past 13 crop years.

In § 932.149, modified minimum grade requirements for specified styles of canned olives of the ripe type, references and corresponding definitions for terms not specified in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) are no longer needed because U.S. Oliver Standards have been amended to include these definitions. Thus, such provisions should be deleted from § 932.149(b).

Table I—Limits for Defects in § 932.149 should be amended to change the limit for minor and major stems for halved olives, and the limit for severe blemishes for whole, whole pitted, and halved olives. These changes bring the table into conformity to current industry practice. In addition § 932.149(c) should be deleted because it is no longer applicable.

Also, as a conforming change § 932.154(c) should be amended to specify that the size of any transferred olives be certified by the "Processed Products Branch, USDA", instead of the currently specified "Processed Products Standardization and Inspection Branch, USDA", as it was formerly known.

In § 932.161 the words "or minced" should be deleted, where they occur, in order to comply with U.S. Standards for Grades of Canned Ripe Olives.

Section 944.401(b)(1) should be amended to delete a specified time period, where no requirements are applicable with respect to color and blemishes for canned green ripe olives imported, in order to conform to a change in § 932.150 that was made effective December 1, 1983.

It is found that it is impractical and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this interim rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) There is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act; (2) the

handling of the 1984 crop of domestic olives is expected to begin soon, and it is intended that this action be applicable to all olives of such crop: (3) handlers are aware of this action as proposed by the California Olive Committee; (4) some of the changes represent a continuation in the relief of restrictions from the last marketing season and no useful purpose is served by delaying the effective date; and (5) the remaining changes are either non-substantive in nature, or merely conform the regulations to current industry practices.

List of Subjects in 7 CFR Parts 932 and 944

Marketing agreements and orders, Olives, California, Imports, Food grades and standards.

PART 932—[AMENDED]

Therefore, Part 932, Subpart—Rules and Regulations (7 CFR 932.108–932.161) and Part 944 Fruits; Import Regulations (7 CFR 944.401) are amended as follows:

1. Section 932.149 is amended by deleting paragraph (c) and revising paragraph (b) and Table I, to read as follows:

§ 932.149 Modified minimum grade requirements for specified styles of canned olives of the ripe type.

* * * * *

(b) Terms used in this section shall have the same meaning as are given to the respective terms in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52) including the terms "U.S. Grade B", "U.S. Grade C", "size", "character", "defects", and "Ripe Type": *Provided,* That Table I of this section shall apply in lieu of the tables for limits for defects contained in said standards.

TABLE I—LIMITS FOR DEFECTS

	Whole per 50 olives	Pitted per 50 olives	Halves per 100 halves	Segmented per 255 gm (9oz)	Sliced per 255 gm (9oz)	Chopped per 255 gm (9oz)	Broken pitted per 255 gm (9oz)
HEVM, HEM or EVM	1	1	1	2	Fairly free	Fairly free	2.
Stems:							
Minor and major stems inclusive	3	3	3				
Major stems	2	2	2	3	3	3	4.
Minor and major blemishes, minor and major wrinkles and mutilated.	10	10	No limit	Fairly free	Fairly free	Fairly free	No limit.
Provided: Major blemishes, major wrinkles do not exceed.	5	5	25				51 gm. [1]
Further provided: Mutilated do not exceed	3	3					
Broken pieces and poorly cut units			25	Fairly free	Fairly free		
Mechanical damage	5	5	20				
Blowouts, cross pitted, plunger and pitter damage.		15					
Obvious split pit or misshapen	5						
Severe blemishes (green-ripe type only)	3	3	3				

[1] Major blemishes only.

2. Sections 932.151, 932.154, 932.161 are amended as follows:

Section	Current language	Amended language
932.151(b)	Form OAC–2 "Lot Identification Tag"	COC 3A or 3C, weight and grade report.
932.151(b)	Identification tag	Weight and grade report.
932.151(d)(2)	Form OAC–3 "Report of Size-Grade of Natural Condition Olives".	Form COC–3A or 3C weight and grade report.
932.151(d)(2)	Form OAC–3	Form COC–3A or 3C.
932.151(e)(1)	Form OAC–5 "Report of Non-Canning Olive Inspection Disposition".	Form COC–5, report of limited and undersize and cull olives inspection and disposition.
932.151(e)(1)	Form OAC–5	Form COC–5.
932.151(e)(2)	Form OAC–5	Form COC–5.
932.151(e)(2)	OAC control card	COC control card.
932.154(a)	Form OAC–6	Form COC–6.
932.154(b)	Form OAC–5 "Report of Non-Canning Olive Inspection Disposition".	Form COC–5, report of limited and undersize and cull olives inspection and disposition.
932.154(c)	Processed products standardization and inspection branch, USDA.	Processed products branch, USDA.
932.161(b)(1)	OAC Form 21	COC Form 21.
932.161(b)(2)(i)	OAC Form 29a	COC Form 29a.
932.161(b)(2)(ii)	OAC Form 29b	COC Form 29b.
932.161(d)(1)	OAC Form 27a	COC Form 27a.
932.161(d)(2)	OAC Form 27b	COC Form 27b.
932.161(e)(1)	OAC Form 27c	COC Form 27c.
932.161(e)(2)	OAC Form 27b	COC Form 27b.
932.161(f)(1)	OAC Form 28a	COC Form 28a.
932.161(f)(2)	OAC Form 28b	COC Form 28b.

3. Section 932.153 is revised to read as follows:

§ 932.153 Establishment of minimum grade and size requirements for 1984–85 crop olives used in limited use styles.

(a) *Grade.* On and after August 1, 1984, any handler may use processed olives of the respective variety groups in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1984, and meet the grade requirements specified in § 932.52(a)(1) as modified by § 932.149.

(b) *Sizes.* Except as provided in § 932.51(a)(2)(i), on and after August 1, 1984, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1984, through July 31, 1985 and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1984, or after July 31, 1985;

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh 1/90 pound: *Provided,* That not to exceed 25 percent of the olives in any lot or sublot may be smaller than 1/90 pound:

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh 1/140 pound: *Provided,* That not to exceed 25 percent of the olives in any lot or sublot may be smaller than 1/140 pound;

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh 1/180 pound: *Provided,* That not to exceed 10 percent of the olives in any lot or sublot may be smaller than 1/180 pound;

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh 1/140 pound: *Provided,* That not to exceed 20 percent

of the olives in any lot or sublot may be smaller than 1/140 pound.

4. Section 932.161 is amended by removing the words "or minced" where they occur in paragraphs. (b)(1)(ii), (c), (d)(2), (e)(2), and (f)(2).

PART 944—[AMENDED]

5. Section 944.401(b)(1) is revised to read as follows:

§ 944.401 Olive Regulation 1.

* * * * *

(b) * * *

(1) Canned ripe olives shall grade at least U.S. Grade C: *Provided,* That with respect to defects, the limits for defects as contained in Table I of § 932.149 shall apply as shall the requirements of U.S. Grade B for character for canned whole, pitted and broken pitted olives, and the requirement that canned chopped olives be practically free from identifiable units of pit caps, end slices, and slices as defined in § 932.149(a)(2): *Provided further,* That no requirements shall be applicable with respect to color and blemishes for canned green ripe olives imported.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: August 28, 1984.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-23257 Filed 8-30-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Aero Coach Aviation International, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Aero Coach Aviation International, Inc. to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: August 16, 1984.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Aero Coach Aviation International, Inc. on August 16, 1984 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportational lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number os small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, "Aero Coach Aviation International, Inc."

* * * * *

(Secs. 103 and 238 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1228))

Dated: August 28, 1984.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 84-23225 Filed 8-30-84; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R-0528]

Interest on Deposits; Regulation Q; Temporary Suspension of Early Withdrawal Penalty

AGENCY: Federal Reserve System.

ACTION: Temporary suspension of the Regulation Q early withdrawal penalty.

SUMMARY: The Board of Governors, acting through its Secretary, pursuant to delegated authority, has suspended temporarily the Regulation Q penalty for the withdrawal of time deposits prior to maturity from member banks for depositors affected by severe storms and tornadoes in the designated counties of Wisconsin.

EFFECTIVE DATE: June 12, 1984, for the Wisconsin counties of Dane and Iowa; July 10, 1984, for the Wisconsin counties of Menominee, Oneida, and Vilas.

FOR FURTHER INFORMATION CONTACT: Daniel L. Rhoads, Attorney (202/452–3711), Legal Division, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: On June 12, 1984, pursuant to section 301 of the Disaster Relief Act of 1974 (42 U.S.C. 5141) and Executive Order 12148 of July 15, 1979, the President, acting through the Director of the Federal Emergency Management Agency, designated the Wisconsin counties of Dane and Iowa major disaster areas. On July 10, 1984, the Wisconsin counties of Menominee, Oneida and Vilas were also designated major disaster areas. The Board regards the President's actions as recognition by the Federal government that disasters of major proportions have occurred. The President's designations enable victims of the disasters to qualify for special emergency financial assistance. The Board believes it appropriate to provide an additional measure of assistance to victims by temporarily suspending the Regulation Q early withdrawal penalty (12 CFR 217.4(d)). The Board's action permits a member bank, wherever located, to pay a time deposit before maturity without imposing this penalty upon a showing that the depositor has suffered property or other financial loss in the disaster areas, as a result of the severe storms and tornadoes beginning on or about April 27, 1984, for the Wisconsin counties of Menominee, Oneida and Vilas, and June 8, 1984, for the Wisconsin counties of Dane and Iowa. A member bank should obtain from a depositor seeking to withdraw a

time deposit pursuant to this action a signed statement describing fully the disaster-related loss. This statement should be approved and certified by an officer of the bank. This action will be retroactive to June 12, 1984, for the counties of Dane and Iowa, and July 10, 1984, for the counties of Menominee, Oneida and Vilas, and will remain in effect until 12 midnight, December 29, 1984.

List of Subjects in 12 CFR Part 217

Advertising, Banks, Banking, Federal Reserve System, Foreign banking.

In view of the urgent need to provide immediate assistance to relieve the financial hardship being suffered by persons in the Wisconsin counties directly affected by the severe storms and flooding, good cause exists for dispensing with the notice and public participation provisions in section 553(b) of Title 5 of the United States Code with respect to this action. Because of the need to provide assistance as soon as possible and because the Board's action relieves a restriction, there is good cause to make this action effective immediately.

By order of the Board of Governors, acting through its Secretary, pursuant to delegated authority, August 28, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23260 Filed 8-30-84; 8:45 am]

BILLING CODE 6210-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 618

General Provisions

AGENCY: Farm Credit Administration.

ACTION: Final rule; notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) is confirming the effective date of final regulations adopting new and amended regulations setting out the authorization for technical assistance and financially related services programs and requiring district board policy guidelines and FCA approval for such programs (49 FR 23159, June 5, 1984). This regulation allows the Farm Credit System (System) institutions greater latitude in developing and implementing technical assistance and financially related services programs pursuant to district policies, FCA regulations, and the Farm Credit Act of 1971, as amended (Pub. L. 92-181 as amended by Pub. L. 96-592).

EFFECTIVE DATE: August 10, 1984.

FOR FURTHER INFORMATION CONTACT:

Charles E. Baker, Financially Related Services Section, (703) 883-4138, or Kenneth L. Peoples, Office of General Counsel, (703) 883-4024

(Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621, as amended (12 U.S.C. 2243, 2246, and 2252)

Donald E. Wilkinson,

Governor.

[FR Doc. 84-23103 Filed 8-30-84; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-19]

Changes to Controlled Airspace, Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule modifies the description of controlled airspace in the vicinity of the Honolulu International Airport, HI, without changing the physical size and shapes of the affected airspace. This action replaces the incorrect references to a navigational aid which was relocated with references to geographical coordinates.

DATES: Effective date—0901 GMT, August 30, 1984. Comments must be received on or before October 12, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Dirctor, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-19, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves redescribing controlled airspace without changing its size or shape and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to §71.171, §71.181 and §71.401(b) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to modify the descriptions of the Honolulu, HI, Control Zone, Transition Area, and Terminal Control Area, so that they no longer reference distances and bearings from a navigational aid that is scheduled to be relocated effective August 30, 1984. The navigational aid references have been replaced with geographical coordinate references. This action does not alter the physical size or shape or effectiveness of the affected airspace. Sections 71.171, 71.181 and 71.401(b) of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

I find that in view of the amendment's nature as a redescription and the pending relocation of the navigational aid referenced in the existing rule, notice or public procedure under 5 U.S.C. 553(b) is impracticable, unnecessary and contrary to the public interest and also that good cause exists for making this amendment effective August 30, 1984.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated

impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas and Terminal control areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.171, § 71.181 and § 71.401(b) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

§ 71.171 [Amended]

Honolulu, HI [Revised]

Within a 5-mile radius of Honolulu International Airport (lat. 21°19'15" N., long. 157°55'45" W.); within a 5-mile radius of NAS Barbers Point (lat. 21°1835" N., long. 158°04'30" W.); 2 miles south of a line from lat. 21°21'27" N., long. 158°00'59" W.; to lat. 21°21'29" N., long. 157°59'46" W.; and within an area bounded by a line from lat. 21°15'43" N., long. 158°01'00" W.; to lat. 21°10'54" N., long. 158°10'39" W.; to lat. 21°16'41" N., long. 158°13'56" W.; to lat. 21°19'04" N., long. 158°09'08" W.; to the point of beginning.

§ 71.181 [Amended]

Honolulu International Airport, HI [Revised]

That airspace extending upward from 700 feet above the surface south and southeast of Honolulu beginning at lat. 21°20'30" N., long. 157°51'15" W.; thence south to lat. 21°15'30" N., long. 157°49'15" W.; thence east along the shoreline to and clockwise along the arc of a 15 NM radius circle centered on Honolulu International Airport (lat. 21°19'15" N., long. 157°55'45" W.) to lat. 21°08'40" N., long. 158°07'35" W.; thence northwest to lat. 21°10'29" N., long 158°11'29" W.; thence to lat. 21°15'43" N., long 158°00'59" W.; then counterclockwise along the arc of a 5-mile radius circle centered on NAS Barbers Point (lat. 21°18'35" N., long. 158°04'30" W.) to and counterclockwise along the arc of a 5-mile radius circle centered on Honolulu International Airport to the point of beginning; and an area bounded by a line from lat. 21°10'29" N., long. 158°11'29" W.; to lat. 21°16'16" N., long 158°14'45" W.; to lat. 21°16'41" N., long. 158°13'56" W.; to lat. 21°15'43" N., long. 158°00'59" W.; to the point of beginning.

Honolulu, Wheeler AFB, HI [Revised]

That airspace extending upward from 700 feet above the surface within an area bounded by a line from lat. 21°25'53" N., long. 158°04'02" W.; to lat. 21°26'01" N., long. 158°00'19" W.; to lat. 21°27'19"N., long. 158°00'21" W.; thence clockwise along the 3-mile radius circle centered on Wheeler AFB (lat. 21°29'00" N., long. 158°02'30"W.); to lat. 21°26'49" N., long. 158°04'04" W.; to the point of beginning; and that airspace extending upward from 700 feet above the surface within 2 miles northwest of and parallel to the centerline of Runway 06 (068°38'40" bearing) beginning at the 3-mile radius arc and extending northeast to intercept an arc of a 5-mile radius circle centered on Wheeler AFB (lat. 21°29'00" N., long. 158°02'30" W.) thence clockwise along the 5-mile arc to the Koko Head, HI, VORTAC 305° radial; thence northwest along the Koko Head, HI, VORTAC 305° radial to the arc of the 3-mile radius circle.

§ 71.401 [Amended]

Honolulu, HI [Revised]

Primary Airport

Honolulu International Airport (lat. 21°29'20" N., long. 157°55'27" W.) Boundaries.

Area A. That airspace extending upward from the surface to and including 9,000 feet MSL within an area bounded by a line beginning at the Honolulu ILS Runway 4R DME (lat. 21°20'01" N., long. 157°54'23" W.), to lat. 21°18'39" N., long. 157°51'15" W.; thence direct to a point on bearing 145°, and 4.5 miles from the ILS Runway 4R DME; thence along the 145° bearing to, and then clockwise along, the 7.5-mile radius arc of the ILS Runway 4R DME to lat. 21°17'19" N., long. 158°01'53" W.; to lat. 21°20'11" N., long. 158°01'57" W.; and then east along a line 0.5 miles north of, and parallel to, the ILS Runway 8L localizer course to a point 1.5 miles west of the ILS Runway 4R DME, thence direct to the point of beginning.

Area B. That airspace extending upward from 1,500 feet MSL to and including 9,000 feet MSL between 7.5 miles and 15 miles of the ILS Runway 4R DME and bounded on the east by a line from lat. 21°12'30" N long. 157°54'00" W., to lat. 21°06'28" N., long. 157°47'22" W.; and on the west by a line 1.5 miles northwest of, and parallel to, the ILS Runway 4R localizer course, excluding that airspace within Area A.

Area C. That airspace extending upward from 2,000 feet MSL to and including 9,000 feet MSL between 15 miles and 22 miles of the ILS Runway 4R DME and bounded on the northeast by the Koko Head VORTAC (lat. 21°16'06" N., long. 157°42'21" W.) 111° radial and on the west by a line 1.5 miles northwest of, and parallel to, the ILS Runway 4R localizer course.

Area D. That airspace extending upward from 3,000 feet MSL to and including 9,000 feet MSL within 22 miles of the ILS Runway 4R DME, south of a line from lat. 21°20'11" N., long. 158°01'57" W., to lat. 21°26'13" N., long. 158°17'01" W., north of a line 1.5 miles northwest of, and parallel to, the ILS Runway 4R localizer course to lat. 21°17'19" N., long. 158°01'53" W.; excluding that airspace within Areas G, H, and I.

Area E. That airspace extending upward from 4,000 feet MSL to and including 9,000 feet MSL within a 32-mile radius of the ILS runway 4R DME extending from a line between lat. 21°06'11" N., long. 157°36'02" W.; and lat. 21°01'14" N., long. 157°26'36" W.; clockwise to a line from lat. 21°30'08" N., long. 158°26'56" W.; to lat. 21°26'13" N., long. 158°17'01" W.; excluding Areas A, B, C, D, G, H and J.

Area F. That airspace extending upward from 5,000 feet MSL to and including 9,000 feet MSL bounded by a line 0.5 miles northwest of, and parallel to, the Koko Head VORTAC 050° radial beginning at the Koko Head 291° radial and extending to lat. 21°25'15" N., thence southeast along a 152° heading to, and then along the 32-mile radius arc of the ILS Runway 4R DME to lat. 21°01'14" N., long. 157°26'36" W.; to lat 21°06'11" N., long. 157°36'02" W.; thence direct to the point of beginning, excluding that airspace within areas C and J.

Area G. That airspace extending upward from 1,600 feet MSL to and including 9,000 feet MSL within an area bounded by a line from lat. 21°20'11" N., long. 158°01'57" W.; to lat. 21°20'11" N., long. 158°03'00" W.; to lat. 21°19'11" N., long. 158°03'00" W.; to lat. 21°19'11" N., long. 158°01'56" W.; to the point of beginning.

Area H. That airspace extending upward from 1,900 feet MSL to and including 9,000 feet MSL within an area bounded by a line from lat. 21°20'11" N., long. 158°01'57" W.; to lat. 21°20'10 N., long. 158°03'00" W.; to lat. 21°19'11" N., long. 158°03'00" W.; to lat. 21°19'11" N., long. 158°03'00" W.; to the point of beginning.

Area I. That airspace extending upward from 1,000 feet MSL to and including 9,000 feet MSL within an area bounded by a line from lat. 21°20'10" N., long. 158°03'55" W.; to lat. 21°20'09" N., long. 158°11'35" W.;to lat. 21°19'09" N., long. 158°11'34" W.; to lat. 21°19'11" N., long. 158°03'55" W.; to the point of beginning.

Area J. That airspace extending upward from 1,600 feet MSL to and including 9,000 feet MSL within 15 miles of the ILS Runway 4R DME, bounded on the north by a line extending west along the Koko Head VORTAC 111°/281° radial until intersecting, and then proceeding along the H–5Freeway to lat. 21°18'39" N., long. 157°1'15" W.; bounded on the west by Area A, and on the south by a line from lat. 21°12'30" N., long. 157°54'00" W.; to lat. 21°06'28" N., long 157°47'22" W.

Area K. That airspace extending upward from the surface to and including 2,000 feet MSL within an area south of the H–1 Freeway, between lat. 21°22'32" N., long. 157°55'40" W.; to lat. 21°21'29" N., long. 157°54'00" W.; and lat. 21°18'39" N., long. 157°51'15" W.; east of long. 157°55'40" W., and north of Area A.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on August 22, 1984.

John W. Baier

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 84–23138 Filed 8–30–84; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 24217; Amdt. No. 1276]

Air Traffic and General Operating Rules; Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operation, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. The amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Aviation safety, Approaches, Standard instrument.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

§ 97.23 [Amended]

1. By Amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective October 25, 1984*

Alton/St. Louis, IL—St. Louis Regional, VOR-A, Amdt. 7
Iron Mountain/Kingsford, MI—Ford, VOR RWY 1, Amdt. 9
Iron Mountain/Kingsford, MI—Ford, VOR RWY 19, Amdt. 4
Iron Mountain/Kingsford, MI—Ford, VOR RWY 31, Amdt. 11
Sault Ste. Marie, MI—Chippewa County Intl, VOR-A (TAC), Amdt. 3

** * * Effective October 11, 1984*

Bentonville, AR—Bentonville Muni, VOR-A, Amdt. 6
Lakeland, FL—Lakeland Muni, VOR RWY 13, Amdt. 3
Lakeland, FL—Lakeland Muni, VOR RWY 27, Amdt. 3
Baltimore, MD—Baltimore-Washington Intl, VOR RWY 10, Amdt. 14
Baltimore, MD—Baltimore-Washington Intl, VOR RWY 28, Amdt. 19
Baltimore, MD—Baltimore-Washington Intl, VOR RWY 33L, Amdt. 4
Aurora, MO—Aurora Memorial Muni, VOR/DME-A, Amdt. 1
Chester, SC—Chester Muni, VOR/DME RWY 23, Amdt. 3
Lancaster, SC—Lancaster County, VOR/DME-A, Amdt. 5
Riverton, WY—Riverton Regional, VOR RWY 10, Amdt. 8
Riverton, WY—Riverton Regional, VOR RWY 28, Amdt. 8

** * * Effective September 27, 1984*

Hartford, CT—Hartford-Brainard, VOR-A, Amdt. 6
Davenport, IA—Davenport Muni, VOR RWY 3, Amdt. 7

Davenport, IA—Davenport Muni, VOR RWY 21, Amdt. 6
Auburn-Lewiston, ME—Auburn-Lewiston Muni, VOR/DME-A, Amdt. 2
Dickinson, ND—Dickinson Muni, VOR-A, Amdt. 1

** * * Effective August 15, 1984*

West Palm Beach, FL—Palm Beach Intl, VOR RWY 31, Amdt. 1

** * *Effective August 13, 1984*

Casa Grande, AZ—Casa Grande Muni, VOR RWY 5, Amdt. 2

§ 97.25 [Amended]

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective October 25, 1984*

Alton/St. Louis, IL—St. Louis Regional, LOC BC RWY 11, Amdt. 5
Iron Mountain/Kingsford, MI—Ford, LOC/DME BC RWY 19, Amdt. 6

** * * Effective October 11, 1984*

Sarasota/Bradenton, FL—Sarasota-Bradenton, LOC/DME BC RWY 14, Amdt. 3, Cancelled
Winder, GA—Winder, LOC RWY 31, Amdt. 6
Morganton, NC—Morganton-Lenoir, SDF RWY 3, Amdt. 1

** * * Effective September 27, 1984*

Davenport, IA—Davenport Muni, LOC RWY 15, Amdt. 2
Norman, OK—Max Westheimer, LOC RWY 3, Amdt. 2

** * * Effective August 22, 1984*

Jamestown, ND—Jamestown Muni, LOC/DME BC RWY 12, Amdt. 5

** * * Effective August 15, 1984*

West Palm Beach, FL—Palm Beach Intl, LOC BC RWY 27R, Amdt. 11

§ 97.27 [Amended]

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective October 25, 1984*

Alton/St. Louis, IL—St. Louis Regional, NDB RWY 17, Amdt. 9
Alton/St. Louis, IL—St. Louis Regional, NDB RWY 29, Amdt. 7
Sault Ste. Marie, MI—Chippewa County Intl, NDB RWY 16, Amdt. 3
Sault Ste. Marie, MI—Chippewa County Intl, NDB RWY 34, Amdt. 2
Wadsworth, OH—Wadsworth Muni, NDB RWY 2, Orig.

** * * Effective October 11, 1984*

Winder, GA—Winder, NDB RWY 31, Amdt. 6
Sturgis, MI—Kirsch Muni, NDB RWY 18, Amdt. 3
Sturgis, MI—Kirsch Muni, NDB RWY 24, Amdt. 7
Morganton, NC—Morganton-Lenoir, NDB RWY 3, Amdt. 1
Southport, NC—Brunswick County, NDB-A, Amdt. 3
Aiken, SC—Aiken Muni, NDB RWY 24, Amdt. 6
Lancaster, SC—Lancaster County, NDB RWY 24, Amdt. 2
Houston, TX—Hull Field, NDB RWY 17, Amdt. 6
Houston, TX—Hull Field, NDB RWY 35, Amdt. 2

** * * Effective September 27, 1984*

Davenport, IA—Davenport Muni, NDB RWY 3, Amdt. 13
Auburn-Lewiston, ME—Auburn-Lewiston Muni, NDB RWY 4, Amdt. 5
DuBois, PA—DuBois-Jefferson County, NDB RWY 25, Amdt. 8
Mesquite, TX—Phil L. Hudson Field, NDB-A, Orig., Cancelled
Mesquite, TX—Phil L. Hudson Muni, NDB RWY 17, Orig.

§ 97.29 [Amended]

4. By amending § 97.29 ILS ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

** * * Effective October 25, 1984*

Alton/St. Louis, IL—St. Louis Regional, ILS RWY 29, Amdt. 7
Iron Mountain/Kingsford, MI—Ford, ILS RWY 1, Amdt. 6
Sault Ste. Marie, MI—Chippewa County Intl, ILS RWY 16, Amdt. 4

** * * Effective October 11, 1984*

Baltimore, MD—Baltimore-Washington Intl, ILS RWY 10, Amdt. 10
Baltimore, MD—Baltimore-Washington Intl, ILS RWY 15R, Amdt. 11
Baltimore, MD—Baltimore-Washington Intl, ILS RWY 28, Amdt. 5
Baltimore, MD—Baltimore-Washington Intl, ILS RWY 33L, Amdt. 3
Columbus, OH—Port Columbus Intl, ILS RWY 10L, Amdt. 12
Riverton, WY—Riverton Regional, ILS RWY 28, Amdt. 1

** * * Effective September 27, 1984*

Windsor Locks, CT—Bradley Intl, ILS RWY 33, Amdt. 2
Auburn-Lewiston, ME—Auburn-Lewiston Muni, ILS RWY 4, Amdt. 3
Dickinson, ND—Dickinson Muni, ILS/DME RWY 32, Orig.
DuBois, PA—DuBois-Jefferson County, ILS RWY 25, Amdt. 6
Wilkes-Barre/Scranton, PA—Wilkes-Barre/Scranton Intl, ILS RWY 4, Amdt. 31

** * * Effective August 22, 1984*

Jamestown, ND—Jamestown Muni, ILS RWY 30, Amdt. 5

** * * Effective August 15, 1984*

West Palm Beach, FL—Palm Beach Intl, ILS RWY 9L, Amdt. 21

** * * Effective August 13, 1984*

Casa Grande, AZ—Case Grande Muni, ILS/DME RWY 5, Amdt. 2

§ 97.31 [Amended]

5. By amending § 97.31 RADAR SIAP identified as follows:

** * * Effective October 11, 1984*

Baltimore, MD—Baltimore-Washington Intl, RADAR 1, Amdt. 9

§ 97.33 [Amended]

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective October 11, 1984*

St Louis, MO—Lambert-St Louis Intl, RNAV RWY 30R, Amdt. 1

** * * Effective September 27, 1984*

Dickinson, ND—Dickinson Muni, RNAV RWY 32, Orig., Cancelled
Dickinson, ND—Dickinson Muni, RNAV RWY 14, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "signifianct rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C., on August 24, 1984.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 84-23140 Filed 8-30-84; 8:45 am]
BILLING CODE 4910-13-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Transportation System

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: 14 CFR Part 1214 is amended by adding this new Subpart 1214.6, "Nonscientific Payloads." This Subpart, in conjunction with Subparts 1214.1, 1214.2, and 1214.8, states NASA policy on the flight of nonscientific payloads aboard the Space Transportation System (STS). The intended effect of this rule is to broaden the range of potential launch service customers and increase the access of the general public to the STS.

EFFECTIVE DATE: August 31, 1984.

ADDRESS: Deputy Associate Administrator for External Relations (Code L), NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Russell Ritchie, (202) 453–8306.

SUPPLEMENTARY INFORMATION: On May 7, 1984, NASA published a proposed rule in the Federal Register (49 FR 19313) inviting public comments by July 6, 1984, on "Nonscientific Payloads" aboard the STS. This rule establishes policy and general procedures for broadening the range of potential launch service customers and increasing the access of the general public to the STS.

Three comments were received on the proposed rule. The first contained three recommendations: (1) Include a representative from the arts on the Nonscientific Payloads Evaluation Committee, (2) carry art reduced rates on a space available basis, and (3) eliminate the requirement that all nonscientific payloads be returned to Earth aboard the same STS flights that carry them into orbit. In developing the proposed rule, NASA considered all of these actions and chose not to adopt them for the following reasons. The Nonscientific Payloads Evaluation Committee is an organization internal to NASA, established to assist in making decisions for which only the Agency is responsible; therefore, it is appropriate that the membership of the Committee be limited to NASA personnel. In addition, the Committee does not expect to make recommendations on proposed payloads based on issues of artistic merit, precluding the need for a member with arts expertise. If an occasion should arise in which such expertise is needed for its deliberations, the Committtee will seek assistance from such recognized authorities as the National Endowment for the Arts. With respect to recommendation 2, NASA has no authority to single out arts payloads as more worthy than other categories, therefore justifying their flight at subsidized rates. It is the objectives of the Agency to treat all nonscientific payloads equally, whatever their nature. On recommendation 3, NASA intends to avoid contributing unnecessarily to the already substantial accumulation of objects currently in Earth orbit, some of which are functioning spacecraft and the rest debris. The accumulation causes difficulty for tracking activities and could pose a potential hazard at more densely cluttered altitudes. Therefore, unless a clear necessity is served by leaving a payload in orbit, it will be returned to Earth aboard the same flight that carries it into orbit.

The second comment also urged elimination of that portion of the rule requiring nonscientific payloads be returned to Earth aboard the same flights that carry them into orbit. The purpose in this instance, however, was not to leave the payloads in orbit, but to propel them into destructive reentry. The response to recommendation 3 of the first comment applies to this comment as well. In addition, we do not wish to increase the number of space objects that reenter Earth's atomosphere.

The third comment expressed concern that, despite disclaimers to the contrary, acceptance of a nonscientific payload for flight aboard the STS will constitute an endorsement by NASA of the payload. NASA does not believe this to be a valid concern because Agency policy and regulations beyond this particular regulation prohibit endorsement of commercial products.

Several changes were made in the text on NASA initiative. Section 1214.1603(c) was changed to "officers, or their designees" from "officials." The term officer is preferred in order to be consistent with the National Aeronautics and Space Act of 1958 as amended. The addition of designees provides latitude to management necessary for the proper functioning of the Committee. Section 1214.1606(f) was changed to "human or animal life" from "animal life" and § 1214.1606(k) and (l) were added to aid clarity. The remaining changes were to correct typographical errors.

The National Aeronautics and Space Administration has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1214

Payload specialist, Mission manager, NASA-related payload, Mission specialist, Investigator working group, Government employees, Government procurement, Security measures, Space transportation and exploration, SSUS Procurement, Small self-contained payloads, Reimbursement for shuttle services, Authority of Space Transportation System (STS) Commander, Articles authorized to be carried on space transportation system flights, Space Transportation System Personnel Reliability Program, Nonscientific payloads.

PART 1214—SPACE TRANSPORTATION SYSTEM

14 CFR Part 1214 is amended by adding Subpart 1214.16 to read as follows:

Subpart 1214.16—Nonscientific Payloads

Sec.

Authority: 42 U.S.C. 2473.

Subpart 1214.16—Nonscientific Payloads

§ 1214.1600 Scope.

This Subpart establishes NASA policy regarding the accommodation of nonscientific payloads aboard the STS.

§ 1214.1601 Applicability.

This Subpart applies to NASA Headquarters and field installations.

§ 1214.1602 Relation to Subparts 1214.1, 1214.2, and 1214.8.

Except as specifically noted, the provisions of the Space Shuttle and Spacelab policies also apply to nonscientific payloads. In event of any inconsistencies in the policies, the reimbursement policy established by this Subpart will govern with respect to nonscientific payloads.

§ 1214.1603 Definitions.

(a) *Nonscientific payloads.* All cargoes that do not meet the definitions of national defense payloads; communications, weather, or other high technology satellites; materials sciences/processing payloads; scientific experiments; engineering test articles; or other similarly technical cargoes routinely considered for flight as conventional or self-contained payloads.

(b) *Total operations costs.* All direct and indirect costs. Such costs include direct program charges for manpower, expended hardware, refurbishment of hardware, spares, propellants, provisions, consumables and launch and recovery services. They also include a charge for program support, center overhead and contract administration.

(c) *Committee.* The Nonscientific Payload Evaluation Committee, established in NASA Headquarters for the purpose of reviewing technically feasible requests to fly nonscientific payloads. The Committee consists of the following NASA Headquarters officers.

or their designees: Chief Engineer (Code D), Associate Administrator for Policy (Code F), General Counsel (Code G), Associate Administrator for External Relations (Code L), as Chairperson, Associate Administrator for Space Flight (Code M), Associate Administrator for Space Science and Applications (Code E), Chief Scientist (Code P), and Associate Administrator for Aeronautics and Space Technology (Code R). The Committee will meet within 30 days of the effective date of this Subpart and not less than once every 90 days thereafter. The Committee will develop procedures to carry out this policy.

(d) *Technically feasible for flight.* All physical aspects and operational characteristics of a payload which make it suitable for flight aboard the STS. Evaluation of the proposed payload for acceptance includes, but is not limited to, compatability with STS operating systems and other payloads, compliance with national and international radio spectrum regulations, safety considerations of the vehicles and crew, risk to other payloads, and ability of the STS to meet all customers' operational requirements.

§ 1214.1604 Policy.

(a) Nonscientific payloads are eligible for flight aboard the STS. Although the Space Shuttle and Spacelab were developed for the purpose of accommodating technical cargoes of the type described in § 1214.1603(a), nonscientific payloads may be flown on a space available basis.

(b) Normally no more than 10 percent of STS flight capability, as defined in Subparts 1214.1, 1214.2, and 1214.8, will be employed for nonscientific payloads.

(c) Nonscientific payloads must be approved by the Associate Deputy Administrator for flight prior to manifesting.

(d) Nonscientific payloads may be remanifested to accommodate technical cargoes.

(e) Reimbursement for standard services provided to nonscientific payloads normally will be based on total operations cost recovery.

(f) Information concerning the details which must be included in a nonscientific payload request, and current prices and fees may be obtained from Customer Services Division (Code MC), Office of Space Flight, NASA Headquarters, Washington, DC 20546.

(g) Exceptions to this policy may be granted at the discretion of the Associate Deputy Administrator.

§ 1214.1605 Approval of nonscientific payloads.

(a) All requests to fly nonscientific payloads aboard the STS will be addressed to the Director, Customer Services Division, who will screen the requests and forward those found technically feasible for flight to the Nonscientific Payload Evaluation Committee.

(b) The Committee will evaluate each request considering such matters as:

(1) The sponsor and nature of the proposed payload;

(2) The plan for developing the payload;

(3) Endorsement or opposition by a recognized professional, business, or charitable organization;

(4) The purpose to which the payload may be put when returned to Earth;

(5) Compliance with national and international radio regulations for payloads intentionally transmitting electromagnetic energy; and

(6) Other considerations which are appropriate to specific requests.

(c) Committee findings will be documented and forwarded directly to the Associate Deputy Administrator. Approval of nonscientific payloads for flights aboard the STS is reserved to the Associate Deputy Administrator.

(d) Rejected requests will be returned to their sponsors with explanations for their rejection.

§ 1214.1606 Preconditions for acceptance.

(a) Sponsors must accept responsibility for all expenses associated with or arising from their respective nonscientific payloads.

(b) Nonscientific payloads must be technically feasible for flight as determined by the Director, Customer Services Division, Office of Space Flight.

(c) NASA reserves the right to obtain evaluations of nonscientific payload requests from any individuals or organizations of its own choosing.

(d) Nonscientific payload sponsors must be willing to appear before the Nonscientific Payload Evaluation Committee to explain their requests.

(e) No payload will be accepted for flight which is inconsistent with NASA's mission or otherwise not in the national interest.

(f) No human or animal life will be permitted in a nonscientific payload.

(g) Nonscientific payloads will not be permitted to operate as free flyers.

(h) Nonscientific payload sponsors must enter into a standard NASA launch services agreement.

(i) All nonscientific payloads will be returned to Earth aboard the same STS flights that carry them into orbit.

(j) Acceptance for flight does not consitute NASA endorsement or certification (other than for Space Shuttle flight) of a nonscientific payload.

(k) NASA specifically reserves the right to reject nonscientific payloads proposed—or which appear to be proposed—solely or primarily for the purposes of advertising, publicity, endorsements, or other means of promotion.

(l) Each request to fly a nonscientific payload must be accompanied by a nonrefundable processing fee.

James M. Beggs,

Administrator.

[FR Doc. 84-23148 Filed 8-30-84; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 83C-0321]

Listing of Color Additives for Coloring Contact Lenses

Correction

In FR Doc. 84-19699 beginning on page 30065 in the issue of Thursday, July 26, 1984, make the following correction.

On page 30065, column 2, line 4 in the **"SUMMARY"** paragraph "1,4-bis([2-methylphenyl)-" should read "1,4-bis[(2-methylphenyl)-".

BILLING CODE 1505-01-M

---

21 CFR Part 74

[Docket No. 83C-0167]

D&C Blue No. 6; Listing as a Color Additive for Coloring Sutures

Correction

In FR Doc. 84-19603 beginning on page 29955 in the issue of Wednesday, July 25, 1984, make the following correction:

§ 74.3106 [Corrected]

On page 29956, in § 74.3106(a), third column, the third line should have read as follows: "biindoline]-3,3'dione [CAS Reg. No.".

BILLING CODE 1505-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Griseofulvin

Correction

In FR Doc. 84–19700 beginning on page 30066 in the issue of Thursday, July 26, 1984, make the following corrections.

On page 30067, in column 1, tenth line, "21 U.S.C. 360(e)" should read "21 U.S.C. 360b(e)".

BILLING CODE 1505-01-M

21 CFR Part 607

[Docket No. 84N-0145]

Biologics Products; Establishment Registration and Product Listing for Manufacturers of Human Blood and Blood Products; Amendment To Exempt Certain Transfusion Services From Registration

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to exempt from FDA's requirements for establishment registration and product listing (and routine establishment inspection) certain transfusion services that routinely prepare red blood cells and that are approved for Medicare reimbursement by the Health Care Financing Administration (HCFA). FDA is amending the regulations as a followup to a revision of a Memorandum of Understanding (MOU) between the Public Health Service (PHS), FDA, and HCFA. Under this revision of the MOU, FDA will not perform routine inspections of transfusion services that routinely prepare red blood cells, to avoid duplicative regulatory inspections of such facilities by both HCFA and FDA. The amended MOU is published with this final rule as Appendix A.

DATE: This amendment is effective August 31, 1984.

Comments will be accepted until October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (HFN–368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1306.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 25, 1980 (45 FR 19316), FDA published a notice announcing the execution of a MOU effective January 21, 1980, between the PHS, FDA, and HCFA. The purpose of the understanding was to consolidate responsibilities for inspecting and surveying certain blood-banking and transfusion programs. Implementation of that MOU allowed, among other things, HCFA and FDA to stop performing duplicative regulatory inspections of over 3,000 transfusion services. Transfusion services exempted from FDA registration and inspection requirements are facilities that are part of either a hospital or an independent clinical laboratory and that perform compatibility testing and transfusion of blood and blood components but are not engaged in the routine collection or processing of blood or plasma (except recovered plasma) except for therapeutic collections, and the hospitals or the independent testing laboratories are approved by HCFA for participation in the Medicare program.

FDA published the MOU in the **Federal Register** to allow its review by the public, in conformance with its policy (announced in the **Federal Register** of October 3, 1974 (39 FR 35697) and codified at 21 CFR 20.108(c)) of publishing in the **Federal Register** the text of all MOU's executed by FDA.

In the **Federal Register** of September 30, 1980 (45 FR 64601), FDA proposed to amend the biologics regulations on establishment registration and product listing to implement the MOU described above. The MOU provided that FDA would not perform routine regulatory inspections of transfusion services "* * * not engaged in the routine collection or processing * * *" of blood when the facility is approved for participation in the Medicare program by HCFA. In the preamble of its proposal of September 30, 1980, FDA defined the phrase "routine collection or processing" to include the collection of blood for autologous transfusion and the routine preparation of any blood component, including red blood cells. Thus, FDA proposed not to exempt from the requirements of establishment registration and product listing (and routine regulatory inspection) any transfusion service routinely preparing red blood cells.

In the **Federal Register** of December 30, 1980 (45 FR 85727), FDA published a rule implementing the MOU based on the proposal of September 30, 1980. In the preamble to that rule, the agency summarized a number of comments on the proposal. The comments requested (paragraph 4, 45 FR 85729) that FDA also provide an exemption from FDA's requirements concerning establishment registration and product listing to transfusion services that routinely prepare red blood cells. In the response in the preamble, FDA stated that the definition of a transfusion service in the MOU did not include a transfusion service that routinely prepared red blood cells. For that reason, the agency rejected the comments because they concerned a matter outside the scope of that rulemaking. However, FDA advised it would explore the possibility of amending the MOU to include an exemption for such transfusion services and allow FDA to amend the regulations to provide the additional exemption requested by the comments.

Accordingly, FDA advises that the amendments to the MOU, urged by the comments and summarized below, were studied by the Department and approved by the Secretary of Health and Human Services on June 6, 1983. The amendments were effective on that date.

1. Section IIA, 1: The definition of a transfusion service was modified to include the words "or red blood cells". The revised definition reads as follows: A "transfusion service" is a facility, which is part of either a hospital or an independent clinical laboratory, and which performs compatibility tests for, but is not engaged in the routine collection or processing of, blood or plasma (except recovered plasma or red blood cells) except for therapeutic collections, and the hospital or the independent testing laboratory is approved by HCFA for participation in the Medicare program.

2. Section II, C: The last sentence which read, "Once HCFA adopts the FDA standards as indicated in paragraph D below, these facilities will not be registered as blood establishments with PHS/FDA" was changed to read, "These facilities will not be registered as blood establishments with PHS/FDA."

3. All references to Department of Health, Education, and Welfare and HEW were changed to Health and Human Services and HHS, respectively.

The current MOU, as amended on June 6, 1983, is published as Appendix A to this final rule.

FDA is making a conforming amendment in 21 CFR 607.65(f) of the biologics regulations to exempt from FDA's requirements for establishment registration and product listing about 550 hospital-based transfusion services that routinely prepare red blood cells, provided that these transfusion services are approved for Medicare reimbursement by HCFA. FDA finds that registration and product listing by these transfusion services are not necessary for the protection of the public health.

Other blood establishments not discussed in the exemption in the revised MOU must, of course, continue to meet the FDA's requirements for

establishment registration and product listing.

The Commissioner finds for good cause under 5 U.S.C. 553(b)(B) and 21 CFR 10.40(e)(1) that notice and public procedure are unnecessary. The establishment registration and product listing requirements have as their purpose ensuring that FDA has an inventory of regulated establishments and products, and here that purpose is adequately met by HCFA's approvals. Although FDA usually employs notice-and-comment rulemaking to grant exemptions from establishment registration and product listing under section 510, the revision in § 607.65 is a minor conforming amendment to reflect the elimination, with no adverse effects on public health, of duplicative regulatory requirements for certain transfusion services. FDA already has implemented the provisions of the amended MOU agreement. Accordingly, the Commissioner finds good cause not to delay the effective date of the amendment of § 607.65(f).

The agency, nevertheless, is providing a 30-day period, until October 1, 1984, during which it will accept comments on the rule. If FDA decides on the basis of comments received that any change in the amendments is necessary, it will publish the change in the **Federal Register.**

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has carefully analyzed the economic effects of this final rule and has determined that the rule does not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed, and it has been determined that the rule does not constitute a major rule as defined in section 1(b) of the Executive Order. FDA is exempting from requirements of establishment registration and product listing (and from routine establishment inspection) about 550 hospital-based transfusion services that routinely prepare red blood cells and that are approved for Medicare reimbursement by HCFA. This action avoids duplicative routine regulatory inspections of these facilities by both HCFA and FDA, and thereby reduces a regulatory burden without loss of consumer protection.

Therefore, FDA is granting an exemption within the meaning of 21 CFR 10.40(c)(4)(i) from routine FDA inspections of certain transfusion services.

List of Subjects in 21 CFR Part 607

Blood.

PART 607—[AMENDED]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 510, 701, 52 Stat. 1040–1042 as amended, 1055–1056 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 321, 360, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 607 is amended in § 607.65 by revising paragraph (f) to read as follows:

§ 607.65 Exemptions for blood product establishments.

* * * * *

(f) Transfusion services which are a part of a facility approved for Medicare reimbursement and engaged in the compatibility testing and transfusion of blood and blood components, but which neither routinely collect nor process blood and blood components. The collection and processing of blood and blood components in an emergency situation as determined by a responsible person and documented in writing, therapeutic collection of blood or plasma, the preparation of recovered human plasma for further manufacturing use, or preparation of red blood cells for transfusion are not acts requiring such transfusion services to register.

* * * * *

Effective date. This regulation is effective August 31, 1984.

(Secs. 201, 510, 701, 52 Stat. 1040–1042 as amended, 1055–1056 as amended, 76 Stat. 794–795 as amended (21 U.S.C. 321, 360, 371); Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: August 10 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

Appendix A—Memorandum of Understanding for Administration of Blood-Banking and Transfusion Service Programs

Note: This appendix will not appear in the Code of Federal Regulations

I. Purpose and Background

Since 1966, hospitals and independent laboratories participating in the program of Health Insurance for the Aged and Disabled established by Title XVIII of the Social Security Act (Medicare), have been surveyed by the Department of Health and Human Services (HHS), most recently including the Health Care Financing Administration (HCFA), for compliance with the applicable provisions of the Medicare statute and regulations. These regulations include requirements affecting the blood banking and transfusion services of hospitals and independent laboratories. (Hospitals accredited by the Joint Commission on the Accrediation of Hospitals (JCAH) or the American Osteopathic Association (AOA) are deemed under the Medicare Act and regulations to meet most of the Medicare requirements.)

Since 1973, the Food and Drug Administration (FDA) has concurrently conducted administrative inspections of blood banks and transfusion services engaged in the collection, processing, storage, compatibility testing, or distribution of blood and blood components under the drug provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and the biological products provisions of the Public Health Service Act (42 U.S.C. 262).

Most nongovernmental hospitals and independent laboratories with blood-banking or transfusion service capabilities approved by the Medicare program are also subject to inspection by FDA. In early 1979, HCFA and FDA proposed to coordinate all Federally authorized inspections of hospital blood banks and transfusion services in order to minimize duplication of effort and to reduce the burden on affected facilities. This Memorandum of Understanding finalizes the consolidation within HCFA of all responsibilities for the inspection and surveying of approximately 3,000 transfusion services. However, other blood establishments, as defined below, will remain subject to inspection under the Public Health Service (PHS)/FDA program, and will also be subject to HCFA requirements if they choose to participate in the Medicare program.

PHS/FDA and HCFA shall continue to act under existing delegations of authority, and no transfer of statutory functions or authority is made here. HCFA shall, however, conform many of its program requirements for the survey of blood banks and transfusion services to those issued by PHS/FDA. This includes the adoption of certain of the PHS/FDA regulations applicable to blood and blood component products set forth at 21 CFR Part 606.

Additionally, PHS/FDA shall no longer inspect on a routine basis clinical laboratories or portions thereof which perform tests such as hepatitis tests, serum protein electrophoresis, or quantitative immunoglobulin determinations in support of the preparation of biological products by a firm registered with PHS/FDA, if the clinical laboratory is approved under the HCFA program.

II. Substance of Agreement

A. *Definitions:* For the purpose of this agreement, the following definitions apply:

1. A "transfusion service" is a facility, which is part of either a hospital or an independent clinical laboratory, and which performs compatibility tests for, but is not engaged in the routine collection or processing of blood or plasma (except recovered plasma or red blood cells) except for therapeutic collections, and the hospital or the independent testing laboratory is approved by HCFA for participation in the Medicare program.

2. A "blood establishment" is any other facility or portions of a facility registered as such with FDA pursuant to 21 U.S.C. Part 510 and 21 CFR Part 607. Blood establishments include hospital and nonhospital blood banks, plasmapheresis centers, and the clinical laboratories performing required testing for these establishments.

B. *Transfusion service survey and approval.* HCFA shall be responsible for:

1. Surveying hospitals and independent laboratories, including the transfusion service, and applying the Medicare conditions of participation and conditions for coverage through the Medicare survey, certification, and facility approval process, including the utilization of HCFA's system of Medicare State survey agency agreements;

2. Approving and disapproving hospitals and independent laboratories for purposes of Medicare.

3. Surveying the transfusion service of hospitals and independent laboratories in conjunction with PHS/FDA, when such a survey is appropriate to certify and document any alleged significant deficiency or deficiencies, which would, if confirmed to be present, adversely affect the health and safety of patients.

4. Conducting special surveys of the transfusion services of hospitals and independent laboratories concerning administrative, procedural, licensure, technical certification or related matters as needed, or when requested by PHS/FDA or others, as appropriate.

5. Conducting enforcement activities, such as the investigation and referral of cases to the Inspector General of the Department of Health and Human Services for further action.

6. Negotiating, approving, and administering agreements with the Medicare State survey agencies; and

7. Applying the administrative review and hearing provisions applicable to hospitals and independent laboratories under Medicare.

C. *Survey of good manufacturing practices in facilities performing emergency blood collections only.* HCFA shall survey the procedures related to the collection and processing (including labeling) of blood and blood components for transfusion at transfusion services in hospitals and independent clinical laboratories participating in the Medicare program. These facilities will not be registered as blood establishments with PHS/FDA.

D. *Development of technical and scientific standards.* PHS/FDA shall be responsible for the promulgation and interpretation of technical and scientific standards relating to transfusion services and blood establishments and for responding to inquiries concerning these standards except as indicated in paragraph E below. HCFA shall undertake to adopt these standards for use in the Medicare program.

E. *Application of personnel and proficiency testing standards.* For purposes of the Medicare program, the HCFA standards for personnel (42 CFR 405.1028 (d), (g), and (i) for hospitals and 42 CFR 405.1310 through 405.1315 for independent clinical laboratories) and proficiency testing (42 CFR 405.1314(a)) shall apply. For purposes of the PHS/FDA program, the PHS/FDA standards for personnel (21 CFR 600.10 for licensed establishments and 21 CFR 606.20 of registered blood establishments) shall apply to registered, licensed and unlicensed blood establishments.

F. *Special investigations of clinical laboratories.* PHS/FDA shall no longer routinely inspect clinical laboratories or portions thereof which perform hepatitis tests or other laboratory procedures for registered blood establishments when the laboratory is surveyed by and meets the requirements of the HCFA program. When a special investigation is required by PHS/FDA to document the presence of any alleged significant deficiency or deficiencies which would, if confirmed, adversely affect the safety or efficacy of products, or the safety or health of donors, the investigation by FDA will be coordinated with regional HCFA personnel.

G. *Adverse transfusion reaction reporting.* The provisions of 21 CFR 606.170(b) require that fatal transfusion reactions related to the administration of blood or blood components be reported as soon as possible to PHS/FDA. PHS/FDA evaluates these reports and, when indicated, may undertake special investigations to determine whether remedial action has been or needs to be undertaken by the blood establishment.

PHS/FDA shall continue to receive these reports from blood banks and transfusion services in hospitals and independent laboratories participating in the Medicare program. Those reports received by FDA from transfusion services will be transmitted to HCFA for evaluation and followup under that program. In addition, PHS/FDA shall transmit to HCFA those reports which involve fatalities resulting from errors and accidents in areas of a hospital unrelated to the collection or processing of blood or blood components.

H. *Research and development.*

1. PHS/FDA shall be responsible for conducting studies related to the technical and scientific aspects of the administration and regulation of transfusion services and blood establishments, including studies for standards' development, improved quality control practices and testing, and evaluation methodologies.

2. HCFA shall be responsible for conducting studies pertaining to the Medicare coverage and amount of reimbursement to hospitals and independent laboratories stemming from the activities of their transfusion services and blood banks, the survey and approval of such services, the appropriate utilization of services, and the related administrative processes.

I. *Training.*

1. PHS/FDA shall furnish technical assistance to HCFA for the training of laboratory surveyors of the Medicare State survey agencies and other HCFA survey personnel with respect to the technical and scientific standards applicable to transfusion services and blood banks.

2. HCFA, in conjunction with PHS/FDA, shall be responsible for training laboratory surveyors of the Medicare State survey agencies and HCFA personnel concerning blood banking administration and procedure.

J. *Amendments.* This agreement may be modified at any time in writing by the Assistant Secretary for Health, the Commissioner of Food and Drugs, and the Administrator of the Health Care Financing Administration, or their authorized delegates. PHS/FDA and HCFA shall review this memorandum of understanding within 2 years after its

effective date. Either party in the interim has a right to an earlier review of this agreement or any of its provisions.

K. *Resolution of differences.* In any case in which PHS/FDA and HCFA find that the resolution of significant differences with respect to this agreement cannot be achieved, the matter will be referred by the Assistant Secretary for Health, the Commissioner of Food and Drugs, and the Administrator, HCFA, to the Undersecretary or the Secretary for decision.

Dated: June 6, 1983.

Amended memorandum of understanding approved by:

Margaret M. Heckler,

Secretary of the Department of Health and Human Services.

[FR Doc. 84-23149 Filed 8-30-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Rescheduling of Methaqualone From Schedule II to Schedule I

Correction

In FR Doc. 84-22556 beginning on page 33870 in the issue of Monday, August 27, 1984, make the following correction:

On page 33870, third column, in the first paragraph under **"SUPPLEMENTARY INFORMATION"**, fifth and sixth lines from the bottom, remove the brackets surrounding "August 27, 1984".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 7973]

Income Tax; Treatment of Transfer of Property Between Spouses, Tax Treatment of Alimony and Separate Maintenance Payments, and Dependency Exemption in the Case of Child of Divorced Parents

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the treatment of transfers of property between spouses or former spouses, the tax treatment of alimony and separate maintenance payments, and the dependency exemption in the case of a child of divorced parents. Changes to the applicable law were made by the Tax Reform Act of 1984. These regulations affect persons who transfer property to or receive property from their spouses or former spouses, persons who pay or receive alimony and separate maintenance payments, and divorced or separated persons who are custodial on noncustodial parents, and provide them with the guidance necessary to comply with the law.

In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATE: The temporary regulations apply to transfers of property between spouses or former spouses after July 18, 1984, (except as otherwise provided in § 1.1041-1T(f)), alimony or separate maintenance payments made with respect to divorce or separation instruments executed after December 31, 1984, and dependency exemptions claimed for tax years beginning after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC: LR:T (LR-136-84) (202) 566-4336, not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the treatment of transfers of property between spouses, or former spouses incident to divorce, under section 1041 of the Internal Revenue Code of 1954 (Code), as added by section 421 of the Tax Reform Act of 1984 (Act) (Pub. L. 98-369, 98 Stat. 793), alimony or separate maintenance payments under sections 71 and 215 of the Code, as amended by section 422 of the Act (Pub. L. 98-369, 98 Stat. 795), and the dependency exemption in the case of a child of divorced or separated parents under section 152 of the Code, as amended by section 423 of the Act (Pub. L. 98-369, 98 Stat. 799). The temporary regulations provided by this document will remain in effect until superseded by final regulations on these subjects.

These temporary regulations are presented in the form of questions and answers. The questions and answers are not intended to address comprehensively the issues raised by sections 1041, 71, 215 and 152(e). Taxpayers may rely for guidance on these questions and answers, which the Internal Revenue Service will follow in resolving issues arising under sections 1041, 71, 215 and 152(e). No inference, however, should be drawn regarding questions not expressly raised and answered.

Explanation of Provisions

Property Transfers Between Spouses or Former Spouses Incident to Divorce

Prior to enactment of the Act, a transfer of property to a spouse (or former spouse) in exchange for the release of marital claims resulted in the recognition of gain or loss to the transferor. The spouse receiving the property received a basis in the transferred property equal to its fair market value. Section 421 of the Act adds a new section 1041 to the Code which provides that no gain or loss is recognized on a transfer of property between spouses, or former spouses if incident to a divorce. Under new section 1041, the transferee's basis is equal to the transferor's adjusted basis immediately before the transfer. A transfer between former spouses will be treated as incident to a divorce if it occurs within 1 year after the marriage ceases or is related to the cessation of the marriage.

Generally, the amendments made by section 421 apply to transfers made after July 18, 1984, except transfers under any instrument in effect on or before July 18, 1984. Two transitional rules contained in section 421 of the Act provide that if both spouses or former spouses elect, the rules of section 1041 will apply to all transfers made after December 31, 1983 or to all transfers after July 18, 1984 under any instrument in effect on or before July 18, 1984. The regulations provide the manner and time to make the elections.

Alimony and Separate Maintenance Payments

Alimony and separate maintenance payments are deductible from income by the payor under section 215 of the Code and includible in the income of the payee under section 71 of the Code. Prior to enactment of the Act, a payment qualified as alimony or separate maintenance if it met several requirements. First, the payment was required to be in discharge of a legal obligation imposed by a family or marital relationship. Second, the payment was required to be made under a decree of divorce or separate maintenance, a written separation

agreement, or a decree of support or maintenance. Third, the payment was required to be "periodic" as defined in § 1.71–1(d) of the regulations. In addition, payments which were fixed as child support were not treated as alimony.

Under section 422 of the Act, alimony and separate maintenance payments under a decree of divorce or separate maintenance or a written instrument incident to such a decree, a written separation agreement, or a decree requiring support or separate maintenance continue to be deductible by the payor and includible in the income of the payee. However, the Act provides a new definition of alimony and separate maintenance payments. Such payments no longer must be made on account of a family or marital relationship, nor must they be "periodic". Instead, if six requirements are met, a payment received by, or on behalf of, the payee spouse (or former spouse) will qualify as an alimony or separate maintenance payment. First, the payment must be in cash. Second, the payment must not be designated as a payment which is nondeductible by the payor and nonincludible in income by the payee. Third, if the parties are separated under a decree of divorce or legal separation, they must not be members of the same household at the time payment is made. Fourth, the payor must not have any liability to make any such payment (or any substitute for such payment) after the death of the payee and the divorce or separation instrument must state that there is no such liability. Fifth, the payment must not be treated as child support. Sixth, payments must be made in each year of a defined 6 consecutive post-separation calendar year period in order for annual payments during this period in excess of $10,000 to qualify as alimony or separate maintenance payments. In addition, in the event that annual alimony or separate maintenance payments decrease by more than $10,000 during the 6-year period, section 71(f) and the regulations under that section provide for a "recapture" of excess alimony or separate maintenance payments. The recaptured amount is included in the gross income of the payor spouse for the year in which the total payments decrease by more than $10,000 and deducted in computing the adjusted gross income of the payee spouse for the same year.

Under the Act, there is no change in the treatment of payments which are fixed as child support. However, if a payment that would otherwise qualify as an alimony or separate maintenance payment will be reduced upon the happening of a contingency specified in the instrument relating to a child of the payor spouse, such as attaining a specified age, marrying, dying, leaving school, or a similar contingency, or will be reduced at a time which can clearly be associated with such a contingency, an amount equal to the amount of such reduction will be treated as an amount fixed as child support. The regulations are designed to provide as much certainty as is consistent with the statutory language.

Penalties

The Act provides that a penalty may be assessed against a payee who fails to supply the payor with the payee's social security number. A similar penalty may be assessed against a payor who fails to report the payee's social security number on the payor's return of tax for the taxable year in which an alimony or separate maintenance payment is made. If the failure of either party is due to reasonable cause and not to willful neglect, no penalty will be assessed against that party.

Dependency Exemption

Under present law, a general rule, the custodial parent (the parent having custody of the child for the greater part of the year) is allowed the $1,000 exemption for each dependent child. However, under two special rules, the noncustodial parent is entitled to the exemption if that parent meets certain requirements relating to the child's support. The Act eliminates the two special rules and adds a simple exception to the general rule. Under this exception, the custodial parent can release his/her claim to the dependency exemption to the noncustodial parent by signing a written delcaration releasing the claim to the dependency exemption to the noncustodial parent for a year, a number of specified years, or permanently. The declaration must be attached annually to the noncustodial parent's return of tax for each year the dependency exemption is released.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (control no. 1545–0074).

Drafting Information

The principal author of these temporary regulations is Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service.

However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects

26 CFR 1.61–1—1.281–1

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR 1.1001–1—1.1102–3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

Adoption of Amendments to the Regulation

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

Paragraph 1.—A new § 1.1041–1T is added immediately following § 1.1039–1 to read as follows:

§ 1.1041–1T Treatment of transfer of property between spouses or incident to divorce (temporary).

Q–1 How is the transfer of property between spouses treated under section 1041?

A–1 Generally, no gain or loss is recognized on a transfer of property from an individual to (or in trust for the benefit of) a spouse or, if the transfer is incident to a divorce, a former spouse. The following questions and answers describe more fully the scope, tax consequences and other rules which apply to transfers of property under section 1041.

(a) *Scope of section 1041 in general.*

Q–2 Does section 1041 apply only to transfers of property incident to divorce?

A–2 No. Section 1041 is not limited to transfers of property incident to divorce. Section 1041 applies to any transfer of property between spouses regardless of whether the transfer is a

gift or is a sale or exchange between spouses acting at arm's length (including a transfer in exchange for the relinquishment of property or marital rights or an exchange otherwise governed by another nonrecognition provision of the Code). A divorce or legal separation need not be contemplated between the spouses at the time of the transfer nor must a divorce or legal separation ever occur.

Example (1). A and B are married and file a joint return. A is the sole owner of a condominium unit. A sale or gift of the condominium from A to B is a transfer which is subject to the rules of section 1041.

Example (2). A and B are married and file separate returns. A is the owner of an independent sole proprietorship, X Company. In the ordinary course of business, X Company makes a sale of property to B. This sale is a transfer of property between spouses and is subject to the rules of section 1041.

Example (3). Assume the same facts as in example (2), except that X Company is a corporation wholly owned by A. This sale is not a sale between spouses subject to the rules of section 1041. However, in appropriate circumstances, general tax principles, including the step-transaction doctrine, may be applicable in recharacterizing the transaction.

Q–3 Do the rules of section 1041 apply to a transfer between spouses if the transferee spouse is a nonresident alien?

A–3 No. Gain or loss (if any) is recognized (assuming no other nonrecognition provision applies) at the time of a transfer of property if the property is transferred to a spouse who is a nonresident alien.

Q–4 What kinds of transfers are governed by section 1041?

A–4 Only transfers of property (whether real or personal, tangible or intangible) are governed by section 1041. Transfers of services are not subject to the rules of section 1041.

Q–5 Must the property transferred to a former spouse have been owned by the transferor spouse during the marriage?

A–5 No. A transfer of property acquired after the marriage ceases may be governed by section 1041.

(b) *Transfer incident to the divorce.*

Q–6 When is a transfer of property "incident to the divorce"?

A–6 A transfer of property is "incident to the divorce" in either of the following 2 circumstances—

(1) The transfer occurs not more than one year after the date on which the marriage ceases, or

(2) The transfer is related to the cessation of the marriage.

Thus, a transfer of property occurring not more than one year after the date on which the marriage ceases need not be related to the cessation of the marriage to qualify for section 1041 treatment. (See A–7 for transfers occurring more than one year after the cessation of the marriage.)

Q–7 When is a transfer of property "related to the cessation of the marriage"?

A–7 A transfer of property is treated as related to the cessation of the marriage if the transfer is pursuant to a divorce or separation instrument, as defined in section 71(b)(2), and the transfer occurs not more than 6 years after the date on which the marriage ceases. A divorce or separation instrument includes a modification or amendment to such decree or instrument. Any transfer not pursuant to a divorce or separation instrument and any transfer occurring more than 6 years after the cessation of the marriage is presumed to be not related to the cessation of the marriage. This presumption may be rebutted only by showing that the transfer was made to effect the division of property owned by the former spouses at the time of the cessation of the marriage. For example, the presumption may be rebutted by showing that (a) the transfer was not made within the one- and six-year periods described above because of factors which hampered an earlier transfer of the property, such as legal or business impediments to transfer or disputes concerning the value of the property owned at the time of the cessation of the marriage, and (b) the transfer is effected promptly after the impediment to transfer is removed.

Q–8 Do annulments and the cessations of marriages that are void *ab initio* due to violations of state law constitute divorces for purposes of section 1041?

A–8 Yes.

(c) *Transfers on behalf of a spouse.*

Q–9 May transfers of property to third parties on behalf of a spouse (or former spouse) qualify under section 1041?

A–9 Yes. There are three situations in which a transfer of property to a third party on behalf of a spouse (or former spouse) will qualify under section 1041, provided all other requirements of the section are satisfied. The first situation is where the transfer to the third party is required by a divorce or separation instrument. The second situation is where the transfer to the third party is pursuant to the written request of the other spouse (or former spouse). The third situation is where the transferor receives from the other spouse (or former spouse) a written consent or ratification of the transfer to the third party. Such consent or ratification must state that the parties intend the transfer to be treated as a transfer to the nontransferring spouse (or former spouse) subject to the rules of section 1041 and must be received by the transferor prior to the date of filing of the transferor's first return of tax for the taxable year in which the transfer was made. In the three situations described above, the transfer of property will be treated as made directly to the nontransferring spouse (or former spouse) and the nontransferring spouse will be treated as immediately transferring the property to the third party. The deemed transfer from the nontransferring spouse (or former spouse) to the third party is not a transaction that qualifies for nonrecognition of gain under section 1041.

(d) *Tax consequences of transfers subject to section 1041.*

Q–10 How is the transferor of property under section 1041 treated for income tax purposes?

A–10 The transferor of property under section 1041 recognizes no gain or loss on the transfer even if the transfer was in exchange for the release of marital rights or other consideration. This rule applies regardless of whether the transfer is of property separately owned by the transferor or is a division (equal or unequal) of community property. Thus, the result under section 1041 differs from the result in *United States* v. *Davis*, 370 U.S. 65 (1962).

Q–11 How is the transferee of property under section 1041 treated for income tax purposes?

A–11 The transferee of property under section 1041 recognizes no gain or loss upon receipt of the transferred property. In all cases, the basis of the transferred property in the hands of the transferee is the adjusted basis of such property in the hands of the transferor immediately before the transfer. Even if the transfer is a bona fide sale, the transferee does not acquire a basis in the transferred property equal to the transferee's cost (the fair market value). This carryover basis rule applies whether the adjusted basis of the transferred property is less than, equal to, or greater than its fair market value at the time of transfer (or the value of any consideration provided by the transferee) and applies for purposes of determining loss as well as gain upon the subsequent disposition of the property by the transferee. Thus, this rule is different from the rule applied in section 1015(a) for determining the basis of property acquired by gift.

Q–12 Do the rules described in A–10 and A–11 apply even if the transferred property is subject to liabilities which exceed the adjusted basis of the property?

A–12 Yes. For example, assume A owns property having a fair market value of $10,000 and an adjusted basis of $1,000. In contemplation of making a transfer of this property incident to a divorce from B, A borrows $5,000 from a bank, using the property as security for the borrowing. A then transfers the property to B and B assumes, or takes the property subject to, the liability to pay the $5,000 debt. Under section 1041, A recognizes no gain or loss upon the transfer of the property, and the adjusted basis of the property in the hands of B is $1,000.

Q–13 Will a transfer under section 1041 result in a recapture of investment tax credits with respect to the property transferred?

A–13 In general, no. Property transferred under section 1041 will not be treated as being disposed of by, or ceasing to be section 38 property with respect to, the transferor. However, the transferee will be subject to investment tax credit recapture if, upon or after the transfer, the property is disposed of by, or ceases to be section 38 property with respect to, the transferee. For example, as part of a divorce property settlement, B receives a car from A that has been used in A's business for two years and for which an investment tax credit was taken by A. No part of A's business is transferred to B and B's use of the car is solely personal. B is subject to recapture of the investment tax credit previously taken by A.

(e) *Notice and recordkeeping requirement with respect to transactions under section 1041.*

Q–14 Does the trasnsferor of property in a transaction described in section 1041 have to supply, at the time of the transfer, the transferee with records sufficient to determine the adjusted basis and holding period of the property at the time of the transfer and (if applicable) with notice that the property transferred under section 1041 is potentially subject to recapture of the investment tax credit?

A–14 Yes. A transferor of property under section 1041 must, at the time of the transfer, supply the transferee with records sufficient to determine the adjusted basis and holding period of the property as of the date of the transfer. In addition, in the case of a transfer of property which carries with it a potential liability for investment tax credit recapture, the transferor must, at the time of the transfer, supply the transferee with records sufficient to determine the amount and period of such potential liability. Such records must be preserved and kept accessible by the transferee.

(f) *Property settlements—effective dates, transitional periods and elections.*

Q–15 When does section 1041 become effective?

A–15 Generally, section 1041 applies to all transfers after July 18, 1984. However, it does not apply to transfers after July 18, 1984 pursuant to instruments in effect on or before July 18, 1984. (See A–16 with respect to exceptions to the general rule.)

Q–16 Are there any exceptions to the general rule stated in A–15 above?

A–16 Yes. Two transitional rules provide exceptions to the general rule stated in A–15. First, section 1041 will apply to transfers after July 18, 1984 under instruments that were in effect on or before July 18, 1984 if both spouses (or former spouses) elect to have section 1041 apply to such transfers. Second, section 1041 will apply to all transfers after December 31, 1983 (including transfers under instruments in effect on or before July 18, 1984) if both spouses (or former spouses) elect to have section 1041 apply. (See A–18 relating to the time and manner of making the elections under the first or second transitional rule.)

Q–17 Can an election be made to have section 1041 apply to some, but not all, transfers made after December 31, 1983, or some but not all, transfers made after July 18, 1984 under instruments in effect on or before July 18, 1984?

A–17 No. Partial elections are not allowed. An election under either of the two elective transitional rules applies to all transfers governed by that election whether before or after the election is made, and is irrevocable.

(g) *Property settlements—time and manner of making the elections under section 1041.*

Q–18 How do spouses (or former spouses) elect to have section 1041 apply to transfers after December 31, 1983, or to transfers after July 18, 1984 under instruments in effect on or before July 18, 1984?

A–18 In order to make an election under section 1041 for property transfers after December 31, 1983, or property transfers under instruments that were in effect on or before July 18, 1984, both spouses (or former spouses) must elect the application of the rules of section 1041 by attaching to the transferor's first filed income tax return for the taxable year in which the first transfer occurs, a statement signed by both spouses (or former spouses) which includes each spouse's social security number and is in substantially the form set forth at the end of this answer.

In addition, the transferor must attach a copy of such statement to his or her return for each subsequent taxable year in which a transfer is made that is governed by the transitional election. A copy of the signed statment must be kept by both parties.

The election statements shall be in substantially the following form:

In the case of an election regarding transfers after 1983:

Section 1041 Election

The undersigned hereby elect to have the provisions of section 1041 of the Internal Revenue Code apply to all qualifying transfers of property after December 31, 1983. The undersigned understand that section 1041 applies to all property transferred between spouses, or former spouses incident to divorce. The parties further understand that the effects for Federal income tax purposes of having section 1041 apply are that (1) no gain or loss is recognized by the transferor spouse or former spouse as a result of this transfer; and (2) the basis of the transferred property in the hands of the transferee is the adjusted basis of the property in the hands of the transferor immediately before the transfer, whether or not the adjusted basis of the transferred property is less than, equal to, or greater than its fair market value at the time of the transfer. The undersigned understand that if the transferee spouse or former spouse disposes of the property in a transaction in which gain is recognized, the amount of gain which is taxable may be larger than it would have been if this election had not been made.

In the case of an election regarding preexisting decrees:

Section 1041 Election

The undersigned hereby elect to have the provisions of section 1041 of the Internal Revenue Code apply to all qualifying transfers of property after July 18, 1984 under any instrument in effect on or before July 18, 1984. The undersigned understand that section 1041 applies to all property transferred between spouses, or former spouses incident to the divorce. The parties further understand that the effects for Federal income tax purposes of having section 1041 apply are that (1) no gain or loss is recognized by the transferor spouse or former spouse as a result of this transfer; and (2) the basis of the transferred property in the hands of the transferee is the adjusted basis of the property in the hands of the transferor immediately before the transfer, whether or not the adjusted basis of the transferred property is less than, equal to, or greater than its fair market value at the time of the transfer. The undersigned understand that if the transferee spouse or former spouse disposes of the property in a transaction in which gain is recognized, the amount of gain which is taxable may be larger than it would have been if this election had not been made.

Par. 2. New § 1.71–1T is added immediately following § 1.71–1 to read as set forth below:

§ 1.71–1T Alimony and separate maintenance payments (temporary).

(a) *In general.*

Q–1 What is the income tax treatment of alimony or separate maintenance payments?

A–1 Alimony or separate maintenance payments are, under section 71, included in the gross income of the payee spouse and, under section 215, allowed as a deduction from the gross income of the payor spouse.

Q–2 What is an alimony or separate maintenance payment?

A–2 An alimony or separate maintenance payment is any payment received by or on behalf of a spouse (which for this purpose includes a former spouse) of the payor under a divorce or separation instrument that meets all of the following requirements:

(a) The payment is in cash (see A–5).

(b) The payment is not designated as a payment which is excludible from the gross income of the payee and nondeductible by the payor (see A–8).

(c) In the case of spouses legally separated under a decree of divorce or separate maintenance, the spouses are not members of the same household at the time the payment is made (see A–9).

(d) The payor has no liability to continue to make any payment after the death of the payee (or to make any payment as a substitute for such payment) and the divorce or separation instrument states that there is no such liability (see A–10).

(e) The payment is not treated as child support (see A–15).

(f) To the extent that one or more annual payments exceed $10,000 during any of the 6-post-separation years, the payor is obligated to make annual payments in each of the post-separation years (see A–19).

Q–3 In order to be treated as alimony or separate maintenance payments, must the payments be "periodic" as that term was defined prior to enactment of the Tax Reform Act of 1984 or be made in discharge of a legal obligation of the payor to support the payee arising out of a marital or family relationship?

A–3 No. The Tax Reform Act of 1984 replaces the old requirements with the requirements described in A–2 above. Thus, the requirements that alimony or separate maintenance payments be "periodic" and be made in discharge of a legal obligation to support arising out of a marital or family relationship have been eliminated.

Q–4 Are the instruments described in section 71(a) of prior law the same as divorce or separation instruments described in section 71, as amended by the Tax Reform Act of 1984?

A–4 Yes.

(b) *Specific requirements.*

Q–5 May alimony or separate maintenance payments be made in a form other than cash?

A–5 No. Only cash payments (including checks and money orders payable on demand) qualify as alimony or separate maintenance payments. Transfers of services or property (including a debt instrument of a third party or an annuity contract), execution of a debt instrument by the payor, or the use of property of the payor do not qualify as alimony or separate maintenance payments.

Q–6 May payments of cash to a third party on behalf of a spouse qualify as alimony or separate maintenance payments if the payments are pursuant to the terms of a divorce or separation instrument?

A–6 Yes. Assuming all other requirements are satisfied, a payment of cash by the payor spouse to a third party under the terms of the divorce or separation instrument will qualify as a payment of cash which is received "on behalf of a spouse". For example, cash payments of rent, mortgage, tax, or tuition liabilities of the payee spouse made under the terms of the divorce or separation instrument will qualify as alimony or separate maintenance payments. Any payments to maintain property owned by the payor spouse and used by the payee spouse (including mortgage payments, real estate taxes and insurance premiums) are not payments on behalf of a spouse even if those payments are made pursuant to the terms of the divorce or separation instrument. Premiums paid by the payor spouse for term or whole life insurance on the payor's life made under the terms of the divorce or separation instrument will qualify as payments on behalf of the payee spouse to the extent that the payee spouse is the owner of the policy.

Q–7 May payments of cash to a third party on behalf of a spouse qualify as alimony or separate maintenance payments if the payments are made to the third party at the written request of the payee spouse?

A–7 Yes. For example, instead of making an alimony or separate maintenance payment directly to the payee, the payor spouse may make a cash payment to a charitable organization if such payment is pursuant to the written request, consent or ratification of the payee spouse. Such request, consent or ratification must state that the parties intend the payment to be treated as an alimony or separate maintenance payment to the payee spouse subject to the rules of section 71, and must be received by the payor spouse prior to the date of filing of the payor's first return of tax for the taxable year in which the payment was made.

Q–8 How may spouses designate that payments otherwise qualifying as alimony or separate maintenance payments shall be excludible from the gross income of the payee and nondeductible by the payor?

A–8 The spouses may designate that payments otherwise qualifying as alimony or separate maintenance payments shall be nondeductible by the payor and excludible from gross income by the payee by so providing in a divorce or separation instrument (as defined in section 71(b)(2)). If the spouses have executed a written separation agreement (as described in section 71(b)(2)(B)), any writing signed by both spouses which designates otherwise qualifying alimony or separate maintenance payments as nondeductible and excludible and which refers to the written separation agreement will be treated as a written separation agreement (and thus a divorce or separation instrument) for purposes of the preceding sentence. If the spouses are subject to temporary support orders (as described in section 71(b)(2)(C)), the designation of otherwise qualifying alimony or separate payments as nondeductible and excludible must be made in the original or a subsequent temporary support order. A copy of the instrument containing the designation of payments as not alimony or separate maintenance payments must be attached to the payee's first filed return of tax (Form 1040) for each year in which the designation applies.

Q–9 What are the consequences if, at the time a payment is made, the payor and payee spouses are members of the same household?

A–9 Generally, a payment made at the time when the payor and payee spouses are members of the same household cannot qualify as an alimony or separate maintenance payment if the spouses are legally separated under a decree of divorce or of separate maintenance. For purposes of the preceding sentence, a dwelling unit formerly shared by both spouses shall not be considered two separate households even if the spouses physically separate themselves within the dwelling unit. The spouses will not be treated as members of the same household if one spouse is preparing to

depart from the household of the other spouse, and does depart not more than one month after the date the payment is made. If the spouses are not legally separated under a decree of divorce or separate maintenance, a payment under a written separation agreement or a decree described in section 71(b)(2)(C) may qualify as an alimony or separate maintenance payment notwithstanding that the payor and payee are members of the same household at the time the payment is made.

Q–10 Assuming all other requirements relating to the qualification of certain payments as alimony or separate maintenance payments are met, what are the consequences if the payor spouse is required to continue to make the payments after the death of the payee spouse?

A–10 None of the payments before (or after) the death of the payee spouse qualify as alimony or separate maintenance payments.

Q–11 What are the consequences if the divorce or separation instrument fails to state that there is no liability for any period after the death of the payee spouse to continue to make any payments which would otherwise qualify as alimony or separate maintenance payments?

A–11 If the instrument fails to include such a statement, none of the payments, whether made before or after the death of the payee spouse, will qualify as alimony or separate maintenance payments.

Example (1). A is to pay B $10,000 in cash each year for a period of 10 years under a divorce or separation instrument which does not state that the payments will terminate upon the death of B. None of the payments will qualify as alimony or separate maintenance payments.

Example (2). A is to pay B $10,000 in cash each year for a period of 10 years under a divorce or separation instrument which states that the payments will terminate upon the death of B. In addition, under the instrument, A is to pay B or B's estate $20,000 in cash each year for a period of 10 years. Because the $20,000 annual payments will not terminate upon the death of B, these payments will not qualify as alimony or separate maintenance payments. However, the separate $10,000 annual payments will qualify as alimony or separate maintenance payments.

Q–12 Will a divorce or separation instrument be treated as stating that there is no liability to make payments after the death of the payee spouse if the liability to make such payments terminates pursuant to applicable local law or oral agreement?

A–12 No. Termination of the liability to make payments must be stated in the terms of the divorce or separation instrument.

Q–13 What are the consequences if the payor spouse is required to make one or more payments (in cash or property) after the death of the payee spouse as a substitute for the continuation of pre-death payments which would otherwise qualify as alimony or separate maintenance payments?

A–13 If the payor spouse is required to make any such substitute payments, none of the otherwise qualifying payments will qualify as alimony or separate maintenance payments. The divorce or separation instrument need not state, however, that there is no liability to make any such substitute payment.

Q–14 Under what circumstances will one or more payments (in cash or property) which are to occur after the death of the payee spouse be treated as a substitute for the continuation of payments which would otherwise qualify as alimony or separate maintenance payments?

A–14 To the extent that one or more payments are to begin to be made, increase in amount, or become accelerated in time as a result of the death of the payee spouse, such payments may be treated as a substitute for the continuation of payments terminating on the death of the payee spouse which would otherwise qualify as alimony or separate maintenance payments. The determination of whether or not such payments are a substitute for the continuation of payments which would otherwise qualify as alimony or separate maintenance payments, and of the amount of the otherwise qualifying alimony or separate maintenance payments for which any such payments are a substitute, will depend on all of the facts and circumstances.

Example (1). Under the terms of a divorce decree, A is obligated to make annual alimony payments to B of $30,000, terminating on the earlier of the expiration of 6 years or the death of B. B maintains custody of the minor children of A and B. The decree provides that at the death of B, if there are minor children of A and B remaining, A will be obligated to make annual payments of $10,000 to a trust, the income and corpus of which are to be used for the benefit of the children until the youngest child attains the age of majority. These facts indicate that A's liability to make annual $10,000 payments in trust for the benefit of his minor children upon the death of B is a substitute for $10,000 of the $30,000 annual payments to B. Accordingly, $10,000 of each of the $30,000 annual payments to B will not qualify as alimony or separate maintenance payments.

Example (2). Under the terms of a divorce decree, A is obligated to make annual alimony payments to B of $30,000, terminating on the earlier of the expiration of 15 years or the death of B. The divorce decree provides that if B dies before the expiration of the 15 year period, A will pay to B's estate the difference between the total amount that A would have paid had B survived, minus the amount actually paid. For example, if B dies at the end of the 10th year in which payments are made, A will pay to B's estate $150,000 ($450,000–$300,000). These facts indicate that A's liability to make a lump sum payment to B's estate upon the death of B is a substitute for the full amount of each of the annual $30,000 payments to B. Accordingly, none of the annual $30,000 payments to B will qualify as alimony or separate maintenance payments. The result would be the same if the lump sum payable at B's death were discounted by an appropriate interest factor to account for the prepayment.

(c) *Child support payments.*

Q–15 What are the consequences of a payment which the terms of the divorce or separation instrument fix as payable for the support of a child of the payor spouse?

A–15 A payment which under the terms of the divorce or separation instrument is fixed (or treated as fixed) as payable for the support of a child of the payor spouse does not qualify as an alimony or separate maintenance payment. Thus, such a payment is not deductible by the payor spouse or includible in the income of the payee spouse.

Q–16 When is a payment fixed (or treated as fixed) as payable for the support of a child of the payor spouse?

A–16 A payment is fixed as payable for the support of a child of the payor spouse if the divorce or separation instrument specifically designates some sum or portion (which sum or portion may fluctuate) as payable for the support of a child of the payor spouse. A payment will be treated as fixed as payable for the support of a child of the payor spouse if the payment is reduced (a) on the happening of a contingency relating to a child of the payor, or (b) at a time which can clearly be associated with such a contingency. A payment may be treated as fixed as payable for the support of a child of the payor spouse even if other separate payments specifically are designated as payable for the support of a child of the payor spouse.

Q–17 When does a contingency relate to a child of the payor?

A–17 For this purpose, a contingency relates to a child of the payor if it depends on any event relating to that child, regardless of whether such event is certain or likely to occur. Events that relate to a child of the payor include the following: the child's attaining a specified age or income level, dying,

marrying, leaving school, leaving the spouse's household, or gaining employment.

Q–18 When will a payment be treated as to be reduced at a time which can clearly be associated with the happening of a contingency relating to a child of the payor?

A–18 There are two situations, described below, in which payments which would otherwise qualify as alimony or separate maintenance payments will be presumed to be reduced at a time clearly associated with the happening of a contingency relating to a child of the payor. In all other situations, reductions in payments will not be treated as clearly associated with the happening of a contingency relating to a child of the payor.

The first situation referred to above is where the payments are to be reduced not more than 6 months before or after the date the child is to attain the age of 18, 21, or local age of majority. The second situation is where the payments are to be reduced on two or more occasions which occur not more than one year before or after a different child of the payor spouse attains a certain age between the ages of 18 and 24, inclusive. The certain age referred to in the preceding sentence must be the same for each such child, but need not be a whole number of years.

The presumption in the two situations described above that payments are to be reduced at a time clearly associated with the happening of a contingency relating to a child of the payor may be rebutted (either by the Service or by taxpayers) by showing that the time at which the payments are to be reduced was determined independently of any contingencies relating to the children of the payor. The presumption in the first situation will be rebutted conclusively if the reduction is a complete cessation of alimony or separate maintenance payments during the sixth post-separation year (described in A–21) or upon the expiration of a 72-month period. The presumption may also be rebutted in other circumstances, for example, by showing that alimony payments are to be made for a period customarily provided in the local jurisdiction, such as a period equal to one-half the duration of the marriage.

Example: A and B are divorced on July 1, 1985, when their children, C (born July 15, 1970) and D (born September 23, 1972), are 14 and 12, respectively. Under the divorce decree, A is to make alimony payments to B of $2,000 per month. Such payments are to be reduced to $1,500 per month on January 1, 1991 and to $1,000 per month on January 1, 1995. On January 1, 1991, the date of the first reduction in payments, C will be 20 years 5 months and 17 days old. On January 1, 1995, the date of the second reduction in payments, D will be 22 years 3 months and 9 days old. Each of the reductions in payments is to occur not more than one year before or after a different child of A attains the age of 21 years and 4 months. (Actually, the reductions are to occur not more than one year before or after C and D attain *any* of the ages 21 years 3 months and 9 days through 21 years 5 months and 17 days.) Accordingly, the reductions will be presumed to clearly be associated with the happening of a contingency relating to C and D. Unless this presumption is rebutted, payments under the divorce decree equal to the sum of the reduction ($1,000 per month) will be treated as fixed for the support of the children of A and therefore will not qualify as alimony or separate maintenance payments.

(d) *Excess front-loading rules.*

Q–19 What are the excess front-loading rules?

A–19 The excess front-loading rules are two special rules which may apply to the extent that payments in any calendar year exceed $10,000. The first rule is a minimum term rule, which must be met in order for any annual payment, to the extent in excess of $10,000, to qualify as an alimony or separate maintenance payment (see A–2(f)). This rule requires that alimony or separate maintenance payments be called for, at a minimum, during the 6 "post-separation years". The second rule is a recapture rule which characterizes payments retrospectively by requiring a recalculation and inclusion in income by the payor and deducation by the payee of previously paid alimony or separate maintenance payment to the extent that the amount of such payments during any of the 6 "post-separation years" falls short of the amount of payments during a prior year by more than $10,000.

Q–20 Do the excess front-loading rules apply to payments to the extent that annual payments never exceed $10,000?

A–20 No. For example, A is to make a single $10,000 payment to B. Provided that the other requirements of section 71 are met, the payment will qualify as an alimony or separate maintenance payment. If A were to make a single $15,000 payment to B, $10,000 of the payment would qualify as an alimony or separate maintenance payment and $5,000 of the payment would be disqualified under the minimum term rule because payments were not to be made for the minimum period.

Q–21 Do you excess front-loading rules apply to payments received under a decree described in section 71(b)(2)(C)?

A–21 No. Payments under decrees described in section 71(b)(2)(C) are to be disregarded entirely for purposes of applying the excess front-loading rules.

Q–22 Both the minimum term rule and the recapture rule refer to 6 "post-separation years". What are the 6 "post separation years"?

A–22 The 6 "post-separation years" are the 6 consecutive calendar years beginning with the first calendar year in which the payor pays to the payee an alimony or separate maintenance payment (except a payment made under a decree described in section 71(b)(2)(C)). Each year within this period is referred to as a "post-separation year". The 6-year period need not commence with the year in which the spouses separate or divorce, or with the year in which payments under the divorce or separation instrument are made, if no payments during such year qualify as alimony or separate maintenance payments. For example, a decree for the divorce of A and B is entered in October, 1985. The decree requires A to make monthly payments to B commencing November 1, 1985, but A and B are members of the same household until February 15, 1986 (and as a result, the payments prior to January 16, 1986, do not qualify as alimony payments). For purposes of applying the excess front-loading rules to payments from A to B, the 6 calendar years 1986 through 1991 are post-separation years. If a spouse has been making payments pursuant to a divorce or separation instrument described in section 71(b)(2) (A) or (B), a modification of the instrument or the substitution of a new instrument (for example, the substitution of a divorce decree for a written separation agreement) will not result in the creation of additional post-separation years. However, if a spouse has been making payments pursuant to a divorce or separation instrument described in section 71(b)(2)(C), the 6-year period does not begin until the first calendar year in which alimony or separate maintenance payments are made under a divorce or separation instrument described in section 71(b)(2) (A) or (B).

Q–23 How does the minimum term rule operate?

A–23 The minimum term rule operates in the following manner. To the extent payments are made in excess of $10,000, a payment will qualify as an alimony or separate maintenance payment only if alimony or separate maintenance payments are to be made in each of the 6 post-separation years. For example, pursuant to a divorce decree, A is to make alimony payments to B of $20,000 in each of the 5 calendar years 1985 through 1989. A is to make no

payment in 1990. Under the minimum term rule, only $10,000 will qualify as an alimony payment in each of the calendar years 1985 through 1989. If the divorce decree also required A to make a $1 payment in 1990, the minimum term rule would be satisfied and $20,000 would be treated as an alimony payment in each of the calendar years 1985 through 1989. The recapture rule would, however, apply for 1990. For purposes of determining whether alimony or separate maintenance payments are to be made in any year, the possible termination of such payments upon the happening of a contingency (other than the passage of time) which has not yet occurred is ignored (unless such contingency may cause all or a portion of the payment to be treated as a child support payment).

Q–24 How does the recapture rule operate?

A–24 The recapture rule operates in the following manner. If the amount of alimony or separate maintenance payments paid in any post-separation year (referred to as the "computation year") falls short of the amount of alimony or separate maintenance payments paid in any prior post-separation year by more than $10,000, the payor must compute an "excess amount" for the computation year. The excess amount for any computation year is the sum of excess amounts determined with respect to each prior post-separation year. The excess amount determined with respect to a prior post-separation year is the excess of (1) the amount of alimony or separate maintenance payments paid by the payor spouse during such prior post-separation year, over (2) the amount of the alimony or separate maintenance payments paid by the payor spouse during the computation year plus $10,000. For purposes of this calculation, the amount of alimony or separate maintenance payments made by the payor spouse during any post-separation year preceding the computation year is required by any excess amount previously determined with respect to such year. The rules set forth above may be illustrated by the following example. A makes alimony payments to B of $25,000 in 1985 and $12,000 in 1986. The excess amount with respect to 1985 that is recaptured in 1986 is $3,000 ($25,000 − ($12,000 + $10,000)). For purposes of subsequent computation years, the amount deemed paid in 1985 is $22,000. If A makes alimony payments to B of $1,000 in 1987, the excess amount that is recaptured in 1987 will be $12,000. This is the sum of an $11,000 excess amount with respect to 1985 ($22,000 − $1,000 + $10,000)) and a $1,000 excess amount with respect to 1986 ($12,000 − ($1,000 + $10,000)). If, prior to the end of 1990, payments decline further, additional recapture will occur. The payor spouse must include the excess amount in gross income for his/her taxable year begining with or in the computation year. The payee spouse is allowed a deduction for the excess amount in computing adjusted gross income for his/her taxable year beginning with or in the computation year. However, the payee spouse must compute the excess amount by reference to the date when payments were made and not when payments were received.

Q–25 What are the exceptions to the recapture rule?

A–25 Apart from the $10,000 threshold for application of the recapture rule, there are three exceptions to the recapture rule. The first exception is for payments received under temporary support orders described in section 71(b)(2)(C) (see A–21). The second exception is for any payment made pursuant to a continuing liability over the period of the post-separation years to pay a fixed portion of the payor's income from a business or property or from compensation for employment or self-employment. The third exception is where the alimony or separate manitenance payments in any post-separation year cease by reason of the death of the payor or payee or the remarriage (as defined under applicable local law) of the payee before the close of the computation year. For example, pursuant to a divorce decree, A is to make cash payments to B of $30,000 in each of the calendar years 1985 through 1990. A makes cash payments of $30,000 in 1985 and $15,000 in 1986, in which year B remarries and A's alimony payments cease. The recapture rule does not apply for 1986 or any subsequent year. If alimony or separate maintenance payments made by A decline or cease during a post-separation year for any other reason (including a failure by the payor to make timely payments, a modification of the divorce or separation instrument, a reduction in the support needs of the payee, or a reduction in the ability of the payor to provide support) excess amounts with respect to prior post-separation years will be subject to recapture.

(e) *Effective dates*

Q–26 When does section 71, as amended by the Tax Reform Act of 1984, become effective?

A–26 Generally, section 71, as amended, is effective with respect to divorce or separation instruments (as defined in section 71(b)(2)) executed after December 31, 1984. If a decree of divorce or separate maintenance executed after December 31, 1984, incorporates or adopts without change the terms of the alimony or separate maintenance payments under a divorce or separation instrument executed before January 1, 1985, such decree will be treated as executed before January 1, 1985. A change in the amount of alimony or separate maintenance payments or the time period over which such payments are to continue, or the addition or deletion of any contingencies or conditions relating to such payments is a change in the terms of the alimony or separate maintenance payments. For example, in November 1984, A and B executed a written separation agreement. In February 1985, a decree of divorce is entered in substitution for the written separation agreement. The decree of divorce does not change the terms of the alimony A pays to B. The decree of divorce will be treated as executed before January 1, 1985 and hence alimony payments under the decree will be subject to the rules of section 71 prior to amendment by the Tax Reform Act of 1984. If the amount or time period of the alimony or separate maintenance payments are not specified in the pre-1985 separation agreement or if the decree of divorce changes the amount or term of such payments, the decree of divorce will not be treated as executed before January 1, 1985, and alimony payments under the decree will be subject to the rules of section 71, as amended by the Tax Reform Act of 1984.

Section 71, as amended, also applies to any divorce or separation instrument executed (or treated as executed) before January 1, 1985 that has been modified on or after January 1, 1985, if such modification expressly provides that section 71, as amended by the Tax Reform Act of 1984, shall apply to the instrument as modified. In this case, section 71, as amended, is effective with respect to payments made after the date the instrument is modified.

Par. 3. New § 1.215–1T is added immediately after § 1.215–1 to read as follows:

§ 1.215–1T Alimony, etc., payments (temporary).

Q–1 What information is required by the Internal Revenue Service when an alimony or separate maintenance payment is claimed as a deduction by a payor?

A–1 The payor spouse must include on his/her first filed return of tax (Form 1040) for the taxable year in which the payment is made the payee's social

security number, which the payee is required to furnish to the payor. For penalties applicable to a payor spouse who fails to include such information on his/her return of tax or to a payee spouse who fails to furnish his/her social security number to the payor spouse, see section 6676.

Par. 4. New § 1.152–4T is added immediately after § 1.152–4 to read as follows:

§ 1.152–4T Dependency exemption in the case of a child of divorced parent, etc. (temporary).

(a) *In general.*

Q–1 Which parent may claim the dependency exemption in the case of a child of divorced or separated parents?

A–1 Provided the parents together would have been entitled to the dependency exemption had they been married and filing a joint return, the parent having custody of a child for the greater portion of the year (the custodial parent) will generally be entitled to the dependency exemption. This rule applies to parents not living together during the last 6 months of the calendar year, as well as those divorced or separated under a separation agreement.

Q–2 Are there any exceptions to the general rule in A–1?

A–2 Yes, there are three exceptions. The general rule does not apply (i) if a multiple support agreement is in effect (see section 152(c)), (ii) if a decree or agreement executed prior to January 1, 1985 provides that the custodial parent has agreed to release his or her claim to the dependency exemption to the noncustodial parent and the noncustodial parent provides at least $600 of support to the child (see section 152(e)(4)), or (iii) if the custodial parent relinquishes the exemption in the manner described in A–3.

Q–3 How may the exemption for a dependent child be claimed by a noncustodial parent?

A–3 A noncustodial parent may claim the exemption for a dependent child only if the noncustodial parent attaches to his/her income tax return for the year of the exemption a written declaration from the custodial parent stating that he/she will not claim the child as a dependent for the taxable year begining in such calendar year. The written declaration may be made on a form to be provided by the Service for this purpose. Once the Service has released the form, any declaration made other than on the official form shall conform to the substance of such form.

Q–4 For what period may a custodial parent release to the noncustodial parent a claim to the exemption for a dependent child?

A–4 The exemption may be released for a single year, for a number of specified years (for example, alternate years), or for all future years, as specified in the declaration. If the exemption is released for more than one year, the original release must be attached to the return of the noncustodial spouse and a copy of such release must be attached to his/her return for each succeeding taxable year for which he/she claims the dependency exemption.

Q–5 May only the custodial parent claim a deduction under section 213(d) for medical expenses paid by the parent or an income exclusion under section 105(b) for medical expenses paid by an employer for a dependent child?

A–5 No. Under the new rules, if a child receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance, or who are separated under a written separation agreement, that child will be treated as a dependent of both parents for purposes of sections 105(b) and 213(d). Thus, a parent can deduct medical expenses paid by that parent for a child even though a dependency exemption for the child is claimed by the other parent. The special rule of sections 105(b) and 213(d) does not apply where over half of the support of a child is treated as having been received from a person under the provisions of section 152(c) (relating to multiple support agreements).

Q–6 When does section 152(e), as amended by the Tax Reform Act of 1984, become effective?

A–6 Section 152(e), as amended, is effective with respect to dependency exemptions for taxable years beginning after December 31, 1984.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 1041(d)(4) (98 Stat. 798, 26 U.S.C. 1041(d)(4)), 152(e)(2)(A) (98 Stat. 802, 26 U.S.C. 152(e)(2)(A)), 215(c) (98 Stat. 800, 26 U.S.C. 215(c)) and 7805 (68A Stat. 917, 26 U.S.C. 7805) of the Internal Revenue Code of 1954. Approved by the Office of Management and Budget under control number 1545–0074.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

August 17, 1984.

Approved:

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–23129 Filed 8–30–84; 8:45 am]

BILLING CODE 4830–01–M

---

26 CFR Part 1

[T.D. 7971]

Income Tax; Taxable Years Beginning After December 31, 1953; Returns Relating to Foreclosures and Abandonments of Security

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the requirement of reporting abandonments, foreclosures, and other acquisitions of property securing indebtedness. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect any person who, in connection with a trade or business, lends money secured by property, and who later either acquires an interest in any property securing the indebtedness, or has reason to know that the property which is security for the indebtedness has been abandoned. The regulations provide these persons with the guidance necessary to comply with the law. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: The regulations are effective for acquisitions and abandonments of property after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the reporting of abandonments. foreclosures, and other acquisitions of property securing indebtedness under section 6050J of the

Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 (98 Stat. 687). The temporary regulations will remain in effect until superseded by final regulations on this subject. In the Proposed Rules section of this issue of the **Federal Register** is a notice of proposed rulemaking relating to information reporting of transfers of security to persons other than the lender under section 6050J(f) of the Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 (98 Stat. 688).

Explanation of Provisions

Section 6050J provides that an information return must be made by any person who, in connection with a trade or business, lends money secured by property, and who later either acquires an interest in the property or has reason to know the property has been abandoned. Any person required to make an information return under section 6050J must also furnish a statement to the applicable taxpayer (or taxpayers) on or before January 31 of the calendar year following the year in which the acquisition or abandonment of property occurs. Section 6050J is effective for acquisitions and abandonments of property after December 31, 1984.

Due to the effective date of section 6050J, there is a need for immediate guidance so that persons subject to section 6050J can make preparations to comply with these provisions. Therefore, these regulations have been drafted in question and answer format in order to facilitate their timely publication. No inference should be drawn, however, regarding issues not raised herein or regarding the inclusion of certain questions, and not others, in these regulations. The regulations provide rules relating to the reporting requirements of section 6050J, including the persons and property subject to the reporting requirement, the information required to be reported, and when a person has reason to know that property which secures a loan has been abandoned.

Special Analyses

The Commissioner of Internal Revenue has determined that this regulation is not a major rule as defined in Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 29, 1983.

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and a Regulatory Impact Analysis is not required for this rule.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0877.

Drafting Information

The principal author of these regulations is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR Parts 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

The following new § 1.6050J–1T shall be added at the appropriate place.

§ 1.6050J–1T Questions and answers concerning information returns relating to foreclosures and abandonments of security.

The following questions and answers relate to the requirement of reporting foreclosures and abandonments of security under section 6050J of the Internal Revenue Code Act of 1954, as added by section 148 of the Tax Reform Act of 1984 (98 Stat. 687).

Requirement of Reporting

In General

Q–1: What does section 6050J provide with respect to the reporting of acquisitions and abandonments of property that secures indebtedness?

A–1: Section 6050J provides that an information return must be made by any person who, in connection with a trade or business conducted by the person (except as provided in A–13), lends money and, in full or partial satisfaction of the debt, acquires an interest in any property that is security for the debt, or has reason to know that the property has been abandoned. For purposes of these questions and answers, a person who lends money in connection with a trade or business is referred to as a "lender".

Trade or Business Requirement

Q–2: Must a person be in the trade or business of lending money in order to be subject to the reporting requirement of this section?

A–2: No. A person does not have to be in the trade or business of lending money to be subject to this reporting requirement. Thus, if L sells automobiles and lends money to B to enable B to purchase an automobile from L for use in B's trade or business, and that automobile is security for the loan, L would be subject to this reporting requirement. Similarly, if P promotes interests in an oil well, and lends money to I to enable I to invest in the oil well which is security for the loan, P would be subject to this reporting requirement.

Q–3: How does the reporting requirement apply in the case of pools, fixed investment trusts, or other similar arrangements through which undivided beneficial interests or participations in indebtedness are offered?

A–3: In these cases, the owners of the undivided beneficial interests or participations are not subject to this reporting requirement. Instead, the trustee, record owner, or person acting in a similar capacity is treated as the lender for purposes of this reporting requirement and is the party required to report. For purposes of both section 6050J and the applicable penalty provisions, only one return and one statement must be filed with respect to each loan or other evidence of indebtedness. For situations when more than one return or statement must be filed, see A–29, A–31, and A–41. The trustee, record owner, or person acting in a similar capacity, rather than the owners of beneficial interests or participations, is subject to the applicable penalty provisions (see A–43).

Q–4: How does the reporting requirement apply in the case of corporate, tax-exempt, or other bank issues?

A–4: In these cases, the owners or holders of a bond issue are not required to report. Instead, the trustee or person acting in a similar capacity is treated as the lender for purposes of this reporting requirement and is the party required to report. For purposes of both section 6050J and the applicable penalty provisions, only one return and one statement must be filed with respect to a bond issue. For situations when more than one return or statement must be filed, see A–29, A–31, and A–41. The trustee or person acting in a similar

capacity, rather than the owners or holders of a bond issue, is subject to the applicable penalty provisions (see A–43).

Property Subject to Reporting

Q–5: Does the reporting requirement apply to all types of property securing indebtedness?

A–5: No. The reporting requirement does not apply to any loan made to an individual and secured by an interest in tangible personal property which is neither held for investment nor used in a trade or business. For rules governing when the reporting requirment applies to tangible personal property of a type ordinarily used for personal purposes, see A–8.

Q–6: Does the reporting requirement apply when property securing indebtedness is held both for personal use and for use in a trade or business?

A–6: Yes. The reporting requirement applies when property securing indebtedness is held both for personal use and for use in a trade or business. Similarly, the reporting requirement applies when the borrower holds such property both for personal use and for investment purposes.

Q–7: Does the reporting requirement apply to indebtedness secured by a personal residence?

A–7: Yes. A lender is subject to the reporting requirement if the property that is security for the loan is real property, including a personal residence, whether or not held for investment or used in a trade or business.

Q–8: In the case of a loan made to an individual and secured by personal property of a type that is ordinarily used for personal purposes, how does a lender know whether such property is used in a trade or business or held for investment purposes?

A–8: In the case of a loan made to an individual and secured by personal property of a type that is ordinarily used for personal purposes, such as an automobile, computer, or boat, the lender is subject to the reporting requirement if the lender knows that the property will be used in a trade or business or held for investment purposes. For this purpose, a lender knows information if the information is included on the books and records of the lender or its agents pertaining to the loan, or is known by the lender or agent's officers, partners, principals or employees, but only if such information was acquired in the course of their ordinary business activities on behalf of the lender. For example, if a borrower indicates on the loan agreement or disclosure statement that the borrower intends to use the property securing the loan in the borrower's trade or business, the lender is subject to this reporting requirement. Similarly, if the borrower notifies the lender that the borrower intends to convert the property from personal use to use in a trade or business, the lender is subject to the reporting requirement.

Q–9: If a lender maintains a system under which the lender classifies loans according to the use of property that secures the loan (such as use in a trade or business or personal use), may the lender rely on this system in determining whether the reporting requirement applies?

A–9: Yes. A lender may rely on the classification system to determine whether the reporting requirement applies, provided that the classification system is designed and reasonably maintained to ensure accuracy in identifying the use of property.

Acquisition of an Interest

Q–10: For purposes of the reporting requirement, when is a lender treated as acquiring an interest in property that is security for indebtedness?

A–10: In general, an interest in property is acquired on the earlier of the date title is transferred to the lender or the date possession and the burdens and benefits of ownership are transferred to the lender. If State or other applicable law provides for an objection period within which the borrower and other appropriate parties may object to the lender's proposal to retain the property in satisfaction of the indebtedness, a lender is treated as acquiring an interest in the property on the date this objection period expires. If the lender purchases the property at a sale held to satisfy the indebtedness, such as at a foreclosure or execution sale, the lender is treated as acquiring an interest in the property on the later of the date of the sale or the date the borrower's right of redemption, if any, expires. See A–15 for rules governing reporting when a party other than the lender acquires property securing indebtedness at a foreclosure, execution or similar sale.

Q–11: If a lender takes possession of property that is security for a loan for a limited purpose, such as completing construction on or improvement to the property, is the lender treated as having acquired an interest in the property at that point?

A–11: No. The lender in these circumstances in not treated as acquiring an interest in the property. However, the lender must report if he later acquires an interest in the property in full or partial satisfaction of the indebtedness (see A–10 or A–15).

Indirect Acquisition

Q–12: If a lender acquires an interest in a partnership, trust, or other entity in full or partial satisfaction of a loan that is secured by the assets or property owned by the partnership, trust, or other entity, is the lender treated as acquiring an interest in the property securing the loan?

A–12: Yes. A lender in this case acquires an interest in the underlying assets or property and the reporting requirements of this section apply to the acquisition of that interest in a partnership, trust, or other entity.

Treatment of Governmental Units

Q–13: How does the reporting requirement apply to a governmental unit?

A–13: A governmental unit (or any agency or instrumentality thereof) which lends money secured by property is subject to the reporting requirement without regard to the requirement that the money be lent in connection with a trade or business. A governmental unit (or any agency or instrumentality thereof) subject to the reporting requirement must designate an officer or employee to make the return. The officer or employee appropriately designated must make the return in the form and manner prescribed by this section.

Notification of Sale Under Section 7425(b)

Q–14: Does a return filed as required under this section constitute a notification of sale under section 7425(b)?

A–14: No. A return filed under this section is not considered a notification of sale under section 7425(b).

Sale to Third Party

Q–15: If a party other than the lender purchases property securing a loan at a foreclosure, execution, or similar sale, must the lender report under this section?

A–15: Yes. The lender must report if a party other than the lender purchases property securing the lender's loan at a foreclosure, execution, or similar sale. If the proceeds of that sale are applied to satisfy all or any portion of the lender's loan, the lender must treat the property as having been abandoned. The lender will be treated as having reason to know that the property has been abandoned as of the date of the sale (see A–19). If no proceeds of such a sale are made available to satisfy any portion of the lender's loan but the lender's security interest foreclosed upon is terminated, reduced, or otherwise impaired by reason of the sale, the lender will be

treated as having reason to know that the property has been abandoned as of the date of the sale (see A–19).

Treatment of Foreign Borrowers

Q–16: How does the reporting requirement apply in the case of foreign borrowers where the property securing the loan is located outside the United States?

A–16: No reporting is required where both of the following requirements are met: (a) The property securing the loan is located outside the United States, and (b) at any time before the lender is required to report, the borrower furnishes the lender with a statement, signed upon penalty of perjury, that he is an exempt foreign person (unless an employee or other agent of the lender who is responsible for receiving or reviewing these statements has actual knowledge that the statement is incorrect). For purposes of this section, the borrower is an exempt foreign person if he:

(1) Is not a citizen of the United States, a resident of the United States, a person treated as a resident of the United States by reason of an election under section 6013 (g) or (h) or a United States corporation or other United States entity;

(2) Is not subject to the provisions of section 877; and

(3) At the time the statement is furnished, is not, or reasonably expects not to be, engaged in a trade or business in the United States during the current year in connection with the loan or property securing the loan.

If, after providing the statement, the borrower ceases to be an exempt foreign person, he must so notify the lender in writing within 30 days of this change in status. If the lender is so notified, this exemption from the reporting requirement no longer applies.

Abandonments

Q–17: For purposes of this reporting requirement, when has an abandonment occurred?

A–17: An abandonment has occurred when the objective facts and circumstances indicate that the borrower intended to and has permanently discarded the property from use.

Q–18: Does the fact that a lender knows or has reason to know of an abandonment of property securing a loan mean that the borrower is entitled to an abandonment loss?

A–18: No. The definition of an abandonment of property securing a loan in A–17 applies only for purposes of this reporting requirement and is not intended to apply for other purposes, such as determining whether a borrower would be entitled to an abandonment loss.

Q–19: Under what circumstances will a lender be considered to have reason to know that property which is security for a loan has been abandoned?

A–19: Whether a lender has reason to know that property which is security for a loan has been abandoned is to be determined with reference to all the facts and circumstances concerning the status of the property. When the lender in the ordinary course of business becomes aware or should become aware of circumstances indicating that the property has been abandoned, the lender will be deemed to know all the information that would have been discovered through a reasonable inquiry. For example, if a borrower has failed (without adequate explanation) to make payments on the loan for a substantial period, the lender must make a reasonable inquiry to determine whether there has been an abandonment. If a reasonable inquiry would reveal objective facts and circumstances indicating that the borrower intended to and has permanently discarded the property from use, then the lender has reason to know that the property has been abandoned. If a lender knows or has reason to know that the property has been abandoned and reasonably expects to commence foreclosure, execution sale, or similar proceedings, see A–20.

Q–20: If a lender has reason to know that property that is security for a loan has been abandoned and reasonably expects to commence within three months foreclosure, execution sale, or similar proceedings, is reporting of the abandonment required?

A–20: In these circumstances, the lender need not report as of the date he knows or has reason to know that the property has been abandoned. Instead, the lender must report as of the date he acquires an interest in the property or a third party purchases the property at a foreclosure, execution or similar sale (see A–10 and A–15). In any other case, the lender must report as of the date the lender knows or has reason to know that the property has been abandoned (see A–18).

Q–21: If a lender has reason to know that property that is security for a loan has been abandoned and reasonably expects to commence within three months foreclosure, execution sale or similar proceedings but in fact does not commence such proceedings within the three month period, must the lender report?

A–21: Yes. In these circumstances, the lender's obligation to report the abandonment arises at the close of the three month period. For example, if on December 31, 1985, a lender first has reason to know that property securing his loan has been abandoned and reasonably expects to commence foreclosure proceedings within three months, the lender is not required to report as of December 31, 1985 (see A–20). However, if the lender does not in fact commence foreclosure proceedings by March 31, 1986, the lender's obligation to report arises on this date. The lender must provide information on the abandonment under A–27 as of the date the lender first had reason to know of the abandonment (December 31, 1985). The lender must file the return required under this section with the Internal Revenue Service on or before February 28, 1987, and furnish a statement to the borrower on or before January 31, 1987 (see A–33 and A–40).

Subsequent Holder of a Loan

Q–22: To whom does the reporting requirement apply when a person lends money secured by property and subsequently transfers his interest in the indebtedness to another person?

A–22: The subsequent holder of a loan is treated as the lender for purposes of this reporting requirement and is the party required to report with respect to events occurring after the date he acquires the loan. This rule applies to all subsequent holders of a secured loan, including governmental units or any agencies or instrumentalities thereof. For example, if the Federal National Mortgage Association purchases real property loans from a lender, it would be subject to the reporting requirement.

Multiple Lenders

Q–23: If more than one person lends money secured by the same property, and one lender forecloses upon or otherwise acquires an interest in the property, must the other lenders report under this section?

A–23: Yes. In these circumstances, other lenders must report if they know or have reason to know that the property securing their loans is foreclosed upon or otherwise acquired by another lender and the sale or other acquisition terminates, reduces, or otherwise impairs their security interests in the property (see A–15). For example, if there is a first and second mortgage on a building, and the second mortgagee knows or has reason to know that the first mortgagee has foreclosed upon the building, the second mortgagee is subject to the reporting requirement

even if no part of the indebtedness owed to him is satisfied by the proceeds of the foreclosure sale. For a description of the reporting requirement applicable to the first mortgagee, see A–10 and A–15.

Q–24: If more than one person lends money secured by property, and one lender knows or has reason to know that the property has been abandoned, must each lender report under this section?

A–24: No. Each lender is required to report only when he knows or has reason to know that property has been abandoned (see A–19).

Form and Manner of Return

Form of Return

Q–25: What form shall be used to make a return required by section 6050J?

A–25: Except as provided in A–35, the return must be made on Forms 1096 and 1099. The person required to make the return, however, may prepare and use a form which contains provisions substantially similar with those of Forms 1096 and 1099 if the person complies with any revenue procedures relating to substitute Forms 1096 and 1099 in effect at that time.

Information Included on Return

Q–26: What information must be included on a return required by reason of an acquisition of an interest in property that is security for a loan?

A–26: The following information must be included on the return:

(a) The name and address of the borrower with respect to the secured indebtedness;

(b) The borrower's TIN, as defined in Section 7701(a);

(c) A general description of the property in which an interest is acquired;

(d) Whether the borrower is personally liable for repayment of the indebtedness;

(e) The date on which the person acquired an interest in the property (see A–10 or A–15);

(f) The amount of the indebtedness outstanding at the time the interest in property is acquired;

(g) If the borrower is personally liable for repayment of the indebtedness, the fair market value of the property at the time the interest is acquired;

(h) The amount of the indebtedness satisfied by the acquisition; and

(i) Any other information as may be required by Forms 1096 and 1099.

Q–27: What information must be included on a return required because a person knows or has reason to know that property which is security for a loan has been abandoned?

A–27: The following information must be included on the return:

(a) The information required in A–26 (a), (b), and (d);

(b) A general description of the property abandoned;

(c) The date on which the person first knows or has reason to know that the property has been abandoned;

(d) The amount of the indebtedness outstanding as of the date on which the person first knows or has reason to know that the property has been abandoned;

(e) If the borrower is personally liable for repayment of the indebtedness, the fair market value of the property at the time of abandonment; and

(f) Any other information as may be required by Forms 1096 and 1099.

Partnership Borrower

Q–28: If a borrower is a partnership, must the TIN of each partner be reported?

A–28: No. If a borrower is a partnership, only the TIN of the partnership must be reported.

Multiple Borrowers

Q–29: If there is more than one borrower on a single secured loan, must a person required to report under this section make a return with respect to each borrower on the loan?

A–29: Yes. Generally, a separate return must be made with respect to each borrower on a secured loan. However, only one report is required if the lender knows that the borrowers hold property as tenants by the entirety or that the property is held as community property.

General Description of Property

Q–30: What type of information constitutes a general description of the property?

A–30: A general description of the property consists of information that sufficiently identifies the property. In the case of real property, a general description consists of the property's address unless this information is not available or would not sufficiently identify the property, in which case a legal description (*i.e.*, section, lot, block) must be provided instead. A general description of personal property consists of the type, make and model (where applicable) of the property. For example, an automobile would be described as "Car—1983 Pontiac Firebird." However, in the case of a single loan secured by more than one piece of personal property, a general description consists of the type or category of the pieces acquired or abandoned. For example, if the security for a single loan is six desks and seven typewriters, a general description of the property would be "Office Equipment."

Multiple Acquisitions and Abandonments

Q–31: Must each acquisition and abandonment that occurs in a taxable year be reported on a separate return?

A–31: Generally, each acquisition and abandonment required to be reported by a person for a taxable year must be reported on a separate return. However, in the case of a single loan secured by more than one piece of property, separate returns will not be required when a person acquires an interest in, or knows or has reason to know of the abandonment of, more than one piece of property that is security for the single loan in a taxable year. Instead, the person shall make one return for all of the acquisitions and one return for all of the abandonments of property that are security for the loan for a taxable year.

Fair Market Value

Q–32: In the case of a foreclosure, execution, or similar sale, what is the fair market value of the property for purposes of the reporting requirement?

A–32: In general, in the absence of clear and convincing evidence to the contrary, the proceeds of the foreclosure, execution, or similar sale will be considered the fair market value of the property for purposes of this reporting requirement.

Time for Filing

Q–33: When must a person file the return or returns required by section 6050J with the Internal Revenue Service?

A–33: The return or returns must be filed on or before February 28th of the year following the calendar year in which the acquisition of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property.

Place for Filing

Q–34: Where must the return or returns be filed?

A–34: The return or returns must be filed with the appropriate Internal Revenue Service Center, the addresses of which are listed in the instructions for the Form 1099 series.

Use of Magnetic Media

Q–35: What rules apply with respect to the use of magnetic media?

A–35: Any return required under section 6050J must be filed on magnetic media to the extent required by section 6011(e). Any person not required by section 6011(e) to file returns under

section 6050J on magnetic media may request permission to do so. See § 1.9101 for rules relating to permission to submit information on magnetic tape or other media. If a person required to file returns on magnetic media fails to do so, the penalty under section 6652 (failure to file an information return) applies.

Requirement of Furnishing Statements to Borrowers

In General

Q–36: What statements must be furnished to borrowers?

A–36: Any person required to make an information return under section 6050J must furnish a statement to each borrower whose name is required to be set forth in a return filed with the Internal Revenue Service. For the date when the statement must be furnished, see A–40.

Q–37: Is the statement considered to be furnished to the borrower if it is mailed to the borrower at the borrower's last known address?

A–37: Yes.

Information Included on Statement

Q–38: What information must be included on the statement?

A–38: The statement must include the following information:

(a) Except in the case where the return is made on behalf of a governmental unit (or any agency or instrumentality thereof), the name and address of the person required to make the information return;

(b) In the case where the return is made on behalf of a governmental unit or any agency or instrumentality thereof, the name and address of such unit, agency or instrumentality;

(c) The information required under A–26 or A–27, whichever is applicable; and

(d) A legend stating that the information is being reported to the Internal Revenue Service.

Copy of Form 1099 to Borrowers

Q–39: May the requirement of furnishing a statement be met by furnishing a copy of the Form 1099 filed with respect to that borrower?

A–39: Yes. The requirement of furnishing a statement may be met by furnishing to the borrower a copy of the Form 1099 containing the same information filed with the Service with respect to that borrower, or a reasonable facsimile thereof, provided that the form or the reasonable facsimile bears a legend stating that the information is being reported to the Internal Revenue Service.

Time of Furnishing Statement

Q–40: When is a statement required to be furnished to the borrower?

A–40: A statement is required to be furnished to the borrower on or before January 31 of the year following the calendar year in which the acquisition or abandonment of property occurs.

Multiple Borrowers

Q–41: If a person required to report under this section must make an information return with respect to more than one borrower on a single loan, of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property.

A–41: Yes. A separate statement must be furnished to each borrower with respect to which a separate return is required under section 6050J.

Extensions of Time

Q–42: Are there any circumstances under which an extension of time may be granted with respect to the requirement of furnishing statements to borrowers?

A–42: Yes. Upon written application of the person required to report, the service center director may, for good cause shown, grant that person an additional period (not to exceed 30 days) in which to furnish statements under section 6050J with respect to any calendar year. The application for an extension must be addressed to the director of the service center with which the returns must be filed. The application must contain a concise statement of the reasons for requesting the extension in order to aid the service center director in determining the period of extension, if any, to be granted. The application must state at the top of the first page that it is made under section 1.6050J–1T and must be signed by the person required to report under section 6050J. In general, the application should be filed not earlier than September 30 of the year in which the acquisition of an interest in the property occurs or in which the lender knows or has reason to know of the abandonment of the property, and not later than January 15 of the following year.

Penalties

Q–43: Are there penalties for failing to comply with the requirements of section 6050J and the regulations thereunder?

A–43: Yes. The penalty for failing to make any information return with respect to any borrower under section 6050J is provided in section 6652. The penalty for failing to furnish a statement to any borrower is provided in section 6678.

Effective Date

Q–44: When is section 6050J effective?

A–44: Section 6050J is effective for acquisitions and abandonments of property after December 31, 1984.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 6050J and 7805 of the Internal Revenue Code of 1954 (98 Stat. 687, 68A Stat. 917, 26 U.S.C. 6050J, 7805 respectively).

(Approved by the Office of Management and Budget under control number 1545–0877)

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 17, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–23133 Filed 8–30–84; 8:45 am]

BILLING CODE 4830–01–M

---

26 CFR Part 1

[T.D. 7974]

Temporary Income Tax Regulations Under the Tax Reform Act of 1984 Relating to a Transitional Rule for Certain Transfers of Intangibles

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to a transitional rule for certain transfers of intangibles to foreign corporations. This transitional rule was enacted as a part of the Tax Reform Act of 1984. The regulations are issued to provide immediate guidance to the public and to the Service for ruling purposes.

DATE: The regulations apply to transfers of intangible property made after June 6, 1984, and before January 1, 1985. However, they do not apply to any transfer or exchange of property described in a ruling request filed under section 367(a) of the Internal Revenue Code of 1954 before March 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mary E. Dean of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington,

D.C. 20224, Attention: CC:LR:T, 202–566–3289 (not a tollfree call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under section 367(a) of the Internal Revenue Code. The transitional rule implemented by these regulations relates to certain transfers of intangibles under section 367(a) and is part of section 131 of the Tax Reform Act of 1984 (Pub. L. No. 98–369, 98 Stat. 494) (hereinafter, the "Act").

Explanation of Provisions

This Treasury decision adds a new § 1.367(a)–4T to the Code of Federal Regulations. The Act amended section 367(d) of the Internal Revenue Code to provide special rules for transfers of intangibles taking place after December 31, 1984, in taxable years ending after that date. A transitional rule was provided in section 131(g) of the Act to protect against transfers made after June 6, 1984, and before January 1, 1985, in order to avoid the rules of new section 367(d). The Act provided that this transitional rule may be waived at the discretion of the Service.

Paragraph (a) of § 1.367(a)–4T provides the general rule that transfers of intangible property made after June 6, 1984, and before January 1, 1985, shall be treated as made pursuant to a plan having as one of its principal purposes the avoidance of Federal income tax.

Paragraph (b) details the applicability of the general rule. The Act provides that the general rule will not apply to transfers of property described in a request filed before March 1, 1984. This exception is reflected in paragraph (b).

Paragraph (c) contains guidelines for the granting of a waiver from the general rule of paragraph (a). Paragraph (c)(1) sets forth transfers which will be granted a waiver. Paragraph (c)(2) sets forth transfers which will not be granted a waiver. The transfers described in paragraph (c)(2) (i) and (ii) are listed in the conference report as transfers that should not be given a waiver. Paragraph (c)(3) lists facts and circumstances which will be used in determining whether a waiver is to be granted for transfers not described in paragraph (c) (1) or (2).

Nonapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 20, 1983.

Regulatory Flexibility Act

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for this regulation. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of these regulations is Mary E. Dean of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Parts 1.301–1—1.385–6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

PART 1—[AMENDED]

Adoption of Amendments to the Regulations

The amendments to 26 CFR Part 1 are as follows:

Income Tax Regulations

A new § 1.367(a)–4T is added immediately after § 1.367(a)–3, to read as follows:

§ 1.367(a)–4T Temporary regulations providing a transitional rule for certain transfers of intangibles.

(a) *General rule.* If, after June 6, 1984, and before January 1, 1985, a United States person transfers any intangible property to a foreign corporation, then, except as provided to the contrary in this section, the transfer shall be treated for purposes of section 367(a) of the Code as pursuant to a plan having as one of its principal purposes the avoidance of Federal income tax. For purposes of this section, the term "intangible property" means any—

(1) Patent, invention, formula, process, design, pattern or know-how;

(2) Copyright, literary, musical, or artistic composition;

(3) Trademark, trade name, or brand name;

(4) Franchise, license, or contract;

(5) Method, program, system, procedure, campaign, survey, study, forecast, estimate, customer list, or technical data; or

(6) Any similar item which property has substantial value independent of the services of any individual.

(b) *Period covered.* The rules of this section apply to transfers of intangible property made after June 6, 1984, and before January 1, 1985. However, these rules will not apply to any transfer or exchange of property described in a request for ruling filed under section 367(a) before March 1, 1984 or with respect to which a ruling was obtained before June 6, 1984. In the case of a transfer described in a request for ruling filed before March 1, 1984, the guidelines of Revenue Procedure 68–23 (68–1 CB 821) will be applicable (even if the transfer is made after December 31, 1984).

(c) *Waiver*—(1) *Waiver granted.* Application of the general rule of paragraph (a) of this section will be waived for any of the following transfers of intangible property:

(i) A transfer of intangible property for which the transferor agrees to apply to the transfer the rules applicable to post-December 31, 1984 transfers under section 367(d) as amended by section 131(b) of the Tax Reform Act of 1984.

(ii) A transfer for which the transferor—

(A) Purchased the intangible property from an unrelated third party,

(B) Has not deducted or claimed as credits against tax any research and development or other similar expenses incurred in developing the property, and

(C) Would have received for the transfer a favorable ruling under the guidelines of Revenue Procedure 68–23 (68–1 CB 821) as applicable prior to the Tax Reform Act of 1984;

(iii) A transfer in fact required by a foreign government as a necessary condition of doing business in the foreign country or compelled by a genuine threat of immediate expropriation by a foreign government; or

(iv) A transfer of good will, going concern value or similar intangible property developed by a foreign branch.

(2) *Waiver not granted.* Application of the general rule of paragraph (a) of this section will not, except as provided in paragraph (c)(1)(i) of this section, be waived for any of the following transfers:

(i) A transfer of intangible property that is not fully developed;

(ii) A transfer of intangible property that is not essential to the active conduct of a trade or business of the transferee; or

(iii) A transfer that would not have received a favorable ruling under the guidelines of Revenue Procedure 68–23. (See section 3.02(1) (a)(iv) and (b)(i) through (iv) of that revenue procedure.)

For purposes of paragraph (c)(2)(i), intangible property will be treated as fully developed if it has been used in a

trade or business or if no further significant research and development expenses are required or expected to be incurred prior to such use. For purposes of paragraph (c) of this section, intangible property is not essential to the active conduct of a trade or business unless the products or services to which the intangible relates may not be sold in a foreign country without access by ownership, license, or otherwise to the intangible property, or unless such access to the intangible property is necessary to realization of a level of earnings reasonable for that trade or business from sales of such products or services in that country.

(3) *Facts and circumstances.* In the case of a transfer not described in paragraph (c)(1) or (c)(2), a waiver may be granted subject to a facts and circumstances determination of whether the transfer would be pursuant to a plan having as one of its principal purposes the avoidance of Federal income tax. Waiver with respect to a transfer not described in paragraph (c)(1) will be granted only upon a determination that the transfer made before January 1, 1985, was not made for the purpose of avoiding the application of section 367(d). Favorable facts and circumstances to be considered in this regard in determining if a waiver of the general rule of paragraph (a) of this section will be given include (but are not limited to):

(i) The existence of a binding commitment (either with an unrelated party or with a foreign government or governmental agency) made before June 6, 1984, to transfer the intangible property;

(ii) The existence of a documented plan prior to March 1, 1984, to transfer the properties before January 1, 1985; and

(iii) Anticipated use of the intangible by the transferee immediately or soon after the transfer.

For purposes of paragraph (c)(3) (i) and (ii) of this section, the earlier the commitment or plan was made, the greater is the probability that a waiver will be given. In general, demonstration of the facts described in paragraph (c)(3)(iii) will not be sufficient for a waiver in the absence of other facts indicating that a waiver should be granted. Waiver will be granted under this paragraph (c)(3) only if the intangible property is fully developed, if the intangible property is essential to the active conduct of a trade or business of the transferee, and if a favorable ruling would have been issued under the guidelines of Revenue Procedure 68–23.

(4) *Effect of Waiver.* If the general rule of paragraph (a) of this section is waived, then a favorable ruling for the transfer of the intangible will be granted pursuant to Revenue Procedure 68–23.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. The period during which the transition rule of section 131(g) of the Act is applicable is a short period which has already begun. The Service presently has rulings pending which are subject to the transitional rule. Thus, both Service personnel and transferors of intangibles are in need of immediate guidance.

For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805) and section 131(g) of the Tax Reform Act of 1984 (98 Stat. 494).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 17, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–23211 Filed 8–30–84; 8:45 am]

BILLING CODE 4830–01–M

---

26 CFR Parts 41 and 48

[T.D. 7970]

Heavy Vehicle Use Tax; Tax on Diesel Fuel; Tax on the Sale of Piggyback Trailers; Extension of Payment Due Date for Certain Fuel Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the imposition of heavy vehicle use tax, the increase of the tax on diesel fuel, the reduction for a one-year period of the tax on the sale of piggyback trailers and semi-trailers, and the extension of the payment due date for certain fuel taxes. Changes to the applicable tax law were made by the Highway Revenue Act of 1982 and the Tax Reform Act of 1984. The regulations would affect owners of highway motor vehicles, retailers and users of diesel fuel, purchasers and sellers of piggyback trailers, and certain qualified persons liable for fuel taxes, and would provide them with the guidance needed to comply with those Acts.

DATE: The regulations relating to the heavy vehicle use tax are effective after June 30, 1984. The regulations relating to the tax on diesel fuel are effective after July 31, 1984. The regulations relating to the tax on the sale of piggyback trailers are effective for piggyback trailers sold at retail after July 17, 1984, and before July 18, 1985. The regulations relating to the fuel tax payment date are effective for certain fuel taxes due after March 31, 1983.

FOR FURTHER INFORMATION CONTACT: William A. Jackson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (LR–33–84) (202) 566–4336, not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to heavy vehicle use tax under sections 4481, 4482, and 4483 of the Internal Revenue Code of 1954 (Code), as amended by section 513 of the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982) (Pub. L. 97–424, 96 Stat. 2177) and sections 901, 902, and 903 of the Tax Reform Act of 1984 (Division A of the Deficit Reduction Act of 1984) (Pub. L. 98–369, 98 Stat. 1003). This document also contains temporary regulations in the form of questions and answers relating to an increase in the tax on diesel fuel under section 4041(a) of the Code, a credit or refund to original purchasers of diesel-powered automobiles and light trucks under section 6427(g) of the Code, and an exemption of certain buses from the diesel fuel tax under section 6427(b)(2) of the Code as amended by sections 911(a), 911(b), and 915 of the Tax Reform Act of 1984, respectively. Also contained are temporary regulations in the form of questions and answers relating to a reduction in the retailer's excise tax on the sale of piggyback trailers and semi-trailers under section 4051(d) of the Code, as amended by section 921 of the Tax Reform Act of 1984. Also included are questions and answers relating to an extension of the payment due date for certain fuel taxes under section 518(a) of the Highway Revenue Act of 1982 as amended by section 734(i) of the Tax Reform Act of 1984.

The temporary regulations provided by this document will remain in effect until superseded by final regulations on these subjects. In forthcoming

documents, proposed regulations dealing with the subject matter of this document will be issued as proposed Excise Tax Regulations under sections 4481, 4482, and 4483 of the Code (26 CFR Part 41) and sections 4041, 4051 and 6427 of the Code (26 CFR Part 48). The forthcoming proposed regulations will include revisions to either the use tax schedules or the method used to determine the taxable gross weight of highway motor vehicles for purposes of the heavy vehicle use tax. The forthcoming proposed regulations will also include provisions relating to section 143(a) of the Highway Revenue Act which provides that if a State registers highway motor vehicles without receiving proof of payment of the Federal Highway Use Tax, that State's Federal-aid highway funds may be reduced up to 25 percent for that fiscal year. This provision is effective for States registering highway motor vehicles on or after January 1, 1985.

The portion of these temporary regulations which are presented in the form of questions and answers are not intended to address comprehensively the issues raised by sections 4041, 4051, 6427(b)(2), and 6427(g). Taxpayers may rely for guidance on these questions and answers, which the Internal Revenue Service will follow in resolving issues arising under the above-mentioned sections. No inference, however, should be drawn regarding questions not expressly raised and answered.

Heavy Vehicle Use Tax

This document contains temporary regulations relating to the heavy vehicle use tax. Prior to enactment of the Highway Revenue Act of 1982 ("Highway Revenue Act") and the Tax Reform Act of 1984 ("Tax Reform Act"), an excise tax was imposed on the use on the public highways of any highway motor vehicle which (together with the semi-trailers and trailers customarily used in connection with highway motor vehicles of the same type as such vehicle) had a taxable gross weight in excess of 26,000 pounds, at a rate of $3.00 a year for each 1,000 pounds of taxable gross weight or fraction thereof. Use tax schedules set forth in § 41.4482(b)–1 were used to determine the taxable gross weight of highway motor vehicles.

Section 901 of the Tax Reform Act provides, effective for taxable periods beginning on or after July 1, 1984, that the heavy vehicle use tax is imposed only on highway motor vehicles which (together with the semi-trailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) have a taxable gross weight of at least 55,000 pounds. Under the temporary regulations, the use tax schedules are revised to reflect the increased threshold for incurring tax liability and to provide a new category for tractor-trailer-trailer combinations.

A person who owns 5 or fewer vehicles and operates 5 or fewer vehicles at all times during the taxable period beginning July 1, 1984, is allowed to use for that taxable period, the lesser of the rate imposed by section 4481(a) as effective on July 1, 1984, or the rate of $3.00 for each 1,000 pounds of taxable gross weight. The Highway Revenue Act provides that vehicle ownerships shall be aggregated to determine common control of vehicles for purposes of the one-year special rule for small owner-operators.

In addition, an exemption from the tax is provided for vehicles that will not be used for more than 5,000 miles on public highways during any taxable period. The Tax Reform Act provides that this exemption applies to agricultural vehicles that will not be used more than 7,500 miles on the public highways during any taxable period.

Finally, section 902 of the Tax Reform Act provides a 25 percent reduction of the tax imposed by section 4481 in the case of certain trucks used in logging.

Increase in the Diesel Fuel Tax

This document contains temporary regulations in the form of questions and answers relating to the increase in the diesel fuel tax. Section 911 of the Tax Reform Act increases the tax on diesel fuel subject to tax under section 4041(a) of the Code on or after August 1, 1984, from 9 cents a gallon to 15 cents a gallon. The temporary regulations clarify that if the tax imposed by section 4041(a)(1) of the Code is improperly paid upon the sale of diesel fuel to a retailer, the retailer must nevertheless pay the full diesel fuel tax when the fuel is sold for use a in diesel-powered highway vehicle.

Diesel Fuel Differential

This document also contains temporary regulations in the form of questions and answers relating to the diesel fuel differential amount payable in the form of an income tax credit or an excise tax refund to original purchasers of qualified diesel-powered vehicles. Section 911 of the Tax Reform Act, in addition to increasing the tax on diesel fuel from 9 cents a gallon to 15 cents a gallon for fuel sold or used on or after August 1, 1984, provides for the advance repayment of this increased tax (the diesel fuel differential amount) to original purchasers of qualified diesel-powered highway vehicles.

A "qualified diesel-powered highway vehicle" is any diesel-powered highway vehicle that has at least 4 wheels, has a gross vehicle weight rating of 10,000 pounds or less, and is registered for highway use in the United States under the laws of any State. An "original purchaser" is generally the first person to purchase a qualified diesel-powered highway vehicle after January 1, 1985, and before January 1, 1988, for use other than resale. In addition, a person who holds a qualified diesel-powered highway vehicle on January 1, 1985, for use other than resale, will be treated as an original purchaser, entitled to advance repayment of the diesel fuel differential amount or a fraction thereof.

The diesel fuel differential amount payable to an original purchaser of a qualified diesel-powered highway vehicle is $102, except such amount is $198 in the case of a truck or van. The fraction of the diesel fuel differential amount which is payable to a holder on January 1, 1985 of a qualified diesel-powered highway vehicle is determined by the model year of the vehicle. No amount is payable to a holder of a vehicle with a model year of 1978 or earlier. The basis of a qualified diesel-powered highway vehicle is, for purposes of subtitle A of the Code, reduced by the diesel fuel differential amount (or applicable fraction thereof).

Tax on Diesel Fuel Used in Certain Buses

This document also contains temporary regulations in the form of questions and answers relating to the refund of all or a portion of the excise tax on diesel fuel used in certain intercity, local and school buses. Section 915 of the Tax Reform Act provides for a refund of 12 cents a gallon with respect to intercity, local and school buses unless the diesel fuel is used in a qualified local bus, in which case a full 15 cents a gallon refund is allowable. A "qualified local bus" is a bus that is engaged in furnishing intracity passenger land transportation and has a seating capacity of at least 20 adults (not including the driver). Such transportation must be available to the general public and be along regular scheduled routes. Further, the bus must either be under contract with a State or local government or be receiving more than a nominal subsidy from a State or local government.

Reduction in Tax on the Sale of Piggyback Trailers

Also contained in this document are temporary regulations in the form of questions and answer relating to the temporary reduction of the excise tax on the retail sale of piggyback trailers or semi-trailers. Prior to enactment of the Tax Reform Act, the tax imposed by section 4051(a) of the Code on the first retail sale of a piggyback trailer or semi-trailer was 12 percent of the amount for which the article was sold. Section 921 of the Tax Reform Act temporarily reduces this tax to 6 percent of the amount for which a piggyback trailer or semi-trailer is sold in the case of sales which occur after July 17, 1984, and before July 18, 1985. In order to qualify for this reduced rate of tax, both the seller and the purchaser must register with the Internal Revenue Service and the purchaser must certify to the seller that the piggyback trailer or semi-trailer will be used, or resold for use, principally in connection with trailer-on-flatcar service by rail, or will be incorporated into an article which will be so used or resold. A special rule is provided to permit purchasers and sellers of piggyback trailers sold after July 17, 1984, and before October 30, 1984 to register to make such sales by October 30, 1984. If any piggyback trailer or semi-trailer which was sold subject to the reduced 6 percent tax under section 4051(a) is not used or resold for a use which qualifies for such rate, then such use or resale shall be treated as a sale to which section 4051(a) applies. The amount of tax imposed under section 4051(a) on such sale shall be equal to the amount of tax imposed on the first retail sale and the person so using or reselling such trailer or semi-trailer shall be liable for such tax.

Extension of Payment Due Date for Certain Fuel Taxes

Section 518(a) of the Highway Revenue Act authorized the Secretary to prescribe regulations which permit any qualified person whose liability for tax under section 4081 is payable with respect to semimonthly periods to have a due date of 14 days after the close of each semimonthly period if payment is made by wire transfer to any government depositary authorized under section 6302(c). Temporary regulation were published in § 145.3–1 implementing this provision. Section 734(i) of the Tax Reform Act provides that the use of the extended due date is permissible for wire transfers made to a Federal Reserve Bank, except as provided in regulations prescribed by the Secretary or his delegate. This temporary regulation provides that the extended due date provided in section 518(a) of the Highway Revenue Act for payment of fuel taxes under section 4081 will continue to be available for wire transfers made to authorized government depositaries in accordance with §145.3–1

Need for Temporary Regulations

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Special Analysis

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (control no. 1545–0143).

Drafting Information

The principal authors of these temporary regulations are William A. Jackson and Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects

26 CFR Part 41

Excise taxes, Motor vehicles.

26 CFR Part 48

Agriculture, Arms and ammunition, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 41 and 48 are amended as follows:

PART 41—[AMENDED]

Paragraph 1. New §§ 41.4481–1T and 41.4481–1aT are added immediately after § 41.4481–1 to read as follows:

§ 41.4481–1T Imposition of tax (Temporary).

(a) *In general.* A tax is imposed under section 4481 (a) of the Code for each taxable period beginning after June 30, 1984 on the first use on the public highways in the United States during such period of any highway motor vehicle that (together with the semi-trailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds, at the rate specified in paragraph (b) of this section. The tax is imposed on the use of such a highway motor vehicle only if, at the time of the use of such vehicle, it is registered or required to be registered in the name of a person (whether or not such person is the person who uses the vehicle). In addition, the tax is imposed on the use in the United States of any Canadian highway motor vehicle that is registered in a Canadian province and has a "prorate license" under the Uniform Vehicle Registration Proration and Reciprocity Agreement (or similar agreements) to satisfy the registration laws of certain of the United States. See, however, §§ 41.4483–1, 41.4483–2 41.4483–2T relating, respectively, to exemptions from the tax in the case of highway motor vehicles used by a State or any political subdivision thereof, certain transit-type buses, and vehicles used for 5,000 or fewer miles (7,500 or fewer miles in the case of agricultural vehicles) on public highways. See § 41.4483–3T relating to a reduction in tax in the case of certain trucks used in logging. For definitions of the terms "registered", "highway motor vehicle", "taxable gross weight", "taxable period", and "use", see §§ 41.4481–3, 41.4482(a)–1, 41.4482(b)–1, and paragraphs (b) and (c) of § 41.4482(c)–1, respectively.

(b) *Rate of tax.* For taxable periods after June 30, 1984, the tax is computed on each 1,000 pounds of taxable gross weight or fraction thereof of each highway motor vehicle the use of which at any time during the taxable period is subject to the tax. Thus, any fraction of 1,000 pounds of taxable gross weight in excess of 55,000 pounds of taxable gross

weight is treated as 1,000 pounds for purposes of the computation of the tax. Following are the rates of tax in effect for taxable periods after June 30, 1984:

Taxable gross weight	Rate of tax
At least 55,000 pounds but not over 75,000 pounds.	$100 per taxable period plus $22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds.
Over 75,000 pounds	$550.

See however, § 41.4481–1aT for special rules in the case of a small owner-operator. See § 41.4482(b)–1T for schedule of taxable gross weights for the taxable period beginning July 1, 1984.

(c) *Computation of tax.* (1) Except as provided in paragraph (c)(2) of this section (and § 41.4481–1aT in the case of small owner-operators), the tax on the use of a particular highway motor vehicle for the taxable period is computed as follows:

(i) For vehicles with a taxable gross weight of at least 55,000 pounds, but not over 75,000 pounds, add to $100 an amount equal to $22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds; and

(ii) For vehicles with a taxable gross weight over 75,000 pounds, the tax is $550.

(2) If the first taxable use of a particular highway motor vehicle is made after the end of the first month of the taxable period, the tax on the use of such vehicle for such taxable period is computed by multiplying the amount of tax that would be due for a full taxable period, as computed under paragraph (c)(1) of this section, by a fraction. Such fraction shall have as its numerator the number of months in the taxable period beginning with the month of first taxable use and as its denominator the number of months in the entire taxable period. See example (2) of paragraph (e) of this section.

(3) If in any taxable period a highway motor vehicle is destroyed or stolen before the first day of the last month in the taxable period, and is not subsequently used during such taxable period, the tax shall be calculated proportionately from the first day of the month in the period in which the first taxable use of the highway motor vehicle occurs to and including the last day of the month in which the highway motor vehicle was destroyed or stolen. Any tax paid under section 4481(a) on such a highway motor vehicle in excess of the tax calculated in the preceding sentence, shall be an overpayment for which a refund of tax may be claimed. For purposes of this paragraph (c)(3), a highway motor vehicle is destroyed if the vehicle is damaged due to an accident or other casualty to such an extent that it is not economical to rebuild.

(4) If the use of a highway motor vehicle during the taxable period is discontinued (for reasons other than destruction or theft as described in paragraph (c)(3) of this section) or is converted to a use which is exempt from the tax imposed by section 4481(a), the computation of the tax is not affected and no right to refund of any tax paid under section 4481 arises.

(d) *Refund of tax under section 4481(a).* Any claim for refund of an overpayment of tax under section 4481(a) due to destruction or theft of the vehicle shall be made in accordance with the applicable provisions of this section and § 301.6402–2 (Regulations on Procedure and Administration) and shall be filed by the person in whose name the vehicle is registered or required to be registered when the vehicle is destroyed or stolen. A claim for refund of the tax imposed by section 4481(a) is to be filed on Form 843 (Claim).

(e) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). In the taxable period beginning July 1, 1984, the first taxable use of a particular highway motor vehicle, a bus, having a taxable gross weight of 56,000 pounds occurs on July 10, 1984, at which time the vehicle is registered in the name of X. A tax of $122 ($100+$22) is imposed on X for the use of such vehicle for such taxable period.

Example (2). On July 1, 1984, X has registered in his name a highway motor vehicle having a taxable gross weight of 60,000 pounds. The vehicle is in "dead storage" until August 10, 1984, at which time X starts using the vehicle on the public highways in carrying on his trucking business. On August 10, 1984, the vehicle is still registered in X's name. Since the first taxable use of this highway motor vehicle during the taxable period occurred on August 10, 1984, X is required to pay a tax of $192.50 ([$100+(5×$22)]×11/12) for such taxable period.

Example (3). On April 15, 1985, a vehicle with a taxable gross weight of 70,000 pounds and registered in the name of Y is completely destroyed. Y had purchased the vehicle from X who had paid the tax for the taxable period beginning July 1, 1984. Y is entitled to a refund of tax for those full months after destruction in the taxable period ending June 30, 1985. Thus, Y may file a claim for a refund of $71.67—3/12 of the total tax of $430 ($100+(15×$22)).

§ 41.4481–1T Special rules for small owner-operators (temporary).

(a) *In general.* In the case of a small owner-operator (as defined in paragraph (b) of this section), the tax imposed by section 4481(a) for the taxable period beginning July 1, 1984, and ending June 30, 1985, is—

(1) For vehicles with a taxable gross weight under 55,000 pounds—no tax,

(2) For vehicles with a taxable gross weight of at leats 55,000 pounds but not over 58,000 pounds—the amount determined by using the rate of tax set forth in paragraph (b) of § 41.4481–1T, and

(3) For vehicles with a taxable gross weight over 58,000 pounds—$3.00 for each 1,000 pounds (or fraction thereof) of taxable gross weight, but not to exceed $550.

If the first taxable use of a particular highway motor vehicle subject to tax under this section is made after the end of the first month of the taxable period, or if a particular highway motor vehicle subject to tax under this section is destroyed or stolen before the first day of the last month in the taxable period, the tax shall be computed using the proration rules provided in §§ 41.4481–1T(c) (2) and (3), respectively. The tax imposed by section 4481(a) on a small owner-operator for taxable periods beginning after June 30, 1985, is the amount determined by using the rate of tax set forth in paragraph (b) of § 41.4481–1T.

(b) *Small owner-operator.* For purposes of this section, the term "small owner-operator" means any person who at all times during the taxable period owns no more than 5 highway motor vehicles with respect to which a tax is imposed by section 4481(a) for such taxable period and operates no more than 5 highway motor vehicles with respect to which a tax is imposed by section 4481(a) for such taxable period. For purposes of the preceding sentence, a vehicle on which the tax has been suspended under § 41.4483–2T(a) shall be considered a vehicle with respect to which a tax is imposed by section 4481(a). A person may qualify as a small owner-operator under this section with respect to vehicles which such person owns and operates, notwithstanding the fact that such vehicles are registered or are required to be registered in the name of another person. Such other person who has registered or is required to register the vehicles, but who does not own or operate the vehicles, will be entitled to compute tax under § 41.4481–1T, to the extent the vehicles are owned and operated by small owner-operators. See example (5) of paragraph (f) of this section. In the case of a lease of a vehicle, the lessor is treated as the owner and the lessee is treated as the operator of such vehicle.

(c) *Aggregation of vehicle ownerships.* For purposes of paragraph (b) of this

section all highway motor vehicles upon which the tax under section 4481(a) is imposed which are owned or operated by—

(1) Any trades or businesses (whether or not incorporated) which are under common control with a taxpayer (as defined in § 1.52–1(b)), or

(2) Any member of any controlled group of corporations of which a taxpayer is a member, for any taxable period,

shall be treated as being owned or operated by such taxpayer during such taxable period.

(d) *Controlled groups of corporations.* For purposes of paragraph (c)(2) of this section the term "controlled group of corporations" has the same meaning assigned to it in section 1563(a), except that—

(1) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

(2) The determination shall be made without regard to sections 1563(a)(4) and 1563(e)(3)(C).

(e) *Highway motor vehicle.* For purposes of this section, the term "highway motor vehicle" has the same meaning assigned to such term in section 4482(a) and the regulations thereunder.

(f) *Examples.* The application of this section may be illustrated by the following examples:

Example (1). On July 1, 1984, Z is the owner and operator of 5 highway motor vehicles each of which has a taxable gross weight of 60,000 pounds. On July 5, 1984, Z leases an additional 2 highway motor vehicles with a taxable gross weight of 60,000 pounds for use in Z's trucking business. Even though Z only owns 5 highway motor vehicles with respect to which a tax is imposed under section 4481(a), Z is operating a total of 7 such vehicles. Therefore, Z does not qualify as a small owner-operator under this section.

Example (2). On July 1, 1984, X is the owner and operator of 5 highway motor vehicles each of which has a taxable gross weight in excess of 58,000 pounds as determined under the schedules set forth in § 41.4482(b)–1T. X pays tax on these vehicles under section 4481 as provided in paragraph (a)(3) of this section. A new vehicle weighting 60,000 pounds is added to X's operating fleet in October 1984. X's small owner-operator status ceases upon the addition of the 6th vehicle to X's fleet and additional tax liability is incurred at such time in an amount equal to the excess of the tax which would have been imposed on the original 5 vehicles under § 41.4481–1T(b) for the entire taxable period over the tax X paid for these vehicles under paragraph (a)(3) of this section. Tax liability for the 6th vehicle is determined under the rate set forth in § 41.4481–1T(b) for the period from October 1, 1984, to June 30, 1985, under the proration rules in § 41.4481–1T(c)(2).

Example (3). On July 1, 1984, Y is the owner and operator of 100 highway motor vehicles. For purposes of determining whether or not Y qualifies as a small owner-operator, the taxable gross weight of the vehicles is determined by reference to the schedules set forth in § 41.4482(b)–1T. Ninety-seven of the vehicles have a taxable gross weight of less than 55,000 pounds. Three of the vehicles have a taxable gross weight of 60,000 pounds. Thus, Y is the owner and operator of a fleet of 5 or fewer vehicles subject to tax under section 4481(a) and is a small owner-operator. The tax imposed by section 4481(a) is applied by determining the rate of tax under paragraph (a) of this section. Thus, for the taxable period July 1, 1984, through June 30, 1985, Y is liable for no tax on the vehicles weighing less than 55,000 pounds, and $540 ($180×3) of tax on the vehicles weighing 60,000 pounds.

Example (4). Assume the same facts as in example (3), except that on January 1, 1985, Y buys three highway motor vehicles each of which weighs 60,000 pounds. Y's small owner-operator status ceases upon the addition of the three vehicles to Y's fleet and Y must redetermine the tax on the vehicles using the rates in § 41.4481–1T(b). The redetermined tax on the original three vehicles weighing 60,000 pounds is $630 ($210×3). Since Y already paid $540 on these three vehicles, the additional amount to be paid is $90 (without interest). In addition, Y is liable for tax on the three added 60,000 pound vehicles for the period from January 1, 1985, through June 30, 1985, at the rates set forth in § 41.4481–1T(b). Thus, the tax due on these vehicles is $315 [$\frac{6}{12}$×[3×$210]]. The total tax due from Y is $405, and must be paid with a Form 2290 filed by February 28, 1985.

Example (5). Fleet carrier A has entered into operating agreements with 50 highway motor vehicle operators, each of which will provide services to A's shipping customers. None of the 50 operators are under common control with A or are members of a controlled group of corporations of which A is a member. Twenty of A's vehicle operators have purchased two truck-tractors (the "vehicles") under conditional sales contracts with A while 10 vehicle operators purchased two vehicles under conditional sales agreements with other persons. All 30 of these operators are treated as owning their vehicles for Federal income tax purposes. The remaining 20 operators own outright two vehicles each. For purposes of determining the amount of tax imposed by section 4481(a), each owner of two vehicles is considered a small owner-operator. In the interest of administrative convenience, A registers all 100 of its fleet vehicles in its own name under the laws of A's home state and pays the tax imposed on these vehicles. A is reimbursed by the operators for registration fees and taxes paid. Since A neither owns nor operates the 100 vehicles which are owned and operated by the small owner-operators, A pays the tax under section 4481(a) based on the rate applicable to small owner-operators.

Example (6). Assume the same facts as in example (5), except that twenty of A's vehicle operators have leased two vehicles each from A, rather than purchasing the vehicles under conditional sales contracts. As to these twenty leased vehicles, A is treated as the owner of the vehicles and cannot compute tax under section 4481(a) for these vehicles based on the rate applicable to small owner-operators, but must instead compute the tax based on the rate set forth in § 41.4481–1T(b). A is still eligible to compute tax under section 4481(a) on the other 80 vehicles based on the rate applicable to small owner-operators because these vehicles are owned and operated by small owner-operators.

Example (7). P is a corporation which owns more than 50 percent of the single outstanding class of stock of three corporations, X, Y and Z. X Corporation operates and has registered in its name two highway motor vehicles, each of which has a taxable gross weight in excess of 55,000 pounds. Y and Z Corporations operate and have registered in their names three and two vehicles, respectively, each of which has a taxable gross weight in excess of 55,000 pounds. For purposes of paragraph (c)(2) of this section, Corporations P, X, Y, and Z are treated as members of a "controlled group of corporations" as that term is defined in § 41.4481–1aT(d). Thus, although each corporation pays the Federal Highway Use Tax on its vehicles separately from the other corporations, ownership and operation of their vehicles must be aggregated and none of the corporations qualify as a small owner-operator under this section. Accordingly, each corporation shall furnish such information as is required on the first Form 2290 filed for the taxable period and determine its tax liability under the rates set forth in § 41.4481–1T(b).

Par. 2. New § 41.4482(b)–1T is added immediately after § 41.4482(b)–1 to read as follows:

§ 41.4482(b)–1T Schedule of taxable gross weights for the taxable period beginning July 1, 1984, and ending June 30, 1985 (temporary).

The following schedule of taxable gross weights, based on the sum of the weights referred to in § 41.4482(b)–1(a), is hereby prescribed for the taxable period beginning July 1, 1984. Any highway motor vehicle which falls in one of the categories shown in the following schedule shall be considered, for purposes of the regulations in this part, to have the taxable gross weight assigned to such category. Any highway motor vehicle which does not fall in one of the categories shown in the following schedule shall be considered, for purposes of the regulations in this part, to have a taxable gross weight of less than 55,000 pounds.

Use Tax Schedule

	Taxable gross weight (in pounds)
1. Single units:	
(a) 4 axled truck equipped for use as a single unit with actual unloaded weight of less than 22,000 pounds	55,000
(b) 4 axled truck equipped for use as a single unit with actual unloaded weight of 22,000 pounds or more and less than 30,000 pounds	68,000
(c) 4 axled truck equipped for use as a single unit with actual unloaded weight of 30,000 pounds or more	80,000
(d) More than 4 axled truck equipped for use as a single unit	80,000
2. Tractor-trailer combinations:	
(e) 2 axled truck-tractor with actual unloaded weight of 11,000 pounds or more	60,000
(f) 3 or 4 axled truck-tractor with actual unloaded weight of less than 13,000 pounds	65,000
(g) 3 or 4 axled truck-tractor with actual unloaded weight of 13,000 pounds or more and less than 17,000 pounds	70,000
(h) 3 or 4 axled truck-tractor with actual unloaded weight of 17,000 pounds or more	74,000
(i) More than 4 axled truck-tractor	80,000
3. Tractor-trailer-trailer combinations:	
(j) 2 or more axled truck-tractor used to haul more than one trailer	80,000
4. Truck-trailer combinations:	
(k) 2 axled truck with actual unloaded weight of 12,000 pounds or more and equipped for use in combinations	55,000
(l) 3 or 4 axled truck with actual unloaded weight of less than 14,000 pounds and equipped for use in combinations	65,000
(m) 3 to 4 axled truck with actual unloaded weight of 14,000 pounds or more and less than 19,000 pounds and equipped for use in combinations	74,000
(n) 3 or 4 axled truck with actual unloaded weight of 19,000 pounds or more and equipped for use in combinations	76,000
(o) More than 4 axled truck equipped for use in combinations	80,000
5. Buses: Actual unloaded weight of vehicle plus 150 pounds for each unit of seating capacity provided for passengers and driver.	

Par. 3. New § 41.4483–2T is added immediately after § 41.4483–2 to read as follows:

§ 41.4483–2T Exemption for trucks used for 5,000 or fewer miles and agricultural vehicles used for 7,500 or fewer miles on public highways (temporary).

(a) *Suspension of tax*—(1) *In general.* Liability for the tax imposed by section 4481(a) with respect to any highway motor vehicle is suspended during a taxable period if it is reasonable to expect that the vehicle will be used for 5,000 or fewer miles on public highways during such taxable period and the owner furnishes in the time and manner required the information required under paragraph (a)(2) of this section. See paragraph (g) of this section regarding special rules for agricultural vehicles. See § 41.4482(c)–1(c) for the meaning of "use" on the public highways.

(2) *Information to be supplied in support of suspension of tax.* The owner of a highway motor vehicle who reasonably expects that the vehicle will be used for 5,000 or fewer miles on public highways during a taxable period shall furnish on the first Form 2290 (Heavy Vehicle Use Tax Return) filed during the taxable period for such motor vehicle, such information as is required by the Form in order to support the suspension of tax under paragraph (a) of this section.

(b) *Cessation of suspension from tax.* If a highway motor vehicle on which the tax under section 4481(a) is suspended for a particular taxable period under paragraph (a)(1) of this section is used for more than 5,000 miles on public highways during such taxable period, the owner of the vehicle shall pay the tax for the entire taxable period in accordance with section 4481(a). The tax shall be reported on Form 2290, which must be filed on or before the last day of the month immediately following the month in which the use of the vehicle during the taxable period exceeds 5,000 miles. If such Form is filed within the time required by the preceding sentence, it shall be treated as timely filed.

(c) *Exemption.* If at the end of any taxable period during which the tax under section 4481(a) on a highway motor vehicle was suspended under paragraph (a)(1) of this section the vehicle has not been used for more than 5,000 miles on public highways, the vehicle shall be exempt from the tax for that taxable period. The owner of the vehicle shall verify that the vehicle was used for less than 5,000 miles in such ended taxable period on the first Form 2290 filed for the next taxable period.

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A is the owner of 6 highway motor vehicles, each of which has a taxable gross weight in excess of 55,000 pounds. None of these 6 vehicles are agricultural vehicles. The vehicles are placed in use during July 1984. Because of the nature of his business, A reports on the first Form 2290 filed after June 30, 1984, that he reasonably expects that none of the vehicles will be used for more than 5,000 miles on public highways. Accordingly, the tax imposed by section 4481(a) is suspended for A's 6 vehicles for the taxable period July 1, 1984, through June 30, 1985.

Example (2). Assume the same facts as in example (1) except that during the month of February 1985, the use of one of A's vehicles exceeds 5,000 miles on public highways. A is liable for the full tax for the taxable period July 1, 1984, through June 30, 1985, for that vehicle at the rate set forth in § 41.4481–1T(b), and must so report on Form 2290 filed on or before March 31, 1985, the last day of the month following the month in which the use exceeds 5,000 miles.

(e) *Refund of tax for highway motor vehicle used 5,000 or fewer miles.* If a highway motor vehicle on which the tax imposed by section 4481(a) has been paid for a given taxable period is used for 5,000 or fewer miles on public highways during such taxable period, the person who paid the tax may file a claim for refund of an overpayment of the tax at the end of the taxable period. Claims for refunds of tax made under this paragraph (e) shall be filed in the same manner as claims for refunds filed under § 41.4481–1T(d). Refunds of tax made under this paragraph (e) shall be without interest.

(f) *Relief from liability for tax under certain circumstances.* If the tax imposed by section 4481(a) on a highway motor vehicle is suspended for any taxable period under paragraph (a) of this section and the vehicle is transferred while the suspension is in effect, the transferor will not be liable for any tax on such vehicle for such taxable period if such transferor furnishes a statement to the transferee on which is included the transferor's name, address and taxpayer identification number, the vehicle identification number, the date of transfer of the vehicle, the number of miles the vehicle has been used on the public highways during the taxable period, the odometer reading at the time of the transfer, and the name, address and taxpayer identification number of the transferee. The statement required in the preceding sentence shall be attached by the transferee to a Form 2290 which must be filed on or before the last day of the month following the month in which such vehicle is transferred. The suspension from tax under paragraph (a) continues until the vehicle is used on the public highways for more than 5,000 miles during the taxable period (including use by the transferor for the portion of the taxable period prior to the transfer). If the transferor has furnished the statement required in this paragraph (f), the transferee and not the transferor is liable for the entire tax under section 4481(a) for the taxable period in which the transfer was made. If the transferor has not furnished such statement to the transferee, then the transferor is also liable for the tax on the use of such vehicle for such taxable period to the extent that the tax or an installment payment of the tax has not been previously paid. See paragraph (b) of this section relating to cessation of suspension from tax.

(g) *Special rule for agricultural vehicles*—(1) *In general.* In applying the provisions of this section to an agricultural vehicle, "7,500" shall be substituted for "5,000" each place it appears in paragraph (a) through (f) of this section.

(2) *Meaning of terms*—(i) *Agricultural vehicle.* An agricultural vehicle is any highway motor vehicle—

(A) Used (or expected to be used) primarily for farming purposes, and

(B) Registered (under the laws of the State or States in which such vehicle is required to be registered) as a highway motor vehicle used for farming purposes.

A highway motor vehicle is used primarily for farming purposes if more than one-half of such vehicle's use (determined on the basis of mileage) during the taxable period is for farming purposes. Further, the highway motor vehicle must be registered (under the laws of the State or States where such vehicle is required to be registered) as a highway motor vehicle used for farming purposes for the entire taxable period in order to qualify as an agricultural vehicle. See § 41.4482(a)–1 for the definition of "highway motor vehicle".

(ii) *Farming purposes.* For purposes of this section, "farming purposes" means the transporting of any farm commodity to or from a farm, or the use directly in agricultural production.

(iii) *Farm commodity.* A "farm commodity" is any agricultural or horticultural commodity, feed, seed, fertilizer, livestock, bees, poultry, fur-bearing animals, or wildlife. A farm commodity does not include a commodity which has been changed by a processing operation from its raw or natural state. For example, juice which has been extracted from fruits or vegetables is not a farm commodity for purposes of this paragraph (g).

(iv) *Farm.* The term "farm" includes stock (including feed yards for fattening cattle), dairy , poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses and other similar structures as are used primarily for the raising of any agricultural or horticultural commodity. Greenhouses and other similar structures used primarily for purposes other than the raising of agricultural or horticultural commodities (for example, display, storage, or fabrication of wreaths, corsages, and bouquets) do not constitute "farms".

(v) *Agricultural production*—(A) *In general.* A highway motor vehicle is considered to be used directly in agricultural production only if it is used as indicated in the following paragraphs.

(B) *Use of a highway motor vehicle in connection with cultivating, raising, and harvesting.* A highway motor vehicle is considered to be used directly in agricultural production if such vehicle is used in connection with cultivating the soil, or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry, and fur-bearing animals and wildlife. A highway motor vehicle which is used in connection with operations such as canning, freezing, packaging, or other processing operations will not be considered to be used directly in agricultural production.

(C) *Use of a highway motor vehicle in connection with planting, cultivating, caring for, cutting, etc., of trees.* A highway motor vehicle is used directly for agricultural production if it is used in connection with planting, cultivating, caring for, or cutting of trees, or in connection with the preparation (other than milling) of trees for market; but only if such operations are incidental to farming operations. These farming operations include felling trees and cutting them into logs or firewood, but do not include sawing logs into lumber, chipping, or other milling operations. The operations specified in this paragraph (g)(2)(v)(C) will be considered "incidental to farming operations" only if they are of a minor nature in comparison with the total farming operations involved. Therefore, a treefarmer or timbergrower may not claim that a highway motor vehicle used in that trade or business is used directly in agricultural production.

(D) *Use of a highway motor vehicle in connection with the operation, management, conservation, improvement, or maintenance of a farm.* A highway motor vehicle is used directly for agricultural production if it is used in connection with the operation, management, conservation, improvement, or maintenance of a farm and its tools and equipment. Examples of these operations include clearing land, repairing fences and farm buildings, building terraces or irrigation ditches, cleaning tools or farm machinery, painting, and other activities which contribute in any way to the conduct of a farm as such, as distinguished from any other enterprise in which the owner of the highway motor vehicle may be engaged.

(3) *Mileage on farm not counted toward 7,500 mile limit.* For purposes of this section, the number of miles which a highway motor vehicle is driven on a farm and not on the public highways shall not be taken into account when determining whether the vehicle's mileage is in excess of 7,500 miles. Accurate records should be kept by taxpayers of the number of miles that a highway motor vehicle is operated on a farm.

(h) *Owner.* For purposes of this section the term "owner" means, with respect to any highway motor vehicle, the person described in section 4481(b)

(Approved by the Office of Management and Budget under control number 1545–0143)

Par. 4. New § 41.4483–3T is added immediately after § 41.4483–3 to read as follows:

§ 41.4483–3T Reduction in tax for trucks used in logging (temporary).

(a) *In general.* The tax imposed by section 4481 shall be reduced by 25 percent in the case of a truck used in logging.

(b) *Truck used in logging.* The term "truck used in logging" means any highway motor vehicle which—

(1) Is used exclusively during the taxable period for the transportation, to and from a point located on a forested site, of products harvested from such forested site, and

(2) Is registered (under the laws of the State or States in which such vehicle is required to be registered) as a highway motor vehicle used in the transportation of harvested forest products.

Products harvested from the forested site may include timber which has been processed for commercial use by sawing into lumber, chipping or other milling operations if such processing occurs prior to transportation from the forested site.

PART 48—[AMENDED]

Par. 5. New § 48.4041–2T is added immediately after § 48.4041–2 to read as follows:

§ 48.4041–2T Questions and answers concerning the increased diesel fuel tax (temporary).

Q–1. What is the amount of tax imposed on diesel fuel under section 4041(a) on or after August 1, 1984, and before October 1, 1988?

A–1. The tax on diesel fuel under section 4041(a) for such period is 15 cents a gallon.

Q–2. Who must file a return and pay the tax for diesel fuel sold for use as a fuel in a diesel-powered highway vehicle?

A–2. Any person who sells diesel fuel for use as a fuel in a diesel-powered highway vehicle (hereinafter "retailer") must file a return and pay the tax on diesel fuel sold for such use.

Q–3. Is a retailer required to file a return and pay tax on diesel fuel sold by the retailer for use in a diesel-powered highway vehicle if tax was paid on the sale to the retailer by the person from whom the retailer purchased the diesel fuel (hereinafter "wholesaler")?

A–3. Yes. The retailer must file a return and pay the tax imposed by section 4041(a)(1) on diesel fuel sold by the retailer for use as a fuel in a diesel-

powered highway vehicle. No tax is payable on the sale of diesel fuel unless such fuel is sold for use in a diesel-powered highway vehicle. Therefore, the wholesaler should not have paid any tax on the sale of the diesel fuel to the retailer. Where tax was nevertheless paid on the sale to the retailer, the retailer must pay the tax imposed by section 4041(a)(1) when the fuel is sold for use in a diesel-powered highway vehicle. Thus, for example, if a retailer purchased diesel fuel before August 1, 1984 and the wholesaler paid a tax of 9 cents a gallon on the fuel sold, the retailer is nevertheless obligated to pay the tax imposed by section 4041(a)(1) when the retailer sells the fuel for use in a diesel-powered highway vehicle. In the case of a sale for such use occurring on or after August 1, 1984, the tax on the fuel sold is 15 cents a gallon even though only 9 cents a gallon was paid on the sale to the retailer.

Q–4. Who may obtain a refund from the Internal Revenue Service for the tax improperly paid on the sale of the diesel fuel to the retailer?

A–4. Only the wholesaler who paid the tax may obtain a refund for any tax paid on the sale of the diesel fuel to the retailer. Such refund may be obtained only after the retailer is reimbursed by the wholesaler for the tax paid.

Par. 6. New § 48.4051–1T is added immediately after § 48.4042–3 to read as follows:

§ 48.4051–1T Questions and answers concerning the temporary reduction in the excise tax on the sale of piggyback trailers and semi-trailers (temporary).

The following questions and answers concern the reduction in the tax imposed by section 4051(a) in the case of piggyback trailers and semi-trailers sold after July 17, 1984, and before July 18, 1985.

Q–1 What is the excise tax imposed by section 4051(a) on the first retail sale of a piggyback trailer or semi-trailer if such sale occurs after July 17, 1984, and before July 18, 1985?

A–1 The tax imposed by section 4051(a) on the first retail sale of a piggyback trailer or semi-trailer after July 17, 1984, and before July 18, 1985, is 6 percent of the price for which such trailer or semi-trailer is sold if the requirements set forth below are met. If any of these requirements are not met, then the tax imposed by section 4051(a) on such sale is 12 percent of the price for which such trailer or semi-trailer is sold. The requirements for the reduced rate are as follows:

(A) Both the seller and the purchaser of the piggyback trailer or semi-trailer are registered with the Internal Revenue Service in the manner described in A–3 below, unless one of the exceptions set forth in section 4222 and the regulations thereunder applies,

(B) The purchaser provides the seller with a properly executed piggyback certificate, and

(C) The seller retains such certificate in his possession.

Q–2 What qualifies as a "piggyback trailer or semi-trailer"?

A–2 For purposes of this section, a "piggyback trailer or semi-trailer" is any trailer or semi-trailer which is designed for use principally in connection with trailer-on-flatcar service by rail and meets the Association of American Railroads specifications for use in connection with trailer-on-flatcar service by rail.

Q–3 How do the purchaser and seller of a piggyback trailer or semi-trailer register with the Internal Revenue Service in order to qualify for the reduced rate of tax?

A–3 In order to qualify for the reduced rate of tax imposed by section 4051(a) on the first retail sale of a piggyback trailer or semi-trailer, both the purchaser and seller of the piggyback trailer or semi-trailer must, prior to the sale of such trailer or semi-trailer (except in the case of sales after July 17, 1984, and before October 30, 1984, for which sales the purchaser and seller must be registered before October 30, 1984, file a Form 637 (Registration for tax-free transactions under Chapter 32 of the Internal Revenue Code) unless one of the exceptions to the registration requirement set forth in section 4222 and the regulations thereunder applies. Form 637 shall be completed in duplicate and executed in accordance with the instructions contained on the reverse of the Form 637. This Form shall be filed with the District Director for the district in which the principal place of business of the registrant is located. Copies of Form 637 may be obtained from any district director or local IRS office. Any person who receives a validated Certificate of Registry (validated Form 637), shall be considered to be registered for purposes of this section.

Q–4 What information must be included on the piggyback certificate that the purchaser must furnish the seller upon the first retail sale of a piggyback trailer or semi-trailer?

A–4 A properly executed piggyback certificate must include the following:

(A) The name, address and taxpayer identification number of the purchaser,

(B) The date that the piggyback trailer or semi-trailer was sold to the purchaser,

(C) A description of such trailer or semi-trailer,

(D) A statement that the piggyback trailer or semi-trailer will be used, or resold for use, principally in connection with trailer-on-flatcar service by rail, or will be incorporated into an article which will be so used or resold, and

(E) The signature of the purchaser.

The following form of certificate will be acceptable for purposes of this section and must be adhered to in substance:

Certificate

(For use by purchasers of a piggyback trailer or semi-trailer that is eligible for a reduced rate of tax under section 4051(d) of the Internal Revenue Code of 1954.)

———— 19—— (Date)

1. I, the undersigned, hereby certify that I am, or the (Name of company) ———— of which I am (Position held) ————, is, purchasing from (the seller) ————, the piggyback trailer(s) or semi-trailer(s) specified in section 2. I also certify that such trailer(s) or semi-trailer(s) will be (check one):

—— used, or resold for use, principally in connection with trailer-on-flatcar service by rail, or

—— incorporated into an article which will be so used or resold.

2. *Description of piggyback trailer or semi-trailer.* (a) Type, (b) Quantity, (c) Serial number, (d) Gross vehicle weight rating, (e) Date of sale, (f) Invoice number, (g) Name of the manufacturer of trailer or semi-trailer.

I understand that the willful use of this certificate to evade or defeat the excise tax otherwise applicable under section 4051(a), will subject me to a fine of not more than $10,000 or imprisonment of not more than 5 years, or both, together with cost of prosecution.

_____

(Signature)

_____

(Address)

Q–5 What if a piggyback trailer or semi-trailer is sold in the manner described in A–1 (thereby becoming eligible for a reduced rate of tax under section 4051(a)) and then is used, or resold for a use, other than for use principally in connection with trailer-on-flatcar service?

A–5 If any piggyback trailer or semi-trailer which was subject to tax under section 4051(a) at a rate of 6 percent is not used or resold for a use which qualifies for such rate then: (A) Such use or resale shall be treated as a sale to which section 4051(a) applies, (B) The amount of the tax imposed under section 4051(a) on such sale shall be equal to the

amount of tax imposed on the first retail sale, and (C) The person so using or reselling such trailer or semi-trailer shall be liable for such tax.

(Approved by the Office of Management and Budget under control number 1545-0143)

Par. 7. New § 48.6151-1T is added immediately after § 48.6151-1 to read as follows:

§ 48.6151-1T Question and answer relating to the extension of the payment due date for certain fuel taxes (temporary).

Q-1 To whom must wire transfer payments of the tax under section 4081 be made in order to permit qualified persons (as defined in section 518(b) of the Highway Revenue Act of 1982) whose liability for such tax is payable with respect to semi-monthly periods, to have a payment due date of 14 days after the close of each semi-monthly period?

A-1 For qualified persons whose liability for tax under section 4081 arises after March 31, 1983, the due date for each payment is 14 days after the close of each semi-monthly period if the payment is made by wire transfer to any authorized government depositary in accordance with § 145.3-1.

Par. 8. New §§ 48.6427-1T and 48.6427-2T are added immediately after § 48.6427-1 to read as follows:

§ 48.6427-1T Questions and answers concerning the tax on diesel fuel used in certain buses (temporary).

The following questions and answers concern the amount to be refunded in the case of diesel fuel used in certain buses as provided in section 6427(b).

Q-1 Are intercity, local or school buses eligible for a credit or refund of tax paid under section 4041(a) for diesel fuel so used?

A-1 Yes. Generally, in the case of diesel fuel sold or used after July 31, 1984, on which tax was imposed under section 4041(a)(1) and which is used in intercity, local, or school buses, the amount of credit or refund is 12 cents a gallon. However, the amount to be refunded in the case of diesel fuel used in a local bus while such bus is being operated as a "qualified local bus" is 15 cents a gallon.

Q-2 When is a local bus considered to be operated as a "qualified local bus"?

A-2 A local bus is considered to be operated as a qualified local bus if such bus—

(1) Is engaged in furnishing (for compensation) intracity passenger land transportation that is available to the general public and is scheduled and along regular routes,

(2) Has a seating capacity of at least 20 adults (not including the driver), and

(3) Is under contract with (or is receiving more than a nominal subsidy from) any State or local government (as defined in section 4221(d)) to furnish such transportation.

A company that operates qualified local buses is eligible for the 15 cents a gallon credit or refund only with respect to fuel used while such buses are operating as qualified local buses. For example, a company that operates its buses along subsidized and unsubsidized intracity routes may obtain the 15 cents a gallon credit or refund only with respect to fuel used while operating the subsidized intracity routes. A bus is under contract with a State or local government only if the contract imposes a bona fide obligation on the operator of the bus to furnish the transportation to which the contract relates. A subsidy is more than nominal if the subsidy is reasonably expected to exceed an amount equal to 3 cents multiplied by the number of gallons of diesel fuel used while operating on subsidized routes.

Q-3 What is meant by the term "intracity passenger land transportation"?

A-3 The term "intracity passenger land transportation" means the land transportation of passengers to and from points located within the same metropolitan area. The term includes transportation along routes that cross State, city or county boundaries provided such routes remain within the metropolitan area.

§ 48.6427-2T Questions and answers concerning the advance repayment of increased diesel fuel tax to original purchasers of diesel-powered automobiles and light trucks (temporary).

The following questions and answers concern the credit or refund of the diesel fuel differential amount to the original purchaser of a qualified diesel-powered highway vehicle as provided in section 6427(g).

In General

Q-1 Is a credit or refund of the increased diesel fuel tax available to purchasers of diesel-powered vehicles?

A-1 Yes. A credit or refund of the diesel fuel differential amount may be claimed for qualified diesel-powered highway vehicles purchased after January 1, 1985, and before January 1, 1988. A credit or refund of a fraction of the diesel fuel differential amount may be claimed for certain qualified diesel-powered highway vehicles held on January 1, 1985. No interest is payable on the diesel fuel differential amount (or fraction thereof).

Q-2 Who is eligible to claim the credit or refund of the diesel fuel differential amount (or fraction thereof)?

A-2 Any person who is, or is treated as, an original purchaser of a qualified diesel-powered highway vehicle may claim this credit or refund.

Q-3 Who qualifies as an original purchaser?

A-3 Generally, an original purchaser is the first person to purchase a qualified diesel-powered highway vehicle for use other than resale. In addition, a person holding a qualified diesel-powered highway vehicle for a use other than resale at the end of January 1, 1985, is treated as an original purchaser. However, State or local governments (as defined in section 4221(d)(4)) or nonprofit educational organizations (as defined in section 4221(d)(5)), do not qualify as original purchasers or as holders who are treated as original purchasers.

Q-4 Will the use of a vehicle by a dealer as a demonstrator be treated as a use other than resale?

A-4 No. Thus, a dealer may not claim a credit or refund under this section for a vehicle used as a demonstrator vehicle; rather, the first person to purchase the demonstrator vehicle for a use other than resale will qualify as the original purchaser of the vehicle.

Q-5 Will the lease or rental of a vehicle by its owner be treated as a use other than resale?

A-5 Yes. The lease or rental of a vehicle is treated as a use other than resale both in the case of vehicles purchased after January 1, 1985, and vehicles held on such date. Thus, for example, a person who purchases a qualified diesel-powered highway vehicle on January 15, 1985, and leases the vehicle under either a long-term or short-term lease under which the lessee is not treated as the owner for Federal income tax purposes, is eligible to claim a credit or refund for the diesel fuel differential amount.

Q-6 If a person purchases a vehicle subject to a lien and registers the vehicle in the name of the lienholder, who is eligible to claim the credit or refund?

A-6 The purchaser is eligible to claim the credit or refund even if the lienholder holds title to the vehicle.

Q-7 What is a qualified diesel-powered highway vehicle?

A-7 A qualified diesel-powered highway vehicle is any diesel-powered highway vehicle (as defined in § 48.4041-7(b)) which—

(1) Has at least 4 wheels,

(2) Has a gross vehicle weight rating (within the meaning of § 48.4061(a)–1(f)(3)) of 10,000 pounds or less, and

(3) Is registered for highway use in the United States under the laws of any State.

Q–8 What is the diesel fuel differential amount?

A–8 The diesel fuel differential amount is $102 in the case of a vehicle other than a truck or van and $198 in the case of a truck or van. A van for this purpose is a vehicle which has no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

Special Rule for Vehicles Held on January 1, 1985

Q–9 Who is eligible to claim the credit or refund for vehicles purchased on or before January 1, 1985?

A–9 In the case of a qualified diesel-powered highway vehicle purchased on or before January 1, 1985, the person holding such vehicle at the end of January 1, 1985, for a use other than resale is the only person eligible to claim the credit or refund of the applicable fraction of the diesel fuel differential amount. For this purpose, the owner of the vehicle for Federal income tax purposes is treated as the holder of the vehicle. Thus, a lessee of a vehicle under either a long-term or short-term lease will not be treated as the holder of such vehicle at the end of January 1, 1985 (unless the lease is treated as a sale for Federal income tax purposes).

Q–10 What is the amount of credit or refund allowable to a person holding a qualified diesel-powered highway vehicle on January 1, 1985?

A–10 The amount of credit or refund allowable depends upon the model year of the qualified diesel-powered highway vehicle. The table below sets forth the applicable amounts:

Model year of qualified diesel-powered highway vehicle	Amount	
	Other than truck or van	Truck or van
1984 or 1985	$102	$198
1983	85	165
1982	68	132
1981	51	99
1980	34	66
1979	17	33

No credit or refund is allowed in the case of a 1978 or earlier model year vehicle.

Q–11 What is the model year of a vehicle?

A–11 The model year designated by the manufacturer for the vehicle is the model year for purposes of the table in A–10.

Reduction in Basis

Q–12 What effect does allowance of the diesel fuel differential amount (or fraction thereof) have on the basis of a qualified diesel-powered highway vehicle?

A–12 For purposes of subtitle A of the Internal Revenue Code, the basis of any qualified diesel-powered highway vehicle is reduced by the diesel fuel differential amount (or fraction thereof) allowable with respect to such vehicle. For example, if a qualified diesel-powered highway vehicle is purchased for business purposes by an original purchaser on January 2, 1985, the basis of such vehicle for purposes of determining depreciation, investment tax credit, and the amount of again or loss to be recognized upon a disposition of the vehicle, is reduced by $102 in the case of a vehicle other than a truck or van, and $198 in the case of a truck or van. Such basis reduction shall be considered to occur on the date of purchase or, in the case of a vehicle held on January 1, 1985, on such date.

Q–13 Does the credit or refund have any effect on the income tax deduction for diesel fuel used for business purposes?

A–13 No. A taxpayer who has claimed a credit or refund under this section may nevertheless claim any otherwise allowable deduction for diesel fuel purchased.

Claiming Credit or Refund of the Diesel Fuel Differential Amount

Q–14 May the diesel fuel differential amount (or fraction thereof) be claimed for a qualified diesel-powered highway vehicle more than once?

A–14 No. The diesel fuel differential amount (or fraction thereof) may be claimed only once for a qualified diesel-powered highway vehicle. The claim is made by the original purchaser and is claimed as an income tax credit, unless the original purchaser is eligible under section 6427 (j) to file a claim for refund in lieu of an income tax credit.

Q–15 How does a person claim the diesel fuel differential amount (or fraction thereof) as an income tax credit?

A–15 The amount of credit determined under A–8 or A–10 is entered on Form 4136 together with any other credits to be entered on such Form. The Form 4136 is then attached to the original purchaser's income tax return. In the case of a qualified diesel-powered highway vehicle purchased by an original purchaser after January 1, 1985, and before January 1, 1988, the credit is claimed on the income tax return for the taxable year during which the vehicle was purchased. In the case of a person who is treated as an original purchaser by reason of holding the vehicle at the end of January 1, 1985, the credit is claimed on the income tax return for the taxable year which includes December 31, 1984, *i.e.* the tax return for 1984 in the case of a calendar year taxpayer.

Q–16 How does an original purchaser who is eligible to claim the diesel fuel differential amount as a refund, do so?

A–16 The diesel fuel differential amount may be claimed by the original purchaser as a refund by filing Form 843 (Claim) with the Internal Revenue Service.

(Approved by the Office of Management and Budget under control number 1545–0143)

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 4051(d)(2)(B)(ii) (98 Stat. 1009; 26 U.S.C. 4051(d)(2)(B)(ii)), 4483(d) (96 Stat. 2178; 26 U.S.C. 4483(d)), and 7805 (68A Stat. 917; 26 U.S.C. 7805) of the Internal Revenue Code of 1954.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 17, 1984.

Ronald A. Pearlman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 84–23130 Filed 8–30–84; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Approval of Amendment to the Virginia Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Virginia as an amendment to the State's permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface

Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to the Virginia statute concerning a reorganization of the Commonwealth's Executive Department as it relates to Virginia's administration of SMCRA.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and Federal regulations, and is approving it. The Federal rules at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this action. The State specified in its submission of the amendment that the effective date for the statutory change in Virginia is January 1, 1985. In accordance with the State's specified effective date, the Director is approving the amendment with an effective date for implementation of the amendment of January 1, 1985.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Ralph Cox, Field Office Director, Big Stone Field Office, Office of Surface Mining, P.O. Box 626, Big Stone Gap, Virginia 24219; Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Virginia program was conditionally approved by the Secretary of the Interior on December 15, 1981 (46 FR 61088–61115). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submisssion, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 **Federal Register**.

II. Submission of Amendment

By letter dated June 13, 1984, Virginia submitted Chapter 590 of the 1984 Acts of Assembly signed April 7, 1984, by the Governor. The statutory change will bring together those State programs which are responsible for the administration of SMCRA through the Virginia Surface Mining Control and Reclamation Act of 1979 and all programs related to mining, mineral resources, and energy into new Department of Mines, Minerals and Energy. The new department will contain all the current duties and responsibilities now vested in the Department of Conservation and Economic Development and the Division of Mined Land Reclamation as the regulatory authority in Virginia.

Those Sections of the Code of Virginia currently part of Virginia's approved permanent program which have been amended are:

Section	
1. 45.1–228	14. 45.1–248
2. 45.1–229	15. 45.1–250
3. 45.1–230	16. 45.1–251
4. 45.1–231	17. 45.1–252
5. 45.1–234	18. 45.1–253
6. 45.1–236	19. 45.1–255
7. 45.1–237	20. 45.1–256
8. 45.1–239	21. 45.1–260
9. 45.1–241	22. 45.1–261.1
10. 45.1–242	23. 45.1–262
11. 45.1–243	24. 45.1–270.5
12. 45.1–244	25. 45.1–270.7
13. 45.1–247	

On July 16, 1984, OSM published a notice in **Federal Register** announcing receipt of the amendment and inviting public comment on whether the proposed amendment satisfied the criteria for approval of state program amendments at 30 CFR 732.15 and 732.17 (49 FR 28743). The public comment period ended August 15, 1984. The opportunity to request a public hearing was provided but none was requested.

III. Director's Findings

The Director finds in accordance with SMCRA and 30 CFR 732.1 and 732.15, that the program amendment submitted by Virginia on June 13, 1984, meets the requirements of SMCRA and 20 CFR Chapter VII, as discussed below.

The Federal regulations at 30 CFR 732.17(b)(2) stipulate that the State shall promptly notify the Director, in writing, of any changes in the authority of the regulatory authority to implement, administer or enforce the approval program. As noted above, Virginia formally notified OSM or the impending reorganization of the regulatory authority by letter of June 13, 1984.

After reviewing the documents, OSM has determined that the reorganization of the State executive department which brings together those State programs responsible for the administration of SMCRA through the Virginia Surface Mining Control and Reclamation Act of 1979 into a new Department of Mines, Minerals and Energy, meets the requirements of SMCRA and the Federal regulations. The new department will be responsible for all programs related to mining, mineral resources and energy and will contain all the current duties now vested in the Department of Conservation and Economic Development as the regulatory authority authorized to implement, administer and enforce the approval regulatory program under SMCRA.

Further, the Division of Mined Land Reclamation (DMLR), which currently administers the program under the Department of Conservation and Economic Development will continue to administer the program under the Department of Mines, Minerals and Energy and the State has indicated that all current DMLR regulations will remain in force. The State has also assured that the current staffing and funding levels of the approved program will remain intact.

Therefore, the Director finds that the newly designated regulatory authority has the capability to implement, administer, and enforce the approved program provisions consistent with 30 CFR 732.15(b).

IV. Public Comment

No comments were received by OSM in response to this State program amendment submitted by Virginia.

V. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 or actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 27, 1984.

John D. Ward,

Deputy Director, Office of Surface Mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

PART 946—VIRGINIA

1. 30 CFR Part 946.10 is revised to read as follows:

§ 946.10 State regulatory program approval.

The Virginia State Program, as submitted on March 3, 1980, as amended and clarified on June 16, 1980, as resubmitted on August 13, 1981, and clarified in a meeting with OSM on September 21 and 22, 1981, and in a letter to the Director of the Office of Surface Mining on October 15, 1981, was conditionally approved, effective December 15, 1981. Beginning on that date, the Department of Conservation and Economic Development, Division of Mined Land Reclamation, was deemed the regulatory authority in Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. By a statutory revision found in Chapter 590 of the 1984 Acts of Assembly signed by the Governor of Virginia on April 7, 1984, the authorities and responsibilities for administering the Virginia State Program are incorporated into the newly established Department of Mines, Minerals and Energy. Effective January 1, 1985, the Department of Mines, Minerals and Energy will be the regulatory authority and contain all the current duties and responsibilities now vested in the Department of Conservation and Economic Development. Copies of the approved program, as amended are available for review at:

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219.

Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266

Office of Surface Mining Reclamation and Enforcement, Room 5124, 100 L Street, NW, Washington, D.C. 20240.

2. 30 CFR 946.15 is amended by adding a new paragraph (n) as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(n) The following amendment is approved effective January 1, 1985: Chapter 590 of the 1984 Acts of Assembly to revise various sections of Title 45 of the Code of Virginia, submitted June 13, 1984.

[FR Doc. 84–23205 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 7

Black Canyon of the Gunnison National Monument, CO; Snowmobile Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule designates locations in the park where snowmobiles may be used by the park visitor for recreational purposes. This rulemaking has been designed to provide for recreational use and enjoyment of park resources as well as to provide for the preservation of the park in a manner that is consistent with the general snowmobile policy of the National Park Service and the off-road vehicle policy of the Department of the Interior.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Kastellic, Superintendent, Black Canyon of the Gunnison National Monument, P.O. Box 1648, Montrose, Colorado 81402, Telephone: 303–240–6522.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) issued in 1972, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harassement of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural and aesthetic values.

In response to Executive Order 11644, the Secretary of Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated regulations on April 1, 1974, currently codified as Title 36, Code of Federal Regulations (CFR), § 2.18, that closed all National Park System areas to snowmobile use except those specifically designated as open by **Federal Register** notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR regulations, the National Park Service developed a Servicewide policy revision which was published in the **Federal Register** on August 13, 1979 (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. Snowmobiling must be consistent with a park's natural, cultural, scenic and aesthetic values; safety considerations; park managment objectives and protection of wildlife and other park resources. The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the Code of Federal Regulations.

On November 26, 1974, the National Park Service (NPS) published a notice in the **Federal Register** (39 FR 41282) establishing areas in the Black Canyon of the Gunnison National Monument that were open to snowmobile use. That notice complied with the requirements of Executive Order 11644.

Public Participation

In the fall of 1974 an environmental assessment was prepared on alternatives for snowmobile use in the Black Canyon of the Gunnison National Monument. Public response to the proposed snowmobile routes was invited by press release from the Superintendent. The response period was from November 26, 1974 to December 26, 1974. No negative responses were received. No public meetings were held to discuss the proposal.

In compliance with the revised National Park Service snowmobile policy published in the **Federal Register** (44 FR 47412) on August 13, 1979, the Black Canyon of the Gunnison National Monument published its proposed snowmobile regulations in the **Federal Register** July 15, 1983 (48 FR 32365). During the 30 day period allowed for public comment, no responses were received. The regulations adopted today are the same as those proposed on July 15, 1983.

Drafting Information

The following individual participated in the writing of these regulations: Joseph Kastellic, Superintendent, Black

Canyon of the Gunnison National Monument.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*), the Service has prepared an environmental assessment on this final rule which is available at the address noted previously.

The Department of the Interior has determined that this document is not major rule within the meaning of Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), nor does this rulemaking require the preparation of a regulatory analysis. This conclusion is based on the finding that no substantial costs, if any, should result for any small entity. There may be a limited positive result for local repair shops, filling stations, parts stores, and retail snowmobile outlets.

List of Subjects in 36 CFR Part 7

National Parks.

Authority

The Service authority for promulgating this regulation is 16 U.S.C. 1 and 3.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. Add a new § 7.53 as follows:

§ 7.53 Black Canyon of the Gunnison National Monument.

(a) *Snowmobiles* (1) During periods when snow depth prevents regular vehicular travel to the North Rim of the Monument, as determined by the superintendent, snowmobiling will be permitted on the graded, graveled North Rim Drive and parking areas from the north monument boundary to North Rim Campground and also to the Turnaround.

(2) On roads designated for snowmobile use, only that portion of the road or parking area intended for other motor vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when there is sufficient snow cover and when these roads and parking areas are closed to all other motor vehicle use by the public. These routes will be marked by signs, snow poles, or other appropriate means. Snowmobile use outside designated routes is prohibited.

(b) [Reserved]

Dated: July 24, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23164 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-70-M

---

36 CFR Part 7

Theodore Roosevelt National Park, ND

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: On July 15, 1983, the National Park Service published in the **Federal Register** (48 FR 32366), a proposed rule to designate locations within Theodore Roosevelt National Park where snowmobiles may be used for recreational purposes during the winter season. This proposal was made available for public review and comment for 30 days. This final regulation provides for the preservation and recreational enjoyment of the park consistent with Executive Order 11644, National Park Service snowmobile policy and Department of the Interior off-road vehicle policy.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Harvey D. Wickware, Superintendent, Theodore Roosevelt National Park, Medora, North Dakota 58645, Telephone: (701) 623-4466.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) issued in 1972 directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harassment of wildlife, disruption of wildlife habitat and not adversely affect scenic, natural or aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated regulations on April 1, 1974, currently codified at Title 36, Code of Federal Regulations (CFR), § 2.18, that closed all National Park System areas to snowmobiling use except those specifically designated as open by **Federal Register** notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR regulations, the National Park Service developed a Servicewide policy revision which was published in the **Federal Register** on August 13, 1979 (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. Snowmobiling must be consistent with the park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives and protection of wildlife and other park resources.

The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the Code of Federal Regulations. This regulation is necessary to comply with Servicewide policy.

A notice was published in the **Federal Register** March 13, 1975 (40 FR 11768); designating the Little Missouri River channel within Theodore Roosevelt National Park as the authorized snowmobile trail. The route has since received sporadic winter use dependent upon snow and ice conditions. The routes designated by this final rulemaking are the same as those routes identified and adopted in 1975.

Public Participation

In 1975 an environmental assessment was prepared on alternatives for snowmobile use in Theodore Roosevelt National Park. Public response to the proposed snowmobile routes was invited by press release from the Superintendent. Only two citizens voiced opposition to allowing snowmobile use on the Little Missouri River.

The proposed snowmobile regulations for Theodore Roosevelt National Park were published July 15, 1983, in the **Federal Register** (48 FR 32366). No comments were received during the 30 day public comment period. The final regulations are the same as those proposed in 48 FR 32366.

Drafting Information

The following persons participated in the writing of these regulations: Harvey D. Wickware, Superintendent and Robert D. Powell, Chief Ranger, Theodore Roosevelt National Park.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This conclusion is based on the finding that the majority of use will be for access to snowmobiling areas on adjacent lands. There may be a limited positive result for local repair shops, filling stations, parts stores and retail snowmobile outlets.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*), the National Park Service has prepared an environmental assessment and a finding of no significant impact for this regulation. Copies are available at the address listed at the beginning of this rulemaking.

List of Subjects; 36 CFR Part 7

National Parks

Authority

Section 3 of the Act of August 25, 1916 (16 U.S.C. 3). In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—[AMENDED]

1. Add a new § 7.54 as follows:

§ 7.54 Theodore Roosevelt National Park

(a) *Snowmobiles.* (1) Designated routes open to snowmobile use are the portions of the Little Missouri River which contain the main river channel as it passes through both units of Theodore Roosevelt National Park. Ingress and egress to and from the designated route must be made from outside the boundaries of the park. There are no designated access points to the route within the park.

(2) The superintendent shall determine the opening and closing dates for the use of designated snowmobile routes each year, taking into consideration snow, weather and river conditions. He shall notify the public by posting of appropriate signs at the main entrance to both units of the park. The superintendent may, by the posting of appropriate signs, require persons to register or obtain a permit before operating any snowmobiles within the park. The operation of snowmobiles shall be in accordance with State laws in addition to the National Park Service regulations.

(b) [Reserved]

Dated: July 10, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23163 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-70-M

---

36 CFR Part 7

Curecanti National Recreation Area, CO; Snowmobile Regulations

AGENCY: National Park Service, Interior.

ACTION: Final Rule.

SUMMARY: This final regulation designates those areas within Curecanti National Recreation Area where snowmobiles may be used for recreational purposes. This regulation provides for the preservation and enjoyment of the Recreation Area in a way that is consistent with both the snowmobile policy of the National Park Service and the off-road vehicle policy of the Department of the Interior.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Glen Alexander, Superintendent, Curecanti National Recreation Area, P.O. Box 1040, Gunnison, Colorado 81230. Telephone: (303) 641-2337.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on Public Lands) issued in 1972, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harassment of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural and aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated regulations on April 1, 1974, currently codified at Title 36, Code of Federal Regulations (CFR), § 2.18, that closed all National Park System areas to snowmobile use except those specifically designated as open by **Federal Register** notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR regulations, the National Park Service developed a Servicewide policy revision which was published in the **Federal Register** on August 13, 1979 (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. Snowmobiling must be consistent with the park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives; and protection of wildlife and other park resources.

The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowobile use shall be promulgated as special regulations in the Code of Federal Regulations.

This final regulation is necessary to comply with Servicewide policy. Its promulgation also responds to public interest in additional recreational opportunities at Curecanti National Recreation Area. Snowmobile use areas will comprise the frozen water surface of and designated access roads to Blue Mesa Lake within the recreation area, which are normally used by motorboats and motorized vehicles during the open water seasons.

Public Participation

In the winter of 1981 an environmental assessment was prepared on alternatives for snowmobile use in Curecanti National Recreation Area. Public response to the proposed snowmobile routes was invited by a press release from the Superintendent. The response period was from January 27, 1981, to February 27, 1981. No negative responses were received. No public meetings were held to discuss the proposal.

In compliance with the revised National Park Service snowmobile policy published in the **Federal Register** (44 FR 47412) on August 13, 1979,

Curecanti National Recreation Area published its proposed snowmobile regulations in the **Federal Register** November 18, 1983 (44 FR 52484). During the 30-day public comment period, two responses were received. The U.S. Fish and Wildlife Service requested a determination of effect of this regulation on any endangered species, in this case, the bald eagle. The National Park Service has determined that there will be no significant impact on the wintering bald eagle. A second response was received from the snowmobile industry, which encouraged adoption of the proposed rule.

The regulations adopted today are the same as those proposed November 18, 1983.

Drafting Information

The following individuals participated in the writing of the regulations: James C. Riggs, Arnold B. Simmons, and Roger Andrascik, all of Curecanti National Recreation Area.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Law

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*), the Service has prepared an environmental assessment and a finding of no significant impact for this final regulation which is available at the address noted previously.

The Department of the Interior has determined that this document is not a major rule within the meaning of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), nor does this rulemaking require the preparation of a regulatory analysis. This conclusion is based on the finding that no substantial costs, if any, should result for any small entity. There may be a limited positive result for local repair shops, filling stations, parts stores, and retail snowmobile outlets.

List of Subjects in 36 CFR Part 7

National parks.

Authority: The Service's authority for promulgating this regulation is 16 U.S.C. 1 and 3.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows: § 7.51 is amended by adding a new paragraph (c) as follows:

§ 7.51 Curecanti National Recreation Area

* * * * *

(c) *Snowmobiles.* Snowmobiles are permitted to operate within the boundaries of Curecanti National Recreation Area provided:

(1) That the operators and machines conform to the laws and regulations governing the use of snowmobiles as stated in this chapter and those applicable to snowmobile use promulgated by the State of Colorado where they prove to be more stringent or restrictive than those of the Department of the Interior.

(2) That their use is confined to the frozen surface of Blue Mesa Lake, and designated access roads. A map of areas and routes open to snowmobile use will be available in the office of the superintendent.

(3) That for the purposes of this section, snowmobile gross weight will be limited to a maximum of 1200 lbs. (machine and cargo) unless prior permission is granted by the superintendent.

Dated: August 8, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23162 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-70-M

---

36 CFR Part 7

Dinosaur National Monument, CO and UT; Snowmobile Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: On April 28, 1983, the National Park Service published in the **Federal Register** (48 FR 19185), a proposed rule to designate those areas within Dinosaur National Monument where snowmobilies may be used for recreational purposes. This proposal was made available for public review and comment for a period of thirty (30) days. This final regulation provides for the preservation and recreational enjoyment of the park consistent with the National Park Service snowmobile policy and the off-road vehicle policy of the Department of the Interior.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Joe L. Kennedy, Superintendent, Dinosaur National Monument, P.O. Box 210, Dinosaur, Colorado 81610. Telephone: (303) 374-2216.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on the Public Lands) issued in 1972, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harrassment of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural and aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated regulations on April 1, 1974, currently codified at Title 36, Code of Federal Regulations (CFR), § 2.18, that closed all National Park System areas to snowmobile use except those specifically designated as open by **Federal Register** notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR regulations, the National Park Service developed a Servicewide policy revision which was published in the **Federal Register** on August 13, 1979, (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. Snowmobiling must be consistent with a park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives and protection of wildlife and other park resources.

The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as special regulations in the Code of Federal Regulations.

This final regulation is necessary to comply with Servicewide policy. Snowmobiling has previously been permitted on approach roads to Dinosaur National Monument, but not within the Monument proper. However, pursuant to the Act of September 8, 1960 (74 Stat. 857,861), these roads constitute a part of the Monument, and are subject to the regulations of the National Park

Service. The National Park Service administers approximately 40 miles of such approach roads within a 200 foot right-of-way.

Two sections of these roads, totaling about 22 miles, are not plowed in the winter and will be designated as snowmobile routes. These proposed routes would be used by snowmobilers primarily for access to lands administered by the Bureau of Land Management.

Public Participation

It is the policy of the National Park Service, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. In the summer of 1982, an environmental assessment was prepared on alternatives for snowmobile use at Dinosaur National Monument. Public reponse to the proposed snowmobile routes was invited in the **Federal Register** from April 28, 1983, through May 31, 1983. No comments were received during the ensuing thirty (30) day public review period. Consequently, the final rule published here is the same as that proposed on April 28, 1983.

Drafting Information

The following individuals participated in the writing of these regulations: Joe L. Kennedy, Superintendent and John E. Welch, Chief Ranger, Dinosaur National Monument.

Paperwork Reduction Act

This regulation does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This conclusion is based on the finding that the majority of use will be for access to snowmobiling areas on adjacent lands. No substantial costs, if any, should result for any small entity. There may be a limited positive result for local repair shops, gas stations, parts stores and retail snowmobile outlets.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*), the National Park Service has prepared an environmental analysis for this regulation, which is available at the address listed at the beginning of this rulemaking.

List of Subjects in 36 CFR Part 7

National parks.

Authority: Section 3 of the Act of August 25, 1916 (16 U.S.C. 3).

In consideration of the foregoing, amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. In § 7.63 add a new paragraph (c) as follows:

§ 7.63 Dinosaur National Monument

* * * * *

(c) Snowmobiles: (1) Designated routes which will be open to smowmobile use are approximately 20 miles of the Harpers Corner Road in Colorado and approximately 2 miles of the Cub Creek Road in Utah. The Harpers Corner Road section extends from the Plug Hat Overlook to the Echo Park Road Turnoff. The Cub Creek Road section extends from the Chew Ranch Road, 1 mile north of the Green River Bridge, to the point where the Cub Creek Road leaves the southern boundary of the monument.

(2) On roads designated for snowmobile use, only that portion of the road or parking area intended for other motor vehicle use may be used by snowmobiles. Such roadway is available for snowmobile use only when there is sufficient snow cover and when these roads are closed to all other motor vehicle use by the public.

(3) Snowmobile use outside designated routes is prohibited.The superintendent shall determine the opening and closing dates for use of the designated snowmobile routes each year.

Dated: July 10, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23166 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-70-M

---

36 CFR Part 7

Zion National Park, UT; Snowmobile Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: On July 15, 1983, the National Park Service published in the **Federal Register** (48 FR 32367), a proposed rule to designate those areas in Zion National Park where snowmobiles may be used for recreational purposes. This final regulation provides for the preservation and enjoyment of the park in a way consistent with both the snowmobile policy of the National Park Service and the off-road vehicle policy of the Department of the Interior.

EFFECTIVE DATE: October 1, 1984

FOR FURTHER INFORMATION CONTACT: Superintendent, Zion National Park, Springdale, Utah 84767, Telephone: (801) 772-3256.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11644 (Use of Off-Road Vehicles on the Public Lands) issued in 1972, directed Federal land managing agencies to develop unified regulations and to designate areas of use for off-road vehicles. Such areas must meet criteria which minimize resource damage, harrassment of wildlife, disruption of wildlife habitat, and, in the case of national parks, not adversely affect scenic, natural and aesthetic values.

In response to Executive Order 11644, the Secretary of the Interior issued a Departmental memorandum on May 5, 1972, to assure full compliance with the Order and to provide policies and procedures for its implementation. The National Park Service, as required by the above directive, promulgated regulations on April 1, 1974, currently codified at Title 36, Code of Federal Regulations (CFR) § 2.18, that closed all National Park System areas to snowmobile use except those specifically designated as open by **Federal Register** notice or special regulation.

In order to comply with the requirements of Executive Order 11644 and 36 CFR regulations, the National Park Service developed a Servicewide policy revision which was published in the **Federal Register** on August 13, 1979 (44 FR 47412). This policy provides for the use of snowmobiles in units of the National Park System as a mode of transportation to provide the opportunity for visitors to see, sense, and enjoy the special qualities of the park in the winter. Snowmobiling must be consistent with a park's natural, cultural, scenic and aesthetic values; safety considerations; park management objectives and protection of wildlife and other park resources.

The policy further provides that, where permitted, snowmobiles shall be confined to properly designated routes and water surfaces which are used by motorized vehicles or motorboats during other seasons. Routes and water surfaces to be designated for snowmobile use shall be promulgated as

special regulations in the Code of Federal Regulations.

The regulation is necessary to comply with Servicewide policy. Recreational use of the designated snowmobile routes will be encouraged. However, it is expected that most of the use will be by private individuals traveling through Zion National Park to their property north of the park boundary. Snowmobile routes will comprise 11.75 miles on the Kolob Terrace Road and in the area of the Lava Point Fire Lookout. Specifically, five segments of road are proposed for designation as follows:

(1) The 3.5-mile paved portion of the Kolob Terrace Road from the park boundary in the west one-half of section 33, Township 40 South, Range 11 West, Salt Lake Base and Meridian, north to where this road leaves the park in the northwest corner of sec. 16, T. 40 S., R 11 W., SLBM; (2) An approximately 5-mile paved portion of the Kolob Terrace Road from the park boundary, north of Spendlove Knoll, in sec. 5, T. 40 S., R. 11 W., SLBM; (3) An approximately 1-mile portion of unplowed, graded road from the park boundary in the southeast corner of sec. 13, T. 39 S., R. 11 W., SLBM, south to Lava Point Fire Lookout in the northwest quarter of sec. 31, T. 39 S., R. 10 W., SLBM; (4) An approximately 2-mile portion of unplowed, graded dirt road from the Lava Point Ranger Station, southeast to the West Rim Trailhead and then to a point where the road divides and leaves the park in the southeast corner of sec. 30, and the northeast corner of sec. 31, T. 39 S., R. 10 W., SLBM; and (5) An approximately ¼-mile portion of the unplowed, graded dirt road from the Lava Point Ranger Station, north to the park boundary where the road leaves the park, all in the southeast corner of sec. 13, T. 39 S., R. 11 W., SLBM.

Public Participation

An environmental assessment was prepared on alternatives for snowmobile use at Zion National Park. Public response was invited by press release from the superintendent. The regulation is established to comply with Executive Order 11644 and to provide for public access to private lands north of the park.

The proposed snowmobile regulations for Zion National Park were published in the **Federal Register** (48 FR 32367) on July 15, 1983. During the thirty (30) day public comment period, one comment was received opposing the establishment of any snowmobile route. As the intent of Executive Order 11644 is to allow snowmobile use where reasonable, this objection was considered and rejected. The rule published here is the same as that proposed on July 15, 1983.

Drafting Information

The following persons participated in the writing of this regulation: M.S. Nicholson, and L.L. Hays, Zion National Park.

Paperwork Reduction Act

This regulation does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a "major rule" within the meaning of Executive Order 12291. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Service has determined that the regulations contained in this rulemaking will not have a significant economic effect on a substantial number of small entities, nor does it require the preparation of a regulatory analysis. This conclusion is based on the finding that the majority of use will be for access to adjacent lands. No substantial costs, if any, should result for any small entity. There may be a limited positive result for local repair shops, filling stations, parts stores and retail snowmobile outlets.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332, *et seq.*), the Service has prepared an environmental assessment and a finding of no significant impact of the rule. Copies are available at the address listed at the beginning of this rulemaking.

List of Subjects in 36 CFR Part 7

National parks.

Authority: Section 3 of the Act of August 25, 1916 (16 U.S.C. 3).

In consideration of the foregoing, amend 36 CFR Chapter I as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. In § 7.10 add a new paragraph (e) as follows:

§ 7.10 Zion National Park

* * * * *

(e) *Snowmobiles.* After consideration of snow and weather conditions, the superintendent may permit the use of snowmobiles on designated routes within the park. Snowmobile use is restricted to the established roadway. All off-road use is prohibited. The designated routes are defined as follows:

(1) All of the paved portion of the Kolob Terrace Road from the park boundary in the west one-half of Sec. 33, T. 40 S., R. 11 W., Salt Lake Base and Meridian, north to where this road leaves the park in the northwest corner of Sec. 16, T. 40 S., R. 11 W., SLBM. This paved portion of the Kolob Terrace Road is approximately three and one-half miles in length.

(2) All of the unplowed, paved portions of the Kolob Terrace Road from the park boundary, north of Spendlove Knoll, in Sec. 5, T. 40 S., R. 11 W., SLBM, north to where this road leaves the park in the southwest corner of Sec. 23, T. 39 S., R. 11 W., SLBM, a distance of approximately five miles.

(3) The unplowed, graded dirt road from the park boundary in the southeast corner of Sec. 13, T. 39 S., R. 11 W., SLBM, south to Lava Point Fire Lookout in the northwest quarter of Sec. 31, T. 39 S., R. 10 W., SLBM, a distance of approximately one mile.

(4) The unplowed, graded dirt road from the Lava Point Ranger Station, southeast to the West Rim Trailhead and then to a point where this road divides and leaves the park, in the southeast corner of Sec. 30, and the northeast corner of Sec. 31, T. 39 S., R. 10 W., SLBM, a distance of approximately two miles.

(5) The unplowed, graded dirt road from the Lava Point Ranger Station, north to the park boundary where this road leaves the park, all in the southeast corner of Sec. 13, T. 39 S., R. 11 W., SLBM, a distance of approximately one-fourth mile.

Dated: July 10, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23165 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 1

Disinterments From National Cemeteries

AGENCY: Veterans Administration.

ACTION: Final regulation amendment.

SUMMARY: The Veterans Administration is changing its regulation on disinterment from national cemeteries. The regulation currently states that disinterment of the remains of the dependent of a veteran which were interred in a national cemetery, based

on an agreement by the veteran to be buried in the same or adjoining grave, may be authorized by the Chief Memorial Affairs Director. It has been determined that eligibility for burial of a dependent in a national cemetery is not contingent on the interment of the veteran in the same or any other national cemetery. Therefore, the paragraph providing procedures for this requirement is being removed.

EFFECTIVE DATE: This regulation is effective August 16, 1984.

FOR FURTHER INFORMATION CONTACT: Sonja McCombs, Management Analyst, Department of Memorial Affairs, Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2987.

SUPPLEMENTARY INFORMATION: On March 29, 1984, a proposed amendment to 38 CFR 1.621 was printed on Page 12283 of the **Federal Register.** A 30-day comment period was provided. No comments were received; therefore, the regulation amendment is hereby adopted as final.

The Administrator has determined that this regulation is nonmajor in accordance with Executive Order 12291, Federal Regulation. The Administrator hereby certifies that this amendment will not, when promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this amendment is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations apply almost exclusively to individual veterans and their survivors. They will have no significant impact on small entities (i.e., small business, small private and nonprofit organizations, and small governmental jurisdictions).

There is no Catalog of Federal Domestic Assistance number involved.

List of Subjects in 38 CFR Part 1

Cemeteries, Claims, Government property, Veteran.

By direction of the Administrator.

Approved: August 16, 1984.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 1—[AMENDED]

§ 1.621 [Amended]

38 CFR Part 1, GENERAL, is amended by removing paragraph (d) to § 1.621.

(38 U.S.C. 210(c))

[FR Doc. 84–23186 Filed 8–30–84; 8:45 am]

BILLING CODE 8320–01–M

---

38 CFR Part 8

National Service Life Insurance

AGENCY: Veterans Administration.

ACTION: Final regulation amendments.

SUMMARY: The Veterans Administration is amending regulations to reflect that premiums for National Service Life Insurance (NSLI) "V" term policyholders will be capped at the renewal age 70 premium rate. Most commercial companies limit either the number of term renewals or fix an age at which renewal is no longer available. NSLI "V" term policies, however, can be renewed an indefinite number of times. With each five year term renewal, the premiums increase to reflect the mortality experience associated with the higher ages. By capping the premium cost at the renewal age 70 rate, this proposal will provide financial relief for elderly policyholders.

EFFECTIVE DATE: September 1, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Carey, Assistant Director for Insurance, VA Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, PA 19101, (215) 951–5360.

SUPPLEMENTARY INFORMATION: On pages 29972 and 29973 of the **Federal Register** of July 25, 1984, there was published a notice of proposed regulatory developments to reflect that premiums for National Service Life Insurance (NSLI) "V" term policyholders will be capped at the renewal age 70 premium rate. Interested persons were given 30 days within which to submit written comments, suggestions, or objections regarding the proposed regulation.

A written objection to the proposed regulations was filed on August 23, 1984, which questioned whether there would be sufficient funds available to ensure the future financial solvency of the term capping proposal. In that regard, the VA Actuarial Staff has thoroughly reviewed the financial implications of the term capping proposal, which is funded exclusively by surplus funds derived from term policies, and has concluded that sufficient funds will be available to meet the financial needs of the proposal.

Moreover, an eminent actuary, who is an officer in the Society of Actuaries, has formally reviewed all financial aspects of the term capping proposal and has concluded that the proposal is financially sound.

The Commentator was also concerned that the reduction or elimination of dividends, which will occur under the term capping proposal, will have a negative impact on term policyholders who have their premiums waived due to total disability. He states that since totally disabled policyholders already pay no premiums, the only effect on this group will be a reduction or elimination of the opportunity to purchase paid-up additional insurance with policy dividends. In fact, the term capping proposal has no effect on the policyholders' rights as provided under their contracts of insurance. Therefore, any term policyholder, including those who would have their preimums capped under the proposed regulation, having a total disability waiver of premiums may exercise his or her contractual right to convert to a permanent plan policy. In this manner, these policyholders would continue to receive dividends which may be applied to purchase paid-up additional insurance.

Having considered the objection, we conclude that the proposed regulations should be published as final.

The Administrator hereby certifies that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant ot 5 U.S.C. 605(b), this rule is, therefore, exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this rule will affect only certain NSLI insureds. It will, therefore, have no significant direct impact on small entities in terms of compliance costs, paperwork requirements or effects on competition.

The agency has also determined these regulations are non-major in accordance with Executive Order 12291, **Federal Register.** These regulations will not have a large effect on the economy, will not cause an increase of costs or prices, and will not otherwise have any significant adverse economic effects.

(Catalog of Federal Domestic Assistance Number is 64.103)

List of Subjects in 38 CFR Part 8

Life insurance, Veterans.

Approved: August 28, 1984.

Harry N. Walters,

Administrator.

PART 8—[AMENDED]

38 CFR Part 8, National Service Life Insurance, is amended as follows:

1. In § 8.3, paragraph (a) is revised to read as follows:

§ 8.3 Premium rates.

(a) The premium rates for participating insurance, other than policies of such insurance issued on the modified life or ordinary life plans under 38 U.S.C. 704 (b), (d), or (3), respectively, are based on the American Experience Table of Mortality and interest at the rate of 3 percent per annum: *Provided,* that on or after September 1, 1984, National Service Life Insurance "V" five-year level premium term rates shall not exceed the renewal age 70 term premium rate. The premium rates for participating insurance issued on the modified life or ordinary life plans under 38 U.S.C. 704 (b), (d), or (e), respectively, are based on the 1958 Commissioners Standard Ordinary Basic Mortality Table and interest at the rate of 3 percent per annum. (38 U.S.C. 702 and 706)

* * * * *

2. In § 8.85, paragraph (a) is revised to read as follows:

§ 8.85 Renewal of National Service Life Insurance on the 5-year level premium term plan and limited convertible 5-year level premium term plan.

(a) Effective July 23, 1953, except as provided in paragraph (c) of this section, all or any part of National Service Life Insurance on the 5-year level premium term plan or limited convertible 5-year premium term plan, in any multiple of $500 and not less than $1,000, which is not lapsed at the expiration of any 5-year term period, shall be automatically renewed without application or medical examination for a successive 5-year period at the applicable level premium term rate for the then attained age of the insured: *Provided,* that on or after September 1, 1984, National Service Life Insurance "V" 5-year level premium term rates shall not exceed the renewal age 70 term premium rate: *Provided further,* that in any case in which the insured is shown by satisfactory evidence to be totally disabled at the expiration of the term period of his or her insurance under conditions which would entitle him or her to continued insurance protection but for such expiration, such insurance, if subject to renewal under this paragraph shall be automatically renewed for an additional period of 5 years at the applicable premium rate. The renewal of insurance for any successive 5-year period will become effective as of the day following the expiration of the preceding term period, and the premium for such renewal will be at the applicable level premium term rate on that day: *Provided further:* that no insurance is subject to renewal if the policyholder has exercised his or her optional right to change to another plan of insurance. (38 U.S.C. 705 and 706)

* * * * *

3. In § 8.113, paragraph (e) is revised to read as follows:

§ 8.113 Premium waiver under section 622 of the National Service Life Insurance Act, as amended, and section 724 of Title 38, United States Code.

* * * * *

(e) National Service Life Insurance on the 5-year level premium term plan or limited convertible 5-year level premium term plan shall be automatically renewed for an additional 5-year period at the premium rate for the then attained age of the insured, provided the premiums on such insurance are being waived under this section at the expiration of the term period: *Provided,* that on or after September 1, 1984, National Service Life Insurance "V" 5-year level premium term rates shall not exceed the renewal age 70 term premium rate: *Provided further,* that limited convertible term insurance may not be renewed after the insured's fiftieth birthday. The renewl of insurance under this section shall be effective as of the day following the expiration of the preceding term period, and the premium for such renewed insurance will be at the applicable level premium term rate on that day. The premiums on the insurance renewed under this section shall continue to be waived while the insured continues in active service and for 120 days after separation therefrom. (38 U.S.C. 705 and 706)

* * * * *

[FR Doc. 84-22820 Filed 8-27-84; 8:45 am]

BILLING CODE 6320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action MO 1535; A-7-FRL-2663-2]

Approval and Promulgation of the Missouri State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On February 15, 1984, the Missouri Air Conservation Commission adopted amendments to State regulations entitled "Open Burning Restrictions." These amendments establish the requirement for operating permits for the open burning of untreated wood waste at solid waste disposal and processing installations. Due to the permit requirement and the restrictive measures against open burning in nonattainment areas, the overall effect of the amendments will be to tighten the Missouri Department of Natural Resources control over open burning. EPA is approving these amendments as a revision to the Missouri State Implementation Plan (SIP).

EFFECTIVE DATE: This action will be effective October 30, 1984 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: A copy of the State's submission is available for review at the following addresses:

Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106

Missouri Department of Natural Resources, 1101 Rear Southwest Blvd., Jefferson City, Missouri 65102

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

Written comments should be sent to: Jane C. Johnson, Environmental Protection Agency, Region VII, Air Branch, 324 East 11th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jane C. Johnson at the above address or call (816) 374-3791, (FTS) 758-3791.

SUPPLEMENTARY INFORMATION: On February 15, 1984, after notice and public hearing, the Missouri Air Conservation Commission amended regulations 10 CSR 10-2.100, 3.030, 4.090, and 5.070 entitled "Open Burning Restrictions." The amendments require operating permits for open burning of untreated wood waste at solid waste disposal and processing installations effective April 12, 1984. The original regulations, except 10-5.070, allowed open burning of untreated wood waste without an operating permit at installations holding valid Waste Management licenses. Due to the additional permit requirement and restrictive measures against open burning in nonattainment areas, the overall effect of the amendments will be to tighten control over open burning.

Regulation 10-5.070 pertains to the St. Louis Air Quality Control Region (AQCR). Although the amended regulation appears to allow open burning in limited situations, the

regulation contains two provisions which would effectively prohibit open burning. First, the regulation states that it does not supercede applicable local ordinances; St. Louis City and County have local ordinances banning open burning. Second, the regulation prohibits open burning in nonattainment areas, unless it can be shown that alternatives to open burning would produce greater emissions. The St. Louis AQCR is nonattainment for ozone. Therefore, EPA has determined that the revised regulation would not impose less stringent requirements than those contained in the approved SIP.

On December 15, 1984, the State of Missouri submitted a draft of this revision to the SIP. A public hearing was held on January 18, 1984, and EPA submitted comments to the State in a letter dated January 24, 1984. These amendments to the open burning regulations were then adopted on February 15, 1984, by the Missouri Air Conservation Commission and published on April 2, 1984, in Volume 9, Number 4 of the *Missouri Register*.

Action: EPA approves this submission as a revision to the Missouri SIP. EPA believes this action is noncontroversial and is approving it without prior proposal. The public is advised that this action is effective October 30, 1984 unless we receive written notice within 30 days from the date of publication that someone wishes to submit adverse or critical comments. In such case, this action will be withdrawn and rulemaking will commence again by announcing a proposal of this action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2)].

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I have certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Office of the Federal Register on July 1, 1982.

This notice of final rulemaking is issued under the authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen oxides, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: August 27, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart AA—Missouri

Section 52.1320 is amended by adding a new paragraph (c)(45) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(45) The Missouri Department of Natural Resources submitted revisions to regulations 10 CSR 10–2.100, 3.030, 4.090, and 5.070 requiring operating permits for open burning of untreated wood waste at solid waste disposal and processing installations effective April 12, 1984.

[FR Doc. 84–23180 Filed 8–30–84; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 228

[OW–FRL–2663–4]

Ocean Dumping; Final Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the existing dredged material disposal site located in the Gulf of Mexico offshore of Galveston Harbor as an EPA approved ocean dumping site for the dumping of dredged material. This action is necessary to provide an ocean dumping site for the current and future disposal of this material.

DATE: This site designation shall become effective on October 1, 1984.

ADDRESSES: The Environmental Impact Statement (EIS) and the letter of comment are available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC

EPA Region VI, 1201 Elm Street, Dallas, Texas

U.S. Army Corps of Engineers Library, Galveston District, 400 Barracuda, Galveston, Texas

FOR FURTHER INFORMATION CONTACT: Mr. T.A. Wastler, Chief, Marine Protection Branch (WH–585), EPA, Washington, DC 20460, 202/755–0356.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. (hereafter "the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water. This proposed site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and was last extended on February 7, 1983 (48 FR 5557 et seq.). That list established this site as an interim site.

On October 7, 1983, EPA proposed designation of this site for the continuing disposal of dredged material from the Galveston, Texas, area (48 FR 45798). The public comment period expired on November 21, 1983. One letter of comment was received on the proposed rule. The commenter concurred with the selection of the site and suggested that additional sites might be necessary to accommodate future requirements.

The location of the dredged material disposal site is approximately 3.7 nautical miles southeast of Galveston Island, positioned approximately in a rectangle with coordinates as follows:

29°18'00" N., 94°39'30" W.;
29°15'54" N., 94°37'06" W.;
29°14'24" N., 94°38'42" W.;
29°16'54" N., 94°41'30" W.

The site occupies an area of approximately 6.6 square nautical miles. Water depths within this area range from 10 to 15.5 meters. This site has been used for dredged material disposal since at least 1931. The average annual disposal rate since 1958 has been less than 2 million cubic yards.

EPA has prepared an EIS in accordance with EPA's Statement of Policy for Voluntary Preparation of EIS's (39 FR 16186, May 7, 1974; 39 FR 37119, October 21, 1974). On July 30, 1982, a notice of availability of the draft EIS for public review and comment was published in the **Federal Register** (47 FR 33001). The public comment period on this draft EIS closed September 13, 1982. On November 26, 1982, a notice of availability of the final EIS for public review and comment was published in the **Federal Register** (47 FR 53477). The public comment period on the final EIS closed December 27, 1982. No additional comments were received.

The EIS evaluated ocean alternatives to the continued use of the Galveston dredged material disposal site. These alternatives include no action and three general ocean environments off Galveston which were considered as potentially suitable areas in which to locate an ocean disposal site: The shallow-water area, including the proposed site, the mid-shelf area, where no specific site was located, and the deepwater area more than 90 nautical miles southwest of Galveston.

The alternatives are each within separate major marine environments off Galveston. The shallow-water area (including the proposed site) is a high-energy environment heavily influenced by wave action, coastal or nearshore processes, agricultural runoff, and storms. The deepwater and mid-shelf areas are low-energy environments influenced primarily by offshore and shelf currents.

Appendix A of the draft EIS evaluated and compared the environmental and economic characteristics of the three areas using the ocean dumping site selection criteria. Some of the more important of these criteria in relation to the three potentially suitable disposal areas are discussed below.

Location in relation to breeding, spawning, nursery, feeding or passage areas of living resources in adult or juvenile phases.

The entire shelf region supports valuable commercial fish and shrimp fisheries. Areas off the shelf support a relatively insignificant commercial fishery. The proposed site is in the vicinity of Galveston Bay, an important nursery area for number of commercially important species of fish and shrimp. These species are typical of nearshore western Gulf waters; therefore, the proposed site represents only a small portion of their geographic range.

The mid-shelf area supports valuable commercial fish and shrimp fisheries. The brown shrimp grounds and several offshore banks that represent valuable fishery resources areas exist there.

The deepwater area may be a feeding area for oceanic fish. However, there are no well-defined migratory pathways in the area. This area was selected in order to avoid shallow-water habitats of valuable shellfish and finfish.

Location in relation to beaches and other amenity areas.

The proposed site is about 3.7 nautical miles southeast of the nearest land, Galveston Island. Prevailing southwesterly bottom currents carry the dumped material away from Galveston and the local beaches. The disposal of dredged material will not have a significant adverse impact of free-swimming finfish and shellfish of the area.

The mid-shelf and deepwater areas are located more than 20 nautical miles and 53 nautical miles respectively from the nearest land. Therefore, disposal would have no significant adverse impact on beaches and other coastal and nearshore amenities.

Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.

Prevailing bottom currents at the proposed site flow south and southwest under normal conditions. Shoaling caused by disposal of dredged material in the high-energy shallow water area is not expected to be a concern. Temporary mounds form, but little evidence exists of significant long-term accumulation or mounding of material deposited at the proposed site.

The effects of disposal at mid-shelf sites have not been extensively studied because the mid-shelf region does not contain many disposal sites, and few studies have been undertaken with respect to the fate of dredged material deposited on the open shelf. However, existing information indicates most material falls to the bottom immediately after disposal. Although there is some turbidity of short duration, the material is dispersed over a wide area. Current direction is generally in a southwesterly direction.

Shoaling is less likely to occur in deep water than shallow water due to spreading and dispersion of the sediment as particles settle to the bottom.

For a more complete discussion of the ocean dumping site selection criteria considered, interested persons should examine pages A–7 through A–24 of the EIS. The summary contained in Appendix A recommends that the interim (proposed) site be designated for continuing use. This recommendation is based on several factors. The proposed site has received material dredged from the Galveston Bay Channel System since at least 1931. Past studies which are cited in the EIS have not discerned any significant adverse impacts from disposal at the proposed site and have determined that this is a high-energy erosional zone which can generally accept large volumes of dredged material with little apparent net change to the bottom.

Active oil and gas exploration and drilling occur in the mid-shelf area off Galveston. Fixed structures, such as platforms, and the supply vessels servicing them, would present navigational hazards to the hopper dredges used in channel maintenance. In addition, disposal at a mid-depth site would be more likely to have a long-term effect on the benthos than would disposal at a shallow-water site.

The primary reason against recommending designation of a deepwater site is transportation costs. It is estimated that dredging costs would increase 279 to 298 percent if the disposal area changed to that location.

The final EIS includes the Agency's assessment of the four comments received during the comment period on the draft EIS. Comments correcting facts presented in the draft EIS were incorporated in the text and the changes noted in the final EIS. Specific comments which could not be appropriately treated as text changes were responded to point by point in the final EIS, following the letters of comment.

Based on the information reported in the EIS, EPA is designating the existing Galveston site for continuing use for the ocean disposal of dredged material where the applicant has demonstrated compliance with EPA's ocean dumping criteria. The EIS and the letter of comment are available for inspection at the addresses given above.

The designation of the existing Galveston dredged material disposal site as an EPA Approved Ocean Dumping Site is being published as final rulemaking. Management authority of this site will be delegated to the Regional Administrator of EPA Region VI. An appropriate monitoring program for the site will be developed jointly by EPA and the Corps of Engineers, and continued use of the site will be permitted as long as no significant adverse environmental effects occur at the site.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean

dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effect which would result in its being classified by the Executive Order as a "major" rule. Consequently, this action does not necessitate preparation of a Regulatory Impact Analysis.

This rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Authority: 33 U.S.C. 1412 and 1418.

Dated: August 24, 1984.

Henry L. Longest II,

Assistant Administrator for Water.

PART 228—[AMENDED]

In consideration of the foregoing, Subchapter H of Chapter I of Title 40, § 228.12 is amended by removing paragraph (a)(1)(i)(D) and adding new paragraph (b)(20) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(20) Galveston Dredged Material Site—Region VI. Location: 29°18'00" N., 94°39'30" W.; 29°15'54" N., 94°37'06" W.; 29°14'24" N., 94°38'42" W.; 29°16'54" N., 94°41'30" W.

Size: 6.6. square nautical miles.

Depth: Ranges from 10 to 15.5 meters.

Primary Use: Dredged material.

Period of Use: Continuing use.

Restriction: Disposal shall be limited to dredged material from the Galveston, Texas, area.

[FR Doc. 84-23199 Filed 8-30-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[Federal Acquisition Circular 84-4]

Federal Acquisition Regulation; Noncompetitive Procurement Procedures.

AGENCY: Department of Defense (DoD), General Services Administration (GSA), National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of amendments.

SUMMARY: Federal Acquisition Circular (FAC) 84-4, dated August 29, 1984, cancels Item II of FAC 84-3 and, therefore, the amendments to 48 CFR, Chapter 1, Part 15 (Part 15 of the Federal Acquisition Regulation (FAR)) that were published in the **Federal Register** on June 29, 1984 (49 FR 26740), and which were to be effective October 1, 1984, are withdrawn.

The revisions in FAC 84-3 to FAR Part 15 implemented Office of Federal Procurement Policy (OFPP) Policy Letter 84-2, subject: "Noncompetitive Procurement Procedures." Subsequent to the issuance of OFPP Policy Letter 84-2 and FAC 84-3 in the **Federal Register**, the Competition in Contracting Act (CICA), Title VII, Pub. L. 98-369, was enacted. As a result of the enactment of the CICA, the OFPP policy letter has been rescinded.

Accordingly, and in order to eliminate an unnecessary burden on those involved in the procurement process, Item II of FAC 84-3 and the amendments ot 48 CFR, Chapter 1, Part 15 (Part 15 of the FAR) that were published in the **Federal Register** on June 29, 1984 (49 FR 26740), are withdrawn.

EFFECTIVE DATE: August 29, 1984.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION: FAC 84-3, published in the **Federal Register** on June 29, 1984 (49 FR 26740), contained, among other things, revised FAR coverage on noncompetitive procurement procedures implementing Office of Federal Procurement Policy (OFPP) Policy Letter 84-2, subject: "Noncompetitive Procurement Procedures," to be effective October 1, 1984.

The Competition in Contracting Act of 1984, Pub. L. 98-369, signed July 18, 1984, which preempted OFPP Policy Letter 84-2, is to be fully implemented by April 1, 1985. Implementing the requirements of the OFPP letter now and replacing them with a new set of procedures on April 1, 1985, would create an unnecessary burden on those involved in the procurement process. Therefore, OFPP has rescinded Policy Letter 84-2. As a result of OFPP's action, the amendments published in the **Federal Register** on June 29, 1984 (49 FR 26740) as Item II of FAC 84-3 and corresponding amendments to FAR Part 15 have been canceled.

Notwithstanding the rescission of OFPP Policy Letter 84-2 and Item II of FAC 84-3, Government personnel are reminded that it is the policy of the Government to pursue competition to the maximum extent practicable, and it is their responsibility to assure compliance with this policy. Government personnel are also reminded that Pub. L. 98-72 requirements for approving sole-source contracts and those resulting from unsolicited proposals remain in effect. Guidance on these policies and procedures is contained in Federal Procurement Regulations (FPR) Temporary Regulation 75, FPR Amendment 230, Defense Acquisition Circular 76-48, and NASA Procurement Notice 84-1.

List of Subjects in 48 CFR Ch. I

Government procurement.

Roger M. Schwartz,

Director, FAR Secretariat.

Federal Acquisition Circular

[Number 84-4]

All Federal Acquisition Regulation and other directive material contained in Federal Acquisition Circular 84-4 is

effective on August 29, 1984.

Mary Ann Gileece,

Deputy Under Secretary, Acquisition Management.

Ray Kline,

Acting Administrator of General Services.

S.J. Evans,

Assistant Administrator for Procurement, NASA.

August 29, 1984.

The amendments to 48 CFR Chapter 1 Part 15 published in 49 FR 26740 are withdrawn.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C.; and 42 U.S.C.; 2453(c).

[FR Doc. 84-23347 Filed 8-30-84; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-02; Notice 6]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: On May 17, 1984 (49 FR 20879) NHTSA proposed to amend FMVSS 108 to allow use of center high mounted stop lamps beginning September 1, 1984, requiring conformance only with location and reflection minimization requirements. That action was taken pursuant to a request by General Motors Corporation that NHTSA specify that the lamp may be installed before the effective date of September 1, 1985. Adoption of an optional compliance date would preempt any state laws that might prohibit the lamp's early introduction. This Notice amends Standard No. 108 to allow installation of the lamp effective August 1, 1984. The agency anticipates that this action will promote early achievement of the safety benefits associated with the addition of center high-mounted stop lamps. This notice also responds to a petition for reconsideration of the amendments to Federal Motor Vehicle Safety Standard No. 108 published on May 17, 1984 (49 FR 20818).

DATES: These amendments are effective August 31, 1984. The effective date for voluntarily installing center high-mounted stop lamps and for location and reflection minimization requirements for those devices is August 1, 1984.

ADDRESS: Petitions for reconsideration of the rule should refer to the docket and notice numbers set forth above and be submitted (preferably with 10 copies) to National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2153).

SUPPLEMENTARY INFORMATION: In its petition for reconsideration of NHTSA's final rule establishing requirements for a center high-mounted stop lamp on passenger cars manufactured on or after September 1, 1985 (see 48 FR 48235, October 18, 1983) General Motors requested that NHTSA amend Standard No. 108 to specify that the lamp may be introduced before the effective date. The purpose of this request was to obtain earlier preemption of any state laws that might prohibit the lamp's early introduction. On May 17, 1984, NHTSA responded to GM's request (49 FR 20879) and proposed to allow (but not require) early introduction of the stop lamp. Only requirements regarding lamp location and minimization of reflections would be applicable to cars manufactured with center high-mounted stop lamps between September 1, 1984, and September 1, 1985.

Comments on the proposal were received from Chrysler Corporation, Ford Motor Company, Volkswagen of America, General Motors, and Parker Hannifin Corporation. All commenters concurred with the proposal. Ford and General Motors recommended that the final rule be effective upon its publication in the **Federal Register.** GM further commented that the proposal "did not address the after market package which General Motors had intended to make available through our dealers, since it only speaks of passenger cars manufactured between September 1, 1984 and September 1, 1985."

The agency agrees that an effective date as early as practicable is in the public interest, and, in accordance with the proposal and the comments of GM and Ford, has designated August 1, 1984, as that date. Because the vehicle certification attached pursuant to 49 CFR Part 567 requires only the month and year of manufacture, generally the agency sets an effective date for new vehicle requirements as of the first day of a month so that a manufacturer will not have to certify to differing requirements within a single month. An effective date as of the first of the month also assists the agency in its compliance efforts. NHTSA does not understand that any 1985 model vehicles equipped with a lamp will be manufactured before August 1, 1984, and consequently found no reason to adopt an effective date earlier than that date.

The agency was not aware that GM had intended to offer an aftermarket package until receiving its comment. Such an amendment would be outside the scope of the proposal, and accordingly, was not considered. Under paragraph S4.7.1, the standard covers the aftermarket only to the extent that GM (or any manufacturer) offers a lamp intended as replacement for an original equipment center high-mounted stop lamp. However, to encourage retrofit in the aftermarket, NHTSA will study GM's request and consider whatever legal action may be required to remove impediments to the lamp's use.

Parker Hannifin Corporation, manufacturer of Ideal turn signal and hazard warning signal flashers, petitioned for reconsideration of the amendment to FMVSS No. 108 published on May 17, 1984 (49 FR 20818), which was based upon the original petitions for reconsideration of the final rule requiring center mounted stop lamps. Specifically, Parker Hannifin objected to new paragraph S4.6(b) which stated that "high-mounted stop lamps on passenger cars manufactured on or after September 1, 1985, but before September 1, 1986, may flash when the hazard warning system is activated". In the commenter's opinion, the agency had given no prior notice "to this function", and stated that the agency's action will "create a chaotic condition in the automotive flasher industry." The company avers that an insufficient period of time exists "for the development of a 'due care' basis for certification of hazard warning flashers rated for seven (7) lamps for conformance to FMVSS 108". The existing basis for certification of conformance of thermal flashers is said to be "up to six (6) lamps". Parker Hannifin recommended that the agency prohibit the additional lamp from flashing, or rule that certification for flashers can exclude the center high-mounted stop lamp. In its opinion, the agency's action is the very type of substantive rulemaking without notice which the Third Circuit found objectionable in *Wagner Electric Corp.* v. *Volpe* (466 F. 2d 1013 (3rd. Cir. 1972)).

Parker Hannifin's belief that the provision allowing flashing was adopted

without notice overlooks the circumstances under which the center high mounted stop lamp was made subject to a prohibition against flashing. Although the preamble to the proposed rule did not raise the issue and the commenters did not address it, the specific text of the amendment, taken in context with the other requirements of the standard, required the center high mounted stop lamp to be steady-burning. However, the agency recognizes that it was a reasonable reading of the proposal for the commenters to believe that the light could be flashing. Thus, in order to avoid imposing a burden on vehicle manufacturers due to their interpretation, the May 1984 amendment allowed the lights to flash on vehicles manufactured before September 1, 1986.

The factual situation differs greatly from that of *Wagner*. Before the amendment complained of by Wagner, flashers were required to be "designed to conform" to Standard No. 108, but the burden of certification was upon vehicle manufacturers as aftermarket equipment was not covered until January 1, 1972. NHTSA amended the standard without sufficient notice to apply it to all flashers, for whatever purpose manufactured, thus placing the certification responsibility entirely upon flasher manufacturers. Further, the flashers were required to "conform", not merely be "designed to conform". In the instant case, the effect upon flasher manufacturers is a remote one. In order to facilitate early adoption of a safety device with demonstrable public benefits, at a minimum cost, the agency has allowed vehicle manufacturers to continue to use existing wiring systems for a limited time, if they so choose. There is no requirement that the new lamp flash when the hazard warning signals do, there has been no change to existing Federal or SAE materials applicable to flashers, and given the perceived limited use of the new lamp during 1985 model production, there would appear to be minimal impact upon original equipment and aftermarket requirements for flashers of existing designs. Nor can NHTSA provide an interpretation that certification for flashers may exclude the center mounted lamp. That permission is already implicitly contained in Standard No. 108 which allows the manufacturer to specify the design load at which its flasher is intended to operate. Accordingly the agency has decided to deny Parker Hannifin's petition.

NHTSA has considered the potential impacts of this rule and has determined that the rule is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation guidelines. The conclusions in the original regulatory evaluation for the final rule are not affected by the adoption of this rule. A free copy of that evaluation is available from the Docket Section.

The agency has also considered the impacts of these amendments under the Regulatory Flexibility Act. I certify that these amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles, those businesses affected by this amendment, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small organizations and governmental units which purchase cars equipped with center high-mounted stop lamps will not be significantly affected. The increase in new car prices for vehicles manufactured by companies which opt for early compliance will be negligible.

Because motor vehicle manufacturers must make timely decisions with respect to plans for the 1985 model year and because this amendment will facilitate the early introduction of a safety device, the agency finds that an effective date, earlier than 180 days after issuance of the final rule, is in the public interest. The change adopted in this notice relieves restrictions. Additional notice and comment on the August 1, 1984 early compliance date is unnecessary because of the minor nature of the change from the proposal.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, tires.

PART 571—[AMENDED]

§ 571.108 [Amended]

In consideration of the foregoing, 49 CFR 571,108 Motor Vehicle Safety Standard No. 108, is amended as follows:

1. A new paragraph S4.1.42 is added to read:

S4.1.1.42 A passenger car manufactured between August 1, 1984, and September 1, 1985, may be equipped with a high-mounted stop lamp that conforms to S4.3.1.8.

2. Paragraph (b) of paragraph S4.6 is amended by changing the date "September 1, 1985" to "August 1, 1984".

The engineer and attorney primarily responsible for this rule are Kevin Cavey and Taylor Vinson, respectively.

(Secs. 103, 119 Pub. L. 89-563; 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued: August 24, 1984.

Diane K. Steed,

Administrator.

[FR Doc. 84-23045 Filed 8-29-84; 11:16 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1220

[No. 38849]

Review of Preservation of Records Rules

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; notice of effective date.

SUMMARY: The purpose of this Notice is to specify the effective date of the final rules published at 49 FR 3477, January 27, 1984. The effective date has been pending due to review and approval by the Office of Management and Budget. The effective date is June 6, 1984.

The objective of the Commission's review in the original order was to determine the relevance of each record, the appropriateness of the prescribed retention periods, and the purpose for which each record is needed for the Commission's regulatory mission. For many records, the retention periods were reduced or the recordkeeping requirements were eliminated.

EFFECTIVE DATE: June 6, 1984.

FOR FURTHER INFORMATION CONTACT: Andrew J. Lee, (202) 275-7448.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1220

Preservation of records.

Authority: 49 U.S.C. 10321 and 11145 and 5 U.S.C. 553.

James H. Bayne,

Secretary.

[FR Doc. 84-23169 Filed 8-30-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine the Yaqui Chub To Be an Endangered Species with Critical Habitat, and To Determine the Beautiful Shiner and the Yaqui Catfish To Be Threatened Species with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Yaqui chub (*Gila purpurea*) to be an endangered species, and the beautiful shiner (*Notropis formosus*) and the Yaqui catfish (*Ictalurus pricei*) to be threatened species. Critical habitat on the San Bernardino National Wildlife Refuge (NWR) is designated for these three fishes. A special rule is included to allow take of the threatened species for educational, scientific, and conservation purposes in accordance with Arizona State laws and regulations. This determination is being made because populations of these species have been seriously reduced by habitat modifications including arroyo cutting, water diversion, impoundment construction, development of canal systems for irrigated agriculture, and excessive pumping of underground aquifers. An imminent threat to the remaining populations of Rio Yaqui fishes is the possible release of exotic fish such as the red shiner and channel catfish, which may result in intense competition and/or genetic swamping. The Rio Yaqui fishes occur in the Rio Yaqui Basin which drains western Sonora and portions of eastern Chihuahua in Mexico, and the extreme southeastern corner of Arizona. The Yaqui chub also has been recorded from the Rio Sonora and Rio Matape on the Pacific slope of Mexico, and the beautiful shiner formerly inhabited small drainages in the closed Guzman Basin, including Rio Mimbres in New Mexico, and the Casa Grandes, Santa Maria, and Del Carmen, just east of the Rio Yaqui. This action provides the protection of the Endangered Species Act of 1973, as amended, to these species.

EFFECTIVE DATE: The effective date of this rule is October 1, 1984.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Regional Office, U.S. Fish and Wildlife Service, 421 Gold Avenue, SW., Room 407, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

FOR FURTHER INFORMATION CONTACT: Dr. James E. Johnson, Regional Office of Endangered Species, U.S. Fish and Wildlife Service, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

All of the Rio Yaqui fishes addressed in this rule were first collected and described from San Bernardino Creek, just south of the Arizona-Sonora border, in the latter half of the 19th century (Girard, 1856; Rutter, 1896). Adult Yaqui chubs are known to inhabit pools and undercut banks in permanent streams. The beautiful shiner is found in a variety of habitats, but the largest populations occur in the riffles of small streams. Yaqui catfish are usually found in large streams in areas of medium to slow current. Besides the above information on basic habitat preferences, little is known about the biology of the Rio Yaqui fishes. The biology of the beautiful shiner and the Yaqui catfish is thought to be similar to that of the red shiner and the channel catfish, respectively.

In the past, these fishes were found throughout the Rio Yaqui basin and in a few smaller adjacent drainages (Branson, 1960; Contreras-Balderas, 1975; Hendrickson, 1980; Koster, 1957; McNatt, 1974; Miller, 1977; Miller and Simon, 1943; Minckley, 1973). The range of these species has been significantly reduced, primarily due to habitat destruction. Remaining populations are in danger of being subjected to intense competition and genetic swamping through the indiscriminate release of closely related exotics (e.g., red shiner and channel catfish).

The Yaqui chub was considered by the Service for listing in 1966 and 1973, but no action was taken because its status in Mexico was undetermined (Bur. Sport Fish. Wildl. Res. Publs. 34 and 114). A list published in March of 1979 by the Endangered Species Committee of the American Fisheries Society recommended special concern for the status of the beautiful shiner and the Yaqui catfish, and described the Yaqui chub as endangered (Deacon *et al.*, 1979).

In 1978, the Fish and Wildlife Service contracted with biologists from Arizona State University and the University of Michigan to survey the status of fishes in the Rio Yaqui system of Mexico (Hendrickson *et al.*, 1980). These workers found only one specimen of the Yaqui chub after extensive collection efforts throughout the Rio Yaqui drainage. They also noted range reductions for the beautiful shiner and the Yaqui catfish and expressed concern for the status of these species.

The Yaqui chub, beautiful shiner, and Yaqui catfish were included on the December 30, 1982, Vertebrate Notice of Review (47 FR 58454) in category 1. Category 1 includes those taxa for which the Service has substantial information on hand to support the appropriateness of proposing to list the species as endangered or threatened. On April 12, 1983, the Service was petitioned by the Desert Fishes Council to list the Yaqui chub. Evaluation of this petition by the Service found that substantial information had been presented indicating that the petitioned action may be warranted. A notice of this finding was published on June 14, 1983 (48 FR 27273). Finding on the merits that the petitioned action was warranted, the Service on July 15, 1983, published a proposed rule to determine the Yaqui chub to be an endangered species with critical habitat, and the beautiful shiner and Yaqui catfish to be threatened species with critical habitat (48 FR 32527).

Summary of Comments and Recommendations

In the July 15, 1983, proposed rule (48 FR 32527) and associated notifications, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, foreign governments, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in "The Douglas Daily Dispatch" in Douglas, Arizona, on October 8, 1983, which invited general public comment. A total of five written comments were received on the proposal, one each from the Arizona Game and Fish Department, the Arizona Department of Water Resources, the Bureau of Land Management (BLM), the U.S. Forest Service, and the Mexico Direccion de Flora y Fauna Silvestre (Directorate of Wild Flora and Fauna). No public hearing was requested or held.

The Arizona Game and Fish Department submitted comments supporting the proposal and expressing concern about proposed geothermal exploration on the BLM lands in the San

Bernardino Valley and its possible adverse effects on the waters of the San Bernardino NWR. The Service responded that, while leasing of such resources has occurred, any further actions, such as drilling, would be subject to consultation with the Service under Section 7 of the Endangered Species Act.

The Arizona Department of Water Resources and the BLM submitted comments stating that they knew of no activities that would be affected by the proposal. The U.S. Forest Service responded that they had no opposition to the proposal, and commented that they knew of no potential habitat on their lands for suitable reintroduction of any of the three species.

The Mexico Direccion de Flora y Fauna Silvestre submitted comments expressing their concern for these species and their support for the Service's conservation efforts for these species. These comments also outlined problems these species face in Mexico.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Yaqui chub (*Gila purpurea*) should be classified as an endangered species, and that the beautiful shiner (*Notropis formosus*) and the Yaqui catfish (*Ictalurus pricei*) should be classified as threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to these species are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* All three species of Rio Yaqui fish are seriously affected by a variety of habitat modifications. These species existed in San Bernardino Creek, Arizona, until the spring flows supporting the creek diminished and the remaining aquatic habitat was destroyed by cattle. Arroyo cutting, diverting stream headwaters, construction of impoundments, and excessive pumping of underground aquifers are responsible for the reduction of permanent stream habitat and for failing springs. The remaining U.S. populations of Yaqui chub are limited to a few springs on the San Bernardino NWR (USFWS, 1979) and to Leslie Creek (Silvey, 1975), both in southeastern Arizona, and are threatened by a gradually dwindling spring flow. The shiner and Yaqui catfish have been extirpated from the United States. Many river systems in Mexico, especially in lowland areas, have been highly modified into canal systems for irrigation agriculture. These alterations destroy pool habitats and have adverse impacts on fish populations.

The San Bernardino Valley is known to have potential geothermal energy resources (Hahman, 1979), although the area is not a Known Geothermal Resource Area (KGRA). The BLM has issued leases for geothermal resources on some of their lands adjacent to the San Bernardino NWR. Exploration and development of these leases could potentially cause depletion or pollution of the underground aquifers that supply water to the springs of the refuge, and could thereby result in loss of pollution of the flows of those springs. However, if exploration and development are properly designed and regulated, such effects are not expected (Cheremisinoff and Morresi, 1976).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* These fishes are not used for any commercial purposes, and past scientific collecting has had no impact on existing populations.

C. *Disease or predation.* Introduced predatory fishes, such as largemouth bass, bluegill, black bullhead, channel catfish, and green sunfish are present in some portions of the remaining range of the Rio Yaqui fishes, and probably prey opportunistically on them. The threat of such predation will continue to increase in the remaining habitats of these species in Mexico. This threat is minor at present in U.S. habitats, and steps are already being taken to alleviate it.

D. *The inadequacy of existing regulatory mechanisms.* The Yaqui chub is listed as a Group II species on the threatened and unique wildlife list of Arizona (Ariz. Game and Fish Comm., 1982). Species listed as Group II are defined as beign endangered of being eliminated from the State. Arizona law allows take of Yaqui chub under a scientific collecting permit, or under a valid fishing license by angling. The beautiful shiner and the Yaqui catfish are listed in Group I of the Arizona list of threatened native wildlife (species extirpated from Arizona that still exist elsewhere, and which may possibly be reestablished in Arizona). Because Group I species do not exist in the State, Arizona law does not officially protect them. However, if reestablished, these fishes would probably be relisted as Group II species and their take would be regulated by the State. Arizona law does not provide protection of essential habitat. The Rio Yaqui fishes receive no protection in Mexico.

E. *Other natural or manmade factors affecting its continued existence.* Extant populations of the beautiful shiner and the Yaqui catfish are seriously threatened by the introduction of closely related exotic species. Future releases of the red shiner, *Notropis lutrensis* (currently, widely established in Arizona), into the Rio Yaqui system may reduce beautiful shiner populations through competition or by genetic swamping. The Yaqui catfish may be similarly affected by expanding populations of the channel catfish (*Ictalurus punctatus*) and blue catfish (*Ictalurus furcatus*) that are already established in the Rio Yaqui drainage. This type of interaction has been shown to be detrimental to other native fishes, as illustrated by the rapid elimination of native Yaqui topminnow (listed as endangered and found in the same drainage) populations after introduciton of the closely related common mosquitofish (*Gambusia affinis*), documented by Minckley (1973), Schoenherr (1973) and others. The introduction of exotics in Mexico is expected to continue at an increased rate as the interior portions of Sonora and Chihuahua are developed. The establishment of exotic species in Mexico may also result in intense competitive pressure on existing populations of the Yaqui chub.

This action is the result of careful assessment of the best scientific information available, as well as the best assessment of the threats faced by these fishes. Based on this evaluation, it was determined that the beautiful shiner and Yaqui catfish are threatened species, and the Yaqui chub is an endangered species. as defined by section 3 of the Act. Threatened status for the beautiful shiner and Yaqui catfish seems appropriate based on their status and distribution in Mexico and because of the threats to their remaining habitat in the U.S. and Mexico. The Yaqui chub faces similar threats and has a more restricted distribution in Mexico. Endangered status for the Yaqui chub is most appropriate. If these fishes are not listed their status could continue to decline.

Critical Habitat

The Act and 50 CFR Part 424 define critical habitat as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in

accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of Section 4 of the Act, upon determination by the Secretary that such areas are essential for the conservation of the species.

The Act in section 4(a)(3) requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat for the Rio Yaqui fishes as follows: Arizona, Cochise County: All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S R30E.

The known constituent elements for the Rio Yaqui fishes include clean, small, permanent streams and spring pools without any exotic fishes. The streams should have deep pool areas separated by riffles and flowing areas with moderate current. Backwater areas of stream and springs with overgrown cut banks and accumulations of detritus are necessary for feeding and shelter. The Service has determined that these physical or biological features are essential to the conservation of these species.

Section 4(b)(8) of the Act requires that any proposed or final regulation which designates critical habitat be accompanied by a brief description and evaluation of those activities which may adversely modify such habitat if undertaken, or may be affected by such designation. Any activity which would lower the ground water level to the extent that the water flow from springs on San Bernardino NWR would be reduced could adversely impact the critical habitat. Such activities include, but are not limited to, pumping of ground water for agricultural purposes, and drilling activities associated with geothermal exploration. Any activity which would significantly alter the water chemistry of springs on San Bernardino NWR could adversely impact the critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into surface or underground waters at a point source or by dispersal release. An additional activity which could adversely impact critical habitat is the release of exotic or nonnative fishes. Predation and competition from these introductions could reduce or eliminate populations of the endangered and threatened fishes.

The aquatic habitats of San Bernardino NWR, designated as critical habitat, provide habitat for one of the two existing populations of Yaqui chubs. Additionally, the aquatic habitats on San Bernardino Refuge provide expansion habitat for the Yaqui chub and are considered prime reintroduction sites for the beautiful shiner and Yaqui catfish.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has evaluated the proposed critical habitat designation for the Rio Yaqui fishes, taking into consideration all additional information and comments received. The information brought forward on economic or other impacts did not warrant adjustment of the proposed critical habitat designation. Activities that may be affected by the designation of critical habitat are discussed in the Available Conservation Measures section of this rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Recovery actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Yaqui chub, beautiful shiner and Yaqui catfish, and requires them to ensure that their actions do not result in the destruction or adverse modification of these critical habitats which have been determined by the Secretary. If a "may affect" determination is made, the Federal agency must enter into consultation with the Service. Regulations implementing this interagency cooperation provision are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983).

The only possible activity with Federal involvement that may potentially affect the designated critical habitat is geothermal exploration. This activity is beyond the boundary of the San Bernardino NWR, but could possibly affect underground aquifers supplying surface waters to the critial habitat. Geothermal exploration in the San Bernardino Valley is subject to Federal regulation and licensing by the BLM. It should be emphasized that critical habitat designation may not affect geothermal exploration activities in the vicinity. The designation of critical habitat for these species does not specifically preclude geothermal development in the area. Exploration activities will be allowed to proceed in the vicinity of critical habitat as long as artesian and surface water supplies at San Bernardino NWR are adequately protected.

The Act and implementating regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions which apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the U.S. to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations codified at 50 CFR 17.22, 17.23, and 17.32 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened species under certain circumstances. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not avaiable. In addition, the two species proposed as threatened, the Yaqui catfish and beautiful shiner, have a special rule which will allow take for educational, scientific, or conservation purposes in accordance with applicable State laws and regulations. Any violation of applicable State law would be a violation of the Endangered Species Act. At present no State laws or regulations are applicable to the Yaqui catfish or beautiful shiner, because neither species is presently found in Arizona. When the reintroduction of

these species into Arizona waters occurs, the State will regulate taking in accordance with already existing laws and regulations regarding fishes. This special rule will allow these fishes to be managed as threatened species, thus allowing for more efficient management of the species, and enhancing their conservation. Without the special rule, all prohibitions of an endangered species status would apply.

The Service will review these species to determine whether they should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, implemented through section 8(A)(e) of the Act, and whether they should be considered for other international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for these fishes will not constitute a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These findings are based on a Determination of Effects which is available at the U.S. Fish and Wildlife Service Regional Office (see **ADDRESS** section).

The following information was considered in determining the economic and other impacts that might result from the determination of critical habitat.

Agriculture, primarily cattle production, constitutes the primary product of the areas surrounding the critical habitat. These activities are not expected to affect or be affected by the critical habitat designation on the San Bernardino NWR.

Some interest had been shown in potential geothermal resources in the vicinity of San Bernardino NWR. Geothermal drilling might possibly affect the underground aquifer supplying surface waters at San Bernardino NWR, the critical habitat of the Rio Yaqui fishes. Any exploration activities, however, are subject to regulation and licensing by the BLM. The adjacent area is not a KGRA and there are currently no leases or any interest in that area that would affect or be affected by the critical habitat designation.

The final critical habitat designation for the threatened and endangered Rio Yaqui fishes should cause no additional impacts upon the present economic status of Cochise County.

The final rule designating critical habitat for three fish species contain no recordkeeping or information collection requirements as defined by the Paperwork Reduction Act of 1980.

References

Arizona Game and Fish Commission. 1982. Threatened native wildlife in Arizona. Arizona Game and Fish Department Publication. 12 pp.

Branson, B.A., C.J. McCoy, Jr., and M.E. Sisk. 1960. Notes on the freshwater fishes of Sonora, with an addition to the known fauna. Copeia 1960:217–220.

Cheremisinoff, P.N., and A.C. Morresi. 1976. Geothermal energy technology assessment. Technomic Publishing Co., Inc., Westport, Connecticut. 164 pp.

Contreras-Balderas, S. 1975. Zoogeography and evolution of *Notropis lutrensis* and *"Notropis" ornatus* in the Rio Grande basin and range, Mexico and United States (Pisces: Cyprinidae). Unpubl. Ph.D. Dissertation, Tulane University, New Orleans, Louisiana. 156 pp.

Deacon, J.E., G. Kobetich, J.D. Williams, S. Contreras-Balderas. 1979. Fishes of North America endangered, threatened, or of special concern 1979. Fisheries 4:29–44.

Girard, C. 1856. Researches upon cyprinoid fishes inhabiting the fresh waters of the United States of America, west of the Mississippi Valley, from specimens in the museum of the Smithsonian Institution. Proceedings of the Academy of Natural Sciences of Philadelphia. 8:165–213.

Hahman, W.R. 1979. Geothermal reservoir site evaluation in Arizona. Bureau of Geology and Mineral Technology, Geological Survey Branch, Geothermal Group. Tucson, Arizona. 157 pp.

Hendrickson, D.A., W.L. Minckley, R.R. Miller, D.J. Siebert, and P.L. Haddock. 1980. Fishes of the Rio Yaqui Basin, Mexico and United States. Journal of the Arizona-Nevada Academy of Science 15(3):65–106.

Koster, W.J. 1957. Guide to the fishes of New Mexico. University of New Mexico Press, Albuquerque, New Mexico. 116 pp.

McNatt, R.M. 1974. Reevaluation of the native fishes of the Rio Yaqui in the United States. Proceedings 54th Annual Conference Western Association of State Game and Fish Commissioners. pp. 273–279.

Miller, R.R. 1977. Composition of the native fish fauna of the Chihuahuan desert region. *In:* Transactions of the Symposium on the Biological Resources of the Chihuahuan Desert Region, United States and Mexico. R.H. Wauer and D.H. Riskind (eds.), U.S. Department of the Interior, National Park

Service, Transactions of Proceedings Series 3:365–381.
Miller, R.R., and J.R. Simon. 1943. *Notropis mearnsi* from Arizona, an addition to the known fish fauna of the United States. Copeia 1943:253.
Minckley, W.L. 1973. Fishes of Arizona. Arizona Game and Fish Department, Phoenix, Arizona. 293 pp.
Rutter, C. 1896. Notes on the fresh water fishes of the Pacific Slope of North America. Proceedings California Academy Sciences 6:245–267.
Schoenherr, A.A. 1973. Life History of the topminnow *Poeciliopsis occidentalis* (Baird and Girard) in Arizona and an analysis of its interaction with the mosquitofish *Gambusia affinis* (Baird and Girard). Unpublished Ph.D. Dissertation. Arizona State University, Tempe.
Silvey, W. 1975. Fishes of Leslie Creek, Cochise County, Arizona. Statewide Fisheries Investigations, Statewide Survey of Aquatic Resources Federal Aid Project F–7–R–17, Arizona Game and Fish Department, Phoenix, Arizona. 11 pp.
U.S. Fish and Wildlife Service. 1979. Environmental assessment of the proposed land acquisition of San Bernardino Ranch, Cochise County, Arizona. U.S. Dept. of the Interior, Fish and Wildlife Service, Albuquerque, New Mexico. 59 pp.

Authors

The primary authors of this rule are Mr. Jim Bednarz, Ms. S.E. Stefferud, and Dr. James Johnson, U.S. Fish and Wildlife Service, Regional Office of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following entry in alphabetical order under "FISHES" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes							
*	*	*	*	*	*	*	*
Catfish, Yaqui	*Ictalurus pricei*	U.S.A. (AZ), Mexico	Entire	T	157	17.95(e)	17.44(g)
Chub, Yaqui	*Gila purpurea*	U.S.A. (AZ), Mexico	Entire	E	157	17.95(e)	N/A
Shiner, beautiful	*Notropis formosus.*	U.S.A. (AZ, NM), Mexico.	Entire	T	157	17.95(e)	17.44(g)
*	*	*	*	*	*	*	*

3. Amend § 17.95(e) by adding critical habitat of the Yaqui chub after chub, Spotfin:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Yaqui Chub *(Gila purpurea)*

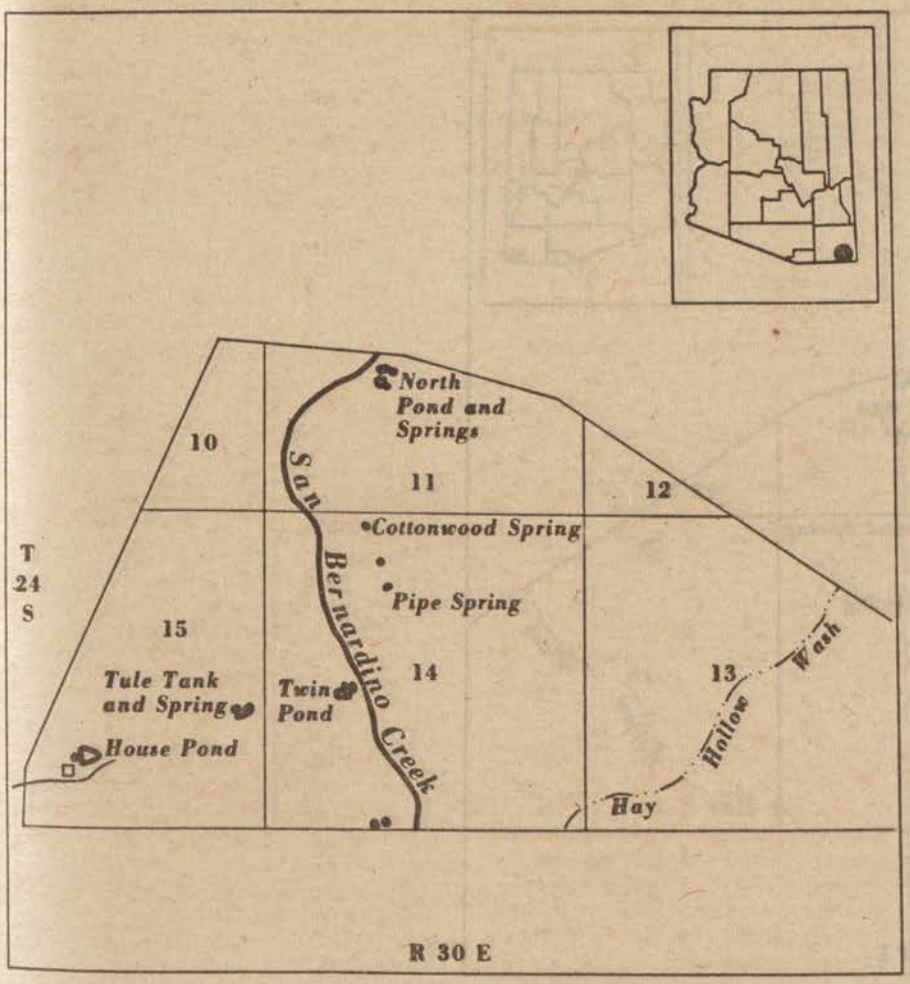
Arizona, Cochise County. All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S, R30E. Known constituent elements include clean permanent water with deep pools and intermediate areas with riffles, areas of detritus or heavily overgrown cut banks in the Rio Yaqui drainage, and the absence of introduced exotic fishes.

BEAUTIFUL SHINER

YAQUI CATFISH

YAQUI CHUB

Cochise County, ARIZONA



* * * * *

4. Amend § 17.95(e) by adding critical habitat of the beautiful shiner after Pupfish, Leon Sprinep:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Beautiful Shiner *(Notropis formosus)*

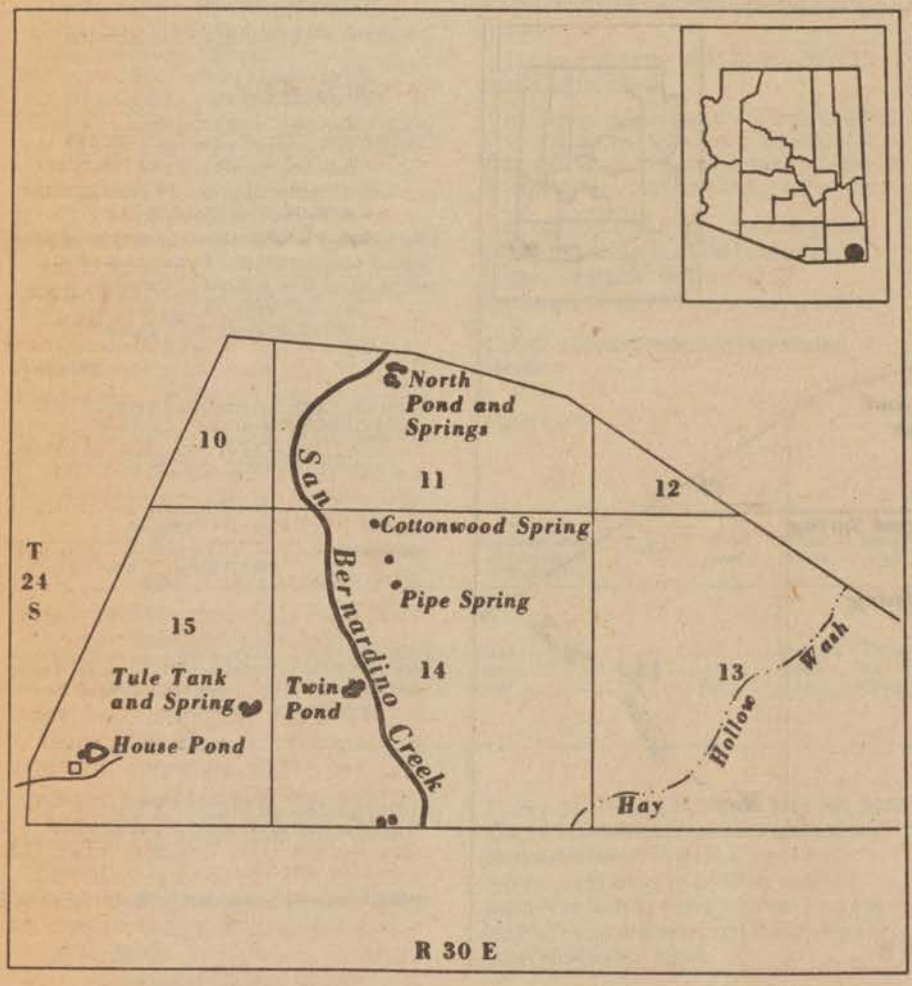
Arizona, Cochise County. All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S, R30E. Known constituent elements include small permanent streams with riffles, or intermittent creeks with pools and riffles in the Rio Yaqui drainage with clean unpolluted water. These waters should be free of introduced exotic fishes.

BEAUTIFUL SHINER

YAQUI CATFISH

YAQUI CHUB

Cochise County, ARIZONA



* * * * *

5. Amend § 17.95(e) by adding critical habitat of the Yaqui catfish before Cabefish, Alabama:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Yaqui Catfish *(Ictalurus pricei)*

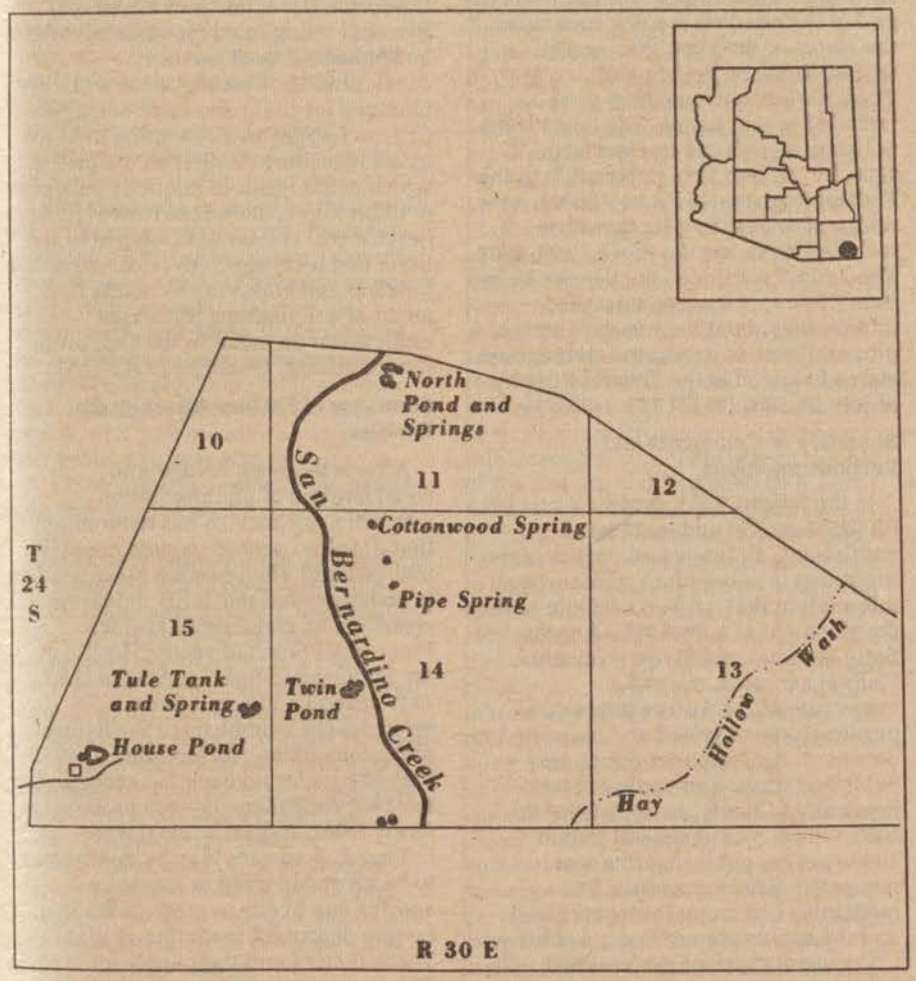
Arizona, Cochise County. All aquatic habitats of San Bernardino NWR in S½ Sec. 11; Sec. 14; S½ and NE¼ Sec. 15; T24S, R30E. Known constituent elements include clean unpolluted permanent water in streams with medium current with clear pools in the Rio Yaqui drainage. These waters should be without introduced exotic fishes.

BEAUTIFUL SHINER

YAQUI CATFISH

YAQUI CHUB

Cochise County, ARIZONA



* * * * *

6. Amend § 17.44 by adding a new paragraph (h) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(h) Yaqui catfish (*Ictalurus pricei*) and beautiful shiner (*Notropis formosus*).

(1) All provisions of § 17.31 apply to these species, except that they may be taken for educational, scientific, or conservation purposes in accordance with applicable Arizona State laws and regulations.

(2) Any violation of State law will also be a violation of the Endangered Species Act.

Dated: August 6, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-22933 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Thelypodium stenopetalum (slender-petaled mustard) and Sidalcea pedata (pedate checker-mallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Thelypodium stenopetalum* (slender-petaled mustard) and *Sidalcea pedata* (pedate checker-mallow) to be endangered species. This action is being taken because over 85 percent of the historic meadowland habitat for these plants has been eliminated by dam construction and urban and commercial development. Most of the remaining habitat in their limited range is subject to development and/or adverse modification. The designation of these species as endangered provides the protection of the Endangered Species Act of 1973, as amended.

EFFECTIVE DATE: The effective date of this rule is October 1, 1984.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Office, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131).

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, Endangered Species Specialist, Regional Office, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131).

SUPPLEMENTARY INFORMATION:

Background

Sidalcea pedata (pedate checker-mallow) is a multi-stemmed, perennial herb of the mallow family. Asa Gray first described this species in 1887 from "Bear Valley in the San Bernardino Mountains, southern California." It grows from a fleshy taproot. The leaves are predominately basal with 3-5 lobes. The few cauline leaves are three-parted, each part biternately dissected into linear segments. The flowers are clustered into loosely spicate racemes

up to 25 cm long with deep pinkish-rose petals. *Thelypodium stenopetalum* (slender-petaled mustard) is an herbaceous short-lived perennial. Sereno Watson described this mustard in 1887 from "Bear Valley, San Bernardino Mountains, on stony hillsides near the upper lake." It has simple decumbent to subdecumbent stems 3–8 dm tall. The cauline leaves are oblong-lanceolate, 1–5 cm long, 0.5–0.9 cm wide and sagittate at the base. The inflorescence is a 1–2 dm long raceme. The flower petals are mostly lavender or whitish and crisped above. The sessile fruits are straight or slightly incurved, 3–5 cm long and ascending. Both of these plant species are localized in the moist alkaline meadows of the Big Bear Basin of San Bernardino County, California.

Although these species were once more abundant locally, the impoundment of Big Bear Lake in the late 1800's and subsequent urbanization have eliminated nearly all of the natural meadowlands of Big Bear Valley, an estimated reduction from more than 7,000 acres to about 1,000 acres. Most of the known stands of checker-mallow and mustard plants were destroyed by these activities. Almost all of the former wet meadow habitats necessary to the continued existence of these species have been eliminated. Both species now exist as very reduced populations having severly restricted distributions.

Studies supported by the U.S. Forest Service (Krantz, 1979) and later studies (Krantz, 1982) have estimated total occupied acreage for the pedate checker-mallow (including scattered residual plants) at about 14.5 acres. Total acreage of slender-petaled mustard populations has been estimated at approximately 16 acres divided among six sites in four general areas (Krantz, 1979, 1980, 1982).

At present the pedate checker-mallow remains in significant numbers only at three locations near Bluff Lake, Baldwin Lake, and the south shore of Big Bear Lake, all of which are under private ownership. Scattered individuals can also be found in a few other areas, mostly vacant lots or remnant meadows surrounded by housing or commercial developments. Such scattered plants apparently do not reproduce and are expected to die out.

The slender-petaled mustard is now known from only four locations, the south shore of Big Bear Lake, near Baldwin Lake, near Erwin Lake, and in Holcomb Valley. The first three are privately owned and under consideration for additional development. The fourth site, Holcomb Valley on National Forest land, was threatened by off-road vehicle (ORV) use. The Forest Service is aware of this population and has implemented protective measures at the site.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congresss on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) of the 1973 Act, and of its intention thereby to review the status of the plant taxa named within. *Sidalcea pedata* and *Thelypodium stenopetalum* were included in that notice. The July 1, 1975, notice was replaced on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82479) of a new notice of review for plants, which included these species. On July 28, 1982, Tim Krantz petitioned the Service to list both these species, and furnished information about their current status. A proposed rule to determine endangered status followed in the **Federal Register** of July 15, 1983 (48 FR 32522–32525).

Summary of Comments and Recommendations

In the July 15, 1983, proposed rule (48 FR 32522–32525) and associated notifictions, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Sun paper of San Bernardino County on September 9, 1983, which invited general public comment. No public hearing was requested. Seven responses (six containing comments) were received, and the comments are discussed below.

Comments by four professional botanists and one geologist strongly supported the listing of both plant species. A botanist with a State native plant society indicated that habitat conditions have deteriorated further since the status surveys of 1978–80. A university botanist also mentioned additonal documented habitat loss and present peril of these plants. A representative of a botanical journal pointed out that mountain meadows tend to be fragile and to recover their full floristic complement quite slowly after being overused. He considered protection of such areas to be essential. A professional geologist discussed the distinctive "pavement" soil profile in the Big Bear area and its concomitant unique flora. Because deep disturbances of the soil profile can permanently destroy the pavement habitat, he suggested that other rare pavement endemics be listed as well. No particular species were named by this commentor, but the Service presently has several species restricted to that general area under review, and would appreciate additional information regarding any of them.

An additional comment by the California Department of Water Resources suggested that critical habitat be designated to allow early consideration of these species in future planning for State and local activities. Critical habitat was not designated to avoid focusing attention on the plants, which could result in injurious collection or other taking activities. However, the Service will endeavor to keep affected State and local agencies informed of the location and status of the plants that might affect planning processes undertaken pursuant to the California Environmental Quality Act (CEQA).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Sidalcea pedata* (pedate checker-mallow) and *Thelypodium stenopetalum* (slender-petaled mustard) should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Sidalcea pedata* A. Gray (pedate checker-mallow) and *Thelypodium stenopetalum* Watson (slender-petaled mustard) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* These two plant species are both restricted in range to the few remaining wet alkaline meadows of the Big Bear Lake Basin. Both species occur in very low numbers and most of the wet meadows necessary for their continued existence have been eliminated by urban and commercial developments. About 80 percent of the

remaining habitat is subject to development, much of it anticipated in the next few years. In a few areas, off-road vehicle activity has also eliminated colonies and damaged habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable to either of these species.

C. *Disease or predation.* Historically, cattle grazing in the Big Bear Lake basin probably affected the species composition of many of the meadow areas formerly supporting these plants. A few of the remaining colonies of both species still suffer possible adverse impacts from cattle grazing, but this threat appears less imminent than the development threats mentioned in Factor A above.

D. *The inadequacy of existing regulatory mechanisms.* Although the pedate checker-mallow and slender-petaled mustard are listed by the State of California as endangered, State law principally addresses salvage of plants when there is a change in land use and restrictions on trade, and does not provide sufficient protection to ensure survival of the species in its natural habitat. Federal listing would provide some additional protection for both species, and provide new options for their protection and management.

E. *Other natural or manmade factors affecting its continued existence.* None known.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the pedate checker-mallow and the slender-petaled mustard as endangered. Urban and commercial development threaten to eliminate wet meadow habitats that support the plants. These listing actions will increase the protection of both plant species. Critical habitat is not being designated for either species because it may focus attention on the plants and might encourage taking.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. All known colonies of pedate checker-mallow and all but one colony of slender-petaled mustard occur on private lands, where direct Federal involvement is minimal. Critical habitat designation would probably focus attention upon the listed plants and their rare and vulnerable status, and might encourage collection for private or commercial purposes. The danger thus posed to these species by the designation of critical habitat outweights the minimal protections that would be provided.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that conservation actions be carried out for all listed species. Such actions are initiated by the Service following listing.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Some consultation involving actions on Forest Service lands is anticipated. A consultation will be conducted for issuance of a special use permit for a permanent pipeline carrying wastewater from the Big Bear Basin to Lucerne Valley that now crosses Forest Service property. No other actions are presently known that would require a consultation under section 7.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to the pedate checker-mallow and slender-petaled mustard, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activites involving endangered species under certain circumstances. It is anticipated that few trade permits will ever be sought or issued since these species are not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to posession of endangered plant species from areas under Federal jurisdiction. The new prohibition now applies to the slender-petaled mustard on U.S. Forest Service lands in the Holcomb Valley. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417). Permits for exceptions to this prohibition are available through section 10(a)(1)(A) of the Act. It is anticipated that few permits for the removal and reduction to possession of the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

The Service will review these species to determine whether they should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8(A)(e) of the Act, and whether they should be considered for other appropriate international agreements.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined in regulations implementing the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Krantz, T.P. 1979. A botanical investigation of *Sidalcea pedata*. Prepared for the San Bernardino National Forest. 24 pp. unpubl. rept.

Krantz, T.P. 1980. *Thelypodium stenopetalum*, the slender-petaled mustard: a botanical survey of the species throughout its range.

Prepared for the San Bernardino National Forest. 43 pp. + appendices, unpubl. rept.
Krantz, T.P. 1982. Petition for listing as Endangered-*Sidalcea pedata* and *Thelypodium stenopetalum*. Petition to U.S. Fish and Wildlife Service, dated 22 July 1982. 10 pp.

Authors

The primary authors of this rule are Mr. Monty D. Knudsen and Dr. Kathleen E. Franzreb, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, Sacramento, California (916/440–2791). Dr. George E. Drewry of the Service's Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order by family and genus, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* *	*	*	*	*		*
Brassicaceae—Mustard family:						
* *	*	*	*	*		*
Thelypodium stenopetalum	Slender-petaled mustard	U.S.A. (CA)	E	158	NA	NA
* *	*	*	*	*		*
Malvaceae—Mallow family:						
* *	*	*	*	*		*
Sidalcea pedata	Pedate checker-mallow	U.S.A. (CA)	E	158	NA	NA
* *	*	*	*	*		*

Dated: August 6, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–23156 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Deregulate the Bahama Swallowtail Butterfly and To Reclassify the Schaus Swallowtail Butterfly From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service make a final determination to remove the Bahama swallowtail butterfly (*Heraclides (Papilio) andraemon bonhotei*) from the U.S. List of Endangered and Threatened Wildlife, and to reclassify the Schaus swallowtail butterfly (*Heraclides (Papilio) aristodemus ponceanus*) from threatened to endangered status. The action is taken under the authority of the Endangered Species Act of 1973, as amended. Both species occur in Dade and Monroe Counties, Florida, and were listed as threatened species in 1976. A recent review of the status of each of these species indicates that the Bahama swallowtail is only a sporadic resident of the United States. It is not subspecifically distinct from the non-threatened Bahaman population of this species and does not presently qualify for listing under the Endangered Species Act, as amended. The Schaus swallowtail has declined in numbers and range since the time of its listing. This action is consistent with a petition filed with the Service on March 9, 1983, by the Florida Game and Fresh Water Fish Commission, and also follows the recommendations of the approved Schaus swallowtail butterfly recovery plan. This rule removes the protection of the Endangered Species Act from the Bahama swallowtail, and affords the Schaus swallowtail the protection of endangered status. Neither species remains eligible for a special rule at 50 CFR 17.47 that permits non-commercial take of adults, so that special rule is deleted.

EFFECTIVE DATE: The effective date of this rule is October 1, 1984.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours (7:00 a.m.–4:30 p.m.) at the Service's Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The Bahama (*Heraclides (Papilio) andraemon bonhotei*) and Schaus (*Heraclides (Papilio) aristodemus ponceanus*) swallowtail butterflies are representatives of tropical species which reach their northern limits of distribution in southern Florida. The Bahama swallowtail was described by Sharpe in 1900. It has dark brown wings with a median yellow band and has two pairs of tails on the hindwings. The Schaus swallowtail was described by Schaus in 1911. Adults have blackish-brown wings with broad rusty patches under the hindwings. Only one pair of tails is present. The primary food of the larval Schaus swallowtail is torchwood (*Amyris elemifera*), while the larval Bahama swallowtail feeds on key lime (*Citrus aurantifolia*) and various *Ruta* and *Xanthoxylum* species.

The Bahama swallowtail has been recorded from Miami and Elliott Key, Dade County, and from Key Largo and Long Key, Monroe County. Most of the records are from Elliott Key. The best available evidence indicates that this species is not a permanent resident of the U.S., nor is it subspecifically distinct from the resident *Heraclides andraemon bonhotei* population in the Bahamas. This species has occasionally reproduced in the U.S., but apparently soon dies out. The most recent known breeding in the U.S. was on Elliott Key in 1972 (U.S. Fish and Wildlife Service, 1982).

The Schaus swallowtail originally occurred from the Miami area south through the Florida Keys as far as Lower Matecumbe Key. The last records from Miami were in 1924. Presumably, urban development eliminated the habitat of the species there. The last records for Upper and Lower Matecumbe Keys were in the mid-1940's.

The disappearance of the species from these Keys apparently coincided with heavy collecting pressure, although collecting is not known to have caused the decline. In the early 1970's, the butterfly was relatively abundant on north Key Largo, but appears to be rare there now. The known range of the Schaus swallowtail is now Elliott and Old Rhodes Keys in Biscayne National Park, Dade County, and north Key Largo, Monroe County (Loftus and Kushlan, 1982; U.S. Fish and Wildlife Service, 1982).

Both the Bahama and Schaus swallowtail butterflies are restricted to tropical hardwood hammocks, which constitute the climax vegetation of upland areas in the Florida Keys. Formerly, this vegetation type occurred more widely in south Florida, but has been largely eliminated on the mainland. The hammocks are closely related floristically to the West Indies, and constitute the only tropical upland

plant community found in the continental U.S. The Florida Keys contain the largest remaining hammocks, but many of the areas are highly subject to development pressures because of restrictions on development in the surrounding lowland (mangrove) areas. Local, State, and Federal laws presently limit development on these wetlands. The hammocks contain a large number of plant species rare to Florida, many of which are considered threatened or endangered by this State. The tropical hardwood hammock plant community is considered to be one of the most restricted and vulnerable habitat types in the U.S.

Both butterflies were proposed for listing as federally threatened on April 22, 1975 (40 FR 17757). The proposal was made final on April 8, 1976 (41 FR 17736). The final regulation included a special rule at 50 CFR 17.47(a) exempting both species from some of the protective provisions available to threatened species under 50 CFR 17.31. Non-commercial take of adults was allowed, provided that other local, State, and Federal regulations were complied with. Chapter 39–27 of the Florida Administrative Code, however, presently lists the Bahama and Schaus swallowtail butterflies as threatened, and prohibits take, possession, sale or transport of all life stages of these species, except by permit. The Federal special rule is superseded by Florida State legislation, because the special rule allows take of adults only where the take would be in compliance with all other local, State, and Federal regulations. Section 6(f) of the Endangered Species Act allows State taking prohibitions to be more restrictive than those imposed by the Act or its implementing regulations.

Section 4(c)(2) of the Endangered Species Act, as amended, requires that a 5-year review of the List of Endangered and Threatened Wildlife be carried out to determine whether any species should be removed from the list or changed in status. A 5-year review notice for the Bahama and Schaus swallowtail butterflies was published by the Service in the February 27, 1981, **Federal Register** (46 FR 14652).

At the time the Bahama swallowtail was listed, the Endangered Species Act allowed protection for distinct population segments of all types of wildlife. The 1978 Amendments to the Act restricted protection at the population level to vertebrates. Since the U.S. populations of the Bahama swallowtail are not subspecifically distinct from the Bahaman populations, and since the subspecies *bonhotei* is not in danger of extinction throughout all or a significant portion of its range, the Act, as amended, requires that this species be removed from the List of Endangered and Threatened Wildlife.

The Florida Game and Fresh Water Fish Commission recently carried out research on the status of the Bahama and Schaus swallowtail butterflies. The studies were funded in part with funds provided by the Service under Section 6 of the Endangered Species Act. The results of this research were incorporated into a recovery plan for the Schaus swallowtail butterfly, including recommendations for the Bahama swallowtail (U.S. Fish and Wildlife Service, 1982). The plan recommended that the Bahama swallowtail be delisted, and that the Schaus swallowtail be reclassified from threatened to endangered, based on its decline in numbers and distribution.

In a petition dated February 23, 1983, and received March 9, 1983, the Florida Game and Fresh Water Fish Commission requested that the Schaus swallowtail be reclassified as an endangered species. An administrative finding that the requested action might be warranted was made on May 9, 1983.

On August 29, 1983, the Service published in the **Federal Register** (48 FR 39096) a proposal to delist the Bahama swallowtail and to reclassify the Schaus swallowtail butterfly from threatened to endangered. Publication of this proposed rule signified that the requested action was warranted, and constituted a required finding in accordance with section 4(b)(3)(B)(ii) of the Act as amended in 1982.

Summary of Comments and Recommendations

In the August 29, 1983, proposed rule (48 FR 39096) and associated notifications, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the Miami, Florida, *Herald* on September 25, 1983, and in the Tavernier, Florida, *Keynoter* on September 22 and 29, 1983; general comment on the proposal was invited. Eight comments were received.

Florida's Department of Natural Resources (Division of Parks and Recreation) and Department of Agriculture and Consumer Services (DACS) supported the proposals. DACS noted, however, that *Heraclides aristodemus* specimens from Andros Island in the Bahamas appeared to be indistinguishable from those in the Florida Keys. Bahaman populations of *Heraclides aristodemus* are presently ascribed to the subspecies *driophilus*. Another commenter, a lepidopterist, also supported the proposal. He indicated that there was evidence that the Cuban population of *Heraclides ponceanus* (presently ascribed to the subspecies *telmenes*), might also be identical to the Florida populations of *ponceanus* but that there is not presently sufficient data to substantiate this. The Service responds that, with respect to the taxonomic status of *Heraclides aristodemus*, the current scientific literature considers *Heraclides aristodemus ponceanus* to be restricted to the Keys of Monroe and Dade Counties, Florida. If at any time revisionary work were to indicate that *ponceanus* should be synonymized with one or more of the other subspecies of *Heraclides aristodemus*, the Service would review the status of the Schaus swallowtail with respect to section 4(a) of the Endangered Species Act. If the taxon were not in danger of extinction throughout all or a significant portion of its range, or likely to become endangered in the foreseeable future, it would no longer qualify for the protection of the Endangered Species Act. For example, if the butterfly were determined to be widespread and abundant in Cuba and the Bahamas, with no serious threat to its continued existence on these islands, the Florida population would not be eligible for the protection of the Act.

Support for the proposals was also received from the Florida Natural Areas Inventory, the National Park Service (Biscayne National Park), the International Union for Conservation of Nature and Natural Resources (Conservation Monitoring Centre) and two private citizens.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Bahama swallowtail should be removed from the U.S. List of Endangered and Threatened Wildlife, and that the Schaus swallowtail butterfly should be reclassified from threatened to endangered status. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments to the Act—see

proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Bahama swallowtail butterfly (*Heraclides andraemon bonhotei*) and Schaus swallowtail butterfly (*Heraclides aristodemus ponceanus*) are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Bahama swallowtail occurs throughout the Bahama Islands. There is no information indicating any threat to the species throughout its range.

Development for residential and recreational purposes threatens to modify or eliminate tropical hardwood forest hammocks on which the Schaus swallowtail depends. Uplands in the Florida Keys, though limited in area, are of much development interest due to the many wetland (mangrove) areas that are virtually impossible to develop. The entire range of this butterfly is vulnerable to modification or destruction from hurricanes. As the range of the species becomes increasingly limited and fragmented, the likelihood of a single hurricane destroying all or most of the remaining population increases.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Both the Bahama and Schaus swallowtail butterflies are popular with collectors. Although a few individuals of the Bahama swallowtail may occasionally be collected when this species appears in Florida, there is no information indicating that the species is threatened by overutilization in the Bahamas.

At the time of the listing of the Schaus swallowtail as a threatened species, some correspondents believed that collection of this species represented a threat. Since the species was listed, it has decreased in range and numbers. Collecting is now probably a greater threat than at the time of listing.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* This final rule removes the Bahama swallowtail butterfly from the protection of the Endangered Species Act. Federal listing as threatened and similar state listing under Chapter 39–27.04 of the Florida Administrative Code both provide regulatory protections for the Schaus swallowtail butterfly, but its population has generally declined, even subsequent to listing. Reclassification from threatened to endangered will benefit the Schaus swallowtail by giving increased priority to its recovery needs, pursuant to section 4(g)(4) of the Act, as amended.

E. *Other natural or manmade factors affecting its continued existence.* The Bahaman segment of the Bahama swallowtail populations provides it with insurance against the risk of extinction. The Schaus swallowtail could lose a significant portion of its remaining populations from hurricanes or frost. The range of this species has decreased substantially in recent decades. The present restricted range could be greatly reduced or eliminated by a single hurricane. The Schaus swallowtail is near the limits of its cold-tolerance in south Florida, and a single severe freeze could also greatly reduce the population.

Insecticide application may have adverse affects on the Schaus swallowtail. The Monroe County Mosquito Control District applies insecticides to control adult and larval mosquitoes. Both ground and aerial applications are made. The large amount of insecticides applied annually in Monroe County (4–5 thousand gallons of Dibrom and Baytex mixed with 50–60 thousand gallons of diesel fuel) could adversely affect the Schaus swallowtail as well as other insects native to the hardwood hammocks.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to reclassify the Schaus swallowtail butterfly from threatened to endangered status and to remove the Bahama swallowtail butterfly from the U.S. List of Endangered and Threatened Wildlife. The Schaus swallowtail has declined since the time it was listed as threatened; the Bahama swallowtail no longer biologically or legally qualifies for the protection of the Endangered Species Act. The reason for not designating critical habitat for the Schaus swallowtail is discussed in the following section. A decision to take no action would leave both species in inappropriate status. Therefore, no action would be contrary to the Act's intent.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time any species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Schaus swallowtail butterfly. Section 4(b) of the Act requires publication of critical habitat maps in the **Federal Register.** Publication of critical habitat descriptions would make this species even more vulnerable to collecting and other pressures and would increase enforcement problems. Though taking prohibitions exist, effective enforcement is difficult, particularly outside Biscayne National Park. For these reasons, the recovery plan for the Schaus swallowtail butterfly expressly recommends that no publicity be given to the remaining colonies of this species. Therefore, it would not be prudent to determine critical habitat for the Schaus swallowtail butterfly at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below. These conservation measures will no longer apply to the Bahama swallowtail butterfly.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 9, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into consultation with the Service. Since the Schaus swallowtail is already protected by section 7 of the Act by its listing as a threatened species, reclassifying the species to endangered will not affect this requirement.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered

wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits my be issued to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

A special rule (50 CFR 17.47(a), pursuant to section 4(d) of the Act) previously allowed non-commercial take of both the Bahama and Schaus swallowtail butterflies. These exemptions applied, however, only if concordant with State and local regulations and ordinances. Florida State law presently prohibits collecting these species except by permit, thus overriding the special rule.

This final rule removes all Federal protection for the Bahama swallowtail, and, by deleting the special rule for the Schaus swallowtail butterfly, brings existing Federal regulatory prohibitions into conformance with current State law. Few effects are anticipated from this change; the Bahama swallowtail is an occasional migrant to the U.S. and few specimens could be taken here. No additional effects are expected regarding the Schaus swallowtail, because take is already prohibited by State law except under permit.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

Loftus, W.F., and J.A. Kushlan. 1982. The status of the Schaus swallowtail and the Bahama swallowtail butterflies in Biscayne National Park. National Park Service, South Florida Research Center, Everglades National Park. Report M–649. 18 pp.

U.S. Fish and Wildlife Service. 1982. Schaus swallowtail butterfly recovery plan. U.S. Fish and Wildlife Service, Atlanta, Georgia. 57 pp.

Author

The primary author of this final rule is Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580). Dr. George E. Drewry of the Service's Washington Office served as editor.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by changing the status of the Schaus swallowtail butterfly, under "INSECTS," from threatened to endangered; changing its scientific name, to reflect current usage, and revising the "special rules" column, as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
Insects:	•	•	•	•	•		•
Butterfly, Schaus swallowtail.	*Heraclides (Papilio) aristodemus ponceanus.*	U.S.A. (FL)	NA	E	13,159	NA	NA
•	•	•	•	•	•		•

3. Further amend § 17.11(h) by removing the Bahama Swallowtail butterfly *(Papilio andraemon bonhotei)*, under "INSECTS," from the list of Endangered and Threatened Wildlife.

§ 17.47 [Reserved]

4. Section 17.47 is removed and reserved.

Dated: August 14, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–23157 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–55–M

---

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Key Largo Woodrat and Key Largo Cotton Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Key Largo woodrat and cotton mouse, two small mammals native to Key Largo, Monroe County, Florida. Destruction and alternation of tropical hardwood hammock forest, to which both species are restricted, is a threat to their continued existence. Both were listed as endangered by an emergency rule on September 21, 1983, but that rule expired on May 18, 1984. This final rule restores the protection of the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is August 31, 1984 because the Service considers that the period between the expiration of the emergency rule covering the Key Largo woodrat and cotton mouse, and the implementation of this permanent final rule, should be as brief as possible because of the threats facing these species.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours (7:00 a.m.—4:30 p.m.) at the Service's Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Flordia 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered

Species Field Supervisor, at the above address (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The Key Largo woodrat (*Neotoma floridana smalli*) was described by Sherman (1955). It is a small mammal, just over a foot in length including the haired tail, and the overall coloration is gray-brown above and white below. It is the southernmost subspecies of woodrat in the U.S., and is separated by a 150-mile gap from other Flordia woodrat (*N. f. floridana*) populations. The Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*) was described by Schwartz (1952). It is about half as long as the woodrat, and its coloration is reddish brown above and white below. Both the woodrat and cotton mouse are endemic to Key Largo, Monroe County, Florida, and originally occurred throughout the hardwood hammocks on this Key, but have disappeared from most of their original range. Both species were introduced to Lignumvitae Key, Monroe County, Florida, in 1970. The woodrat may have reached the carrying capacity of the available habitat on this 90-hectare (220-acre) key, a State botanical site, but the status of the cotton mouse there is unknown. The Florida Department of Parks and Recreation had considered relocating the woodrat and cotton mouse from Lignumvitae Key, because neither species is native there. No such translocation efforts are presently planned, however.

The upland areas that the woodrat and cotton mouse inhabit on north Key Largo reach an elevation of about 4 meters (13 feet). The uplands support a rich biota, including many rare plant species. The climax vegetation type is a hardwood hammock forest with close floristic affinities to the West Indies. The hammocks are restricted to upland areas because they do not tolerate the intrusion of salt water in the tidal lowland areas.

Species associated with the north Key Largo hammocks include the Schaus swallowtail butterfly (*Papilio aristodemus ponceanus*), federally threatened; and several Florida State-listed plant species: tamarindillo (*Acacia choriophylla*), powdery catopsis (*Catopsis berteroniana*), prickly apple (*Cereus gracilis* var. *simpsonii*, a cactus which the Service presently has under review (48 FR 53647, November 28,1983) for possible listing as endangered or threatended), silver palm (*Coccothrinax argentata*) lignum-vitae (*Guaiacum sanctum*), inkwood (*Hypelate trifoliata*), mahogany mistletoe (*Phoradendron rubrum*), and brittle thatch palm (*Thrinax microcarpa*).

Tropical hardwood hammocks develop a closed canopy when they are mature, providing a more moderate, humid environment than the surrounding habitats. The Key Largo woodrat and cotton mouse are restricted to these hammocks. Tropical hardwood hammocks were originally found from Key West northward into the southern peninsula of Florida. Many of the hardwood hammocks on the peninsula, however, have been destroyed due to human activities. This habitat is one of the most limited and threatened ecosystems in Florida. The hammocks on north Key Largo represent some of the larges remaining tracts of this vegetation type. Based on work carried out on Key Largo from 1968 to 1973, Brown (1978) reported that the Key Largo woodrat had been extirpated by fires and development from the southern two-thirds of Key Largo.

Hersh (1981) studied the ecology of the woodrat on north Key Largo. Woodrat densities on a 5.25-hectare (13-acre) study area varied between 2 and 2.5 woodrats per hectare (0.8–1.0 woodrat per acre). Mean home range was 0.2368 hectares (0.6 acre). Each woodrat used several stick nests (about 5.6 nests per woodrat). Woodrats fed on leaves, buds, seeds, and flowers of a variety of plants.

Based on studies carried out on north Key Largo from January to August of 1979, Barbour and Humphrey (1982) found that the woodrat and cotton mouse were most abundant in mature hammocks and were rare or absent in young or recovering hammocks. Cotton mouse density was estimated to be 21.8 mice per hectare (8.8 per acre) in mature forest, but only 1.2 per hectare (0.5 per acre) in successional forest. About 463 hectares (1144 acres) on north Key Largo were occupied by woodrats. Stick nests were absent from two hammocks surveyed southwest of the U.S. 1–State Route 905 intersection. The total woodrat population on north Key Largo was estimated to be 654; the introduced population on Lignumvitae Key was estimated to be 85.

On May 19, 1980, Dr. Stephen R. Humphrey of the Florida State Museum, Gainesville, Florida, petitioned the Service to add the Key Largo woodrat and cotton mouse to the U.S. List of Endangered and Threatened Wildlife, pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The petition included a status report prepared under contract to the Florida Game and Fresh Water Fish Commission. Portions of the report were recently published (Barbour and Humphrey 1982). In the **Federal Register** of July 28, 1980 (45 FR 49961–49962), the Service published a notice of petition acceptance and status review, and announced its intention to propose listing the two Key Largo rodents. In the **Federal Register** of December 30, 1982 (47 FR 58454–58460), these two mammals were included in category 1 of the Service's Review of Vertebrate Wildlife, meaning that there was sufficient information on hand to support the biological appropriateness of a listing proposal. In the **Federal Register** of September 21, 1983 (48 FR 43040–43043), the Service issued an emergency rule listing both species as endangered (for details, see below under "Available Conservation Measures"). The emergency rule expired on May 18, 1984. In the **Federal Register** of February 9, 1984 (49 FR 4951–4956), the Service published a proposed permanent determination of endangered status and critical habitat for the two species.

Summary of Comments and Recommendations

In the proposed rule of February 9, 1984, and associated notifications, all interested parties were requested to submit information that might contribute to the development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting public comment, were published in the *Miami Herald* on February 29, 1984, the *Marathon Keynoter* on March 1, 1984, and the *Key West Citizen* on March 2, 1984. On March 12, 1984, the Service received a request for a public hearing on the proposal. The hearing was held on April 24, 1984, in the Plantation Key Courthouse, Monroe County, Florida.

During the comment period, 62 comments were received. The hearing was attended by 118 persons; 33 individuals made oral statements, and 12 written statements were handed in. Official comment was received from the Florida Game and Fresh Water Fish Commission, which supported the proposal.

A large number of comments or oral statements either supported or opposed listing these species, but provided no substantive data. Support for the listing proposal was voiced by six environmental organizations. Opposition was generally received from landowners, attorneys representing landowners, realtors, and businesses. One individual also presented a petition

signed by 157 persons opposing the proposal.

The opposing comments received can be placed in a number of general groups, depending on content. These categories of comments, and the Service response to each, are listed below.

1. The Key Largo woodrat and/or cotton mouse should not receive the protection of the Endangered Species Act because rodents are pest species and have no intrinsic value to mankind. Some persons stated that Key Largo woodrats had invaded their homes.

Service response. Any species of native wildlife or plant (except a pest insect) is eligible, under the appropriate circumstances, for the protection of the Endangered Species Act. Economic value to mankind is not a factor that the Service may consider in determining whether to list endangered or threatened species. The Key Largo woodrat and cotton mouse are native rodents that generally avoid contact with humans. They have not been implicated in spreading disease to humans. The comments referring to rat problems appear to involve the black rat (*Rattus rattus*), an introduced pest species that is common in and around human dwellings in the Keys. The black rat also occurs in hardwood hammocks on north Key Largo (Hersh, 1981). The Service has no documented evidence of woodrats invading human dwellings.

2. Sufficient habitat for the conservation of the Key Largo woodrat and cotton mouse is included within areas scheduled for acquisition by the Federal (U.S. Fish and Wildlife Service) or Florida State (Department of Natural Resources) governments.

Service response. The Key Largo woodrat and cotton mouse have already disappeared from most of their original range. The scheduled acquisitions, if completed, would improve the potential for conserving the surviving populations, but would not eliminate the danger of extinction. As proposed, these acquisitions would include about 630 acres of hardwood hammocks supporting an estimated 318 woodrats, 49 percent of the total population of 654 woodrats estimated by Barbour and Humphrey (1982) for north Key Largo. At this time, acquisition of less than 150 acres of hammock has taken place. Fifty-one percent of the estimated total woodrat population on north Key Largo (336 woodrats) occurs in areas outside the proposed acquisition projects. These areas represent most of the highest density populations of the woodrat. Similar population percentages presumably apply to the cotton mouse. Although populations of both species would probably reach higher densities in the acquisition areas as hardwood hammocks matured, the most favorable habitat is now outside the acquisition projects.

Two commenters noted that Brown (1978) suggested that preservation of a few hundred acres of climax tropical hammock on north Key Largo would be sufficient to save the Key Largo woodrat and cotton mouse, and that, failing this, introduction of both species could be made to Old Rhodes Key or Elliott Key in Key Biscayne National Park. The Service believes that more than a few hundred acres of hardwood hammock would be required for the long-term survival and recovery of the Key Largo woodrat and cotton mouse. Transplanting is discussed below under "3." Although the Service provided part of the funding for the publication in which Dr. Brown's species accounts and recommendations appeared (See "Literature Cited," below), the contributors to the publication did not represent the Service or its policies, and the Service is not in any way restricted to the conservation recommendations made in the publication.

3. The Lignumvitae Key State Botanical Site, as well as potnetial introduction sites in Key Biscayne National Park (or elsewhere in the Florida Keys) could provide adequate habitat for the conservation of the Key Largo woodrat and cotton mouse, negating the need to list them.

Service response. The seemingly successful introduction of the Key Largo woodrat onto Lignumvitae Key indicates that this species might be able to colonize other hardwood hammocks in the upper Florida Keys. The principal hardwood hammocks remaining in the upper Keys, other than those on north Key Largo, are those of Key Biscayne National Part in Dade County. However, while transplantation to these areas may be a supplementary means of helping the species to survive, the Service must also act to preserve the ability of the species to exist in its current range. One of the primary purposes of the Endangered Species Act is to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved (16 U.S.C. 1531(b)). In accordance with this purpose, the Service 's policy is to attempt to conserve and recover endangered and threatened species within their known historic ranges. While transplantation of species may be a valuable conservation measure, it is not an acceptable procedure to preclude listing. Furthermore, any Service recovery efforts for these species could only take place if they were listed. Regardless of the merit of any transplantation proposals, the Service can commit Endangered Species Act funding and manpower only for the recovery of listed species. After a species is listed, the Service prepares a recovery plan; recovery activities could include, but would not ordinarily be restricted to, transplantation.

4. The Key Largo woodrat and cotton mouse are adequately protected by existing local, State, and Federal regulations (namely, designation of the Florida Keys as an Area of Critical State Concern, regulations affecting dredge and fill activities, customer service policies of the Florida Keys Aqueduct Authority, the Monroe County Land Clearing Ordinance, and rules in the Florida Administrative Code affecting John Pennekamp Coral Reef State Park).

Service response. Proposed principles for guiding development for the Florida Keys Area of Critical State Concern (Florida Statute § 380.0552) contain provisions for the protection of upland resources. The proposed principles, if adopted and rigorously enforced, would apparently provide considerable protection to hardwood hammocks. Designation of federally endangered and threatened species would aid in the recognition and preservation of such areas, however, and would not duplicate the development guidelines. The Service cannot at the present time predict what the final form of the principles for guiding development will be or assess the effectiveness of their enforcement. The Service cannot depend on these proposals to adequately protect the rodents. The Service does not believe the regulations affecting dredge and fill activities and John Pennekamp State Park provide any specific protection to the upland hardwood hammocks on north Key Largo. While the establishment of new access channels and marinas would increase the value of properties now lacking water access, the lack of such access does not mean these areas will be impractical to develop. Many "landlocked" properties on Key Largo have been intensively developed. The policies of the Florida Keys Aqueduct Authority, contrary to one comment received, do not exclude water delivery to all the hardwood hammocks of the Keys, but only to selected areas. The areas denied delivery on north Key Largo are nearly all within proposed Federal or State acquisition projects, mainly west of State Route 905. None of the above-mentioned regulations, either individually or in concert, duplicate the protection afforded endangered or threatened species by the Endangered Species Act.

5. The Key Largo woodrat and cotton mouse are not valid species or subspecies and are not native to Key Largo; they are, therefore, ineligible for the protection of the Endangered Species Act. Mr. Alan B. Maxwell, of Sea Critters, Inc., submitted that the Key Largo woodrat and cotton mouse were not valid subspecies because the woodrat could only be differentiated from mainland Florida populations by an internal (skull) character, and the cotton mouse was characterized by a trait (red pelage) also expressed to a lesser degree by cotton mice *(Peromyscus gossypinus palmarius)* from the southeastern Florida mainland. Mr. Maxwell indicated direct contact had taken place between the Key Largo cotton mouse and mainland forms of this species. He further stated that electrophoretic or immunological studies might confirm whether or not the Key Largo woodrat or cotton mouse are true subspecies. Mr. Maxwell also suggested that these species could be reared in captivity in any numbers desired and their survivability could be improved by hybridizing them with cotton mice and woodrats from mainland Florida.

Service response. The characters used to distinguish the Key Largo woodrat and cotton mouse are typical of anatomical features used in rodent taxonomy to recognize species or subspecies. While additional electrophoretic or immunological data might aid in understanding taxonomic relationships in these species, such data would not provide a definitive decision on whether or not the Key Largo woodrat and cotton mouse should be considered distinct subspecies. Though present-day contact between the Key Largo cotton mouse and mainland cotton mice is unlikely, the Key Largo cotton mouse was probably derived from the nearby mainland populations. Subspecies generally share many morphological characters, and intergrades between subspecies often cannot be identified to the subspecific level. This is the inevitable result of the fact that conspecific subspecies usually interbreed in areas of contact. While captive breeding is a possible Service recovery action, it is not a substitute for maintenance of sufficient populations of the species of concern in natural habitats. With regard to hybridization, it is against Service policy to hybridize listed species with other listed or nonlisted species (or subspecies). The Service has concluded that such hybridization can harm the chances of a species' survival and is not an acceptable conservation measure under the Endangered Species Act.

6. Dr. Earl R. Rich, a biologist retained by attorneys representing several landowners, proposed that the Key Largo woodrat was introduced to Key Largo by coastal trading vessels in the early part of the twentieth century, and that the introduced woodrat population was derived from north Florida, Georgia, or South Carolina populations of *Neotoma floridana floridana*. Dr. Rich concluded that morphometric study of coastal plain populations of *N. f. floridana* would be likely to show these populations to be more closely related to the Key Largo woodrat than are peninsular Florida populations.

Service response. The Florida Keys support many endemic mammal species or subspecies that are derived from mainland populations, but that diverged on the Keys. There is no evidence to suggest that woodrats did not colonize the Florida Keys in the same manner as the rest of the terrestrial vertebrate fauna there. Unlike the introduced black and Norway rats, woodrats are not human commensals and are not likely stowaways on ships. Sherman (1955) did examine some specimens of *Neotoma floridana* from the coastal plain of north Florida (New Berlin, Duval County), and they were less similar to the Key Largo woodrat than were some of the specimens taken farther to the south on the mainland peninsula (Gainesville and Gulf Hammock).

7. The Key Largo woodrat and cotton mouse are not qualified for the protection of the Endangered Species Act because they are not in danger of extinction throughout all or a significant portion of their range.

Service response. The Key Largo woodrat and cotton mouse have been largely or completely extirpated from their former range on Key Largo south of the U.S. 1—State Route 905 intersection. The Service's evaluation of potential future habitat destruction and development is discussed below under "Factors Affecting the Species."

8. Development is not imminent on north Key Largo; therefore there is no immediate need to list these species.

Service response. The Service agrees that imminent development appears less likely now than at the time it was petitioned to list these species. This is due to proposed Federal and State acquisition, a moratorium on the acceptance of new major development proposals in Monroe County, and Florida Keys Aqueduct Authority hookup policy. A slowdown in the demand for residential units on Key Largo has also apparently made immediate development less likely. Nonetheless, several projects have preliminary or final approval or are under construction in areas near to or within habitat of the Key Largo woodrat and cotton mouse. The Service assumes that in the foreseeable future north Key Largo will continue to be an area subject to development pressures. The final constraints on development in the area will depend on the Monroe County Land Use Plan, currently under revision. Additional details on development activities on north Key Largo and the need for Federal protection of these species are discussed below under "Summary of Factors Affecting the Species" and "Available Conservation Measures."

9. Development design and management criteria, rather than limiting the availability of utilities, would be a useful approach in minimizing impacts on the Key Largo woodrat and cotton mouse. The South Florida Regional Planning Council suggested that an example of this approach was the development order issued with respect to the Port Bougainville Development on north Key Largo.

Service response. The Service agrees that design of developments and management requirements could reduce the effects of development on the hardwood hammocks on which the Key Largo woodrat and cotton mouse depend. However, the Endangered Species Act does not give the Service any jurisdiction over such local or State planning. The Service's involvement is generally through Section 7 of the Endangered Species Act, affecting only Federal agencies. Federal participation, for example funding, often takes place long before specific development planning is carried out. After the Federal action has taken place, the Service would have no further jurisdiction over specific planning or management requirements for any development.

10. The Key Largo woodrat and cotton mouse occur much more widely in Monroe County, and therefore should not be listed.

Service response. Three comments indicated that woodrats occurred in areas from which they were not reported by Barbour and Humphrey (1982). These sites, each involving a few nests, were near or adjacent to occupied habitat documented by Barbour and Humphrey. No significant range extensions have been reported for either the Key Largo woodrat or cotton mouse.

11. The proposal of the Key Largo woodrat and cotton mouse as endangered species, with critical habitat, is a hasty bureaucratic measure. Insufficient time was available to allow

the presentation of additional scientific data.

Service response. All notification requirements of the Endangered Species Act regarding comment periods and hearings were met during the proposal of these species (see beginning of "Summary of Comments and Recommendations," above). Extensive notifications were also made following the emergency listing of September 21, 1983. The Service recognizes that the Key Largo woodrat and cotton mouse are not well known biologically, but such is often true of endangered and threatened species. Section 4(b)(1)(A) of the Endangered Species Act requires that listing decisions be made on the basis of the best *available* scientific and commercial data. Recovery measures may well include research on the ecology, distribution, and population dynamics of these species. The present scientific data available for the Key Largo woodrat and cotton mouse, however, indicate that they are endangered, in accordance with the five factors specified in section 4(a)(1) of the Act. This determination accords with the State of Florida, whose Game and Fresh Water Fish Commission has recognized these species as endangered.

12. Several comments specifically addressed the shape and size of the critical habitat for these species, or addressed potential economic effects of designating critical habitat.

Service response. These comments will be considered in a final regulation designating critical habitat for the Key Largo woodrat and cotton mouse (see "Critical Habitat," below).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Key Largo woodrat and the Key Largo cotton mouse should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments to the Act—see proposal at 48 FR 36062, August 8, 1983) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Key Largo woodrat (*Neotoma floridana smalli*) and the Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Key Largo woodrat and cotton mouse formerly occurred throughout the hardwood hammock forests of Key Largo, Monroe County, Florida (Schwartz, 1952; Sherman, 1955; Brown, 1978). These species are presently restricted to the northern portion of Key Largo, except for an introduced population of the woodrat (and possibly the cotton mouse) on Lignumvitae Key, Monroe County (Barbour and Humphrey, 1982). The area of Key Largo north of the U.S. 1—State Route intersection—is the site of the following ongoing or approved residential projects: under construction, Port Bougainville—2,806 units, Largo Beach and Tennis Club, 224 units; preliminary approval, Anchor Bay—159 units, Nichols Subdivision—22 units, Garden Cove—366 units; final approval, Carysfort Yacht Club—512 units (Status of Major Development Projects in Monroe County, Florida, Department of Community Affairs report, January 20, 1984). Approximately one-half of the Key Largo woodrat and cotton mouse habitat is contained in proposed Federal and State land acquisition projects, but only a small proportion of these areas has yet been acquired. If these acquisitions were completed, about 50 percent of Key Largo woodrat and cotton mouse populations would be protected. This would include only about 318 woodrats, however, based on the estimates of density provided by Barbour and Humphrey (1982). Most of the mature Key Largo hammocks with the highest woodrat and cotton mouse densities lie outside the proposed acquisition boundaries. The future of these areas will depend on planning decisions of Monroe County and the State of Florida, as well as the demand for residential and commercial development on north Key Largo. The Service believes that north Key Largo will continue to be an attractive area for residential development, even if such development is slowed by the present major development proposal moratorium, by current economic conditions, and by more restrictive local or State regulations.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not now known to be applicable.

C. *Disease or predation.* Not now known to be applicable.

D. *The inadequacy of existing regulatory mechanisms.* The proposed Federal and State acquisition projects on north Key Largo would provide protection to an estimated one-half of the surviving Key Largo woodrat and cotton mouse populations. Only a small proportion of the proposed upland areas has yet been acquired. Many of the acquisition areas are also denied access to fresh water by the customer service policies of the Florida Keys Aqueduct Authority (Sections 7.01 and 7.02). The principal protection for hardwood hammocks outside the proposed acquisition areas derives from section 18–23 of the Monroe County Code, which requires protection of tropical hardwood hammock communities to the maximum extent possible in the course of land clearing. The past application and enforcement of this ordinance has been largely ineffective in preserving hammocks, although individual trees may be saved. A proposed amendment of § 380.0552 of the Florida Statutes, Florida Keys Area as an Area of Critical State Concern, may, if adopted, increase the amount of protection given hardwood hammocks in the Keys. Permits for clearing small areas of hammock continue to be given by Monroe County, however. No existing regulations duplicate the protective and recovery provisions of the Endangered Species Act, as amended. The Act will impose conservation requirements on Federal agencies carrying out activities on north Key Largo, and requires the Service to develop a recovery plan for the Key Largo woodrat and cotton mouse (see "Available Conservation Measures"). The Key Largo woodrat and cotton mouse are considered endangered by the State of Florida (Administrative Code Chapter 39–27.03), but this statute does not protect the habitat of these species.

E. *Other natural or manmade factors effecting its continued existence.* The Key Largo woodrat may be at the carrying capacity of the available habitat on Lignumvitae Key. The status of the cotton mouse on this Key is unknown. The apparent extirpation of the Key Largo woodrat and cotton mouse from the southern portion of Key Largo indicates that these species are not tolerant of fragmented, highly disturbed hammocks.

The decision to determine endangered status for the Key Largo woodrat and cotton mouse was based on an assessment of the best available scientific information and of past, present, and probable future threats to these species. Because of the need to promptly publish these determinations, no determination of critical habitat can be made at this time. A decision to determine only threatened status would not be justified given the current low population levels, restricted range, and

potential jeopardy from habitat destruction of the Key Largo woodrat and cotton mouse. A decision to take no action would exclude both species from needed protection pursuant to the Endangered Species Act. Therefore, no action or listing as threatened would be contrary to the Act's intent.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that "critical habitat" be designated, "to the maximum extent prudent and determinable," concurrent with the determination that a species is endangered or threatened. Section 4(b)(6)(C) further indicates that a concurrent critical habitat determination is not required if the Service finds that a prompt determination of endangered or threatened status is essential to the conservation of the involved species.

In the case of the Key Largo woodrat and cotton mouse, the Service believes that a prompt determination of endangered status is essential. An emergency listing of both species as endangered was published in the **Federal Register** on September 21, 1983 (48 FR 43040–43043), but expired on May 18, 1984. A permanent final determination of endangered status is now necessary to restore the appropriate legal classifications, to provide the protection of the Act, and to maintain the effectiveness of a relevant biological opinion issued by the Service pursuant to section 7. This opinion is that a loan by the Rural Electrification Administration (REA), for the financing of increased electrical delivery on north Key Largo by the Florida Keys Electric Cooperative (FKEC) would result in development that would jeopardize the survival of the two species. If the Key Largo woodrat and cotton mouse were only proposed, but not listed, they would be eligible only for the consideration given under the conference requirement of section 7(a)(4) of the Act, as amended. This does not require a limitation on the commitment of resources on the part of the concerned Federal agency. Therefore, in order to ensure that the full benefits of section 7 will apply to the Key Largo woodrat and cotton mouse, prompt determination of endangered status is essential. The Service is, however, currently performing the economic and other impact analyses required for a determination of critical habitat for the two species, and does plan to make such a determination in the near future.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal in **Federal Register** of June 29, 1983, 48 FR 29990). Section 7 requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species or critical habitat, the responsible Federal agency must enter into consultation with the Service.

On June 27, 1983, the Service entered into formal section 7 consultation with REA concerning financing of an electric substation and system expansion by the FKEC. The system expansion would potentially allow about 6,000 more electric drops in the north Key Largo area. The Key Largo woodrat and cotton mouse were listed by an emergency rule on September 21, 1983, to allow them to be considered in the consultation, which also dealt with the federally endangered American crocodile and the federally threatened Schaus swallowtail butterfly. On October 27, 1983, the Service's Regional Director in Atlanta, Georgia, issued a biological opinion concerning the American crocodile, the Schaus swallowtail butterfly, and the Key Largo woodrat and cotton mouse. The opinion indicated that the construction of the substation would not jeopardize any listed species, but expansion of the electric delivery capability would facilitate development that would jeopardize the continued survival of the Key Largo woodrat and cotton mouse. The REA has not yet responded to the Service's findings and recommendations in the October 27, biological opinion. Restoration of protection for these species pursuant to section 7 of the Endangered Species Act will assure that they are considered in REA's formulation of loan conditions relating to increased electrical delivery on north Key Largo.

A previous Service consultation pursuant to section 7 of the Endangered Species Act occurred in relation to the Farmers Home Administration (FmHA) funding of the Florida Keys Aqueduct Authority's new aqueduct in the Florida Keys. The Service's concern was that the new pipeline would facilitate development, thereby adversely affecting listed species. FmHA entered into consultation with the Fish and Wildlife Service on February 4, 1980. The consultation involved one endangered species, the American crocodile, and one threatened species, the Schaus swallowtail butterfly, on north Key Largo. A biological opinion issued by the Service on May 29, 1980, indicated that these species would be jeopardized by the project. FmHA agreed to condition its loan to restrict water delivery on north Key Largo, thus avoiding a violation of section 7(a)(2) of the Endangered Species Act. The areas thus excluded from water delivery were within the proposed boundaries of the Crocodile Lake National Wildlife Refuge as well as uplands of several sections of land east of the refuge. About 45 percent of the total Key Largo woodrat and cotton mouse population on north Key Largo occurs in hammocks as a result of the existing biological opinion. Much of the densely occupied habitat, however, lies outside these areas. Since the FmHA is not involved with the construction and operation of the pipeline, no future Federal involvement with this project is anticipated. Because of the high-cost nature of housing development anticipated for north Key Largo, other Federal subsidies are not likely in this area.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Barbour, D.B., and S.R. Humphrey. 1982. Status and habitat of the Key Largo woodrat and cotton mouse (*Neotoma floridana smalli* and *Peromyscus gossypinus allapaticola*). J. Mamm. 63:144–148.

Brown, L.N. 1978. Key Largo cotton mouse; Key Largo woodrat. *In* Layne, J.N. (ed.), Rare and endangered biota of Florida, Vol. I, Mammals, Florida Game and Fresh Water Fish Comm. pp. 10–12

Hersh, S.L. 1981. Ecology of the Key Largo woodrat (*Neotoma floridana smalli*). J. Mamm. 62:201–206.

Schwartz, A. 1952. Three new mammals from southern Florida. J. Mamm. 33:381–385.

Sherman, H.B. 1955. Description of a new race of woodrats from Key Largo, Florida. J. Mamm. 36:113–120.

Author

The primary author of this final rule is Dr. Michael M. Bentzien, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Section 17.11(h) is amended by adding the following two entries, in alphabetical order, to the List of Endangered and Threatened Wildlife under "MAMMALS:"

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	*	*	*	*		
Mouse, Key Largo cotton	*Peromyscus gossypinus allapaticola*	U.S.A. (FL)	Entire	E	131E, 160	NA	NA
*	*	*	*	*	*		
Woodrat, Key Largo	*Neotoma floridana smalli*	U.S.A. (FL)	Entire	E	131E, 160	NA	NA
*	*	*	*	*	*		

Dated: August 7, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23158 Filed 8-30-84; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 40441-4076]

Atlantic Tuna Fisheries

Correction

In FR Doc. 84-19552 beginning on page 29796 in the issue of Tuesday, July 24, 1984, make the following corrections:

1. On page 29798, second column, paragraph 2., first line, "Trade" should have read "Table".

§ 285.31 [Corrected]

2. On page 29800, in § 285.31(cc), first column, third line, "§ 385.33" should have read "§ 285.33".

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 49, No. 171
Friday, August 31, 1984

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

Commodity Credit Corporation

7 CFR Part 1427

[Amdt. 3]

Standards for Approval of Warehouses for Cotton or Cotton Linters

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations found at 7 CFR 1427.1081 *et seq.* relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Cotton or Cotton Linters. The proposed rule would: (1) Permit a parent company to submit a financial statement for a wholly-owned subsidiary; (2) permit warehousemen to submit financial statements on forms other than on Form TW–51; (3) incorporate for CCC purposes USDA regulations governing suspension and debarment; (4) permit CCC to accept an irrevocable letter of credit on forms other than Form CCC–33A; (5) delete the use of a Certificate of Competency issued by the Small Business Administration for a warehouseman who is deficient in net worth; (6) delete certain references to the withdrawal of approval of warehouses by CCC; and (7) make certain other miscellaneous changes.

DATES: Comments must be received on or before October 30, 1984 in order to be assured of consideration.

ADDRESS: Interested persons are invited to send written comments to Paul W. King, Director, Transportation and Storage Division, United States Department of Agriculture, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013; (202) 447–4018 or 447–7433.

FOR FURTHER INFORMATION CONTACT: Lynn W. Howe, 202–447–5785, Transportation and Storage Division, U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Departmental Regulation 1512–1 and Executive Order 12291 and has been classified "not major." It has been determined that the provisions of this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Commodity Credit Corporation is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

The Commodity Credit Corporation (CCC) Charter Act (15 U.S.C. 714) provides authority for CCC to conduct a number of operations to stabilize, support, and protect farm income and prices. Section 4(h) of the CCC Charter Act provides that the Corporation shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage of such commodities are inadequate.

Further, section 5 of the CCC Charter Act provides that in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has set forth standards of approval which must be met by warehousemen before CCC will enter into storage agreements with such warehousemen for the storage of agricultural commodities which are owned by CCC or which are serving as collateral for price support loans made available by CCC.

CCC proposes to amend the following regulations which govern the Standards for Approval of Warehouses for Cotton or Cotton Linters (7 CFR 1427.1081 *et seq.*) in the manner described below.

Section 1427.1081(d)(2) of the regulations currently requires warehousemen to submit financial statements on Form TW–51 and permits a chain of warehouses owned and operated by a single business entity to submit only one financial statement. Several warehousemen have complained that their independently prepared financial statements should satisfy CCC needs and they should not be required to incur the added expense and paperwork burden of submitting financial information on the TW–51. Also, several warehousemen whose warehouse facilities are wholly-owned and operated by a parent company have requested that the financial statement which is prepared for the parent company and which includes the combined financial position of the parent company and all subsidiaries be accepted by CCC. These warehousemen believe that to prepare a separate financial statement for each subsidiary warehouse is very costly and unnecessary. This proposed rule would permit warehousemen to submit financial statement to CCC on forms other than the TW–51 with the approval of the Director, Kansas City Commodity Office (KCCO), or the Director's designee. In addition, this proposed rule provides that a financial statement from the parent company may be accepted by CCC in lieu of individual statements from each wholly-owned subsidiary if approved by the Director, KCCO, or the Director's designee.

Section 1427.1082(c) of the regulations currently provides that, in meeting the standards for approval, the warehouseman, officials and each of the supervisory employees of the warehouseman in charge of the warehouse must not be either suspended or debarred under CCC's suspension and debarment regulations, 7 CFR Part

1407. Since the Board of Directors of the Corporation has adopted, with limited reservations, the regulations implemented by the Department of Agriculture with respect to the suspension and debarment of individuals and firms contracting with CCC, the provisions of § 1427.1082(c) have been amended to incorporate a reference to these provisions. A conforming amendment incorporating a reference to the Department's suspension and debarment regulations has also been made in § 1427.1086(c)(2).

Section 1427.1083(e) of the regulations currently provides that CCC may accept an irrevocable letter of credit in lieu of the required amount of bond coverage if the issuing bank is a commercial bank insured by the Federal Deposit Insurance Corporation and the letter of credit is submitted to CCC on Form CCC–33A, "Irrevocable Letter of Credit". Several Banks have objected to the use of Form CCC–33A and would prefer to use their own letter of credit form. This proposed rule would permit commercial banks to issue letters of credit on forms other than Form CCC–33A, provided that such forms are approved by the Director, KCCO, or the Director's designee.

Section 1427.1085(b) of the regulations currently provides that a Certificate of Competency issued by the Small Business Administration (SBA) for a warehouseman will be accepted by CCC for the purpose of establishing compliance by the warehouseman with certain of the Standards for Approval and the warehouseman will not be required to furnish bond coverage for any deficiency in net worth. The SBA has been reluctant to issue a Certificate of Competency to warehousemen since there is no guarantee that CCC-owned commodities will be stored with a warehouseman who has been issued a certificate. In fact, there have been no cotton warehousemen approved with a Certificate of Competency in the recent past. Accordingly, it has been concluded that the provisions of § 1427.1085(b), which reference the use of a Certificate of Competency, are not needed and this proposed rule would delete that section accordingly.

Section 1427.1086 of the present regulations sets forth the procedures under which CCC approves or disapproves a warehouse for the purpose of storing cotton and cotton linters owned by CCC or pledged to CCC as price support loan collateral. These regulations also provide for the administrative appeal procedures which may be utilized by a warehouseman whose warehouse was not approved by CCC. In addition, § 1427.1086 sets forth the procedures and requirements involving the withdrawal of approval of a warehouse by CCC as a result of the failure of the warehouse to continue meeting the standards for approval or for the failure of the warehouseman to perform the contractual obligations specified in the CCC storage agreement. This proposed rule would delete any references in § 1427.1086 to the withdrawal of approval of warehouses by CCC since it is felt that these regulations should only relate to the approval, rather than the disapproval, of warehouses by CCC. Terms and conditions with respect to the continuing obligations of the warehouseman to meet the standards of approval and storage commitments will be set forth in the Cotton Storage Agreement entered into between the warehouseman and CCC.

Section 1427.1086(c)(1) has also been revised to provide that any request by a warehouseman for reconsideration of a determination by CCC that the warehouseman has failed to meet the Standards for Approval must be in writing. Previously, such a request for reconsideration could be made orally to the Director, KCCO, as well as in writing.

In addition to the foregoing, § 1427.1081(b) of the regulations has been amended to correct the mailing address for the Kansas City Commodity Office and the table of contents have been revised and a new § 1427.1088 added to include control numbers assigned by the Office of Management and Budget (OMB) under provisions of 44 U.S.C. Chapter 35 to information collection requirements.

List of Subjects in 7 CFR Part 1427

Cotton, Loan Programs—Agriculture, Packaging and containers, Price support programs, surety bonds and warehouses.

Proposed Rule

PART 1427—[AMENDED]

Accordingly, it is proposed that the regulations at 7 CFR Part 1427 be amended as follows:

1. The table of contents to Subpart—Standards for Approval of Warehouses for Cotton or Cotton Linters is amended as follows:

* * * * *

1427.1088 OMB Control Numbers Assigned to Paperwork Reduction Act.

2. In § 1427.1081, paragraphs (b) and (d)(2) are revised to read as follows:

§ 1427.1081 General statement and administration.

* * * * *

(b) Copies of the CCC storage agreement and forms required for obtaining approval under this subpart may be obtained from the Kansas City Commodity Office, U.S. Department of Agriculture, P.O. Box 205, Kansas City, Missouri 64141 (hereinafter referred to as the "KCCO").

* * * * *

(d) * * *

(2) A current financial statement of Form TW–51, "Financial Statement", supported by such supplemental schedules as CCC may request. Financial statements may be submitted on forms other than Form TW–51 with approval of the Director, KCCO, or the Director's designee. Financial statements shall show the financial condition of the warehouseman as of a date no earlier than ninety (90) days prior to the date of the warehouseman's application, or such other date as CCC may prescribe. Additional financial statements shall be furnished annually and at such other times as CCC may require. CCC also may require that financial statements prepared by the warehouseman or by a public accountant be examined by an independent certified public accountant in accordance with generally accepted auditing standards. Only one financial statement is required for a chain of warehouses owned or operated by a single business entity. If approved by the Director, KCCO, or the Director's designee, the financial statement of a parent company, which includes the financial position of a wholly-owned subsidiary, may be used to meet the CCC standards for approval for the wholly-owned subsidiary.

* * * * *

3. In § 1427.1082, paragraph (c)(2) is revised to read as follows:

§ 1427.1082 Basic standards.

* * * * *

(c) * * *

(2) Be neither suspended nor debarred under applicable suspension and debarment regulations of the Department of Agriculture.

* * * * *

4. In § 1427.1083, paragraph (e) is revised to read as follows:

§ 1427.1083 Bonding requirements for net worth.

* * * * *

(e) An irrevocable letter of credit may be accepted by CCC in lieu of the required amount of bond coverage provided that the issuing bank is a

commercial bank insured by the Federal Deposit Insurance Corporation. Such standby letter of credit shall be on Form CCC–33A, "Irrevocable Letter of Credit," or on such other form as may be specifically approved by the Director, KCCO, or the Director's designee.

§ 1427.1085 [Amended].

5. Section 1427.1085 is amended by deleting paragraph (b) and by redesignating paragraph (c) and (d) as paragraph (b) and (c), respectively.

6. Section 1427.1086 is revised to read as follows:

§ 1427.1086 Approval of warehouse, requests for reconsideration.

(a) CCC will appove a warehouse if it detemines that the warehouse meets the standards set forth in this subpart. CCC will send a notice of approval to the warehouseman. Approval under this subpart, however, does not relieve the warehouseman of the responsibility for performing the warehouseman's obligations under any agreement with CCC or any other agency of the United States.

(b) Except as otherwise provided in this subpart:

(1) CCC will not approve the warehouse if CCC determines that the warehouse does not meet the standards set forth in this subpart, and

(2) CCC will send any notice of rejection of approval of the warehouseman. The notice will state the cause(s) for such action. Unless the warehouseman or any officials or supervisory employees or the warehouseman are suspended or debarred, CCC will approve the warehouse if the warehouseman establishes that the causes for CCC's rejection of approval have been remedied.

(c) If rejection of approval by CCC is due to the warehouseman's failure to meet the standards set forth:

(1) In § 1427.1082, other than the standard set forth in paragraph (c)(2) thereof, the warehouseman may, at any time after receiving notice of such action, request reconsideation of the action and present to the Director, KCCO, in writing, information in support of such request. The Director shall consider such information in making a determination and notify the warehouseman in writing of such determination. The warehouseman may, if dissatified with the Director's determination, obtain a review of the determination and an informal hearing thereon by filing an appeal with the Deputy Administrator, Commodity Operations, Agricultural Stabilization and Conservation Service (hereinafter referred to as "ASCS"). The time of filing appeals, forms for requesting and appeal, nature of the informal hearing, determination and reopening of the hearing shall be as prescribed in the ASCS regulations governing appeals, 7 CFR Part 780. When appealing under such regulations, the warehouseman shall be considered as a "participant"; and

(2) In § 1427.1082(c)(2), the warehouseman's administrative appeal rights with respect to suspension and debarment shall be in accordance with applicable regulations established by the Department of Agriculture. After expiration of a period of suspension or debarment, a warehouseman may, at any time, apply for approval under this subpart.

7. Section 1427.1088 is added to read as follows:

§ 1427.1088 OMB control numbers assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in this regulation (7 CFR Part 1428) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Numbers 0560–0040, 0560–0074, 0560–0027, and 0560–0059.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072, as amended (15 U.S.C. 714b, 6714c)

Signed at Washington, D.C. on August 28, 1984.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 84–23256 Filed 8–30–84; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1204

[NHTSA Docket No. 84–08; Notice 1]

Uniform Standards for State Highway Safety Program

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend 23 CFR Part 1204, Highway Safety Programs, to clarify the States' flexibility in administering State highway safety programs while eliminating apparent Federal paperwork burdens in seven of the eighteen highway safety standards.

DATES: Comments are due on or before October 1, 1984.

ADDRESSES: Comments should refer to the docket number and be submitted to the Docket Section, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: George Reagle, Associate Administrator for Traffic Safety Programs, NHTSA, (202–426–0837) or Howard Hanna, Chief, Program Development Division, Office of Highway Safety, FHWA, both located at 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–2131).

SUPPLEMENTARY INFORMATION: The Highway Safety Act of 1966, (Pub. L. 89–564 80 Stat. 731) directed the Secretary of Transportation to promulgate uniform standards for State highway safety programs, specified the subjects of several standards, and required States to conform to these uniform standards or risk losing portions of their Federal-aid highway funds (Section 402 of the Highway Safety Act of 1966). Between June 1967 and May 1972, the Secretary promulgated 18 Uniform Federal Standards to be met by State highway safety programs. Fourteen of these standards relate to drivers and vehicles and are administered by the National Highway Traffic Safety Administration; three standards relate to highways and are administered by the Federal Highway Administration; one standard relates to pedestrian safety and is jointly administered by both agencies.

On April 8, 1982, NHTSA and FHWA published a final rule (47 FR 15116) identifying five NHTSA program areas and one FHWA program area as the highway safety programs most effective in reducing accidents, injuries, and fatalities. Inherent in this rulemaking process was the subordinate issue of what will become of the 18 highway safety standards. These standards have formed the basis for State highway safety programs for a number of years. While the NPRM for the April 1982 rule did not specifically address this issue a number of commenters encouraged NHTSA and FHWA to maintain the existing 18 standards as non-binding guidelines for use by the States. The preamble to the April 1982 rule recognized the subordinate issue of what will become of the standards and anticipated some changes to the standards by a subsequent rulemaking. This proposal is intended to accomplish that purpose in part by clarifying that any apparent Federal burdens

associated with these standards are not binding on the States.

The Paperwork Reduction Act of 1980 prohibits the imposition of nonessential reporting or recordkeeping burdens on State or local governments as well as the general public. Consistent with the goals of the Act, with our commitment in 1982 to review the 18 standards, and with comments expressed in the 1982 rulemaking urging the agencies to retain the standards as non-binding guidelines, we have determined that several of those standards contain language that appears to impose substantial mandatory Federal recordkeeping and reporting burdens on State governments as a condition to receiving Federal highway safety funds. While the recordkeeping and reporting requirements of these standards have been administered as guidelines for many years, we recognize the need to clarify that these seven standards do not impose mandatory burdens on State governments.

In the Highway Safety Act, Congress specified several subjects (for example, accident investigation reporting) which must be included in uniform standards promulgated by the Secretary, (23 U.S.C. 402(a)). Some of these subjects encompassed recordkeeping and reporting that was being done by the States before enactment of the Act, and would clearly continue—in some form—in the absence of Federal laws and regulations. In recognition that highway safety programs are primarily of State interest, we propose changing language in Part 1204 which overstates the appropriate Federal role and appears to impose mandatory Federal requirements on the States.

We propose to retain these seven standards as guidelines for state programs, but clarify that the States have broad flexibility to tailor the implementation elements of the standards for these programs to best suit their individual needs. We specifically seek comment on the impact of this proposed amendment on the States in administering their highway safety programs.

These proposed amendments to the Highway Safety Program Standards under 23 U.S.C. 402 do not change the requirements for the State Highway Safety Improvement Program under 23 CFR Part 924.

NHTSA and FHWA have analyzed the impact of this action and have determined that it is neither "major" within the meaning of Executive Order 12291, nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. Because these amendments will permit greater flexibility in determining methods to implement Federal standards, but will impose no obligations, the changes will have no major economic impact on State or local governments. Because there will be virtually no economic or other impact from this proposal, a full regulatory evaluation is not necessary.

In accordance with the Regulatory Flexibility Act, the Agencies have evaluated the effects of this action on small entities. Based on this evaluation, we certify that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed changes pertain only to State implementation of highway safety programs and will not affect small businesses or small governmental units. While some of the programs may use the services of small business contractors, we believe that the programs would not be changed substantially so as to affect these business' services. In accordance with this evaluation, no regulatory flexibility analysis has been prepared.

The Agencies have also analyzed this proposed action for the purpose of the National Environmental Policy Act. The Agencies have determined that the proposed amendments will not have any effect on the human environment.

Interested persons are invited to submit comments on the proposal. It is requested, but not required, that 10 copies be submitted.

All comments must be limited not to 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, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a 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 above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. Because NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, we recommend that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed, stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 23 CFR Part 1204

Highway safety programs.

(Catalog of Federal Domestic Assistance Program number 20.205, Highway Research, planning, and construction and number 20.600, State and Community Highway Safety. The regulations implementing Executive order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

PART 1204—[AMENDED]

In consideration of the foregoing, the following amendments are proposed to Part 1204 of Title 23 of the Code of Federal Regulations:

1. Section 1204.4 Highway Safety Program Standard No. 1 is revised to read as follows:

Highway Safety Program Standard No. 1

Periodic Motor Vehicle Inspection

Each State shall have a program for periodic inspection of all registered vehicles or other experimental, pilot, or demonstration program approved by the Secretary, to reduce the number of vehicles with existing or potential conditions which cause or contribute to accidents or increase the severity of accidents which do occur, and shall require the owner to correct such conditions.

I. A model program would provide, at a minimum, that:

A. Every vehicle registered in the State is inspected either at the time of initial registration and at least annually thereafter, or at such other time may be designated under an experimental, pilot, or demonstration program approved by the Secretary.

B. The inspection is performed by competent personnel specifically trained

to perform their duties and certified by the State.

C. The inspection covers systems, subsystems, and components having substantial relation to safe vehicle performance.

D. The inspection procedures equal or exceed criteria issued or endorsed by the National Highway Traffic Safety Administration.

E. Each inspection station maintains records in a form specified by the State, which include at least the following information:

1. Class of vehicle.
2. Date of inspection.
3. Make of vehicle.
4. Model year.
5. Vehicle identification number.
6. Defects by category.
7. Identification of inspector.
8. Mileage or odometer reading.

F. The State publishes summaries of records of all inspection stations at least annually, including tabulations by make and model of vehicle.

II. The program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

2. Section 1204.4 Highway Safety Program Standard No. 2 is revised to read as follows:

Highway Safety Program Standard No. 2

Motor Vehicle Registration

Each State shall have a motor vehicle registration program.

I. A model registration program would be such that every vehicle operated on public highways is registered and the following information is readily available for each vehicle:

A. Make.
B. Model year.
C. Identification number (rather than motor number).
D. Type of body.
E. License plate number.
F. Name of current owner.
G. Current address of owner.
H. Registered gross laden weight of every commercial vehicle.

II. Each program should have a records system that provides at least the following services:

A. Rapid entry of new data into the records or data system.
B. Controls to eliminate unnecessary or unreasonable delay in obtaining data.
C. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.
D. Data available for statistical compilation as needed by authorized sources.
E. Identification and ownership of vehicle sought for enforcement or other operation needs.

III. This program should be periodically evaluated by the State, and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

3. Section 1204.4 Highway Safety Program Standard No. 5 is revised to read as follows:

Highway Safety Program Standard No. 5

Driver Licensing

Each State shall have a driver licensing program: (a) To insure that only persons physically and mentally qualified will be licensed to operate a vehicle on the highways of the State, and (b) to prevent needlessly removing the opportunity of the citizen to drive. A model program would provide, as a minimum, that:

I. Each driver holds only one license, which identifies the type(s) of vehicle(s) he is authorized to drive.

II. Each driver submits acceptable proof of date and place of birth in applying for his original license.

III. Each driver:

A. Passes an initial examination demonstrating his:

1. Ability to operate the class(es) of vehicle(s) for which he is licensed.
2. Ability to read and comprehend traffic signs and symbols.
3. Knowledge of laws relating to traffic (rules of the road) safe driving procedures, vehicle and highway safety features, emergency situations that arise in the operation of an automobile, and other driver responsibilities.
4. Visual acuity, which must meet or exceed State standards.

B. Is reexamined at an interval not to exceed 4 years, for at least visual acuity and knowledge of rules of the road.

IV. A record on each driver should be maintained which includes positive identification, current address, and driving history. In addition, the record system should provide the following services:

A. Rapid entry of new data into the system.
B. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.
C. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.
D. Ready availability of data for statistical compilation as needed by authorized sources.
E. Ready identification of drivers sought for enforcement or other operational needs.

V. Each license should be issued for a specific term, and should be renewed to remain valid. At time of issuance or renewal each driver's record should be checked.

VI. There should be a driver improvement program to identify problem drivers for record review and other appropriate actions designed to reduce the frequency of their involvement in traffic accidents or violations.

VII. There should be:

A. A system providing for medical evaluation of persons whom the driver licensing agency has reason to believe have mental or physical conditions which might impair their driving ability.

B. A procedure which will keep the driver license agency informed of all licensed drivers who are currently applying for or receiving any type of tax, welfare or other benefits or exemptions for the blind or nearly blind.

C. A medical advisory board or equivalent allied health professional unit composed of qualified personnel to advise the driver license agency on medical criteria and vision standards.

VIII. The program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary. The evaluation shall attempt to ascertain the extent to which driving without a license occurs.

4. Section 1204.4 Highway Safety Program Standard No. 9 is revised to read as follows:

Highway Safety Program Standard No. 9

Identification and Surveillance of Accident Locations

Each State, in cooperation with county and other governments, shall have a program for identifying accident locations and for maintaining surveillance of those locations having high accident rates or losses.

I. A model program would provide, as a minimum, that:

A. There is a procedure for accurate indentification of accident locations on all roads and streets.

1. To identify accident experience and losses on any specific sections of the road and street system.

2. To produce an inventory of:

a. High accident locations.

b. Locations where accidents are increasing sharply.

c. Design and operating features with which high accident frequencies or severities are associated.

3. To take appropriate measures for reducing accidents.

4. To evaluate the effectiveness of safety improvements on any specific section of the road and street system.

B. There is a systematically organized program:

1. To maintain continuing surveillance of the roadway network for potentially high accident locations.

2. To develop methods for their correction.

II. The program shall be periodically evaluated by the State and the Federal Highway Administration should be provided with an evaluation summary.

5. Section 1204.4 Highway Safety Program Standard No. 10 is revised to read as follows:

Highway Safety Program Standard No. 10

Traffic Records

Each State, in cooperation with its political subdivisions, shall maintain a Statewide traffic records system.

A model program would provide, as a minimum that:

I. Information on vehicles and system capabilities should include (conforms to Motor Vehicle Registration standard):

A. Make.

B. Model year.

C. Identification number (rather than motor number).

D. Type of body.

E. License plate number.

F. Name of current owner.

G. Current address of owner.

H. Registered gross laden weight of every commercial vehicle.

I. Rapid entry of new data into the records or data system.

J. Controls to eliminate unnecessary or unreasonable delay in obtaining data.

K. Rapid audio or visual response upon receipt at the records station of any priority request for status of vehicle possession authorization.

L. Data available for statistical compilation as needed by authorized sources.

M. Identification and ownership of vehicles sought for enforcement or other operational needs.

II. Information on drivers and system capabilities should include (conforms to Driver Licensing standard):

A. Positive identification.

B. Current address.

C. Driving history.

D. Rapid entry of new data into the system.

E. Controls to eliminate unnecessary or unreasonable delay in obtaining data which is required for the system.

F. Rapid audio or visual response upon receipt at the records station of any priority request for status of driver license validity.

G. Ready availability of data for statistical compilation as needed by authorized sources.

H. Ready identification of drivers sought for enforcement or other operational needs.

III. Information on types of accidents should include:

A. Identification of location in space and time.

B. Identification of drivers and vehicles involved.

C. Type of accident.

D. Description of injury and property damage.

E. Description of environmental conditions.

F. Causes and contributing factors, including the absence of or failure to use available safety equipment

IV. There should be methods to develop summary listings, cross tabulations, trend analyses and other statistical treatments of all appropriate combinations and aggregations of data items in the basic minimum data record of drivers and accident and acccident experience by specified groups.

V. All traffic records relating to accidents collected hereunder should be open to the public in a manner which does not identify individuals.

VI. The program should be periodically evaluated by the State and the National Highway Traffic Safety Administration should be provided with an evaluation summary.

6. Section 1204.4 Highway Safety Program Standard No. 14 is revised to read as follows:

Highway Safety Program Standard No. 14

Pedestrian Safety

Every State in cooperation with its political subdivisions shall develop and implement a program to insure the safety of pedestrians of all ages. A model program would provide as a minimum that:

I. There should be a continuing statewide inventory of pedestrian-motor vehicle accidents, identifying specifically:

A. The locations and times of all such accidents.

B. The age of all of the pedestrians injured or killed.

C. Where feasible, to determine whether the exterior features of the vehicle produced or aggravated an injury.

D. The color and shade of clothing worn by pedestrians when injured or killed, and the visibility conditions which prevailed at the time.

E. The extent to which alcohol is present in the blood of fatally injured pedestrians 16 years of age and older.

F. Where possible, to determine, the extent to which pedestrians involved in accidents have physical or mental disabilities.

II. There should be established Statewide operational procedures for improving the protection of pedestrians through reduction of potential conflicts with vehicles:

A. By application of traffic engineering practices including pedestrian signals, signs, markings, parking regulations, and other pedestrian and vehicle traffic control devices.

B. By land-use planning in new and redevelopment areas for safe pedestrian movement.

C. By provision of pedestrian bridges, barriers, sidewalks and other means of physically separating pedestrian and vehicle pathways.

D. By provision of environmental illumination at high pedestrian volume and/or potentially hazardous pedestrian crossings.

III. There should be established a Statewide program for familiarizing drivers with the pedestrian problem and with ways to avoid pedestrian collisions.

A. The program content should include emphasis on:

(1) Behavior characteristics of the three types of pedestrians most commonly involved in accidents with vehicles: (i) Children; (ii) persons under the influence of alcohol; (iii) the elderly;

(2) Accident avoidance techniques that take into account the hazardous conditions, and behavior characteristics displayed by each of the three high risk pedestrian groups listed in subparagraph (1).

B. Emphasis on this program content should be included in:

(1) All driver education and training courses;

(2) Driver improvement courses; and

(3) Driver license examinations.

IV. There should be statewide programs for training and educating all members of the public as to safe pedestrian behavior on or near the streets and highways.

A. For children, youths and adults enrolled in schools, beginning at the earliest possible age.

B. For the general population via the public media.

V. There should be a statewdse program for the protection of children walking to and from school, entering and leaving school buses, and in neighborhood play.

VI. There should be a statewide program for establishment and enforcement of traffic regulations

designed to achieve orderly pedestrian and vehicle movement and to reduce vehicle-pedestrian conflicts.

VII. This program should be periodically evaluated by the States, and the National Highway Traffic Safety Administration and the Federal Highway Administration should be provided with an evaluation summary.

7. Section 1204.4 Highway Safety Program Standard No. 18 is amended by revising paragraphs I, IV and V to read as follows:

Highway Safety Program Standard No. 18

Accident Investigation and Reporting

I. *Scope.* This standard establishes the requirement that each State shall have a highway safety program for accident investigation and reporting.

* * * * *

IV. *Requirements.* Each State, in cooperation with its political subdivisions, shall have an accident investigation program. A model program would be structured as follows:

A. *Administration.* 1. There should be a State agency having primary responsibility for administration and supervision of storing and processing accident information, and providing information needed by user agencies.

2. There should be employed at all levels of government adequate numbers of personnel, properly trained and qualified, to conduct accident investigations and process the resulting information.

3. Nothing in this standard should preclude the use of personnel other than police officers, in carrying out the requirements of this standard in accordance with laws and policies established by State and/or local governments.

4. Procedures should be established to assure coordination, cooperation, and exchange of information among local, State, and Federal agencies having responsibility for the investigation of accidents and subsequent processing of resulting data.

5. Each state should establish procedures for entering accident information into the statewide traffic records system established pursuant to Highway Safety Program Standard No. 10, Traffic Records, and for assuring uniformity and compatibility, of this data with the requirements of the system, including as a minimum:

a. Use of uniform definitions and classifications acceptable to the National Highway Traffic Safety Administration and identified in the Highway Safety Program Manuals.

b. A standard format for input of data into the statewide traffic records system.

c. Entry into the statewide traffic records system of information gathered and submitted to the responsible State agency.

B. *Accident reporting.* Each State should establish procedures which require the reporting of accidents to the responsible State agency within a reasonable time after occurrence.

C. *Owner and driver reports.* 1. In accidents involving only property damage, where the vehicle can be normally and safely driven away from the scene, the drivers or owners of vehicles involved should be required to submit a written report consistent with State reporting requirements, to the responsible State agency. A vehicle should be considered capable of being normally and safely driven if it does not require towing and can be operated under its own power, in its customary manner, without further damage or hazard to itself, other traffic elements, or the roadway. Each report so submitted should include, as a minimum, the following information relating to the accident:

a. Location.
b. Time.
c. Identification of driver(s).
d. Identification of pedestrian(s), passenger(s), or pedal-cyclist(s).
e. Identification of vehicle(s).
f. Direction of travel of each unit.
g. Other property involved.
h. Environmental conditions existing at the time of the accident.
i. A narrative description of the events and circumstances leading up to the time of impact, and immediately after impact.

2. In all other accidents, the drivers or owners of motor vehicles involved should be required to immediately notify the police of the jurisdiction in which the accident occurred. This includes, but is not limited to accidents involving: (1) Fatal or nonfatal personal injury, or (2) damage to the extent that any motor vehicle involved cannot be driven under its own power, in its customary manner, without further damage or hazard to itself, other traffic elements, or the roadway, and therefore requires towing.

D. *Accident investigation.* Each State should establish a plan for accident investigation and reporting which should meet the following criteria:

1. Police investigation should be conducted of all accidents as identified in section IV.C.2 above. Information gathered should be consistent with the police mission of detecting and apprehending law violators, and should include, as a minimum, the following:

a. Violation(s), if any occurred, cited by section and subsection, numbers and titles of the State code, that (1) contributed to the accident where the investigating officer has reason to believe that violations were committed regardless of whether the officer has sufficient evidence to prove the violation(s); and (2) for which the driver was arrested or cited.

b. Information necessary to prove each of the elements of the offense(s) for which the driver was arrested or cited.

c. Information, collected in accordance with the program established under Highway Safety Program Standard No. 15, Police Traffic Services, section I–D, relating to human, vehicular, and highway factors causing individual accidents, injuries, and deaths, including failure to use safety belts.

2. Accident investigation teams should be established, representing different interest areas, such as police; traffic; highway and automotive engineering; medical, behavioral, and social sciences. Data gathered by each member of the investigation team should be consistent with the mission of the member's agency, and should be for the purpose of determining probable causes of accidents, injuries, and deaths. These teams should conduct investigations of an appropriate sampling of accidents in which there were one or more of the following conditions:

a. Locations that have a similarity of design, traffic engineering characteristics, or environmental conditions, and that have a significantly large or disproportionate number of accidents.

b. Motor vehicles or motor vehicle parts that are involved in a significantly large or disproportionate number of accidents or injury-producing accidents.

c. Drivers, pedestrians, and vehicle occupants of a particular age, sex, or other grouping, who are involved in a significantly large or disproportionate number of motor vehicle traffic accidents or injuries.

d. Accidents in which causation or the resulting injuries and property damage are not readily explainable in terms of conditions or circumstances that prevailed.

e. Other factors that concern State and national emphasis programs.

V. *Evaluation.* The program should be evaluated at least annually by the State Substance of the evaluation report should be guided by Chapter V of the Highway Safety Program Manual. The National Highway Traffic Safety Administration should be provided with a copy of the evaluation report.

(23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50)

Issued on: August 28, 1984.

Diane K. Steed,

Deputy Administrator, National Highway Traffic Safety Administration.

R.A. Barnhart,

Administrator, Federal Highway Administration.

[FR Doc. 84-23226 Filed 8-28-84; 4:52 pm]

BILLING CODE 4910-56-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-181-84]

Returns Relating to Foreclosures and Abandonments of Security

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the requirement of reporting abandonments, foreclosures, and other acquisitions of property securing indebtedness. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by October 30, 1984. The regulations are proposed to be effective for acquisitions and abandonments of property after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-181-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, (202) 566-3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The regulations provide guidance concerning information returns relating to abandonments, foreclosures, and other acquisitions of property securing indebtedness under section 6050J of the Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 (98 Stat. 687, 26 U.S.C. 6050J). The regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805). For the text of the temporary regulations, see FR Doc. 84-23133 published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules. In the Proposed Rules section of this issue of the **Federal Register** is a notice of proposed rulemaking relating to information reporting of transfers of security to persons other than the lender under section 6050J(f) of the Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 (98 Stat. 688, 26 U.S.C. 6050J(f)).

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required by Chapter 6 of Title 5, United States Code.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies to the Service.

Drafting Information

The principal author of these regulations is Annettee J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.601-1—1.6109-2

Income taxes, Administration and procedure, Filing requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-23132 Filed 8-30-84; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[LR-182-84]

Returns Relating to Transfers of Security to Persons Other Than the Lender

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to information reporting by lenders of any transfer of property that is security for indebtedness to a person other than the lender. This action is necessary because changes to the applicable law were made by the Tax Reform Act of 1984. These regulations would affect any person who, in connection with a trade or business, lends money on a nonrecourse basis that is secured by property (other than a personal residence) and later knows or has reason to know of any transfer of property that is security for the indebtedness of a person other than the lender. The regulations would provide these persons with the guidance necessary to comply with the law.

DATES: Written comments and requests for a public hearing must be delivered by October 30, 1984 The regulations are proposed to be effective for any transfer of property (other than a personal residence) that is security for nonrecourse indebtedness after the date the Treasury decision based on these proposed rules is published in the **Federal Register**.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-182-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224, Attention: CC:LR:T, (202) 566-3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations relating to information reporting by lenders of any transfer of property that is security for indebtedness to a person other than the lender under section 6050J(f) of the Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 (98 Stat. 688). The regulations are to be issued under the authority contained in sections 6050J(f) and 7805 of the Internal Revenue Code of 1954 (98 STat. 688, 68A Stat. 917, 26 U.S.C. 6050J, 7805 respectively). In the Rules and Regulations portion of this issue of the **Federal Register** is the text of temporary regulations relating to information reporting of abandonments, foreclosures, and other acquisitions of property securing indebtedness under section 6050J of the Internal Revenue Code of 1954, as added to the Code by section 148 of the Tax Reform Act of 1984 (98 Stat. 687). The text of the temporary regulations also serves as the comment document for the notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register.**

Explanation of Provisions

Section 6050J requires information reporting by any person who, in connection with a trade or business, lends money secured by property, and who later either acquires an interest in the property or has reason to know that the property has been abandoned. Section 6050J(f) provides that, to the extent the Secretary of the Treasury prescribes by regulation, any transfer of property that is security for indebtedness to a person other than the lender will be treated as an abandonment for purposes of the reporting requirement.

Under the proposed rules contained in this document, any lender who makes a nonrecourse loan must report the transfer of the property securing the loan to a person other than the lender if the lender knows or has reason to know both that the transfer has occurred and that the entire amount of the indebtedness secured by the property is not satisfied in connection with the transfer. The proposed rules define, for purposes of the reporting requirement, when lenders know or have reason to know of a transfer in which less than the entire amount of outstanding indebtedness is satisfied. The rules proposed in this document would apply to any transfer of real property (other than a personal residence) and any transfer of tangible personal property used in a trade or business or held for investment after the date the Treasury decision based on these proposed rules is published in the **Federal Register.**

Alternative rules have been considered. For example, the Service has considered requiring reporting under the proposed rule described in the preceding paragraph only in those cases where the lender also knows or has reason to know one or more of the following facts: (1) That the fair market value of the property at the time it is transferred is less than the outstanding indebtedness secured by the property; (2) that the amount of cash consideration (not including notes or other evidences of indebtedness) paid by the third party to the borrower at the date of transfer is less than 15 percent of the outstanding indebtedness; (3) that the amount of cash consideration plus the fair market value of other property (not including notes or other evidences of indebtedness) paid to the borrower at the date of transfer is less than 15 percent of the outstanding indebtedness; (4) that the transfer was made by way of gift; and (5) that the transfer was made by way of charitable contribution.

Comments are sought on the proposed rule as well as the alternatives that were considered or any other alternative. Such comments should focus on the type of information available to lenders in the ordinary course of their business.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretive and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required by Chapter 6 of Title 5, United States Code.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies to the Service.

Drafting Information

The principal author of these regulations is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.6001-1—1.6109-2

Income taxes, Administration and procedure, Filing requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

PART 1—[AMENDED]

The following new § 1.6050J-2 shall be added at the appropriate place.

§ 1.6050J-2 Questions and answers concerning information returns relating to any transfer of property which secures indebtedness to a person other than the lender.

The following questions and answers relate to the reporting requirement regarding transfers of property which secure indebtedness to a person other than the lender under section 6050J(f) of the Internal Revenue Code of 1954, as added by section 148 of the Tax Reform Act of 1984 (98 Stat. 688).

Q-1: Under what circumstances must a lender who makes a nonrecourse loan report a transfer by the borrower of the

property securing the loan to a person other than the lender?

A–1: If a lender knows or has reason to know that property (other than a personal residence) securing a nonrecourse loan is transferred to a person other than the lender and that the entire amount of the outstanding indebtedness owed to the lender is not satisfied in connection with the transfer, the lender is required to report. For purposes of this question and answer, a lender knows or has reason to know information if—

(a) The information is included on the books and records of the lender or its agents pertaining to the loan, or

(b) The lender or its agents, or the officers, partners, other principals, or employees of the lender or its agents, know or have reason to know such information in the course of their ordinary business activities on behalf of the lender.

Q–2: If a lender knows or has reason to know of a transfer described in the preceding answer, how must a lender report?

A–2: A lender must treat the transfer of property which secures the indebtedness as an abandonment of the property for purposes of the reporting requirement. The lender must report according to the rules provided in § 1.6050J–1T.

Q–3: When is § 1.6050J–2 effective?

A–3: Section 1.6050J–2 is effective for transfers of property after the date the Treasury decision based on proposed § 1.6050J–2 is published in the **Federal Register.**

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84–23131 Filed 8–30–84; 8:45 am]
BILLING CODE 4830–01–M

---

26 CFR Part 1

[LR–195–78]

Certain Returned Magazines, Paperbacks, or Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to a method of accounting for certain returns of magazines, paperbacks, or records. Changes were made in the applicable law by the Revenue Act of 1978. The regulations would provide the public with the guidance needed to comply with the Act and would affect all taxpayers who elect to use the method of accounting for their trades or businesses of selling magazines, paperbacks, or records.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 30, 1984. The amendments are proposed to be effective for taxable years beginning after September 30, 1979.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–195–78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (LR–195–78), (202) 566–3238, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 458 of the Internal Revenue Code of 1954. These amendments are proposed to reflect the changes made by section 372 of the Revenue Act of 1978 (92 Stat. 2860) and are to be issued under the authority contained in sections 7805 and 458 (b)(8) and (e)(5) of the Internal Revenue Code of 1954 (68A Stat. 917; 92 Stat. 2861–2; 26 U.S.C. 7805, 458 (b)(8) and (e)(5)).

In general, section 372 of the Revenue Act of 1978 permits a taxpayer in the trade or business of selling magazines, paperbacks, or records to use a special method of accounting for the return of magazines, paperbacks, or records sold before the end of the taxable year and returned before the close of the merchandise return period for that taxable year. This method of accounting is available only to those taxpayers who use the accrual method of accounting for the trade or business of selling magazines, paperbacks, or records and who make an election to use section 458. Under this section, a taxpayer may elect to exclude from gross income amounts attributable to the qualified sale of magazines, paperbacks, or records provided the merchandise was sold before the end of the taxable year and returned before the close of the merchandise return period. The exclusion is available only if the original sale was a qualified sale. In order to be a qualified sale, the taxpayer must have, at the time of the sale, a legal obligation to adjust the sales price of merchandise that is not sold by the purchaser and the taxpayer must actually make an adjustment to the sales prices of the merchandise because of the purchaser's failure to resell it. Section 458 also provides special accounting rules for treatment of the transitional adjustment resulting from the section 458 election.

The proposed regulations contain rules that determine how and when a suspense account established under section 458(e) must be taken into account by the transferee in the case of certain transactions where there is nonrecognition of gain or loss to either party because of the application of subchapter C of the Internal Revenue Code of 1954. These rules apply generally to transactions where there is a transfer of substantially all of the assets of a trade or business in which paperbacks or records are sold. In general, the principles of section 381 and § 1.381(c)(4)–1 will be applied. The proposed regulations, however, take no position on what rules apply to other transactions described in section 458(e)(5), such as, for example, transfers involving less than substantially all the assets of a trade or business in which paperbacks or records are sold. It is anticipated that rules applicable to such transactions will be developed by regulations, rulings, or otherwise as the issues arise.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Special Analyses

The Commission of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Secretary of the Treasury has certified that this rule, if issued, will not have a significant impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required. The Secretary's certification is based on a determination that the economic impact of the regulation flows directly from the underlying statute, since the regulation prescribes the treatment of the required suspense account in transactions where there is nonrecognition of gain by reason of subchapter C of chapter 1 of

the Code by applying principles contained in that subchapter.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980.

Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies to the Service.

Drafting Information

The principal author of these proposed regulations is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue and the Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans.

PART 1—[AMENDED]

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph. The following new § 1.458–1 shall be added immediately before § 1.458–10:

§ 1.458–1 Exclusion for certain returned magazines, paperbacks, or records.

(a) *Introduction.* For taxable years beginning after September 30, 1979, section 458 allows accrual basis taxpayers to elect to use a method of accounting that excludes from gross income some or all of the income attributable to qualified sales during the taxable year of magazines, paperbacks, or records that are returned before the close of the applicable merchandise return period for that taxable year. Any amount so excluded cannot be excluded or deducted from gross income for the taxable year in which the merchandise is returned to the taxpayer. For the taxable year in which the taxpayer first uses this method of accounting, the taxpayer is not allowed to exclude from gross income amounts attributable to merchandise returns received during the taxable year that would have been excluded from gross income for the prior taxable year had the taxpayer used this method of accounting for such prior year. (See paragraph (e) of this section for rules describing how this amount should be taken into account.) The election to use this method of accounting shall be made in accordance with the rules contained in section 458(c) and in § 1.458–10 and this section. A taxpayer who does not elect to use this method of accounting can reduce income for such returned merchandise only for the taxable year in which the merchandise is actually returned unsold by the purchaser.

(b) *Definitions*—(1) *Magazine.* The term "magazine" means a publication, usually paper-backed and sometimes illustrated, that is issued at regular intervals and contains stories, poems, articles, features, etc. This term includes periodicals, but does not include newspapers or volumes of a single publication issued at various intervals.

(2) *Paperback.* The term "paperback" means a paperback book other than a magazine. Unlike a hardback book, which usually has stiff front and back covers that enclose pages bound to a separate spine, a paperback book is characterized by a flexible outer cover to which the pages of the book are directly affixed. If an item satisfies the definitions of both magazines and paperbacks, it is to be treated as a paperback for purposes of this section.

(3) *Record.* The term "record" means a disc, tape, or similar item on which musical, spoken or other sounds are recorded, but does not include an item that also contains a visual recording. However, the term does not include blank records, tapes, etc., on which it is expected the ultimate purchaser will record. The following items, provided they carry pre-recorded sound, are examples of "records": cassettes, eight track tapes, reel-to-reel tapes, cylinders, and flat discs.

(4) *Qualified sale.* In order for a sale to be considered a qualified sale, both of the following conditions must be met:

(i) The taxpayer must be under a legal obligation (as determined by applicable State law), at the time of sale, to adjust the sales price of the magazine, paperback, or record on account of the purchaser's failure to resell it; and

(ii) The taxpayer must actually adjust the sales price of the magazine, paperback, or record to reflect the purchaser's failure to resell the merchandise. The following are examples of adjustments to the sale price of unsold merchandise: cash refunds, credits to the account of the purchaser, and repurchases of the merchandise. The adjustment need not be equal to the full amount of the sales price of the item. However, a markdown of the sales price under an agreement whereby the purchaser continues to hold the merchandise for sale or other disposition (other than solely for scrap) does not constitute an adjustment resulting from a failure to resell.

(5) *Merchandise return period*—(i) *In general.* Unless the taxpayer elects a shorter period, the "merchandise return period" is the period that ends 2 months and 15 days after the close of the taxable year for sales of magazines and 4 months and 15 days after the close of the taxable yer for sales of paperbacks and records.

(ii) *Election to use shorter period.* The taxpayer may select a shorter merchandise return period than the applicable period set forth in paragraph (b)(5)(i) of this section.

(iii) *Change in merchandise return period.* Any change in the merchandise return period after its initial establishment will be treated as a change in method of accounting.

(c) *Amount of the exclusion*—(1) *In general.* The amount of exclusion with respect to any qualified sale is equal to the lesser of—

(i) The amount covered by the legal obligation referred to in paragraph (b)(4)(i) of this section, or

(ii) The amount of the adjustment agreed to by the taxpayer before the close of the merchandise return period.

(2) *Price adjustment in excess of legal obligation.* The excess, if any, of the amount described in paragraph (c)(1)(ii) of this section over the amount described in paragraph (c)(1)(i) of this section should be excluded in the taxable year in which it is properly accurable under section 461.

(d) *Return of the merchandise*—(1) *In general.* The exclusion from gross income allowed by section 458 applies with respect to a qualified sale of merchandise only if the seller receives, before the close of the merchandise return period, either—

(i) The physical return of the merchandise, or

(ii) Satisfactory evidence that the merchandise has not been and will not be resold (as defined in paragraph (d)(2) of this setion).

For the purpose of this paragraph, evidence of a return received by an agent of the seller (other than the purchaser who purchased the merchandise from the seller) will be considered to be received by the seller at the time the agent receives the merchandise or evidence.

(2) *Satisfactory evidence.* Evidence that merchandise has not been and will not be resold is satisfactory only if the seller receives

(i) Physical return of some portion of the merchandise (*e.g.*, covers) provided under either the agreement between the seller and the purchaser, or the practice of the industry, such return indicates that the purchaser has not sold and will not resell the merchandise, or

(ii) A written statement from the purchaser specifying the quantities of each title not resold provided either—

(A) The statement contains a representation that the items specified will not be resold by the purchaser, or

(B) The past dealings, if any, between the parties and the practice of the industry indicates that such statement constitutes a promise by the purchaser not to resell the items.

(3) *Retention of evidence.* In the case of a return of merchandise (described in paragraph (d)(1)(i) of this section) or portion thereof (described in paragraph (d)(2)(i) of this section), the seller has no obligation to retain physical evidence of the returned merchandise or portion thereof so long as there is documentary evidence that describes the quantity of physical items returned to the seller and that indicates that the items were returned before the close of the merchandise return period.

(e) *Transitional adjustment*— (1) *In general.* An election to change from some other method of accounting for the return of magazines, paperbacks, or records to the method of accounting described in section 458 is a change in method of accounting that requires a transitional adjustment. Section 458 provides special rules for transitional adjustments that must be taken into account as a result of this change. See paragraph (e)(2) of this section for special rules applicable to magazines and paragraph (e) (3) and (4) of this section for special rules applicable to paperbacks and records.

(2) *Magazines: 5-year spread of decrease in taxable income.* For taxpayers who have elected to use the method of accounting described in section 458 to account for returned magazines for a taxable year, section 458(d) and this subparagraph provide a special rule for taking into account any decrease in taxable income resulting from the adjustment required by section 481(a)(2). Under these provisions, one-fifth of the transitional adjustment shall be taken into account in the taxable year of the change and in each of the 4 succeeding taxable years. For example, if the application of section 481(a)(2) would produce a decrease in taxable income of $50 for 1980, the year of change, then $10 (one-fifth of $50) shall be taken into account as a decrease in taxable income for 1980, 1981, 1982, 1983, and 1984.

(3) *Suspense account for paperbacks and records*—(i) *In general.* For taxpayers who have elected to use the method of accounting described in section 458 to account for returned paperbacks and records for a taxable year, section 458(e) provides that, in lieu of applying section 481, an electing taxpayer shall establish a separate suspense account for its paperback business and its records business. The initial opening balance of the suspense account is described in paragraph (e)(3)(ii)(A) of this section. An initial adjustment to gross income for the year of election is described in paragraph (e)(3)(ii)(B) of this section. Annual adjustments to the suspense account are described in paragraph (e)(3)(iii)(A) of this section. Gross income adjustments are described in paragraph (e)(3)(iii)(B) of this section. Examples are provided in paragraph (e)(4) of this section. The effect of the suspense account is to defer all, or some part, of the deduction of the transitional adjustment until the taxpayer is no longer engaged in the trade or business of selling paperbacks or records, whichever is applicable.

(ii) *Establishing a suspense account*— (A) *Initial opening balance.* To compute the initial opening balance of the suspense account for the first taxable year for which an election is effective, the taxpayer must determine the section 458 amount (as defined in paragraph (e)(3)(ii)(C) of this section) for each of the three preceding taxable years. The initial opening balance of the account is the largest such section 458 amount.

(B) *Initial year adjustment.* If the initial opening balance in the suspense account exceeds the section 458 amounts (as defined in paragraph (e)(3)(ii)(C) of this section) for the taxable year immediately preceding the year of election, such excess is included in the taxpayer's gross income for the first taxable year for which the election was made.

(C) *Section 458 amount.* For purposes of paragraph (e)(3)(ii), the section 458 amount for a taxable year is the dollar amount of merchandise returns that would have been excluded from gross income under section 458(a) for such taxable year if the section 458 election had been in effect for such taxable year.

(iii) *Annual adjustments*—(A) *Adjustment to the suspense account.* Adjustments are made to the suspense account each year to account for fluctuations in merchandise returns. To compute the annual adjustment, the taxpayer must determine the amount to be excluded under the election from gross income under section 458(a) for the taxable year. If the amount is less than the opening balance in the suspense account for the taxable year, the balance in the suspense account is reduced by the difference. Conversely, if such amount is greater than the opening balance in the suspense account for the taxable year, the account is increased by the difference (but not to an amount in excess of the initial opening balance described in paragraph (e)(3)(ii)(A) of this section). Therefore, the balance in the suspense account will never be greater than the initial opening balance in the suspense account determined in paragraph (e)(3)(ii)(A) of this section. However, the balance in the suspense account after adjustments may be less than this initial opening balance in the suspense account.

(B) *Gross income adjustments.* Adjustments to the suspense account for years subsequent to the year of the election also produce adjustments in the taxpayer's gross income. Adjustments which reduce the balance in the suspense account reduce gross income for the year in which the adjustment to the suspense account is made. Adjustments which increase the balance in the suspense account increase gross income for the year in which the adjustment to the suspense account is made.

(4) *Examples.* (i) The provisions of paragraph (e) (3) of this section may be illustrated by the following examples:

Example (1). Assume that X corporation, a paperback distributor, makes a timely section 458 election for its taxable year ending December 31, 1980. Assume also that if the election had been in effect for the taxable years ending on December 31, 1977, 1978, and 1979, the dollar amounts of the qualifying returns would have been $5, $8, and $6, respectively. Under these facts, the initial opening balance of X's suspense account on January 1, 1980 is $8, the largest of these amounts. Since the initial opening balance ($8), is larger than the qualifying returns for 1979 ($6), the initial adjustment to gross income for 1980 is $2 ($8 − $6).

Example (2). Assume the same facts as in example (1). Assume also that X has $5 in qualifying returns for its taxable year ending December 31, 1980. Under these facts, X must reduce its suspense account by $3, which is the excess of the opening balance ($8) over the amount of qualifying returns for the 1980 taxable year ($5). X should also reduce its gross income for 1980 by $3. Thus, the net amount excludable from gross income for the 1980 taxable year after taking into account the qualifying returns, the gross income adjustment, and the initial year adjustment is $6 ($3 + $5 − $2).

Example (3). Assume the same facts as in example (2). Assume also that X has qualifying returns of $7 for its taxable year

ending December 31, 1981. Under these facts, X must increase its suspense account balance by $2, which is the excess of the amount of qualifying returns for 1981 ($7) over X's opening balance in the suspense account ($5). X must also increased its gross income by $2. Thus, the net amount excludable from gross income for the 1981 taxable year after taking into account the qualifying returns and the gross income adjustment is $5 ($7 − $2).

Example (4). Assume the same facts as in example (3). Assume also that X has qualifying returns of $10 for its taxable year ending December 31, 1982. Under these facts the opening balance in X's suspense account of $7 will not be increased in excess of the initial opening balance ($8). A must also increase gross income by $1. Thus, the net amount excludable from gross income for the 1982 taxable year is $9 ($10 − $1).

(ii) Examples (1) through (4) may be summarized by the following table:

	Years ending December 31					
	1977	1978	1979	1980 [1]	1981	1982
Facts:						
Qualifying returns during merchandise return period for the taxable year	$5	$8	$6	$5	$7	$10
Adjustment to suspense account:						
Opening balance				8	5	7
Addition to account [2]					2	1
Reduction to account [3]				(3)		
Opening balance for next year				5	7	8
Amount excludable from income:						
Initial year adjustment				(2)		
Amount excludable as qualifying returns in merchandise return period				5	7	10
Adjustment for increase in suspense account					(2)	(1)
Adjustment for decrease in suspense account				3		
Net amount excludable for the year				6	5	9

[1] Year of change.
[2] Applies when qualifying returns during the merchandise return period exceed the opening balance; the addtion is not to cause the suspense account to exceed the initial opening balance.
[3] Applies when qualifying returns during the merchandise return period are less than the opening balance.

(f) *Subchapter C transactions*—(1) *General rule.* If a transfer of substantially all the assets of a trade or business in which paperbacks or records are sold is made to an acquiring corporation, and if the acquiring corporation determines its basis in these assets, in whole or part, with reference to the basis of these assets in the hands of the transferor, then for the purposes of section 458(e) the principles of section 381 and § 1.381(c)(4)–1 will apply. The application of this rule is not limited to the transactions described in section 381(a). Thus, the rule also applies, for example, to transactions described in section 351.

(2) *Special rules.* If, in the case of a transaction described in paragraph (f)(1) of this section, an acquiring corporation acquires assets that were used in a trade or business that was not subject to a section 458 election from a transferor that is owned or controlled directly (or indirectly through a chain of corporations) by the same interests, and if the acquiring corporation uses the acquired assets in a trade or business for which the acquiring corporation later makes an election to use section 458, then the acquiring corporation must establish a suspense account by taking into account not only its own experience but also the transferor's experience when the transferor held the assets in its trade or business. Furthermore, the transferor is not allowed a deduction or exclusion for merchandise returned after the date of the transfer attributable to sales made by the transferor before the date of the transfer. Such returns shall be considered to be received by the acquiring corporation.

(3) *Example.* The provisions of paragraph (f)(2) of this section may be illustrated by the following example.

Example. Corporation S, a calendar year taxpayer, is a wholly owned subsidiary of Corporation P, a calendar year taxpayer. On December 31, 1982, S acquires from P substantially all of the assets used in a trade or business in which records are sold. P had not made an election under section 458 with respect to the qualified sale of records made in connection with that trade or business. S makes an election to use section 458 for its taxable year ending December 31, 1983, for the trade or business in which the acquired assets are used. Assume that P's qualified record returns within the 4 month and 15 day merchandise return period following the 1980 and 1981 taxable years were $150 and $170 respectively. Assume further that S's qualified record returns during the merchandise return period following 1982 were $160. S must establish a suspense account by taking into account both P's and S's experience for the 3 immediately preceding taxable years. Thus, the initial opening balance of S's suspense account is $170. S must also make an initial year adjustment of $10 ($170–$160), which S must include in income for S's taxable year ending December 31, 1983. P is not entitled to a deduction or exclusion for merchandise received after the date of the transfer (December 31, 1982) attributable to sales made by the transferor before the date of transfer. Thus, P is not entitled to a deduction or exclusion for the $160 of merchandise received by S during the first 4 months and 15 days of 1983.

(g) *Adjustment to inventory and cost of goods sold.* If a taxpayer makes adjustments to gross receipts for a taxable year under the method of accounting described in section 458, the taxpayer may also be required to make appropriate corresponding adjustments to purchases or closing inventory and to cost of goods sold for the same taxable year. Such adjustments will be required, for example, where the taxpayer holds the merchandise returned for resale and where the taxpayer is entitled to receive a price adjustment from the person or entity that sold the merchandise to the taxpayer.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84-23135 Filed 8-30-84; 8:45 am]
BILLING CODE 4830-01-M

---

26 CFR Part 1

[LR-107-84]

Collapsible Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a notice of proposed rulemaking to amend the income tax regulations under section 341, relating to collapsible corporations, to reflect amendments to that section made by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Tax Reform Act of 1984 (1984 Act). The 1984 Act amended the definition of a collapsible corporation in section 341(b)(1) and modified the limitation in section 341(d)(2) on the application of section 341 to gain recognized upon the sale or exchange of stock, or a distribution with respect to stock, of a collapsible corporation. These proposed amendments to the regulations will provide the public with guidance needed to comply with the law.

DATES:

Proposed Effective Date

The amendments to the regulations reflecting the 1984 Act are proposed to be effective for sales or exchanges of stock, or distributions with respect to stock, of a corporation occurring after July 18, 1984. A modification to § 1.341–4(a) is proposed to be effective in the case of stock acquired after June 22, 1984, and before January 1, 1988. An amendment conforming § 1.341–1(b) to TEFRA is proposed to be generally effective for distributions after August 31, 1982.

Dates for Comments and Requests

Written comments and requests for a public hearing must be delivered or mailed by October 30, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–107–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Michel A. Daze of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 341 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 222(e)(5) of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 480) (TEFRA) and sections 65 and 1001 (a)(1) and (b)(2) of the Tax Reform Act of 1984 (98 Stat. 498, 1011) (1984 Act). The proposed amendments are to be issued under the authority contained in Code sections 341(d) and 7805 (98 Stat. 498, 26 U.S.C. 341(d);' 68A Stat. 917, 26 U.S.C. 7805, respectively).

Gain Treated as Ordinary Income

Under section 341(a), the entire gain from the sale or exchange of stock of a collapsible corporation, including a complete or partial liquidation, or from a distribution by a collapsible corporation that is treated under section 301(c)(3)(A) as gain from the sale or exchange of property, is considered as ordinary income. Paragraph (2) of section 341(a) was amended by section 222(e)(5) of TEFRA to conform section 341(a) with other amendments to the Code relating to distributions in partial liquidation. The provisions of § 1.341–b, which treat gain recognized as ordinary income, are proposed to be amended to reflect this amendment to section 341(a) by TEFRA.

Section 341(a) converts only long-term capital gain to ordinary income. As amended by section 1001(a)(1) of the 1984 Act, section 1222(3) defines long-term capital gain as gain from the sale or exchange of a capital asset held for more than 6 months, effective for property acquired after June 22, 1984, and before January 1, 1988. Section 1001(b)(2) of the 1984 Act makes a conforming amendment to section 341(a). This limitation on the application of section 341 is reflected in a proposed amendment to § 1.341–4(a).

Collapsible Corporation Defined

Before the 1984 Act, a collapsible corporation was generally defined as a corporation formed or availed of principally for the manufacture, construction, production, or purchase of certain types of property with a view to the sale or exchange of stock (including liquidation of the corporation), or a distribution to shareholders, before the realization by the corporation of a "substantial part" of the taxable income to be derived from such property. Several courts have disagreed as to whether the term "substantial part" should be interpreted by reference to taxable income realized from the property before the collapse (sale, exchange, or distribution), or to taxable income remaining to be realized after the collapse.

The rule that a corporation is not collapsible if the amount of taxable income realized before the collapse is substantial in relation to the total taxable income to be derived from the property has been consistently followed by the Tax Court and adopted by two Circuit Courts of Appeal. *Commissioner* v. *Kelley*, 32 T.C. 135 (1959), *aff'd*, 293 F.2d 904 (5th Cir. 1961); *Zongker* v. *Commissioner*, 39 T.C. 1046 (1963), *aff'd*, 334 F.2d 44 (10th Cir. 1964); *Day* v. *Commissioner*, 55 T.C. 257 (1970). After Kelley, a corporation could avoid collapsible status by realizing as little as one-third of the taxable income to be derived from its property. In contrast, the Third Circuit has held that the amount of taxable income realized could not be substantial unless only an insubstantial part to be derived from the property remained unrealized. *Abbott* v. *Commissioner*, 258 F.2d 537 (3d Cir. 1957). After first adhering to the Third Circuit's position in *Abbott* (Rev. Rul. 62–12, 1962–1 C.B. 321), the Service has acquiesced in several decisions of the Tax Court that refer to the income realized before the collapse (Rev. Rul. 72–48, 1972–1 C.B. 102).

The 1984 Act amends the definition of a collapsible corporation to require that a corporation realize at least two-thirds of the taxable income to be derived from the property in order to avoid collapsible status. The intent is to adopt the view that less than a substantial part must remain unrealized at the time of the collapse and to replace the *Abbott* interpretation with a more definite standard. H.R. Rep. No. 432, 98 Cong., 2d Sess. 1382–3 (1984). This standard is reflected in proposed amendments to §§ 1.341–2 and 1.341–5.

Seventy Percent Limitation

Even if a corporation is collapsible, section 341(d)(2), as amended by the 1984 Act, provides that section 341 will not apply to gain recognized during a taxable year by a shareholder unless more than 70 percent of such gain is attributable to property described in section 341(b)(1) (collapsible property). If 70 percent or less of the gain is attributable to collapsible property, none of the gain is subject to section 341. If more than 70 percent is so attributable, the entire gain is treated as ordinary income, absent any other limitation on the application of section 341. If property is manufactured, constructed, produced, or purchased by a corporation with the proscribed view, but the collapsible event occurs after the realization of two-thirds of the taxable income to be derived from the property, then the property is not collapsible property for purposes of the 70 percent limitation. Section 341(d) was further amended to provide that, in determining whether property is described in section 341(b)(1) for purposes of applying the 70 percent limitation, all property described in section 1221(1) is to be treated, to the extent provided in regulations, as one item of property.

Under § 1.341–4(c)(2), the gain attributable to collapsible property is the excess of the recognized gain of a shareholder with respect to stock in a collapsible corporation over the gain which the shareholder would have recognized if the collapsible property had not been manufactured, constructed, produced, or purchased. Thus, as the number of items of property with respect to which a corporation has realized two-thirds of the taxable income to be derived therefrom increases, the amount of the shareholder's gain attributable to collapsible property decreases. Under § 1.341–2(a)(4), if property is a unit of an integrated project involving several properties similar in kind, a determination of the amount of taxable income realized is made by reference to the aggregate of the properties constituting the single project. Congress was concerned that the 70 percent

limitation would prevent the application of section 341 in some cases when a corporation has not realized in the aggregate two-thirds of the taxable income from separate projects consisting of section 1221(1) property, but with respect to an individual project the corporation has realized two-thirds of the taxable income to be derived therefrom. H.R. Rep. No. 431, *supra*, at 1383. Therefore, the Secretary was authorized to promulgate regulations treating all property described in section 1221(1) as one item of property. H.R. Rep. No. 861, 98th Cong., 2d Sess. 848 (1984).

Accordingly, new paragraphs (c)(4) through (c)(8) are proposed to be added to § 1.341–4. Paragraph (c)(4) provides that section 1221(1) property that is also collapsible property, without regard to whether two-thirds of the taxable income to be derived from such property has been realized, is aggregated and treated as one item of property. Thus, separate projects that consist of such section 1221(1) property are aggregated and treated as a single item of property. If, after applying the aggregation rules of paragraph (c)(4), the corporation has realized less than two-thirds of the taxable income to be derived from the aggregated property, the aggregated property is treated as property described in section 341(b)(1) for the purpose of applying the seventy percent limitation.

The collapsible corporation provisions of section 341 are designed to prevent a taxpayer from converting what otherwise would be ordinary income to a corporation from the manufacture, construction, production, or purchase of property into capital gain from the sale or exchange of stock of the corporation. To carry out the intent of section 341 as amended by the 1948 Act, proposed paragraph (c)(5) provides that, if one of the purposes for forming or availing of a corporation that is related to another corporation is to avoid the application of the aggregation rule provided in the last sentence of section 341(d) and proposed paragraph (c)(4), section 1221(1) property held by both corporations is subject to aggregation. Comments are invited on the extent to and the manner in which such aggregation should be required.

In addition, proposed paragraph (c)(6) provides that a section 1221(1) property is not aggregated with another section 1221(1) property and treated as one item of property under paragraphs (c)(4) and (5), even if such other section 1221(1) property represents a prior aggregation, if the effect would be to reduce the amount of the gain recognized during the taxable year with respect to stock of a collapsible corporation that is attributable to property described in section 341(b)(1).

Proposed paragraph (c)(7) contains the effective dates of the proposed amendments to § 1.341–4 and proposed paragraph (c)(8) provides examples illustrating the application of the 70 percent limitation when gain is attributable to section 1221(1) property.

Effective Dates

The proposed amendment to § 1.341–1(b), which would conform the regulations to section 222(e)(5) of TEFRA, is proposed to be generally effective for distributions after August 31, 1982. The amendment to the limitation on the application of section 341 provided in § 1.341–4(a) is proposed to be effective for stock acquired after June 22, 1984, and before January 1, 1988. All other amendments to the regulations under section 341 are proposed to be effective for sales or exchanges of stock, or distributions with respect to stock, of a collapsible corporation occurring after July 18, 1984.

Comments and Request for a Public Hearing

Before these proposed amendments to the regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of the proposed amendments to the regulations is Michel A. Daźe of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developeing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.301–1—1.385–6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

PART 1—[AMENDED]

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

§ 1.341–1 [Amended]

Paragraph 1. Paragraph (b) of § 1.341–1 is amended by removing "under section 331," and adding instead "under section 331 or under section 302(b)(4) as added by the Tax Equity and Fiscal Responsibility Act of 1982,".

§1.341–2 [Amended]

Par. 2. Section 1.341–2 is amended by removing "a substantial part of the taxable income" from paragraph (a)(l)(iii)(*a*), from first sentence of paragraph (a)(2), and from the second and third sentences of paragraph (a)(4), and adding instead "two-thirds of the taxable income (or, in the case of sales, exchanges, or distributions before July 19, 1984, a substantial part of the taxable income)".

Par. 3. Paragraphs (a) and (c) of § 1.341–4 are revised to read as set forth below.

§ 1.341–4 Limitations on application of section.

(a) *General.* This section shall apply only to the extent that the recognized gain of a shareholder upon his stock in a collapsible corporation would be considered, but for the provisions of this section, as gain from the sale or exchange of a capital asset held for more than 1 year (6 months in the case of stock acquired after June 22, 1984, and before January 1, 1988; 6 months for taxable years before 1977; 9 months for taxable years beginning in 1977). Thus, if a taxpayer sells at a gain stock of a collapsible corporation which he had held for six months or less, this section would not, in any event, apply to such gain. Also, if it is determined, under

provisions of law other than section 341, that a sale or exchange at a gain of stock of a collapsible corporation which has been held for more than 1 year (6 months in the case of stock acquired after June 22, 1984, and before January 1, 1988; 6 months for taxable years before 1977; 9 months for taxable years beginning in 1977) results in ordinary income rather than long-term capital gain, then this section (including the limitations contained herein) has no application whatsoever to such gain.

* * * * *

(c) *Seventy-percent rule.* (1) This section shall apply to the gain recognized during a taxable year upon the stock in a collapsible corporation only if more than 70 percent of such gain is attributable to the property referred to in section 341(b)(l). If more than 70 percent of such gain is so attributable, then all of such gain is subject to this section, and, if 70 percent or less of such gain is so attributable, then none of such gain is subject to this section.

(2) For the purpose of this limitation, the gain attributable to the property referred to in section 341(b)(l) is the excess of the recognized gain of the shareholder during the taxable year upon his stock in the collapsible corporation over the recognized gain which the shareholder would have if the property had not been manufactured, constructed, produced, or purchased. In the case of gain on a distribution in partial liquidation or a distribution described in section 301(c)(3)(A), the gain attributable to the property shall not be less than an amount which bears the same ratio to the gain on such distribution as the gain which would be attributable to the property if there had been a complete liquidation at the time of such distribution bears to the total gain which would have resulted from such complete liquidation.

(3) Gain may be attributable to the property referred to in section 341(b)(1) even though such gain is represented by an appreciation in the value of property other than that manufactured, constructed, produced, or purchased. Where, for example, a corporation owns a tract of land and the development of one-half of the tract increases the value of the other half, the gain attributable to the developed half of the tract includes the increase in the value of the other half.

(4) Except as provided in paragraph (c)(6) of this section, the determination of whether property is described in section 341(b)(1) is made by aggregating and treating as one item of property all property meeting both of the following requirements:

(i) It is stock in trade of the corporation or other property of a kind which would be properly included in the inventory of the corporation if on hand at the close of the taxable year, or property held by the corporation primarily for sale to customers in the ordinary course of the corporation's trade or business (section 1221(1) property), and

(ii) It is described in section 341(b)(1) without regard to whether the corporation has realized two-thirds or more of the taxable income to be derived from such property. Thus, separate projects that consist of property described in both (i) and (ii) of the preceding sentence are aggregated and treated as a single item of property. If, after applying the aggregation rules of this paragraph (c)(4), the corporation has realized less than two-thirds of the taxable income to be derived from the aggregated property, the aggregated property is treated as property described in section 341(b)(1) for the purpose of applying section 341(d)(2) and this paragraph (c).

(5) If one of the purposes for forming or availing of a corporation that is related to another corporation is to avoid the application of the last sentence of section 341(d) and paragraph (c)(4) of this section, section 1221(1) property that is described in paragraph (c)(4) of this section and held by one corporation is subject to aggregation with such property of the related corporation.

(6) Property described in section 1221(1) is not aggregated with other property described in section 1221(1) and treated as one item of property under paragraph (c) (4) and (5) of this section, even if such other section 1221(1) property represents a prior aggregation, if the effect would be to reduce the amount of the gain recognized during the taxable year with respect to stock of a collapsible corporation that is attributable to property described in section 341(b)(1).

(7) Paragraphs (c) (4), (5), and (6) of this section are effective for sales or exchanges of stock, or distributions with respect to stock, of a corporation occurring after July 18, 1984.

(8) The following examples illustrate the application of the seventy percent rule:

Example (1). (i) On January 2, 1985, A forms corporation X and contributes $1 million cash in exchange for all the X stock. Corporation X immediately purchases for $400,000 property that is not described in section 341(b)(2) of section 341(b)(3) and is not stock of another collapsible corporation. As of December 31, 1985, the corporation has sold the property and realized all of the taxable income to be derived from the property, resulting in a profit of $100,000 (after taxes).

(ii) On January 15, 1985, X also acquires for $300,000 each two separate tracts of land in neighboring cities, for the purposes of subdividing and developing each tract into lots suitable for sale as homesites and holding them primarily for sale to customers in the ordinary course of business. Each tract is expected to produce $1.25 million of taxable income. A, however, intends to sell all the X stock before ⅔ of the taxable income is derived from either tract. As of December 31, 1985, X has realized $900,000 of taxable income from tract I (72%), but only $250,000 (20%) from tract II. On January 1, 1986, A sells all the X stock.

(iii) Under paragraph (c)(4) of this section, both tracts are aggregated and treated as one item of property to determine if that item is property described in section 341(b)(1) for the purpose of determining the amount of gain on the sale of the X stock attributable to property so described. Although more than two-thirds of the taxable income to be derived from tract I has been realized by X, less than two-thirds has been realized from the two tracts in the aggregage

$$\frac{900{,}000+250{,}000}{1{,}250{,}000+1{,}250{,}000} \text{ or } 46\% .$$

Thus, the two tracts constitute an item of property that is described in section 341(b)(1).

(iv) Assume A recognizes $750,000 gain upon the sale of the X stock, but A would have recognized only $100,000 gain had the two tracts of land not been acquired for subdivision and sale. Thus, the gain attributable to property described in section 341(b)(1) is $650,000. Because such gain is more than 70 percent of the total gain recognized by A, the entire gain from the sale of the X stock is subject to section 341(a).

Example (2). (i) The facts are the same as in example (1), with the following modification. Tract I is acquired for $150,000 and is expected to produce $465,000 of taxable income. Tract II is acquired for $450,000 and is expected to produce $1,850,000 of taxable income. As of December 31, 1985, X has realized 100% of the taxable income from tract I, but only $1,130,000 (61.1%) from tract II. On January 1, 1986, A sells all the X stock.

(ii) The two tracts are not aggregated and treated as one item of property because the amount of gain from the sale of the X stock attributable to property described in section 341(b)(1) would be reduced below that amount which would be so attributable without aggregation. If the tracts were aggregated, X would have realized more than two-thirds of the taxable income from the two tracts

$$\frac{465{,}000+1{,}130{,}000}{465{,}000+1{,}850{,}000} \text{ or } 68.9\%,$$

and none of A's gain would be attributable to property described in section 341(b)(1).

(iii) If the tracts are not aggregated, however, tract II is property described in section 341(b)(1) since X has not realized two-thirds of the taxable income to be derived from that tract. Therefore, the gain recognized on the sale of the X stock attributable to property described in section 341(b)(1) (tract II) is determined under this paragraph (c) without regard to paragraph (c)(4). If the gain attributable to tract II is more than 70 percent of the total gain recognized by A, the entire gain from the sale of the X stock is subject to section 341(a).

Example (3). On January 2, 1985, A forms corporation X and contributes $600,000 cash in exchange for all the X stock. Corporation X immediately acquires three tracts of land in separate cities for the purpose of subdividing and developing each tract into lots suitable for sale as homesites and holding them primarily for sale to customers in the ordinary course of business. Tract I is expected to produce $250,000 of taxable income, tract II, $50,000, and tract III, $700,000. A, however, intends to liquidate the corporation before ⅔ of the taxable income is derived from any of the projects. As of December 31, 1985, X has realized 100% of the taxable income from tracts I and II, but only $400,000 (57.1%) from tract III. On January 2, 1986, A liquidates the corporation and recognizes gain. Under paragraph (c)(6) of this section, only tracts II and III are aggregated and treated as one item to determine if that item is property described in section 341(b)(1). Because less than two-thirds of the taxable income has been realized from those tracts in the aggregate

$$\frac{50,000 + 400,000}{50,000 + 700,000} \text{ or } 60\%,$$

tracts II and III constitute an item of property that is described in section 341(b)(1). If more than 70 percent of A's gain is attributable to that item of property, all of A's gain is subject to section 341(a).

Example (4). The facts are the same as in example (1), except that on December 31, 1985, X transfers tract II to a newly formed subsidiary, S, in exchange for all the S stock in a transaction to which section 351 applies. One of the purposes for the transfer is to avoid aggregation of the two tracts when A sells all the X stock. Under paragraph (c)(5) of this section, the two tracts are aggregated and treated as one item of property to determine if that item is property described in section 341(b)(1). That item is so described because only 46 percent of the taxable income to be derived therefrom has been realized. Accordingly, for purposes of applying section 341(d) and this paragraph (c), gain recognized upon the sale of the X stock that is attributable to both tract I and tract II is gain attributable to property described in section 341(b)(1).

Example (5). The facts are the same as in example (4), except that, before acquiring tract II, X transfers $300,000 to a newly formed subsidiary, S, which in turn acquires tract II. One of the purposes of the transfer is to avoid aggregation of the two tracts when A sells all the X stock. Upon a sale of all the X stock by A, tract I and tract II are aggregated and treated as one item of property under paragraph (c)(5) of this section. The results are the same as in example (4).

* * * * *

Par. 4. Section 1.341–5 is amended as follows:

1. Paragraph (b)(5) is amended by removing "a substantial part of the taxable income" and adding instead "two-thirds of the taxable income (or, in the case of sales, exchanges, or distributions before July 19, 1984, a substantial part of the taxable income)".

2. Paragraph (d) is revised to read as set forth below:

§ 1.341–5 Application of section.

* * * * *

(d) The following examples will illustrate the application of this section:

Example (1). (i) On January 2, 1985, A formed the W Corporation and contributed $50,000 cash in exchange for all of the stock thereof. The W Corporation borrowed $900,000 from a bank and used $800,000 of such sum in the construction of an apartment house on land which it purchased for $50,000. The apartment house was completed on December 31, 1985. On December 31, 1985, the corporation, having determined that the fair market value of the apartment house, separate and apart from the land, was $900,000, made a distribution (permitted under the applicable State law) to A of $100,000. At this time, the fair market value of the land was $50,000. As of December 31, 1985, the corporation has not realized any earnings and profits. In 1986, the corporation began the operation of the apartment house and received rentals therefrom. The corporation has since continued to own and operate the building. The corporation reported on the basis of the calendar year and cash receipts and disbursements.

(ii) Since A received a distribution and realized a gain attributable to the building constructed by the corporation, since, at the time of such distribution, the corporation has not realized two-thirds of the taxable income to be derived from such building, and since the construction of the building was a substantial activity of the corporation, the W Corporation is considered a collapsible corporation under paragraph (b) of § 1.341–5. The provisions of section 341(d) do not prohibit the application of section 341(a). Therefore, the distribution, if and to the extent that it may be considered long-term capital gain rather than ordinary income without regard to section 341, will be considered ordinary income under section 341(a).

(iii) In the event of the existence of additional facts and circumstances in the above case, the corporation, notwithstanding the above facts, might not be considered a collapsible corporation. See § 1.342–2 and paragraph (a) of § 1.341–5.

Example (2). (i) On January 2, 1985, B formed X Corporation and became its sole shareholder. In August 1985, the corporation completed construction of an office building. It immediately sold this building at a gain of $50,000, included this entire gain in its return for 1985, and distributed this entire gain (less taxes) to B. In June 1986, the corporation completed construction of a second office building. In August 1986, B sold the entire stock of X Corporation at a gain of $12,000, which gain is attributable to the second building.

(ii) X Corporation is a collapsible corporation under section 341(b) for the following reasons: The gain realized through the sale of the stock of X Corporation was attributable to the second office building, the construction of that building was a substantial activity of X Corporation during the time of construction and, at the time of sale, the corporation had not realized two-thirds of the taxable income to be derived from such building. Since the provisions of section 341(d) do not prohibit the application of section 341(a) to B, the gain of $12,000 to B is, accordingly, considered ordinary income.

Example (3). The facts are the same as in example (2), except that the following facts are shown: B was the president of the X Corporation and active in the conduct of its business. The second building was constructed as the first step in a project of the X Corporation for the development for rental purposes of a large suburban center involving the construction of several buildings by the corporation. The sale of the stock by B was caused by his retiring from all business activity as a result of illness arising after the second building was constructed. Under these additional facts, the corporation is not considered a collapsible corporation. See § 1.341–2 and paragraph (a) of § 1.341–5.

Example (4). (i) On January 2, 1978, C formed the Y Corporation and became the sole shareholder thereof. The Y Corporation has been engaged solely in the business of producing motion pictures and licensing their exhibition. On January 2, 1985, C sold all of the stock of the Y Corporation at a gain. The Y Corporation has produced one motion picture each year since its organization and before January 2, 1985, it has realized at least two-thirds of the taxable income to be derived from each of its motion pictures except the last one made in 1984. This last motion picture was completed September 1, 1984. As of January 2, 1985, no license had been made for its exhibition. The fair market value on January 2, 1985, of this last motion picture exceeds the cost of its production by $50,000. A material part of the production of this last picture was completed on January 1, 1984, and between that date and January 2, 1985, the corporation had realized taxable income of $500,000 from other motion pictures produced by it. The corporation has consistently distributed to its shareholder its taxable income when received (after adjustment for taxes).

(ii) Although the corporation is within paragraph (b) of this section with respect to the production of property, the amount of the unrealized income from such property ($50,000) is not substantial in relation to the amount of the income realized, after the completion of a material part of the production of such property and prior to sale of the stock, from such property and other property produced by the corporation

($500,000). Accordingly, the Y Corporation is within paragraph (c)(2) of this section, and is not considered a collapsible corporation.

Example (5). The facts are the same as in example (4) except that C sold all of his stock to D on February 1, 1984. On January 2, 1985, D sold all of the Y Corporation stock at a gain, the gain being attributable to the picture completed September 1, 1984, and not released by the corporation for exhibition. In view of the change of control of the corporation, the provisions of paragraph (c)(2) of this section are not significant at the time of the sale by D, and the Y Corporation would be considered a collapsible corporation on January 2, 1985. See § 1.341–2 and paragraph (a) of § 1.341–5.

Roscoe L Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84–23134 Filed 8–30–84; 8:45 am]

BILLING CODE 4830–01–M

---

26 CFR Part 1

[LR–153–84]

Treatment of Transfer of Property Between Spouses, Tax Treatment of Alimony and Separate Maintenance Payments, and Dependency Exemption in the Case of Child of Divorced Parents; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the treatment of transfers of property between spouses or former spouses, the tax treatment of alimony and separate maintenance payments, and the dependency exemption in the case of a child of divorced parents. The temporary regulations also serves as the text for this Notice of Proposed Relemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 20, 1984. These regulations are proposed to be effective for transfers of property between spouses or former spouses after July 18, 1984 (except as otherwise provided in § 1.1041–1T(f)), alimony or separate maintenance payments made with respect to divorce or separation instruments executed after December 31, 1984, and, to dependency exemptions released for tax years beginning after December 31, 1984.

ADDRESS: Send comments and request for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (LR–153–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T (LR–153–84) (202) 566–4336, not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations are designated by a "T" following their section citation. The final regulations which are proposed to be based on the temporary regulations would amend Part 1 of Title 26 of the Code of Federal Regulations. The regulations provide rules relating to the treatment of transfers of property between spouses, or former spouses incident to divorce under 1041 of the Internal Revenue Code of 1954 (Code) as added by section 421 of the Tax Reform Act of 1984 (Act) (Pub. L. 98–369, 98 Stat. 793), alimony or separate maintenance payments under sections 71 and 215 of the Code as amended by section 422 of the Act (Pub. L. 98–369, 98 Stat. 795) and the dependency exemption in the case of a child of divorced parents under section 152 of the Code, as amended by section 423 of the Act (Pub. L. 98–369, 98 Stat. 799). These regulations are to be issued under the authority contained in sections 1041(d)(4) (98 Stat. 798, 26 U.S.C. 1041(d)(4)), 152(e)(2)(A) (98 Stat. 802, 26 U.S.C. 152(e)(2)(A)), 215(c) (98 Stat. 800, 26 U.S.C. 215(c)) and 7805 (68A Stat. 917, 26 U.S.C 7805) of the Code. For the text of the temporary regulations, see FR Doc. 84–23129 (T.D. 7973) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that although this document is a notice of proposed rulemaking that solicits public comment, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

The principal author of these temporary regulations is Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects in 26 CFR 1.61–1—1.281–1

Income taxes, Taxable income, Deductions, Exemptions.

List of Subjects in 26 CFR 1.1001–1—1.1102–3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 84–23128 Filed 8–30–84; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Public Comment and Opportunity for Public Hearing on the Modification to the Kentucky Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the State of Kentucky as a modification to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These amendments are submitted as further modifications to the Kentucky program. The amendments pertain to (1) procedures that enable sureties to cancel bonds for non-contemporaneous reclamation violations, (2) bond credit for operators who are mining certain abandoned mined lands and establishment of a fund utilizing penalties and fines in excess of $800,000 a year for this purpose (3) Senate Bill 300 and its accompanying policy statement pertaining to incremental bonding, (4) emergency regulations implementing House Bill 514 pertaining to reclamation deferments and the Settlement Agreement for Sierra Club v. Clark *et al.*, Civil Action 83–85, U.S. District Court for Eastern District of Kentucky, (5) Kentucky House Bill 868 pertaining to the receipt of surety bonds and (6) House Bill 888 pertaining to permit transfers.

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before October 1, 1984 will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on September 25, 1984 beginning at 10:00 a.m. at the location shown below under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand delivered to: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

If a public hearing is held its location will be at: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, as listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Offices and the Office of State regulatory authority listed below. Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining, Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, D.C. 20240.

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in the support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Lexington, Kentucky, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business ten working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber.

Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in **ADDRESSES** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1983 **Federal Register** (47 FR 21404–21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1983 **Federal Register** notice.

III. Submission of Program Amendments

By a letter dated August 3, 1984, Kentucky submitted to OSM pursuant to 30 CFR 732.17, certain revisions to the Kentucky regulatory program. These modifications include changes to Kentucky's statute and regulations and a new policy statement. The amendments are discussed below separately.

1. Senate Bill 285

Senate Bill 285 revises KRS 350.066 through 350.077 to provide that a surety upon receipt of a copy of a notice of

non-compliance for failure to maintain contemporaneous reclamation may notify the permittee or the insured that surety on any area disturbed after 30 days from the surety's notice may be refused unless the violation is abated.

Additionally, Kentucky submitted revised regulations for 405 KAR 10:035 that provide procedures for (1) request and notice of surety bond cancellation, (2) permit revocation or deletion of the areas subject to cancellation, and (3) bond release or forfeiture after approval of cancellation.

2. Senate Bill 298

Kentucky is adopting a new provision to its statute that pertains to the remining of property classified as abandoned mine land under KRS 350.560 and the inclusion of such remining in the abandoned mine land enhancement program. Additionally, the new statute contains provisions concerning bond amounts and forefeiture for this type of operation. Further, the bill contains a revision to section 2 of KRS 350.990, paragraph 1, that establishes a fund to be used for the new provisions described above.

3. Senate Bill 300

Senate Bill 300 revises KRS 350.060 to provide procedures for the approval of an incremental bonding plan allowing permit applicants to pay acreage fees in increments according to the approved bonding plan.

Kentucky submitted, as part of its program amendment, a policy memorandum dated July 10, 1984, that directs the implementation of Senate Bill 300. The policy memorandum provides direction to the Regional Administrators on the processing and approval of incremental bonding plans and acreage fees paid in increments.

4. House Bill 514

Kentucky submitted emergency regulations, 405 KAR 16:020E, intended to implement the reclamation deferment portion of House Bill 514. The regulations are intended to reflect the settlement agreement entered by the U.S. District Court on June 15, 1984, in Sierra Club v. Clark *et al.*, Civil Action 83–35 (E.D. KY.).

5. House Bill 868

House Bill 868 amends KRS 350.032 pertaining to the account for receipt of surety bonds. In paragraph 3, Kentucky has adopted specific procedures for handling forfeited surety bonds. Additionally, paragraph 11 provides that the Kentucky Department of Insurance shall revoke a surety's certificate if the surety fails to comply with the provisions of KRS 350.032, paragraph 3.

6. House Bill 888

House Bill 888 amends KRS 350.135 to reflect changes adopted by regulations pertaining to transferee permit applications. The amendment specifies the transferor's and the transferee's liabilities in obtaining written approval to the transfer from the State. Additionally, these provisions contain the conditions by which the State can approve a transfer.

Therefore, the Director is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address the issues of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).* This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: August 28, 1984.

John D. Ward,

Deputy Director, Office of Surface Mining.

[FR Doc. 84–23208 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–05–M

---

30 CFR Part 915

Permanent State Regulatory Program of Iowa; Consideration of Modification of Deadline

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

ACTION: Proposed rule.

SUMMARY: Because material submitted by the State did not satisfy the condition of approval OSM is considering modifying the deadline for Iowa to meet a condition of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The condition concerns the prepayment of civil penalties.

DATE: Comments not received on or before 4:00 p.m. October 1, 1984, will not necessarily be considered.

ADDRESSES: Written comments must be mailed or hand-delivered to: Office of Surface Mining, Kansas City Field Office, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.

Copies of the Iowa program, all written comments received in response to this notice, and all other documents referenced in this notice will be available for public review at the OSM Field Office listed above and at the OSM Headquarters Office and the Office of State regulatory authority listed below, during normal business hours Monday through Friday, excluding holidays.

Office of Surface Mining, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240;

Iowa Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rieke, Field Office Director, Kansas City Field Office, Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION:

Background on the Iowa Program

The Iowa program was conditionally approved by the Secretary of the Interior on January 21, 1981 (46 FR 5885). The approval was made effective April

10, 1981. Information pertinent to the general background, revisions, modifications, and amendments to the Iowa program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Iowa program can be found in the January 21, 1981 **Federal Register.**

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set forth in the notice of conditional approval. The schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

In accepting the Secretary's conditional approval, Iowa agreed to satisfy original conditions (a) and (c) by July 1, 1981 and condition (b) by January 1, 1982. Original conditions (a), (b) and (c) have been removed (47 FR 22950, May 26, 1982, and 47 FR 39482, September 7, 1982). On November 9, 1983, OSM announced the Secretary's decision to impose a new condition of approval on the Iowa program (48 FR 51457).

Background on the Condition

When Iowa's program was conditionally approved by the Secretary of the Interior on January 21, 1981, it did not include a prepayment requirement comparable to that contained in section 518(c) of SMCRA and 30 CFR 845.19. At the time of issuance of the conditional approval of Iowa's permanent program, the Secretary was enjoined on constitutional grounds by the U.S. District Court for the Southern District of Iowa From requiring the State to include in its program a provision comparable to the prepayment requirement in section 518(c) of SMCRA. *Star Coal Co.* v. *Andrus*, 14 ERC 1325 (1980). The issue of the constitutionality of section 518(c) was also pending before the U.S. Supreme Court in two cases. Because of the court cases pending at the time of his decision, the Secretary did not condition his approval of Iowa's program upon correction of the absence of an escrow requirement in the civil penalty provisions.

However, the decision notice on Iowa's program (Finding 4th(3)), stipulated that should the Supreme Court rule that the prepayment requirement of section 518(c) was constitutional, the Secretary would then take steps to require Iowa to comply with the requirements relating to prepayment of civil penalties.

In both of the cases before the Supreme Court, the issue of the constitutionality of section 518(c) was pretermitted on the ground that the issue was not ripe for the Court to decide. *See Hodel* v. *Virginia Surface Mining and Reclamation Association*, 452 U.S. 264, 16 ERC 1027 (1981); *Hodel* v. *Indiana*, 452 U.S. 314, 16 ERC 1048 (1981). Although the Supreme Court did not rule on the constitutionality of section 518(c), the decisions in the *Hodel* and *Star Coal* cases removed the legal restraints on the Secretary's statutory obligation to require Iowa to comply with the prepayment provisions of SMCRA and existing regulations.

Therefore, on January 14, 1982, OSM notified the Iowa Department of Soil Conservation (DSC) that an amendment to Iowa's program was needed because the cases in which the constitutionality of SMCRA's prepayment provision was challenged had been decided and the injunction against the Secretary in the case of *Star Coal* had been lifted.

In the January 14, 1982 letter, OSM noted that it was considering modifying the Federal penalty prepayment requirement because of its concern that rigid adherence to the rule, in certain circumstances, might violate the constitutional guarantee of due process. However, on May 25, 1982, OSM notified the State that no modification to the Federal prepayment rule was anticipated in the near future and set a deadline of June 30, 1983, for the State to amend its program. On August 16, 1982, OSM promulgated final rules modifying the inspection, enforcement and civil penalty provisions of the permanent regulatory program. OSM made no change to the prepayment requirement.

On March 18, 1983, the Iowa Deputy Attorney General, on behalf of the DSC, informally submitted to OSM for review three alternative bills which would amend the Iowa statute concerning civil penalty assessment. On May 25, 1983, the DSC requested a one-year extension of the June 30, 1983, deadline because the legislative session had ended and no action had been taken on any of the three alternatives. The DSC noted that a one-year extension was necessary because the Iowa General Assembly would not convene again until January 1984.

OSM notified Iowa, on August 2, 1983, that the Secretary would propose adding a new condition to the Iowa program requiring the State to amend its program by June 30, 1984, to incorporate requirements consistent with section 518(c) of SMCRA and 30 CFR 845.19. On November 9, 1983, OSM announced the Secretary's decision to impose the condition.

Proposal to Extend Deadline

By letter dated May 2, 1984, Iowa requested the OSM informally review Iowa House File 531, to determine if the legislation would satisfy the condition imposed on the Iowa program. Iowa stated that House File 531 was enacted by the 70th Iowa General Assembly and signed into law by the Governor to satisfy the condition. OSM reviewed House File 531 and advised Iowa by letter of June 8, 1984, that the legislation would not satisfy the condition because it did not require prepayment prior to judicial review.

On July 16, 1984, Iowa requested clarification of the alternatives available to the State program in view of OSM's determination that House File 531 would not satisfy the condition. OSM responded on August 6, 1984, by notifying Iowa that because of the good-faith efforts made by the Iowa Department of Soil Conservation and the Iowa General Assembly, OSM would propose that the deadline for Iowa to meet the condition be extended until June 30, 1985. OSM stated that its staff and legal counsel would be available to work with the State prior to the next legislative session to develop a proposal which will be acceptable to both OSM and the State.

Therefore, OSM is proposing that the deadline for the State to meet this condition be extended until June 30, 1985. OSM requests comments on this proposed extension.

Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act.

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 915

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

Dated: August 28, 1984.

John D. Ward,

Deputy Director, Office of Surface Mining.

[FR Doc. 84–23207 Filed 8:30–84; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 925

Permanent State Regulatory Program of Missouri

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

ACTION: Proposed rule.

SUMMARY: OSM is proposing to modify the deadline for Missouri (1) to promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On August 6, 1984, Missouri requested an extension of time for the development of a blaster certification program until August 6, 1985. Each State with a regulatory program approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) is required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments not received by 4:00 p.m. October 1, 1984, will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to Richard Rieke, Director, Kansas City Field Office, Office of Surface Mining, 818 Grand Avenue, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Rieke, Director, Kansas City Field Office, Office of Surface Mining, 818 Grand Avenue, Kansas City, Missouri 64106; Telephone: (816) 374–5527.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Subchapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after the publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of the Missouri program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On August 6, 1984, Missouri requested an extension of the March 4, 1984 deadline, until August 6, 1985, to submit its blaster certification program. The State's letter indicated that it is depending on technical assistance from knowledgeable parties outside the State's staff and therefore, requires additional time to coordinate such assistance. Additionally, Missouri explains that the extension of time is necessary to accommodate its regulatory process in accordance with procedures established by the Missouri Secretary of State.

Therefore, OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: August 27, 1984.

John D. Ward,

Deputy Director, Office of Surface Mining.

[FR Doc. 84–23206 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–05–M

VETERANS ADMINISTRATION

38 CFR Part 3

Dependency of Parents; Compensation; Correction

AGENCY: Veterans Administration.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule on compensation for dependent parents that appeared at pages 32863 and 32864 in the **Federal Register** of Friday, August 17, 1984, (49 FR 32863 and 32864). The action is necessary to correct a typographical error in a proposed income limitation.

DATE: Comments on the proposed rule must be received on or before September 28, 1984.

ADDRESSES: Send comments to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 15, 1984.

FOR FURTHER INFORMATION CONTACT: Robert M. White 202–389–3005.

Dated: August 28, 1984.

Nancy C. McCoy,

Chief, Directives Management Division.

The following correction is made to FR Doc. 84–21614 appearing on page 32864 in the issue of August 17, 1984:

§ 3.250 [Corrected]

On page 32864, center column, in § 3.250, paragraph (a)(1)(iii), the figure "$285" is corrected to read "$185".

[FR Doc. 84–23038 Filed 8–30–84; 8:45 am]

BILLING CODE 8320–01–M

38 CFR Part 17

Definition of Medical Services

AGENCY: Veterans Administration.

ACTION: Proposed regulation amendments.

SUMMARY: The Veterans Administration is proposing to amend its medical regulations (38 CFR Part 17) to conform with provisions of Pub. L. 89–160, Veterans' Health Care Amendments of 1983. The proposed amendment redefines medical services to include preventive health care and provides continuing treatment eligibility for certain persons disabled as a result of VA treatment.

DATE: Comments must be received on or before October 1, 1984. It is proposed to make this amendment effective the date of the statutory changes which they implement, November 21, 1983.

ADDRESSES: Interested persons are invited to submit written comments, suggestions and objections regarding this proposed amendment to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, of the above address, between the hours of 8 a.m. to 4:30 p.m. Monday through Friday, except holidays until October 16, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph F. Fleckenstein, (202) 389–3785.

SUPPLEMENTARY INFORMATION: Public Law 98–160 amended 38 U.S.C. 601(6)(A)(i) to include preventive health care services as part of the definition of medical services. The law also amended 38 U.S.C. 610(a)(3) relating to eligibility for VA hospital and nursing home care. That section authorizes care for a person receiving VA compensation. The statutory amendment authorizes continuing eligibility for care for certain persons who had received compensation for an injury or disability as a result of receiving VA care or as a result of participation in a rehabilitastion program under 38 U.S.C. chapter 31. Continuing hospital and nursing home care eligibility is provided, when the individual's compensation payments are discontinued due to receiving payments from a judgement or tort settlement in connection withg the injury or disability, so long as such eligibility is provided for in the court judgement or settlement.

The Administrator has determined that this amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 millior or more; will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator certifies that this amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this change will regulate only the eligibility of individuals to these benefits.

The Catalog of Federal Domestic Assistance Numbers are: 64.002, 64.009, 64.010, and 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Government programs—Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: August 16, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is amended as follows:

1. In § 17.30, paragraphs (l) and (m)(1) are revised to read as follows:

§ 17.30 Definitions.

* * * * *

(l) *Hospital care.* The term "hospital care" includes:

(1) Medical services rendered in the course of hospitalization of any veteran and transportation and incidental expenses pursuant to the provisions of § 17.100;

(2) Such mental health services, consultation, professional counseling, and training for the members of the immediate family or legal guardian of a veteran, or the individual in whose household such veteran certifies an intention to live, as may be essential to the effective treatment and rehabilitation of a veteran or dependent or survivor of a veteran receiving care under the provisions of § 17.54(c) (38 U.S.C. 601(5)), as amended by Pub. L. 93–82, sec. 101(b); Pub. L. 94–581, sec. 102(1); and

(3)(i) Medical services rendered in the course of the hospitalization of a dependent or survivor of a veteran receiving care under the provisions of § 17.54(c), and (ii) transportation and incidental expenses for such dependent or survivor of a veteran who is in need of treatment for any injury, disease, or disability and is unable to defray the expense of transportation. (38 U.S.C. 601(5), as amended by Pub. L. 93–82, sec. 101(b); Pub. L. 98–160)

(m) *Medical services.* The term "medical services" includes, in addition to medical examination, treatment, and rehabilitative services:

(1) Surgical services, dental services and appliances as authorized in §§ 17.60(f), 17.120, 17.123 and 17.123a, optometric and podiatric services (in the case of a person otherwise receiving care or services under this chapter) the preventive health care services set forth in 38 U.S.C. 662, and except for veterans authorized outpatient care under § 17.60(e), wheelchairs, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as are medically determined to be reasonable and necessary. (38 U.S.C. 601(6)(A)(i); sec. 106, Pub. L. 98–160)

* * * * *

2. In § 17.48, paragraph (b) is revised to read as follows:

§ 17.48 Considerations applicable in determining eligibility for hospital, nursing home or domiciliary care.

* * * * *

(b)(1) Under paragraph (c)(1) of § 17.47, veterans who are receiving disability compensation awarded under § 3.800 of this title, where a disease,

injury or the aggravation of an existing disease or injury occurs as a result of VA examination, medical or surgical treatment, or of hospitalization in a VA health care facility or of participation in a rehabilitation program under 38 U.S.C. chapter 31, under any law administered by the VA and not the result of his/her own willful misconduct. Treatment may be provided for the disability for which the compensation is being paid or for any other disability. Treatment under the authority of § 17.47(c)(1) may not be authorized during any period when disability compensation under § 3.800 of this title is not being paid because of the provisions of § 3.800(a)(2), except to the extent continuing eligibility for such treatment is provided for in the judgment for settlement described in § 3.800(a)(2) of this title. (38 U.S.C. 610(a); sec. 701, Pub. L. 98–160)

(2) Under paragraph (c)(3) of § 17.47, "No adequate means of support"—when an applicant is receiving an income of $415 or more per month from any source for personal use, this fact will be considered prima facie evidence of adequate means of support. This is subject to rebuttal by a showing that such income is not adequate to provide the care required by reason of the veteran's disability or that the income is not available for the veteran's use because of other obligations such as contributions in whole or in part to the support of a spouse, child, mother or father. In all such cases of alleged inadequate means of support, the circumstances will be submitted to the Director for decision. (38 U.S.C. 610(a); sec. 701, Pub. L. 98–160).

* * * * *

[FR Doc. 84–23237 Filed 8–30–84; 8:45 am]

BILLING CODE 8320–01–M

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 201

Federal Information Resources Management Regulation (FIRMR); Publication of Integrated Provisions

AGENCY: Office of Information Resources Management, GSA.

ACTION: Notice of proposed rulemaking and availability of drafts of certain parts.

SUMMARY: This notice announces the availability of the Block A portion of the proposed integrated text to be published as Amendment 1 to the FIRMR. No changes will be made in authorities, policies, or procedures from those contained in codified portions of the Federal Procurement Regulations (FPR) and Federal Property Management Regulations (FPMR) from which the provisions are derived. Nevertheless, users may desire to become acquainted with the manner in which the integration is made. While comment and review is not solicited, all comments and suggestions received will be considered.

DATES: Any comments on the proposed provisions should be submitted in writing to the Policy Branch, OIRM at the address shown below on or before October 1, 1984. FIRMR Block "A" and the applicable FIRMR Part number must be cited in all correspondence related to this notice.

ADDRESS: Comments should be submitted to the General Services Administration, KMPP, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Leticia Boddie, Policy Branch, Office of Information Resources Management, telephone 202–566–0194 or FTS, 566–0194. A single copy of any of the parts comprising Block A are available upon request; please specify the part(s) desired.

SUPPLEMENTARY INFORMATION: GSA has established (49 FR 20994, May 17, 1984) the FIRMR to provide a single regulation for use by Federal agencies governing certain of their information activities. Text was published for only Part 201–1. An amendment to the FIRMR is under development to publish an integrated FIRMR text for codified Federal Procurement Regulations (41 CFR Subparts 1–4.11, 1–4.12, and 1–4.13) and Federal Property Management Regulations (41 CFR Parts 101–35, 101–36, 101–37). The first of four blocks of integrated FIRMR text has been drafted. Block A consists of six FIRMR parts. Each part includes derivation and distribution tables relating FIRMR sections to FPR/FPMR sources. The parts in Block A are—

Part 201–1—Definitions of Words and Terms

Part 201–6—Protection of Personal Privacy

Part 201–7—Security of Information Resources Systems

Part 201–8—Implementation and Use of Federal Standards (Proposed Supp. 1 to Temp. Reg. 2 is also available)

Part 201–11—Competition

Part 201–16—Planning

List of Subjects in 41 CFR Chapter 201

Government information resources activities, Government procurement.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: August 23, 1984.

Francis A. McDonough,

Deputy Assistant Administrator for Federal Information Resources Management.

[FR Doc. 84–23215 Filed 8–30–84; 8:45 am]

BILLING CODE 6820–28–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[No. 39777]

Negative Surcharge Tariffs; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules (Exemption).

SUMMARY: The Commission proposes, under 49 U.S.C. 10505, to exempt the filing of negative surcharges from the provisions of section 10762(b)(2) that require concurrences of acceptances by parties to rail joint tariffs. This exemption is proposed to permit rail carriers unilaterally to continue to publish allowance ("negative surcharge") tariffs to the extent such tariffs are authorized by section 10705a(a), which expires September 30, 1984. The Chicago and North Western Transportation Company has filed a petition for such an exemption. However, we conclude that continuance of this pricing option should be considered on an industrywide basis.

DATE: Comments are due on October 1, 1984.

ADDRESS: Send an original and, if possible, 15 copies of comments referring to No. 39777 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245, or Mont L. Burrup (202) 275–6447.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Environment and energy. This action will not significantly affect the quality of the human environment or energy conservation.

Regulatory Flexibility Certification. The Commission certifies that the proposed rule (exemption) will not, if promulgated, have a significant

economic impact on a substantial number of small entities, because (1) it involves only "negative surcharges" (i.e., unilateral joint rate reductions) which, among others, have been authorized by a statutory provision that will expire; (2) negative surcharges are borne by the proposing carrier and do not affect the revenues earned by its connections on interline traffic; and (3) the Commission found in Ex Parte No. 427, *Joint Rates Study: A Report to Congress Pursuant to Section 217 of the Staggers Rail Act of 1980* (not printed), served November 18, 1982, at page 22, that only 14 such surcharges were published in fiscal year 1981.

List of Subjects in 49 CFR Part 1039

Railroads.

This notice is issued pursuant to 5 U.S.C. 553 and 49 U.S.C. 10505, 10321, and 10762.

Decided: August 22, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

Appendix

PART 1039—[AMENDED]

Title 49 CFR Part 1039, is proposed to be amended by adding the following new § 1039.18.

§ 1039.18 Allowance ("negative surcharge") tariff exemption.

Rail allowance ("negative surcharge") tariffs reducing the total charges applicable to a movement subject to a joint rate in which the carrier publishing the tariff participates, when the reduction is borne solely by that carrier, are exempt from the provisions of 49 U.S.C. 10762(b)(2) that require concurrences or acceptances by other parties to the joint rate.

[FR Doc. 84-23170 Filed 8-30-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Ribes Echinellum (Miccosukee Gooseberry) Proposed To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to list *Ribes echinellum* (Miccosukee gooseberry), a native plant of Florida and South Carolina, as a threatened species under the authority contained in the Endangered Species Act of 1973, as amended. *Ribes echinellum* is threatened by potential recreational activities, development of its lakeshore habitat, and logging. This proposal, if made final, would implement Federal protection provided by the Endangered Species Act of 1973, as amended, for *Ribes echinellum*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by October 30, 1984. Public hearing requests must be received by October 15, 1984.

ADDRESSES: Comments amd materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, S.W., Atlanta, Georgia 30303. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Ingram at the above address (404/221-3583 or FTS 242-3583).

SUPPLEMENTARY INFORMATION:

Background

Ribes echinellum was first discovered by two Florida botanists in the early spring of 1924, along the shore of Lake Miccosukee in Jefferson County, Florida (Coville, 1924). *Ribes echinellum* remained known only from this one population along the shores of Lake Miccosukee for over 30 years, until a second population was located about 200 miles northeast in McCormick County, South Carolina in 1957 (Radford, 1959). The South Carolina location is considered to represent one of the most unusual floristic assemblages in the two Carolinas (Radford and Martin, 1975). These two sites remain the only known locations for *Ribes echinellum*.

This unique plant is a shrub that reaches 1 meter in height and forms patches that often measure several meters in diameter. The plant has spiny stems and 3-lobed leaves that measure 1–2 centimeters long. The flowers are greenish white and small. The fruits are spiny and measure up to 22 millimeters in diameter.

Federal Government actions on this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. The Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Ribes echinellum* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the April 26, 1978, **Federal Register** publication, which also determined 13 plant species to be endangered or threatened species (43 FR 17909). On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82479); *Ribes echinellum* was included in that notice as a category-1 species. Category-1 species are those for which data in the Service's possession indicate listing is warranted.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Ribes echinellum* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of *Ribes echinellum* was warranted, and that although other pending proposals had precluded its proposal, expeditious progress was being made to add species to the list. Notice of this finding was published in the **Federal Register** on January 20, 1984, (49 FR 2485). Publication of this proposal constitutes the next 1-year finding

requirement, which must be made by October 13, 1984.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate the 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Ribes echinellum* (Coville) Rehder (Miccosukee gooseberry) (Syn: *Grossularia echinella* Coville), are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Because of its localization to only two sites, *Ribes echinellum* is particularly vulnerable to any natural or man-influenced disturbance. The South Carolina population occurs on lands managed as a nature preserve by the South Carolina Wildlife and Marine Resources Department. Increased visitation by the public to this area could increase the risk of accidental destruction and trampling. Additional protection and management planning is needed at the South Carolina site; species biology research is needed to determine what type of management the *Ribes* needs. The species' continued existence is more tenuous in Florida. The Florida population is privately owned and the site has potential for lakeside development. The present owner has no plans to sell or develop the site, but subsequent owners may well choose to develop the site for homesites or recreational developments, if protection planning does not occur. Logging of the associated hardwoods and severe fire could pose additional threats to the Florida population (Milstead, 1978). It is known that logging has occurred near part of the Florida site with observed detrimental effects (Kral, 1977).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Both populations of *Ribes echinellum* occur at sites (riveredge and lakeshore) that have potential for recreational use. If this recreational use is not controlled with the protection of the *Ribes* as a primary consideration, negative impacts to the populations could result. Gooseberries and currants are cultivated for their edible fruits and for their ornamental habit and bloom. The Miccosukee gooseberry is not in demand for these purposes at present but with publicity such a demand could occur.

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms. Ribes echinellum* is afforded limited protection under Florida State law, Chapter 65–426, which includes prohibitions concerning taking, transport, and the sale of plants listed under the Florida law. South Carolina does not have a State law to protect endangered plants, but *Ribes echinellum* is indirectly protected under the Natural Area prohibitions against unauthorized plant taking. The Endangered Species Act would offer additional protection for the species.

E. *Other natural or manmade factors affecting its continued existence.* The small size and number of the populations cause this species to be in danger of extinction due to natural perturbations such as lightning fires or to natural fluctuations in the numbers of extant individuals.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Ribes echinellum* as threaten. With only two populations of this species known to exist it appears to warrant protection uder the Act; threatened status seems appropriate since one of the sites is in State ownership. Critical habitat is not proposed for designation, as is discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Ribes echinellum* at this time. Gooseberries and currants are cultivated for their edible fruits and for their ornamental habit and bloom. Increased publicity and the provision of specific location information associated with critical habitat designations could result in taking pressures on the Miccosukee gooseberry. Prohibitions against taking of plants are difficult to enforce. Taking is not prohibited by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. Although South Carolina State law prohibits unauthorized plant taking from natural areas, drawing attention to this site could increase enforcement problems. Increased visitation at both sites stimulated by critical habitat designation could result in trampling problems. But the appropriate South Carolina land-management agency and the Florida landowner have been informed of the locations of this species and the importance of protecting *Ribes echinellum*, so no additional benefits from the notification function of a critical habitat designation would result. Therefore, it would not be prudent or beneficial to determine critical habitat for *Ribes echinellum* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed,

section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. No Federal involvement is expected or known for *Ribes echinellum*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Ribes echinellum* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the U.S. to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appear on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Ribes echinellum* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417) and it is anticipated that these will be made final following public comment. *Ribes echinellum* is not known to occur on Federal lands. However, this new protection will apply to *Ribes echinellum* once revised regulations are promulgated if this plant is ever found on Federal lands. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Ribes echinellum*,

(2) The location of any additional populations of *Ribes echinellum* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Ribes echinellum*.

Final promulgation of the regulation on *Ribes echinellum* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Service's southeastern Regional Director (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Coville, F.V. 1924. *Grossularia echinella*, a spiny-fruited gooseberry from Florida. Journal of Agricultural Research 28:71–76.

Kral, R. 1977. Personal communication by letter to Dr. R. R. Altevogt (then Staff Botanist at Office of Endangered Species, Washington, D.C.) regarding the Florida population he visited in 1977.

Milstead, Wayne L. 1978. Status report on *Ribes echinellum*. U.S. Fish and Wildlife Service, Atlanta, Georgia.

Radford, A.E. 1959. A relict plant community in South Carolina. Journal of the Elisha Mitchell Scientific Society 75:35–43.

Radford, A.E., and D.L. Martin. 1975. Potential Ecological Natural Landmarks, Piedmont Region, Eastern United States. UNC-Chapel Hill, North Carolina.

Authors

The primary authors of this proposed rule are Ms. E. LaVerne Smith and Mr. Quinn P. Sinnott, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975). Status information and a preliminary listing package were provided by Dr. Wayne C. Milstead, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under the family Saxifragaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * * *		*		*		*
Saxifragaceae—Saxifrage family:						
Ribes echinellum	Miccosukee gooseberry	U.S.A. (FL, SC)	T		NA	NA
* * * *		*		*		*

Dated: August 13, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-23160 Filed 8-30-84; am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 49, No. 171
Friday, August 31, 1984

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.

ACTION

Special Volunteer Programs

AGENCY: ACTION.

ACTION: Notice of availability of funds; demonstration grants.

The Office of Policy and Planning of ACTION announces the availability of funds for fiscal year 1984 for demonstration grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title I, Part C, 42 U.S.C. 4992).

Grant awards in excess of $50,000 will be selected through a competitive procedure.

ACTION will fund these demonstration grants almost exclusively from interagency funds. Applications will be reviewed as specific interagency agreements are signed. The purpose of this competitive process is to identify and support innovative volunteer service projects that have potential for widespread use in low-income areas in the Rio Grande Valley and Southwest Texas.

A. Objective

Volunteer Demonstration Projects address areas of human and social concern where citizens, as volunteers, can contribute toward individual self-reliance and community self-sufficiency. Projects funded under this announcement must utilize volunteers to help alleviate the widespread hardships presently experienced by the citizens of the Rio Grande Valley and Southwest Texas areas.

The types of projects envisioned to be funded are, for example: emergency food and shelter; job readiness training and placement; literacy; nutrition services; youth programs; other community and economic development projects.

B. Eligible Applicants

Only applications from private, non-profit incorporated organizations and public agencies will be considered.

C. Available Funds and Scope of the Grant

ACTION anticipates that up to $1,000,000 in interagency funds will be available for grants, for the purpose of this announcement. There are no restrictions on the dollar amounts of grant awards; the average competitive grant will fall within the $100,000 to $125,000 range. Grants will be awarded for a maximum of 12 months and are generally non-renewable.

Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate any specific amount of money, or any part thereof, for demonstration grants.

D. General Criteria for Grant Selection

Grant applications will be reviewed and evaluated against the general criteria outlined below, as appropriate, as well as conformance to the instructions included in the application. Grant applicant organizations from or closely proximate to the Rio Grande Valley and Southwest Texas will be given preference in order to help alleviate the widespread hardships presently experienced by citizens living in these areas.

Should submitted applications fall within the general category, applicants will be notified individually as to any specific restrictions which may be subsequently placed upon the interagency funds in order that their applications may be revised to conform with such restrictions.

The General Criteria are as follows:

—Potential to recruit and motivate volunteers to provide, effectively and efficiently, direct and, in rare cases, indirect assistance to targeted communities in the Rio Grande Valley and Southwest Texas;

—Carefully formulated, time-phased measurable objectives and feasibility of methods for meeting those objectives;

—Feasibility of proposed budget;

—Evidence of commitment from collaborating agencies and organizations when such is expected to contribute to the value or success of the project;

—Promise of developing innovations or knowledge in areas of priority, and of significance to national program development;

—Capability of proposed staff;

—Potential for replication of the project model; plans for implementation and dissemination of results of project, including any products for use by others;

—Likelihood of completion of project within proposed timetable;

—Adequacy of plans for data gathering and evaluation.

While applicants are not required to contribute a specific portion of project costs, they are encouraged to do so. Applicants capable of such contributions should specify the sources and amounts of non-federal contributions, and the sources and nature of in-kind non-federal contributions.

E. Application Review Process

ACTION's Office of Policy and Planning Staff, which has expertise in volunteer demonstration programs, will review and evaluate all eligible applications for awards in excess of $50,000 upon a competitive basis. The ACTION Assistant Director for Policy and Planning will make the final selection from among the highest-rated applications.

F. Application Submission and Deadline

One signed original and two (2) copies of all completed applications must be submitted to the Assistant Director for Policy and Planning, room M–606, ACTION, 806 Connecticut Avenue, NW., Washington, D.C. The deadline for receipt of applications by the Agency is September 21, 1984. Those eligible for consideration will be evaluated against the above-stated criteria and the purposes for which the interagency funds may be used.

All grant applications must consist of:

a. Action Project Narrative (Form A–1036) which includes a Project Work Plan, specifying projected number of volunteer hours by quarter by work stations.

b. Application for Federal Assistance (Form A–1017) with narrative budget justification.

c. CPA certification of accounting capability.

d. Articles of Incorporation.

e. Proof of nonprofit status or an application for non-profit status, which should be made through the documentation.

f. Resume of proposed project director candidates, if available, or the resume of the Executive Officer of the applicant agency.

g. List of sponsor's governing board members and their relationship to the community.

Those eligible for consideration at any given time will be evaluated against the above-stated criteria and the purposes for which the interagency funds may be used.

To receive an application form, please call the Office of Policy and Planning toll free number (800) 424–8580, Ext. 81.

Signed at Washington, D.C., this 28th day of August 1984.

Thomas W. Pauken,

Director, ACTION.

[FR Doc. 84–23282 Filed 8–30–84; 8:45 am]

BILLING CODE 6050–01–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment; Denmark

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of Country of Origin Adjustment for Certain Condensed Milk from Denmark.

SUMMARY: Presidential Proclamataion 4708 issued December 11, 1979, amended Headnote 3(a) of Part 3 of the Appendix to the Tariff Schedules of the United States to permit the Secretary of Agriculture to make country of origin adjustments for unlicensed quotas that will not be filled by the country of origin listed opposite the quota. This notice implements such an adjustment with respect to the quota quantity assigned to Denmark for condensed milk in airtight containters.

DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Diary, Livestock and Poultry Division, Foreign Agricultural Servivce, Room 6616 South Building, Department of Agriculture, Washington, DC, 20250 or telephone at (202) 447–5270.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512–1 and has been determined to be "nonmajor" since it will not have any of the significant effects specified in those documents. Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this notice, the Administrator, Foreign Agricultural Service, hereby certifies that this notice will not have a significant economic impact on a substantial number of small entities. The adjustment of the country of origin from which the quota item specified herein may be entered does not affect the ability of importers to import this quota item, but only expands the number of countries from which the item may be imported. Also, since this action is being taken in recognition of changes in the market which have already occurred, this action will not cause any new economic impact.

An assessment of the impact of this rule on the environment was made and, based on this evaluation, this action is not a major federal action and will have no foreseeable signficant effects on the quality of the human environment. Consquently, no environmental impact statement is necessary for this proposed rule.

Part 3 of the Appendix to the Tariff Schedules of the United States (TSUS) sets forth import limitations imposed on certain dairy products, including certain condensed milk. Headnote 3(a)(iii) of the Appendix allows for reallocating the quota amount of a dairy article listed in that Appendix among the countries of origin specified for a given article if it is determined that the quota amount assigned to a particular country is not likely to be entered from that country within a given calender year. I hereby determine that it is not likely that the amount of condensed milk specified in TSUS Item 949.90 for Denmark will be entered from the country during calendar year 1984.

Notice is hereby given that the 1984 unused quota quantity for condensed milk specified in TSUS Item 949.90 for Denmark may be imported from Canada, Denmark, the Nethelands and Australia for the remainder of the 1984 quota year.

This quota quantity for TSUS Item 949.90 will revert to the original supplying country on January 1, 1985.

Issued at Washington, D.C. this 13th day of August, 1984.

Leo V. Mayer,

Acting Administrator.

[FR Doc. 84–23155 Filed 8–28–84; 8:45 am]

BILLING CODE 3410–10–M

Rural Electrification Administration

Intent To Prepare a Draft Environmental Impact Statement and Annoucement of a Public Scoping Meeting for Proposed Electric Transmission Project in Western North Dakota

AGENCY: Rural Electrification Administration..

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement and Conduct a Public Scoping Meeting.

SUMMARY: The Rural Electrification Administration (REA) intends to conduct a public scoping meeting and may prepare a Draft Environmental Impact Statement (EIS) in connection with a joint project proposed by Basin Electric Power Cooperative (Basin) and Montana-Dakota Utilities Company (MDU) of Bismark, North Dakota. The project consists of the construction and operation of approximately 112 kilometers (70 miles) of 230 kV electric transmission line from Basin's existing Charlie Creek Substation in McKenzie County, North Dakota. Basin may request REA financing assistance for the project..

DATE: REA will conduct a public scoping meeting at the Watford City Hall (Civic Center), 213 E. 2nd Street, Watford City, North Dakota, on October 2, 1984, at 7:30 CST..

ADDRESS: Any interested parties are invited to submit written comments to REA prior to, at, or within 30 days after the public scoping meeting, in order for the comments to be part of the formal record. Comments should be sent to Mr. Frank W. Bennett, Director, NCA-E, REA, Room 0230-S U.S. Department of Agriculture, 14th Street and Independence Avenue, SW, Washington, D.C. 20250..

FOR FURTHER INFORMATION CONTACT: Mr. Frank W. Bennett, NCA-E, address above, telephone (202) 382–1400, FTS 382–1400, or Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismark, North Dakota 58501, telephone (701) 223–0441.

SUPPLEMENTARY INFORMATION: REA, in order to meet its requirements under the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA *Environmental Policies and Procedures* 7 CFR Part 1794 (49 FR 9544–9558, dated March 13, 1984), hereby gives notice that it intends to conduct a public scoping meeting and may prepare and EIS for the construction and operation of the Charlie Creek to Williston 230 kV

transmission line. According to the provisions of 7 CFR Part 1794 regarding electric transmissioin facilites of the type proposed by Basin and MDU, REA is allowed to determine, after the scoping process is completed and an acceptable Environmental Analysis is submitted by Basin and MDU, whether to prepare an EIS or a finding of no significant impact. REA will take into account the input from Federal, State, and local government agencies and interested groups and individuals in making this decision.

Alternatives to be considered by REA may include, among other considerations: (1) No action; (2) alternative routes; (3) alternative voltages; (4) local generation; (5) upgrading existing facilities; (6) underground transmission; (7) load management and conservation.

The public scoping meeing, to be conducted by a representative of REA, will be held to solicit public input and including, but not limited to, the nature of the proposed project, its possible location, alternatives, and any environmental concerns that should be considered. Requests for additional information concerning the scoping meeting may be directed to Basin or REA at the addresses and telephone numbers listed above.

Any REA financing assistance to Basin will be subject to and contingent upon reaching satisfactory conclusions with respect to the environmental effects of the project, and final action will be taken after compliance with the environmental procedures required by NEPA have been satisfied.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated: August 27, 1984.

Harold V. Hunter,

Administrator.

[FR Doc. 84-23265 Filed 8-30-84; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-583-002]

Bicycle Tires and Tubes From Taiwan; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On April 13, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on bicycle tires and tubes from Taiwan. The review covers the period January 1, 1982, through December 31, 1982.

We gave interested parties an opportunity to comment on the preliminary results. After review of the comment received, the final results are the same as the preliminary results.

EFFECTIVE DATE: August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 14777) the preliminary results of its administrative review of the countervailing duty order on bicycle tires and tubes from Taiwan manufactured by the one Taiwanese company covered by the order, Cheng Shin Rubber Company, Ltd. (47 FR 6913, February 17, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Because the International Trade Commission ("the ITC") determined under section 104(b) of the Trade Agreements Act of 1979 that no industry in the United States would be injured by importations of this merchandise if this countervailing duty order were revoked (48 FR 26655), the Department revoked this order effective December 30, 1982, the date the ITC notified the Department that Cheng Shin had requested an injury determination.

Scope of the Review

Imports covered by the review are shipments of Taiwanese pneumatic bicycle tires and tubes of rubber or plastic, manufactured by Cheng Shin, whether such tires and tubes are sold together as units or separately. Such merchandise is currently classifiable under items 772.4800 and 772.5700 of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1982, through December 31, 1982, and six programs: (1) Preferential income tax rate ceilings; (2) preferential export financing; (3) income tax holidays; (4) tax deductions for investment in production equipment; (5) export loss reserves; and (6) deferred duty payments on raw materials.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a written comment from Cheng Shin.

Comment: Cheng Shin argues that there is adequate evidence in the record to demonstrate that the 25 percent income tax ceiling set by Article 15 of the Statute for the Encouragement of Investment is not a countervailable subsidy. Because "any productive enterprise limited by shares in Taiwan may benefit from the 25% ceiling," it is not limited "to an enterprise or industry, or group of enterprises or industries." In support of its argument, Cheng Shin cited a recent final affirmative detemination on steel products from Argentina in which we found that an import duty exemption for capital goods was provided to a wide variety of industries and therefore not a subsidy (49 FR 18006, April 26, 1984).

Department's Position: In the cited case, the Department's determination was based on verified data supporting respondent's contention that the program was generally available and so applied. In this case, it is not clear on the basis of information presently available to us that this program is in fact available to all applicants on the same terms. Absent such evidence, we cannot reverse our previous determination that the ceiling is limited to a group of industries.

Final Results of the Review

After review of the comment received, the final results are the same as the preliminary results. We determine the aggregate net subsidy to be 0.76 percent for the period January 1, 1982, through December 31, 1982. The Department will instruct the Customs Service to assess countervailing duties of 0.76 percent of the f.o.b. invoice price on any shipments exported on or after January 1, 1982, and entered, or withdrawn from warehouse, for consumption before December 30, 1982, the effective date of the revocation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: August 27, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-23224 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-001]

Cotton Sheeting and Sateen From Peru; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On April 6, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton sheeting and sateen from Peru. The review covers the period January 1, 1982 through December 31, 1982 and three programs.

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, we held a public hearing on May 21, 1984. After review of all comments received, the Department has determined the net bounty or grant during the period of review to be 19.72 percent *ad valorem*.

EFFECTIVE DATE: August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 13730) the preliminary results of its administrative review of the countervailing duty order on cotton sheeting and sateen from Peru (48 FR 4508, February 1, 1983). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of: (1) Plain-woven cotton fabric sheeting, not fancy or figured and not napped, made of singles yarn, with an average yarn number between 3 and 26, imported in Textile and Apparel Category 313, currently classifiable under items 320.-36,320.-38,320.-40,320.-44 of the Tariff Schedules of the United States Annotated ("TSUSA"): And (2) 100% carded cotton sateen fabrics woven with a satin weave and not napped, imported in Textile and Apparel Category 317, and currently classifiable under TSUSA item 320.-54 and 321.-54.

The review covers the period January 1, 1982 through December 31, 1982 and three programs: (1) Certificate of Tax Rebate ("CERTEX"); (2) Nontraditional Export Fund ("FENT"); and (3) Articles 8, 9, 12, 14, 16 of the Law for the Promotion of Exports of Nontraditional Goods ("the Export Law").

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, the American Textile Manufacturer's Institute ("ATMI"), we held a public hearing on May 21, 1984.

Comment 1: The petitioner contends that any elimination of "direct" FENT and CERTEX benefits on exports of cotton sheeting and sateen to the United States would not eliminate the subsidy conferred on exports of those products to the United States, since exports to the United States continue to receive benefits from the application of those programs on exports to other countries. Such continuing benefits constitute countervailable indirect subsidies on exports to the United States.

Department's Position: We disagree and we reiterate our position stated in the final results of administrative review on cotton yarn from Brazil (49 FR 15250, April 18, 1984).

Comment 2: The petitioner argues that the Department's position stated in cotton yarn from Brazil is a misconception of both established economic theory and the plain language of the statute. Because rational businesses seek to maximize profits overall, not just on sales to any single market, Peruvian firms have a clear economic incentive to allocate any benefits received so as to produce at optmum operating levels. Because of the importance of the U.S. market to Peruvian exporters, there is a clear incentive to maintain sales at high levels, and so, benefits from whatever source will be applied to that end. Additionally, the Department's position incorrectly assumes that to be countervailable a benefit must be tied directly to U.S. exports, thus ignoring the statutory provision that indirect bestowals be countervailed.

Department's Position: Export subsidies have an incentive effect on exports to markets for which the subsidy is available. Where the incentive is tied to exports to the United States, we neutralize the incentive by applying a countervailing duty equal to the subsidy on the exports to the United States. Regardless of the ultimate use to which the subsidy is put, the impact of the program is to provide an incentive to exports to a given market. To accept petitioner's argument, we would have to assume that the subsidy benefited all production, including domestically consumed production, of all products of the manufacturer.

Comment 3: The petitioner contends that the Department must conduct a complete verification before attempting to calculate a deposit rate. The Department's verification of only the changes in the CERTEX and FENT programs, which occurred after the period of review, clearly serves the interests of the Government of Peru and prejudices the petitioner. Without a complete verification, the Department has no way of determining whether the Peruvian government has supplemented the FENT and CERTEX programs with other programs. Furthermore, in light of the Court of International Trade's ("the CIT") decision in *Florsheim Shoes Co.* v. *United States* (slip opinion, 83-125, December 1, 1983), the Department will not have the flexibility to recapture any understatement of the correct countervailing duty amount if the CIT decision is sustained on appeal.

Department's Position: The Department has consistently maintained that verifications in section 751 reviews are discretionary. Because of the brevity of the period during which entries were suspended, the fact that a verification had been conducted recently, and the lack of prior litigation in this case, we had decided not to verify during this administrative review. However in the quenstionnaire response, the Government of Peru presented the Department with actions which had the potential to significantly lower future subsidy amounts. We then decided to verify the elimination of the CERTEX and FENT benefits on exports to the United States, only because of that potential. Other programs remained essentially as they had when last verified, so we did not, and still do not, find a complete verification necessary.

With regard to the *Florsheim* case, the Department has appealed that decision and does not intend to adjust its behavior in anticipation of loss on appeal.

Comment 4: The petitioner argues that the record does not adequately explain the reduced levels of subsidies found for Articles 8, 9, and 16 of the Export Law. Such significant reductions are an

additional reason for the Department to conduct a complete verification.

Departments Position: For this review, calculations of the benefits attributable to Articles 8, 9, and 16 were based on the entire year 1982. In reaching the final determination, the Department relied only on data covering a quarter of a year, or less. We believe the calculations based on a full year's activity more accurately reflect the benefits granted. As to verification see our response to Comment 3.

Comment 5: The Government of Peru argues that the Department erred in applying a one percent interest charge on FENT foreign currently loans to the soles received by a borrower rather than to the dollar amount of the loan. Further, the Government of Peru argues that such loans are soles, not dollar loans and the benefit should be calculated by comparing the effective cost in soles with a soles benchmark. The effective cost is the difference between the soles disbursed (dollar principal converted to soles on the date disbursed) and the soles repaid (dollar principal and interest converted to soles on the date repaid). In support of its position, the Peruvian government cites our treatment of dollar indexed peso loans in Argentina, most recently in the final determination on cold-rolled carbon steel flat-rolled products (49 FR 18006, April 26, 1984).

Department's Position: We have reexamined the record in this case and have determined that the one percent interest charge is correctly applied against the dollar principal of the loans. We have also concluded that these loans are dollar loans and that the appropriate benchmark is a dollar benchmark. Unlike the peso loans in Argentina, which were indexed the dollar, the loans in Peru involve actual dollar borrowings. Firms receiving the dollar loans, in effect, lend the dollars to the Central Bank and receive interest payments which offset the cost of the loan.

In recalculating the benefit from the foreign currency FENT loans, we multiplied the dollar value of the loans by the difference between the benchmark rate, the cost of borrowing from external resources, and the preferential rate and adjusted for the number of days the loans were outstanding. We then deducted the cost of depositing the dollars with the Central Bank to arrive at the net subsidy amount. Following this procedure we find the benefit from this program to be 1.32 percent *ad valorem*.

Comment 6: The Government of Peru argues that the Department should exclude from its Article 16 of the Export Law subsidy calculations suspensions and deferrals of import duties for equipment which cannot be used to produce items covered by the countervailing duty order.

Department's Position: We do not have sufficient information to make this adjustment.

Comment 7: The Government of Peru argues that suspensions of import duties under Article 16 are actually exemptions and thus, should be expensed in the year of receipt, not treated as interest free loans.

Department's Position: In order to qualify for the exemption, firms must export 40 percent of their total production, and earn foreign exchange equal to 100 percent of the imported equipment. No exemptions of import duties under Article 16 are granted until the exporters meet those specific export requirements. Therefore, our treatment of the suspensions as interest free loans until the exemption is granted is appropriate.

Comment 8: The Government of Peru argues that in treating the deferrals and suspensions of import duties under Article 16, as interest free loans, the Department did not ensure that the amounts countervailed would not exceed the actual amount of import duties. Furthermore, these suspensions and deferrals should not be treated as short-term loans rolled over every year, but rather as five-year loans (the maximum length of the deferral or suspension).

Department's Position: We agree. The deferred and suspended duties outstanding from previous years (1979–1981) were treated as if long-term loans were taken out in equal amounts in each of the three years. We used equal amounts for each year because we do not know the amounts suspended or deferred during each year. The portion "borrowed" in 1979 was compared to a 1979 benchmark (The benchmarks used were the end of period discount rates as reported in the International Monetary Fund's *International Financial Statistics*). Similarly, the 1980 and 1981 portions were "borrowed" at 1980 and 1981 benchmarks. Each of the three "loans" was then treated as if it had a five year-repayment schedule. Using the long-term methodology outlined in the "Subsidies Appendix" (Subsidies Appendix to the "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" on certain cold-rolled carbon steel flat-rolled products from Argentina, 49 FR 18006) we calculated the benefit attributable to 1982. Using that methodology, the sum of the present values of the amounts countervailed (calculated in the year of receipt) will not exceed the face value of the "loan". We find the benefit from this program to be 0.33 percent *ad valorem*, for the period of review.

For purposes of a cash deposit of estimated countervailing duties attributable to Article 16, we used deferred and suspended duties through 1982. We calculated a rate of 0.77 percent *ad valorem*.

In reaching this final determination, we found a number of mathematical errors in the preliminary calculations. Our correction of these errors has resulted in the following recalculated rates of bounty or grant:

	Percent *ad valorem*
CERTEX	16.72
Articles 8 & 9 of the Export Law	0.29
Article 12 of the Export Law	1.06

Final Results of the Review

After reviewing all of the comments received and adjusting for methodological changes, we determine the total bounty or grant to be 19.72 percent *ad valorem* during the period of review.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the final calculation of duty under the countervailing duty order shall be disregarded to the extent that the estimated duty is less than the final duty, and refunded to the extent that the estimated duty is higher than the final duty, for merchandise entered, or withdrawn from warehouse, for consumption before (for non-signatories) the date of the countervailing duty order, here February 1, 1983. The Department therefore will instruct the Customs Service to assess countervailing duties of 19.72 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 19, 1982, the date of the Department's affirmative preliminary determination, and on or before December 31, 1982.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 2.12 percent of the entered value of any shipment of Peruvian cotton sheeting and sateen entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The

Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: August 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-23221 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-002]

Cotton Yarn From Peru; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On April 6, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Peru. The review covers the period January 1, 1982 through December 31, 1982 and three programs.

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, we held a public hearing on May 21, 1984. After review of all comments received, the Department has determined the net bounty or grant during the period of review to be 20.65 percent *ad valorem*.

EFFECTIVE DATE: August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Richard Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 6, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 13732) the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Peru (48 FR 4508, Feb. 1, 1983). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of various cotton yarns currently classifiable under the following Tariff Schedules of the United States item numbers:

300.60, 302.01 through 302.80, 301.01 through 301.60, 302.70, 301.70, 302.80, 301.80, 302.82, 301.82, 302.84, 301.84, 302.86, 301.86, 302.88, 301.88, 302.92 301.92, 302.94, 301.94, 302.96, 301.96, 302.98, 301.98

The review covers the period January 1, 1982 through December 31, 1982 and three programs: (1) Certificate of Tax Rebate ("CERTEX"); (2) Nontraditional Export Fund ("FENT"); and (3) Articles 8, 9, 12, 14, 16 of the Law for the Promotion of Exports of Nontraditional Goods ("the Export Law").

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of the petitioner, the American Yarn Spinners Association ("AYSA"), we held a public hearing on May 21, 1984.

Comment 1: The petitioner contends that any elimination of "direct" FENT and CERTEX benefits on exports of cotton yarn to the United States would not eliminate the subsidy conferred on exports of those products to the United States, since exports to the United States continue to receive benefits from the application of those programs on exports to other countries. Such continuing benefits constitute countervailable indirect subsidies on exports to the United States.

Department's Position: We disagree and we reiterate our position stated in the final results of administrative review on cotton yarn from Brazil (49 FR 15250, Apr. 18, 1984).

Comment 2: The petitioner argues that just as the Department recognizes that a domestic subsidy confers a benefit on all production and sales, it must also recognize that an export subsidy confers a benefit on all export sales. In this case obvious factors make clear why exporters apply benefits received for third country exports to the United States: (1) The loss of the already established U.S. consumer base would severely limit the firms' ability to export anywhere; (2) the United States is a natural outlet for Peruvian exports; (3) sales to the United States guarantee payment in hard currency U.S. dollars; (4) economies of scale are dependent upon production volume; and (5) diversified export markets avoid disruption due to individual country market fluctuations.

Department's Position: Export subsidies have an incentive effect on exports to markets for which the subsidy is available. Where the incentive is tied to exports to the United States, we neutralize the incentive by applying a countervailing duty equal to the subsidy on the exports to the United States. Regardless of the ultimate use to which the subsidy is put, the impact of the program is to provide an incentive to exports to a given market. To accept petitioner's argument, we would have to assume that the subsidy benefited all production, including domestically consumed production, of all products of the manufacturer.

Comment 3: The petitioner argues that to accept its argument that direct benefits on exports to third countries provide indirect benefits on exports to the United States we would not have to assume the export subsidy benefits all production. Rather, export subsidies should not be applied to domestic sales because export subsidies are expressly intended to promote export performance and because the statute expressly recognizes this distinction. Further, in the Peruvian situation of concern here, the exclusion of international competition from the domestic market obviates the need to apply export subsidies to domestic sales.

Department's Position: We agree that export subsidies should not be applied to domestic production, and as stated above, that export subsidies provide an incentive to export. Where, as in this case, the export subsidies can be tied to a particular market, we hold that the incentive effect is limited to that particular market. The petitioner cannot argue that there is a fungible benefit across export markets from shipment-specific export subsidies and, at the same time, that there is no fungible benefit between the export and domestic subsidies.

Comment 4: The petitioner contends that the Department must conduct a complete verification before attempting to calculate a deposit rate. The Department's verification of only the changes in the CERTEX and FENT programs, which occurred after the period of review, clearly serves the interests of the Government of Peru and prejudices the petitioner. Without a complete verification, the Department has no way of determining whether the Peruvian government has supplemented the FENT and CERTEX programs with other programs. Furthermore, in light of the Court of International Trade's (the CIT") decision in *Florsheim Shoes Co.* v.

United States (slip opinion, 83–125, December 1, 1983), the Department will not have the flexibility to recapture any understatement of the correct countervailing duty amount if the CIT decision is sustained on appeal.

Department's Position: The Department has consistently maintained that verifications in section 751 reviews are discretionary. Because of the brevity of the period during which entries were suspended, the fact that a verification had been conducted recently, and the lack of prior litigation in this case, we had decided not to verify during this administrative review. However in the questionnaire response, the Government of Peru presented the Department with actions which had the potential to significantly lower future subsidy amounts. We then decided to verify the elimination of the CERTEX and FENT benefits on exports to the United States, only because of that potential. Other programs remained essentially as they had when last verified, so we did not, and still do not, find a complete verification necessary.

With regard to the *Florsheim* case, the Department has appealed that decision and does not intend to adjust its behavior in anticipation of loss on appeal.

Comment 5: The Government of Peru argues that the Department erred in applying one percent interest charge on FENT foreign currency loans to the soles received by a borrower, rather than to the dollar amount of the loan. Further, the Government of Peru argues that such loans are soles, not dollar loans, and the benefit should be calculated by comparing the effective cost in soles with a soles benchmark. The effective cost is the difference between the soles disbursed (dollar principal converted to soles on the date disbursed) and the soles repaid (dollar principal and interest converted to soles on the date repaid). In support of its position, the Peruvian government cites our treatment of dollar indexed peso loans in Argentina, most recently in the final determination on cold-rolled carbon steel flat-rolled products (49 FR 18006, Apr. 26, 1984).

Department's Position: We have reexamined the record in this case and have determined that the one percent interest charge is correctly applied against the dollar principal of the loans. We have also concluded that these loans are dollar loans and that the appropriate benchmark is a dollar benchmark. Unlike the peso loans in Argentina, which were indexed against the dollar, the loans in Peru involve actual dollar borrowings. Firms receiving the dollar loans, in effect, lend the dollars to the Central Bank and receive interest payments which offset the cost of the loan.

In recalculating the benefit from the foreign currency FENT loans, we multiplied the dollar value of the loans by the difference between the benchmark rate, the cost of borrowing from external resources, and the preferential rate and adjusted for the number of days the loans were outstanding. We then deducted the cost of the dollars deposited with the Central Bank to arrive at the net subsidy amount. Following this procedure, we find the benefit from this program to be 2.10 percent *ad valorem*.

Comment 6: The Government of Peru argues that the Department should recalculate the Article 16 of the Export Law benefits to eliminate a clerical error in one firm's reported benefits.

Department's Position: We agree, and have adjusted our calculations.

Comment 7: The Government of Peru argues that the Department should exclude from its Article 16 subsidy calculations suspensions and deferrals of import duties on equipment which cannot be used to produce items covered by the countervailing duty order.

Department's Position: We do not have sufficient information to make this adjustment.

Comment 8: The Government of Peru argues that suspensions of import duties under Article 16 are actually exemptions and thus, should be expensed in the year of receipt, not treated as interest free loans.

Department's Position: In order to qualify for the exemption, firms must export 40 percent of their total production and earn foreign exchange equal to 100 percent of the imported equipment. No exemptions of import duties under Article 16 are granted until the exporters meet those specific export requirements. Therefore, our treatment of the suspensions as interest free loans until the exemption is granted is appropriate.

Comment 9: The Government of Peru argues that in treating the deferrals and suspensions of import duties under Article 16, as interest free loans, the Department did not ensure that the amounts countervailed would not exceed the actual amount of import duties. Furthermore, these suspensions and deferrals should not be treated as short-term loans rolled over every year, but rather as five-year loans (the maximum length of the deferral or suspension).

Department's Position: We agree. The deferred and suspended duties outstanding from previous years (1979–1981) were treated as if long-term loans were taken out in equal amounts in each of the three years. We used equal amounts because we do not know the amount suspended or deferred during each year. The portion "borrowed" in 1979 was compared to a 1979 benchmark (the benchmarks used were the end of period discount rates as reported in the International Monetary Fund's, *International Financial Statistics*). Similarly, the 1980 and 1981 portions were "borrowed" at 1980 and 1981 benchmarks. Each of the three "loans" was then treated as if it had a five year repayment schedule. Using the long-term methodology outlined in the "Subsidies Appendix" (Subsidies Appendix to the "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order" on certain cold-rolled carbon steel flat-rolled products from Argentina, 49 FR 18006) we calculated the benefit attributable to 1982.

Using that methodology, the sum of the present values of the amounts countervailed (calculated in the year of receipt) will not exceed the face value of the "loan". We find the benefit from this program to be 2.33 percent *ad valorem* during the period of review.

For the purposes of a cash deposit of estimated countervailing duties attributable to Article 16, we used deferred and suspended duties through 1982. We calculated a rate of 5.40 percent *ad valorem*.

In reaching these final results, we found a number of mathematical errors in the preliminary calculations. Our correction of those errors has resulted in the following recalculated rates of bounty or grant:

	Percent—ad valorem
CERTEX	16.07
Articles 8 & 9 of the Export Law	0.13
Article 12 of the Export Law	0.02

Final Results of the Review

After reviewing all of the comments received and adjusting for methodological changes, we determine the total bounty or grant to be 20.65 percent *ad valorem* during the period of review.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the final calculation of duty under the countervailing duty order shall be disregarded to the extent that the estimated duty is less than the final duty, and refunded to the extent that the estimated duty is higher than the final duty, for merchandise entered, or

withdrawn from warehouse, for consumption before (for non-signatories) the date of the countervailing duty order, here February 1, 1983. The Department therefore will instruct the Customs Service to assess countervailing duties of 20.65 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after November 19, 1982, the date of the Department's affirmative preliminary determination, and on or before December 31, 1982.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 5.55 percent of the entered value of any shipment of Peruvian cotton yarn entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: August 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 84-23222 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-037]

Cotton Yarn From Brazil; Partial Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Partial Revocation of Countervailing Duty Order.

SUMMARY: As a result of a request by the Government of Brazil, the International Trade Commission conducted an investigation and determined that revocation of a portion of the countervailing duty order on cotton yarn from Brazil would not cause injury to an industry in the United States. The Department of Commerce consequently is revoking, in part, the countervailing duty order. All entries of cotton combed yarn, blended cotton combed yarn and blended cotton carded yarn made on or after August 3, 1981, shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: August 31, 1984.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Peggy Clarke, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 15, 1977, the Treasury Department published in the **Federal Register** a countervailing duty order regarding cotton yarn from Brazil (42 FR 14089).

On August 3, 1981, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that the Government of Brazil had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA").

On May 17, 1984, the ITC notified the Department of its determination that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of certain Brazilian cotton yarn if the order were revoked (49 FR 21811, May 23, 1984). Specifically, the ITC determined that an industy in the United States would not be materially injured, or threatened with material injury, by reason of imports of Brazilian combed yarn wholly of cotton, provided for in item 302.—with statistical suffixes 26 and 28 of the Tariff Schedules of the United States Annotated (TSUSA), and of blended cotton yarn, provided for in TSUSA item 300.60 with statistical suffixes 20 through 28. As a result, the Department is revoking the countervailing duty order concerning those products from Brazil with respect to all such merchandise entered, or withdrawn from warehouse, for consumption on or after August 3, 1981, the date the Department received notification of the request for an injury determination.

The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 3, 1981, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to these entries.

This revocation does not affect shipments of carded yarn wholly of cotton provided for in TSUS items 301.01 through 301.98, inclusive, and in item 302.— with statistical suffixes 20, 22 and 24 of the TSUSA. These shipments are subject to the administrative review procedures set forth in section 751 of the Tariff Act of 1930.

This partial revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: August 24, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-23223 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of fee revisions for laboratory accreditation programs.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Bureau of Standards (NBS) announces fee revisions covering laboratory accreditation programs (LAPs) for thermal insulation materials ("Insulation LAP"), freshly mixed field concrete ("Concrete LAP"), carpet ("Carpet LAP"), solid fuel room heaters ("Stove LAP"), acoustical testing services ("Acoustics LAP"), personnel dosimeter processing ("Dosimetry LAP"), and commercial products ("Commercial LAP").

Laboratories interested in becoming accredited may request an application package by contacting the Manager, Laboratory Accreditation.

EFFECTIVE DATE: Laboratories applying for initial accreditation or accreditation renewal on or after October 1, 1984, will be charged the fees described herein.

FOR FURTHER INFORMATION CONTACT: John W. Locke, Manager, Laboratory Accreditation, National Bureau of Standards, Administration Building, Room A531, Gaithersburg, MD 20899; (301) 921-3431.

SUPPLEMENTARY INFORMATION:

Background

Fees for the Insulation, Concrete, Carpet, Stove, and Acoustics LAPs were last revised as announced in the **Federal Register** on August 8, 1983 (48 FR 35986-35989). Fees for the Dosimetry LAP were announced in the **Federal Register** on July 28, 1983 (48 FR 34315-34316). Fees for the Commercial LAP were

announced in the **Federal Register** on January 20, 1984 (49 FR 2496–2499). In accordance with paragraph (c) of sections 7a.10 and 7b.10 of the NVLAP Procedures (15 CFR Parts 7a and 7b), notice is hereby given of fee revisions covering the above mentioned LAPs.

Basis of Fees

NVLAP fees are based on the premise that all operational costs incurred by NBS in evaluating and accrediting laboratories are recovered from fees charged to the applicant laboratories. Fees pay for the maintenance of all operational LAPs, processing applications, administering proficiency testing, preparing evaluation reports and certificates, as well as labor, travel and expense costs of technical experts used in the accreditation process. Fees vary depending on assessment and evaluation time which depends in turn on the number and complexity of test methods, proficiency testing requirements, and frequency of visits to the laboratories in each of the LAPs.

Basis of Fee Increase

Fees are being increased, effective October 1, 1984, in response to Federal policy to fully offset recoverable costs of government programs by user fees where direct beneficiaries can be identified. All costs to maintain established LAPs are included in this revision. Fee income will be used for the maintenance and support of current LAPs. Development costs for the establishment of new or proposed LAPs will be borne either by the requestors of those LAPs or other outside resources.

New Fee Model

The following fee components comprise the revised fee schedule. Current fees versus revised fees are summarized in the accompanying chart.

A LAP initiation fee in the range of $220 to $650 to cover first year "start-up" costs for new applicants.

A single administrative fee of $875 per 12 month accreditation period per laboratory. The fee of $875 is the same for each laboratory regardless of the number of LAPs in which it is enrolled.

For those LAPs with test method fees (ranging from $80 to $490 per test method), there are minimum and maximum fees established for each LAP. These minimum and maximum fees are intended to offset actual costs more accurately since the total time to assess a laboratory, administer proficiency testing, and evaluate a laboratory takes a minimum of one to two work-days, and usually can be expected not to exceed six work-days.

Effect of Fee Increase

Under the new fee schedule the average cost increase is about 9% for laboratories already participating in LAPs other than the Acoustics and Dosimetry LAPs. The fee increases for Acoustics and Dosimetry LAPs reflect the need for more income to achieve self-sufficiency.

The detailed fees for new and renewal applicants are described in the appendices to this notice.

Fee component	Current schedule	New schedule
A. Administrative fee.	$800 per 12-mo accreditation period, except Dosimetry LAP $400 per 12-mo accreditation period.	$875 per 12-mo accreditation period.
B. Individual test method fee.	$70 to $450	$80 to $490.
C. Test method fee minima and maxima:		
Insulation LAP	$600/$4,000	$650/$4,350.
Concrete LAP: None—fees paid directly to Cement and Concrete Reference Laboratory (CCRL).		
Carpet LAP	$600/$1,500	$650/$1,650.
Stove LAP	$1,050/$1,500	$1,150/$1,650.
Acoustics LAP	$600/$2,400	$650/$3,300.
Dosimetry LAP	$725/$900	$850/$1,050.
Commercial LAP	$600/$3,000	$650/$3,300
D. One-time initiation fee:		
Insulation LAP	$600	$650.
Concrete LAP	$200	$220.
Carpet LAP	$600	$650.
Stove LAP	$600	$650.
Acoustics LAP	$600	$650.
Dosimetry LAP	$400	$450.
Commercial LAP	$600	$650.
E. Special fees: Special evaluation, special administrative, unusual costs, foreign laboratory.	Travel costs, assessor wage costs, other costs.	Same.

Dated: August 28, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

Fees for Evaluating an NVLAP Applicant

All fees must be paid to NBS before an initial or renewal decision on accreditation is made. Failure by a laboratory to pay renewal fees on a timely basis will lead to the loss of accreditation.

Administrative Fee. A single administrative fee of $875 covering one 12 month accreditation period will be charged each participating laboratory. This fee is derived from direct and indirect administrative costs for operating established LAPs.

LAP Initiation Fees. These are one-time fees for LAP applicants. The fee for each LAP is based on the costs for processing new applicants.

Test Method Fees. The total cost of test method fees is obtained by summing individual fees for those LAPs where test methods are specified. The total test method fees are limited by the minimum and maximum for each LAP.

Dosimetry LAP Assessment and Proficiency Testing Fees. Unlike other LAPs, which include costs of on-site assessments and proficiency testing in the Test Method Fee, enrollment in the Dosimetry LAP requires payment of separate Assessment and Proficiency Testing Fees.

Specal Evaluation Fee. For those applicants requiring faster service than the normal evaluation schedule allows, a special fee to cover the extra costs for actual travel, per diem, and labor to carry out the special evaluation will be charged.

Special Administrative Fee. If a laboratory has not completed all requirements for accreditation within one year from the first day of the next quarter following receipt of its application, it will be billed an administrative fee of $875 to maintain its application. The full administrative fee plus the applicable LAP fees will be required when it is ready to be accredited.

Foreign Laboratory Fee. Foreign laboratories are offered NVLAP accreditation on the same basis as domestic laboratories. Costs for travel of assessors and mailing of proficiency testing materials outside of the continental United States will be added to normal charges. Upon application, a foreign laboratory must make arrangement for paying the standard evaluation fee in U.S. currency before the assessor leaves the United States. If travel time from port of embarkation to the foreign destination is more than 4 hours but less than 20 hours, the foreign laboratory will also be required to pay labor time for one additional day. Travel time for the return trip will also be billed to the laboratory. For travel times greater than 20 hours, 2 days of labor time for each trip will be charged. When an assessor has been scheduled to visit the foreign laboratory, the laboratory will also be notified of the additional costs for labor time to be paid to NBS before an assessor leaves the United States. More than one assessor may be required to assess the laboratory if it requests accreditation in more than one LAP. Fees will be assessed accordingly.

Unusual Cost Fee. NBS reserves the right to impose extra fees for applicants requiring especially long or complex evaluations. Extra fees will be discussed with the applicant before being imposed.

Appendix 1.—Insulation LAP Fee

Administrative Fee: $875.

One-time Fee for New Applicants: $650.

Total Test Method Fee: The Total Test Method Fee for this LAP is obtained by adding the individual fees for those test methods in which a laboratory seeks accreditation. The individual fees are given in the following table where test methods are listed by NVLAP Code. An asterisk (*) indicates that required proficiency testing costs are included in the individual test method fee. There are minimum and maximum total Test Method Fees for this LAP.

The minimum is $650.

The maximum is $4,350.

The minimum is assesed when the sum of individual fees is less than that amount. The maximum is assesed when the sum exceeds that amount.

INDIVIDUAL TEST METHOD FEES

Test method	Annual fee
01/C01 to 01/C03	$150
01/D01 to 01/D04	80
01/D05 to 01/D06	150
01/D07 to 01/D12	80
01/D13 to 01/D25	150
01/D26	*440
01/D27 to 01/D29	150
01/F01	80
01/F02	*490
01/F05	80
01/F06	220
01/F07	*490
01/F08	*440
01/S01 to 01/S14	150
01/T01	*490
01/T04	*470
01/T05	220
01/T06	*490
01/T09 to 01/T10	150
01/V02 to 01/V03	80
01/V04	150
01/V05 to 01/V06	80

Appendix 2.—Concrete LAP Fee

Administrative Fee: $875.

One-Time Fee for New Applicants: $220.

Total Test Method Fee: The Total Test Method Fee for this LAP is for on-site visits by the inspection organization, ASTM's Cement and Concrete Reference Laboratory (CCRL), authorized by NBS to conduct NVLAP on-site visits. A laboratory that has been inspected by CCRL within two years prior to its application does not pay the CCRL fee until the time of its next CCRL inspection. A laboratory that has not been inspected by CCRL within two years prior to its application must be inspected and pay the required CCRL fee. The CCRL fee will be invoiced and collected by ASTM for CCRL with each inspection. Regularly scheduled inspections will occur on the average of once every 2½ years.

Test Method Group Fees

There are 2 groups of test methods for this LAP as shown below.

The CCRL fee for the Field Group of test methods is $975.

The CCRL fee for the Field plus Laboratory Group of test methods is $1,150.

Test method	Field group	Field and laboratory group
02/M01	X	X
02/M03	X	X
02/M01	X	X
02/M01	X	X
02/M01	X	X
02/M01	X	X
02/M02	Optional	Optional

Appendix 3.—Carpet LAP Fee

Administrative Fee: $875

One-Time Fee for New Applicants: $650

Total Test Method Fee: The Total Test Method Fee for this LAP is obtained by adding the individual fees for those test methods in which a laboratory seeks accreditation. The individual fees are given in the following table where each test method is listed by NVLAP Code. An asterisk (*) indicates that required proficiency testing costs are included in the individual test method fee. There are minimum and maximum Total Test Method Fees for this LAP.

The minimum is $650

The maximum is $1,650

The minimum is assessed when the sum of individual fees is less than that amount. The maximum is assessed when the sum exceeds that amount.

INDIVIDUAL TEST METHOD FEES

Test method	Annual fee
03/C01	*$240
03/C02	80
03/D01	*250
03/D02	80
03/S02	*180
03/E01	80
03/F01	220
03/F02	220
03/F03	80
03/F04	*300
03/B01	220
03/B01	300

Appendix 4.—Stove LAP Fee

Administrative Fee: $875.

One-Time Fee for New Applicants: $650.

Total Test Method Fee: The Total Test Method Fee for this LAP is obtained by selecting one of the four following options.

(1) Physical/Fire Group (04/F00), $1,150;

(2) Physical/Fire Group (04/F00) plus Mobile Home Group (04/M00), $1,420;

(3) Physical/Fire Group (04/F00) plus Electrical Group (04/E00), $1,130; or

(4) All three Groups (04/F00, 04/M00, 04/E00), $1,650.

There are minimum and maximum Total Test Method Fees for this LAP.

The minimum is $1,150.

The maximum is $1,650.

Appendix 5.—Acoustics LAP Fee

Administrative Fee: $875.

One-Time Fee for New Applicants: $650.

Total Test Method Fee: The Total Test Method Fee for this LAP is obtained by adding the individual fees for those test methods in which a Laboratory seeks accreditation. The individual fees are given in the following table where each test method is listed by NVLAP Code. An asterisk (*) indicates that required proficiency testing costs are included in the individual test method fee.

There are minimum and maximum Total Test Method Fees for this LAP.

The minimum is $650.

The maximum is $3,300.

The minimum is assessed when the sum of individual fees is less than that amount. The maximum is assessed when the sum exceeds that amount.

Test method	Annual fee
08/P01	$150
08/P02*	250
08/P03*	350
08/P04*	250
08/P05	110
08/P06*	390
08/P07 to 08/P08	150
08/P09*	350
08/P10*	300
08/P11* to 08/P12*	210
08/P13* to 08/P14*	300
08/P15* to 08/P16*	210
08/P17*	300
08/P18* to 08/P19*	210
08/P20* to 08/P21*	300
08/P22* to 08/P23*	210
08/E01	100
08/E02	140
08/E03*	240
08/E04* to 08/E05	290
08/E06 to 08/E08	110
08/E09 to 08/E10	100
08/E11* to 08/E12	240
08/E13 to 08/E14	100
08/E15	370
08/E16 to 08/E19	110
08/E20 to 08/E21	140
08/E22 to 08/E26	100

Certain pairs of test methods in the Acoustics LAP are similar in technical scope. If a laboratory is interested in applying for one or more of these pairs, the laboratory pays a reduced annual charge for one of the test methods in each pair. The test method pairs and reduced charges are listed below.

Test method	Annual fee
08/P10 to 08/P17	$100
08/P11 to 08/P18	100
08/P12 to 08/P19	100
08/P13 to 08/P20	100
08/P14 to 08/P21	100
08/P15 to 08/P22	100
08/P16 to 08/P23	100
08/P17 to 08/P10	100
08/P18 to 08/P11	100
08/P19 to 08/P12	100
08/P20 to 08/P13	100
08/P21 to 08/P14	100
08/P22 to 08/P15	100
08/P23 to 08/P16	100
08/E03 to 08/E11	100
08/E11 to 08/E03	100

Appendix 6—Dosimetry LAP Fee

(Based on a Two-Year Accreditation Period)

Administrative Fee: $1,750.

One-Time Fee for New Applicants: $450.

Assessment Fee: The minimum assessment fee is $650 based on a one work-day assessment. An additional fee will be imposed at a rate of $450 per work-day if additional assessor time is required. Also, an additional fee of $450 per location will be charged for assessing processors which have one or more remotely located facilities. Most assessments are likely to take two work-days.

Proficiency Testing Fee: The proficiency testing fee is the sum of each category fee for each dosimeter model/type for each category for which accreditation is requested. The Table below lists the fees for each of the eight categories of testing. If a processor fails one or more categories, retesting will be required. The category fees for retesting will be the same as shown in the Table.

FEES FOR PROFICIENCY TESTING BY CATEGORY

[One dosimeter model/type tested in one category]

Category	Fee
I	$850
II	850
III	850
IV	850
V	850
VI	1,050
VII	1,050
VIII	1,050

Appendix 7.—Commercial Products LAP Fee

Administrative Fee: $875.

One-Time Fee for New Applicants: $650.

Total Test Method Fee: The Total Test Method Fee for this LAP is obtained by adding the individual test method fees for those test methods in which a laboratory seeks accreditation. The individual fees are given in the following table where each test method is listed by NVLAP Code.

There are minimum and maximum Total Test Method Fees for this LAP.

The minimum is $650.

The maximum is $3,300.

The minimum is assessed when the sum of the individual fees is less than that amount. The maximum is assessed when the sum exceeds that amount.

Test method codes	Test method category	Fee per test method
Paints and Related Coatings and Materials		
09/A01 to 09/A29	Intrinsic physical properties.	$80
09/B01 to 09/B42	Performance and performance change.	110
09/C01 to 09/C40	Chemical properties and compositions.	110
09/D01 to 09/D16	Sample conditioning and preparation.	80
Paper and Related Products		
09/E01	Paper and paperboard	110
09/E02 to 09/E09		80
09/E10		110
09/E11 to 09/E21		80
09/F01 to 09/F02	Paper specifications	80
09/G01 to 09/G08	Pressure sensitive tapes.	80
09/H01	Packaging	110
09/H02 to 09/H03		80
09/H04 to 09/H22	Federal test method standard for preservation, packaging, and packaging materials.	80
Mattresses		
09/K01		110
09/K02		140
09/K03 to 09/K04		110
09/K05		140
09/K06		80

[FR Doc. 84-23189 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-13-M

National Voluntary Laboratory Accreditation Program (NVLAP)

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of formal establishment of a program for accrediting laboratories that test photographic film.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Bureau of Standards (NBS) announces the formal establishment of a laboratory accreditation program (LAP) for laboratories that test photographic film (Photographic Film LAP). Initially, the LAP will cover test methods included in five ANSI Standards for photographic film. A separate notice appearing in this issue of the **Federal Register** includes the fees for this LAP. Laboratories that are interested in becoming accredited under the Photographic Film LAP may request an application package by contacting the Manager, Laboratory Accreditation, National Bureau of Standards.

DATES: Each laboratory that submits a completed application which is postmarked no later than December 1, 1984, will be included in the first group of laboratories to be evaluated for accreditation. Applications received after that date will be included in subsequent groups as they can be scheduled.

FOR FURTHER INFORMATION CONTACT: John W. Locke, Manager, Laboratory Accreditation, National Bureau of Standards, Admin. A531, Gaithersburg, MD 20899 (301) 921-3431.

SUPPLEMENTARY INFORMATION:

Background. This notice is issued in accordance with § 7a.8 of the NVLAP procedures (15 CFR 7a.8). Establishment of this laboratory accreditation program (LAP) for laboratories that test photographic film (Photographic Film LAP) follows the request letter from the Association for Information and Image Management (AIIM) (formerly the National Micrographics Association) dated March 22, 1983. The AIIM letter identified twelve photographic film standards and test methods for inclusion in the LAP.

A notice announcing a preliminary finding of need which was published on May 20, 1983 (48 FR 22775-22777), proposed that the twelve standards and test methods identified in the AIIM request letter be included in the LAP. Comments received in response to the preliminary finding of need proposed that additional standards and test methods for photographic film be added to the program. The final finding of need for the LAP published on September 30, 1983 (48 FR 44873-44875) identified 26 standards and test methods proposed by persons responding to the preliminary finding of need notice.

In January, 1984, a task group of photographic film experts was established by AIIM to evaluate the 26 standards and test methods to determine their appropriateness for the program. This evaluation resulted in a proposal that eight of the 26 standards and test methods be retained in the LAP. On June 22, 1984, a public workshop was held at AIIM headquarters in Silver Spring, Maryland as announced in the June 11, 1984 **Federal Register** (49 FR 24042).

The purpose of the workshop was to discuss technical requirements for laboratories that test photographic film and determine which test methods should require proficiency testing. It was the consensus of the workshop

attendees that three of the proposed eight standards and test methods should be deleted from the LAP (see workshop minutes on file at the Central Reference and Records Inspection Facility, Department of Commerce, Washington, DC). Other standards and test methods may be added to the program if formally requested provided they are within the scope of the LAP. The purpose of the LAP is to provide national recognition to laboratories capable of performing tests in accordance with the designated test methods.

Accredition Process. The accreditation process for this LAP is described below, followed by an appendix of operational information for this LAP.

Dated: August 28, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

Accreditation Process for the Photographic Film LAP

Requesting An Application. Any testing laboratory interested in becoming accredited under this LAP should contact the Manager, Laboratory Accreditation, National Bureau of Standards, Admin. A531, Gaithersburg, MD 20899, (301) 921–3431. He will send an application package as explained below. All laboratories submitting applications postmarked by December 1, 1984, and accompanied by the requisite fee or purchase order will be scheduled for an initial on-site visit as part of the first group of laboratories considered for accreditation under this LAP. Applications received after this date will be included in subsequent groups of laboratories to be considered for accreditation.

Application Package. The application package includes an application form with a test method selection list, fee schedule, and the Photographic Film LAP handbook which describes the general requirements for accreditation.

Fees. In a separate notice appearing in this issue of the **Federal Register**, NBS announces the fees for the Photographic Film LAP. The fee schedule provides interested laboratories with the information needed to calculate the annual fee associated with the scope of accreditation desired. This fee must be paid before any accreditation decision is made. Also, failure to pay an annual renewal fee will lead to automatic expiration of accreditation at the end of the laboratory's accreditation period.

Enrollment. After payment of the required accreditation fee, the Laboratory will be scheduled for an on-site visit and will be notified of any additional written information which must be supplied, and of any applicable proficiency testing requirements which must be completed for the evaluation.

Basic Conditions for Accreditation. To be accredited under the NVLAP procedures, a laboratory must agree in writing the following conditions:

(1) Be examined and audited, initially and on a continuing basis;

(2) Pay accreditation fees and charges;

(3) Avoid reference by itself and forbid others utilizing its services from referencing its accredited status under NVLAP in consumer media and in product advertising or on product labels, containers, and packaging or the contents therein, or in any other way which might convey the concept of product certification by NBS (Note: A NVLAP accredited laboratory may advertise its accredited status on its letterhead, brochures, and test reports as well as in trade publications and other laboratory services publications.);

(4) Maintain compliance with applicable general and specific criteria and with applicable requirements of the NVLAP procedures (15 CFR Part 7a); and

(5) Participate in proficiency testing that may be required for attaining or maintaining accreditation.

Criteria. The NVLAP general and specific criteria for evaluating laboratories, which are described in §§ 7a.19–7a.30 of the NVLAP procedures (15 CFR 7a.19–7a.30), address a laboratory's organizational structure, technical management, professional and ethical business practices, and system for assuring the quality of test results. The criteria also address aspects of a laboratory directly related to the reliable performance of each test method for which the laboratory desires accreditation, including staff competence and training, facilities and equipment, test plans, calibration procedures, recordkeeping, data handling procedures, and quality control checks and audits.

On-site Visits. Regularly scheduled on-site visits are conducted to assess a laboratory's compliance with the NVLAP criteria. In addition, monitoring visits of limited scope are used to assure that accredited laboratories continue to comply with the criteria or to resolve any testing problems that an accredited laboratory may appear to have. The on-site assessor will conduct an exit interview with the laboratory's management at the conclusion of an on-site visit to summarize the assessor's findings. Each laboratory is notified whenever deficiencies are identified and is given an opportunity to correct those deficiencies before formal accreditation recommendations are prepared or any action is started to revoke accreditation. The laboratory must permit the on-site assessor to review and examine any records or other documents required by the criteria. Also, if a hearing under 5 U.S.C. 556 has been instituted under the NVLAP procedures, the laboratory must permit NBS personnel to review and copy any records or other documents required by the critiera. Failure of the laboratory to cooperate with the on-site assessor will be grounds for the initiation of adverse accreditation action.

Proficiency Testing. Proficiency testing is an integral part of the NVLAP accreditation process. While the existence of facilities, equipment, and personnel which satisfy the criteria indicates a laboratory's overall capability to obtain good results, an analysis of actual test results for certain test methods is also necessary to determine if the overall capability does in fact produce the desired results. A laboratory's failure to participate fully in the conduct of required proficiency testing may also be grounds for the initiation of adverse accreditation action.

Evaluation and Recommendations. An evaluation team composed primarily of peers in the applicable testing areas uses the following information to review each laboratory:

(1) Written information supplied by the laboratory;

(2) Results of proficiency testing; and

(3) Written reports of the assessor regarding on-site visits to the laboratory.

If additional deficiencies are identified beyond those cited during the on-site visit, the laboratory is given written notification of those deficiencies and a reasonable period (ordinarily 30 days) in which to correct or resolve them. After review of the above information and the laboratory's response to any notification of deficiencies, an accreditation recommendation for the laboratory will be made by the evaluation team.

Accreditation Decision. Aided by the recommendations of the evaluation team, a decision is made whether to grant or deny initial accreditation for new laboratories or renewal for currently accredited laboratories. The laboratory is notified by letter of the decision. If accreditation denial is proposed, the notification letter will state the reason.

Appeals. When denial of accreditation is proposed, a laboratory has 30 days from the date of receipt of the notification to request a hearing. The notification will specify to whom a request for a hearing should be sent. If a

hearing is not requested, the denial becomes final. If a hearing is requested, it is held pursuant to 5 U.S.C. 556.

Accreditation Period. Laboratories are granted accreditation for one year with individual laboratory anniversary dates occurring on the first of January, April, July, or October. A laboratory will be assigned one of these anniversary dates which is closest to the time that the decision to grant accreditation is made but in no case shall the anniversary date be less than 12 months from the date of the decision.

Accreditation Renewal. Each accredited laboratory is sent a renewal application form before its current accreditation expires (anniversary date). If acted upon promptly by the laboratory, the lead time will be sufficient to complete the renewal evaluation before the current accreditation expires. The laboratory may use the renewal application form to add or drop test methods for the new accreditation period.

Termination. Any accredited laboratory may voluntarily terminate its accreditation at any time. Likewise, an applicant laboratory may voluntarily terminate its application at any time prior to the completion of action on the application. The matter of refunds is covered in § 7a.15 of the NVLAP Procedures (15 CFR 7a.15).

Revocation. If the Director of NBS or designee finds that an accredited laboratory has violated the terms of its accreditation, the Director or designee may, after consultation with the laboratory, notify that laboratory that he proposes to revoke its accreditation. The laboratory has 30 days in which to appeal a proposed revocation by requesting a hearing. A proposed revocation will specify to whom a request for a hearing should be sent. If a hearing is not requested, the revocation becomes final. If a hearing is requested, it is held pursuant to 5 U.S.C. 556.

Public Notification. Accreditation actions are published in the **Federal Register** within 30 days of such action and in NVLAP quarterly and annual reports.

Compliance with Existing Laws. NVLAP accreditation does not relieve the laboratories from the necessity of observing and complying with existing federal, state, and local statutes, ordinances, or regulations that may be applicable to its operations, including consumer protection and antitrust laws.

Appendix—Operational Information for the Photographic Film LAP

On-site Visits. Regularly scheduled on-site visits will occur every two years. In addition, laboratories will be subject to monitoring visits.

Test Methods. The test methods included in the Photographic Film LAP are listed in the Appendix to the notice of fees for the Photographic Film LAP which appears in this issue of the **Federal Register**. Applicant laboratories may be accredited for one or more of the test methods listed.

Proficiency Testing. NBS recognizes that there may be existing or developing collaborative reference or round-robin testing programs that could be adopted as an integral part of proficiency testing requirements for this LAP. Those parties responsible for such programs are invited to identify themselves and the details of their program for consideration and use as a proficiency testing program for this LAP. Interested parties should contact the Manager, Laboratory Accreditation, NBS, Admin. A531, Gaithersburg, MD 20899; (301) 921–3431. To be accepted for use as a proficiency testing program for this LAP, the program must:

(1) Be ongoing and open to anyone interested in participating;

(2) Issue written reports of its results which include statistical analyses of submitted data and identification of statistical outliers;

(3) Have published descriptions of its programs and procedures which are available to anyone;

(4) Have adequate procedures for the distribution, control, and characterization of testing samples; and

(5) Be willing to provide the identity of participating laboratories and their individual results if they are also participating in the LAP.

NBS may select one or more of these programs for use as a requirement in this LAP. This selection would be based on minimum cost to the laboratories seeking accreditation and availability of programs to meet the overall needs of the LAP.

[FR Doc. 84-23187 Filed 8-30-84; 8:45 am]
BILLING CODE 3510-13-M

National Voluntary Laboratory Accreditation Program (NVLAP); Fees

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of fees for the laboratory accreditation program for photographic film.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Bureau of Standards (NBS) announces the fees for the laboratory accreditation program (LAP) for laboratories that test photographic film (Photographic Film LAP). A separate notice appearing in this issue of the **Federal Register** describes the accreditation process for the Photographic Film LAP. Laboratories that are interested in becoming accredited under this LAP may request an application package by contacting the Manager, Laboratory Accreditation, National Bureau of Standards.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Locke, Manager, Laboratory Accreditation, National Bureau of Standards, Admin. A531, Gaithersburg, MD 20899; (301) 921–3431.

SUPPLEMENTARY INFORMATION:

Background. In a separate notice in this issue of the **Federal Register**, NBS announced the formal establishment of a laboratory accreditation program (LAP) for laboratories that test photographic film (Photographic Film LAP). Pursuant to § 7a.10(b) of the NVLAP procedures (15 CFR 7a.10(b), notice is hereby given of the fees which the Director of the National Bureau of Standards (NBS) has established for the Photographic Film LAP.

Basis of Fees. NVLAP fees are based on the premise that all operational costs incurred by NBS in evaluating laboratories seeking accreditation are recovered from fees charged to the applicant laboratories. Fees pay for processing applications, preparing evaluation reports and certificates, as well as the work-hours, travel, and per diem costs of assessors involved in the evaluation process. The fees vary depending on the assessment time, which in turn depends on complexity of test methods and frequency of visits to the laboratories.

Administrative Fee. An annual administrative fee of $875 will be charged each participating laboratory. This fee is based on the estimated administrative costs for operating the LAP.

LAP Initiation Fee. This is a one-time fee of $650 for new applicants in this LAP. The fee is based on higher costs for processing new applications, assisting new applicants and initial assessment.

Test Method Fee. There is a fee associated with each test method. The total cost of test method fees is obtained by summing individual fees for those test methods in which the applicant requests accreditation. Minimum and maximum fees are imposed for this LAP. The total test method fees are limited by a minimum of $650 and a maximum of $1,400. Laboratories already enrolled in other LAPs are not required to pay the minimum for this LAP if they apply for

test methods whose fees total less than $650.

Fees for Foreign Laboratories. Foreign laboratories are offered NVLAP accreditation on the same basis and involving the same criteria as is required of domestic laboratories. However, the cost of the assessor's travel time and expenses and the cost of mailing proficiency testing materials outside of the continental United States will be added to the normal fees.

The fee model for the Photographic Film LAP is outlined in the Appendix to this notice.

Dated: August 28, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

Appendix—Photographic Film LAP Fee Model

Administration Fee: $875.

Initiation Fee: $650.

Total Test Method Fee: The Total Test Method Fee is the sum of the individual test method fees for those test methods in which a laboratory seeks accreditation, except where the minimum or maximum total test method fees apply. The minimum is $650. The maximum is $1,400. The minimum is assessed when the sum of the individual fees is less than that amount. (Note that laboratories already enrolled in other LAPs are not subject to this minimum.) The maximum is assessed when the sum exceeds that amount. The individual test method fees are given in the following table listing the test methods.

TABLE-TEST METHODS FOR PHOTOGRAPHIC FILM LAP

NVLAP code	Test method designation	Short title	Test method fee ($)
10/PO1	ANSI PH 1.25-1984.	Standard for safety photography film.	80
10/PO2	ANSI Ph 1.28-1981.	Specifications for silver-gelatin/cellulose ester film.	420
10/PO3	ANSI PH 1.29-1971.	Methods for determining curl of film.	80
10/PO4	ANSI PH 1.41-1981.	Specification for silver-gelatin/polyester film.	420
10/PO5	ANSI PH 1.60-1979.	Specifications for ammonia-processed Diazo film.	420

[FR Doc. 84-23188 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Issuance of Permit; Moscow Zoo

On July 11, 1984, Notice was published in the **Federal Register** (49 FR 28304) that an application had been filed with the National Marine Fisheries Service by the Moscow Zoo, 123242, B Grusinskaya I, U.S.S.R., for a permit to obtain one (1) rehabilitated beached/stranded California sea lion (*Zalophus californianus*) for the purpose of public display.

Notice is hereby given that on August 22, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Public Display Permit for the above activity to the Moscow Zoo subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: August 24, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-23195, Filed 8-30-84; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for Permit; Knie's Kinderzoo

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals a authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Knie's Kinderzoo (P266B).

b. Address Gebruder knie AG, CH-8640 Rapperswill, Switzerland.

2. Type of Permit Public Display.

3. Name and Number of Animals: Bottlenose dolphins (Tursiops truncatus) 2.

4. Type of Take: Captive maintenance.

5. Location of Activity: Florida waters.

6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the maine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

As a request for a permit to take living marine mammals to be maintained in areas outside the jurisdiction of the United States, this application has been submitted in accordance with National Marine Fisheries Service policy concerning such applications (40 FR 11619, March 12, 1975). In this regard, no application will be considered unless:

(a) It is submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, through the appropriate agency of the foreign government;

(b) It includes:

i. A certification from such appropriate government agency verifying the information set forth in the application;

ii. A certification from such government agency that the laws and regulations of the government involved permit enforcement of the terms of the conditions of the permit, and that the government will enforce such terms;

iii. A statement that the government concerned will afford comity to a National Marine Fisheries Service decision to amend, suspend or revoke a permit.

In accordance with the above cited policy, the certification and statements of the Division International Traffic and Animal Welfare have been found appropriate and sufficient to allow consideration of this permit application.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region,

9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: August 24, 1984.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 84-23194 Filed 8-30-84; 8:45 am]

Billing Code 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

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 patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-256, 206 (4,451,265)
Diesel Fuel-Aqueous Alcohol Microemulsions
SN 6-351,400 (4,452,288)
Powered Tree Chipper or Bark Hack
SN 6-378,317 (4,454,680)
Rope Wick Chemical Recovery Apparatus
SN 6-385,162 (4,449,391)
Method for Separating Closed Bolls of Cotton by Maturity
SN 6-427,229 (4,451,267)
Microemulsions From Vegetable Oil and Aqueous Alcohol with Trialkylamine Surfactant as Alternative Fuel For Diesel Engines
SN 6-507,191 (4,454,268)
Starch-Based Semipermeable Films
SN 6-586,617
Process to Impart Smooth-Dry and Flame Retardant Properties to Cellulosic Fabric
SN6-586,618
Process to Produce Durable Press Low Formaldehyde Release Cellulosic Textiles
SN 6-610,949
Suffocation-Type Insect Trap with Pitfall and Attractant
SN 6-611,042
Anticlostridial Agents

Department of Commerce

SN 6-348,575 (4,449,823)
Device for Measurement of the Spectral Width of Nearly Monochromatic Sources of Radiant Engery
SN 6-348,576 (4,444,501)
Stabilizing Mechanism for Optical Interferometer
SN 6-611,552
Magnetoresistive Skin for Robots
SN 6-612,291
Modulation Transfer Spectroscopy for Stabilizing Lasers

Department of Health and Human Services

SN 6-294,368 (4,451,618)
Process for the Production of 2-B-D-Ribofuranosylthiazole-4-Carboxamide
SN 6-329,590 (4,362,510)
Cementitious Dental Compositions Which Do not Inhibit Polymerization
SN 6-475,215
Multi-Layer Coil Assembly Coaxially Mounted Around the Rotary Axis for Preparatory Countercurrent Chromatography
SN 6-499,093
Monoclonal Antibodies to Cytoskeletal Proteins
SN 6-540,667
Tumor Treatment in Humans with 4'-Carboxyphthalato (1,2-Diaminocyclohexane) Platinum (II)

Department of Interior

SN 6-376,851 (4,457,624)
Suspended Sediment Sensor
SN 6-488, 481 (4,453,594)
Solution Mining of Coal by Electrolysis

Department of the Air Force

SN 6-329,557
Simultaneous Detection of Time Coincident Signals in an Adaptive Doppler Tracker
SN 6-339,206 (4,426,131)
Replaceable Diffraction Gratings for Cooled Laser Optics
SN 6-465,942 (4,437,080)
Method and Apparatus Utilizing Crystalline Compound Superconducting Elements Having Extended Strain Operating Range capabilities Without Critical Current Degradation
SN 6-595,153
Method to Reveal Microstructures in Single Phase Alloys
SN 6-596,471
Phase Only Optical Filter for use in an Optical Correlation System
SN 6-598,949
Compact Broadband Rectangular to Coaxial Waveguide Junction

Department of the Army

SN 6-212,766
Walsh Function Light Pattern Image Analyzer and Method
SN 6-469,333
Frequency Modulated Phase Locked Loop
SN 6-473,467
Improved Chirp Transform Correlator
SN 6-592,140
Pipe Corrosion Monitoring Apparatus and Method
SN 6-600,241
A Method for Producing Nutritionally Dense Freeze Dried Food Bars
SN 6-600,700
Portable Trapping Device
SN 6-605,456
Method of Directly Crystallizing a (Sm+Ti): Fe=1:5 Compound
SN 6-606,729
Porous Catalytic Metal Plate Degeneration Bed in a Gas Generator
SN 6-608,824
Tone Signalling Adapter for a Telephone Set
SN 6-608,840
Distributed Pulse Forming Network for Magnetic Modulator
SN 6-611,292
High Power Optical Switch for Microsecond Switching
SN 6-612,524
Semiconductor Multipactor Device
SN 6-620,301
Shaft Coupling Device
SN 6-623,883
Temperature Controlled Adjusting Mechanism
SN 6-624,896
Tactical High Frequency Antennas

National Security Agency

SN 6-180,075 (4,383,261)
Method For Laser Recording Utilizing Dynamic Preheating

[FR Doc. 84-23153 Filed 8-30-84; 8:45 am]

BILLING CODE 3410-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing an Import Restraint Limit for Certain Wool Textile Products Exported From Yugoslavia

August 28, 1984.

On May 10, 1984, a notice was published in the **Federal Register** (49 FR

19888) announcing that, on April 30, 1984, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested the Government of the Socialist Federal Republic of Yugoslavia to enter into consultations concerning exports to the United States of men's and boys' suit-type coats in Category 433, produced or manufactured in Yugoslavia.

The United States Government has decided, inasmuch as consultations with the Government of the Socialist Federal Republic of Yugoslavia to reach a mutually satisfactory solution concerning this category have not been held, to control imports of wool textile products in Category 433, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on April 30, 1984 and extends through April 29, 1985 at a level of 3,184 dozen. Inasmuch as charges for imports during the period which began on May 1 and extended through June 30, 1984, have amounted to 3,257 dozen, an amount in excess of the twelve-month restraint limit, no further shipments will be permitted entry into the United States for consumption, or withdrawal from warehouse for consumption until further notice.

The letter published below directs the Commissioner of Customs to establish a control limit of 3,184 for Category 433 and to charge 3,257 dozen to that limit.

EFFECTIVE DATE: September 4, 1984.

FOR FURTHER INFORMATION CONTACT: James Nader, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377–4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 28, 1984.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on September 4, 1984, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 433, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on April 30, 1984, in excess of 3,184 dozen.[1]

Textile products in Category 433 which have been exported to the United States prior to April 30, 1984 shall not be subject to this directive.

Textile products in Category 433 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

The action taken with respect to the Government of the Socialist Federal Republic of Yugoslavia and with respect to imports of wool textile products from Yugoslavia has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register**.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84–23209 Filed 8–28–84; 3:04 pm]

BILLING CODE 3510–DR–M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to Procurement List 1984 a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: August 31, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On June 22, 1984, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (49 FR 25664) of proposed addition to Procurement List 1984, October 18, 1983 (48 FR 48415).

Addition

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1984:

SIC 0782

Ground Maintenance, Recreation Areas, Naval Air Station, Lemoore, California.

C.W. Fletcher,

Executive Director.

[FR Doc. 84–23216 Filed 8–30–84; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1984; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1984 commodities to be produced by and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: October 3, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an

[1] The level of restraint has not been adjusted to reflect any imports exported after April 29, 1984. Imports during the period May 1 through June 30, 1984 have amounted to 3,257 dozen.

opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1984, October 18, 1983 (48 FR 48415):

Class 8465

Sheath, Axe, Plastic; 8465–01–110–2078
Sheath, Brush Hook, Plastic; 8465–01–136–4720
Sheath, McCleod Tool, Plastic; 8465–01–136–4718
Sheath, Shovel, Plastic; 8465–01–136–4719
Sheath, Tool, Pulaski, 8465–01–067–9999

SIC 7369

Commissary Shelf Stocking and Custodial Eielson Air Force Base, Alaska
Commissary Shelf Stocking and Custodial Myrtle Beach Air Force Base, South Carolina

SIC 9199

Forms/Publication Storage and Distribution, Department of Treasury, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, D.C.

C.W. Fletcher,

Executive Director.

[FR Doc. 84–23217 Filed 8–30–84; 8:45 am]
BILLING CODE 6820–33–M

Privacy Act of 1974; Annual Records System Notice

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Change of address

Notice is hereby given that the Committee for Purchase from the Blind and Other Severely Handicapped has moved from 2009 14th Street North, Suite 610, Arlington, Virginia 22201 to 1755 Jefferson Davis Highway, Suite 1107, Arlington, Virginia 22202.

Accordingly, the address of the Executive Director shown under CBH–1, CBH–2, and CBH–3 which appears on pages 48075 and 48076 of the **Federal Register**, Vol. 42, No. 184, Thursday, September 22, 1977 is changed to read "1755 Jefferson Davis Highway, Suite 1107, Arlington, Virginia 22202".

C. W. Fletcher,

Executive Director.

[FR Doc. 84–23213 Filed 8–30–84; 8:45 am]
BILLING CODE 6820–33–M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 83–2]

1982 Jukebox Royalty Distribution Determination

AGENCY: Copyright Royalty Tribunal (Tribunal).

ACTION: Notice of Final Determination.

SUMMARY: The Tribunal announces the adoption of its final determination in the proceeding concerning the distribution to certain copyright owners of jukebox royalty fees deposited for 1982 performances.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW, Washington, DC 20036. Phone: (202) 653–5175.

SUPPLEMENTARY INFORMATION: In accordance with 17 U.S.C. 116(c)(3), the Tribunal on December 13, 1983 published notice in the **Federal Register** (48 FR 55497) of a controversy concerning distribution of the 1982 jukebox royalties. The Tribunal in the same order provided for substantial partial distribution of the 1982 royalties. The sum of $1,350 was distributed to the Italian Book Corporation and 90% of the remainder of the royalty fund was distributed to the designated common agent of the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and SESAC. These claimants have reached agreement on the distribution of the 1982 jukebox royalties. On October 6, 1983 these claimants filed a motion to distribute the entire royalty fund to these claimants in accordance with the terms of their voluntary agreement.

The Tribunal has determined the distribution of the 1982 jukebox royalties on the written record in this proceeding. We have considered the materials submitted by claimants, including materials submitted at the direction of the Tribunal. The Tribunal on December 13, 1983 directed ASCAP, BMI, SESAC and the Italian Book Corporation to submit the justification for the royalty distribution proposal provided in their voluntary agreement. On January 25, 1984 we requested ASCAP, BMA and SESAC to submit information as to the extent of Spanish-language compositions in their repertories. On the basis of this record, the Tribunal has determined to award the entire royalty fund to ASCAP, BMI, SESAC and the Italian Book Corporation in accordance with the terms of their voluntary agreement. We discuss below our reasons for not making an award to other claimants.

Latin American Music and Latin American Music, Inc.

Latin American Music and Latin American Music, Inc. (A.C.E.M.L.A.) claim to own or administer more than 20,000 copyrights of traditional and popular Spanish language songs. These claimants assert that the 1980 census estimates of the United States population includes 14.7 million persons of Spanish origin, and that these estimates "do not take into account the millions of undocumented Spanish-speaking aliens in this country."[1] Claimants further asserted that sample 1983 trade charts presented as exhibits in this proceeding show that "there were a substantial number of hit songs in Spanish that represented claimants' copyrights." Claimants also asserted that "most jukeboxes tend to be located in bars and smaller restaurants, both of which are numerous in Hispanic communities." On the basis of these arguments and the evidence submitted A.C.E.M.L.A. requests an award of 5% of the royalty fund.

We reject any argument that the size of the Hispanic population, with or without the inclusion of undocumented Spanish-speaking aliens, establishes an entitlement of A.C.E.M.L.A. to the jukebox royalty funds. We also cannot justify an award to A.C.E.M.L.A. on the basis of assertions as to the prevalence of jukeboxes in Hispanic communities.

Although there is not in our record any survey of jukebox performances of copyrighted music, it is reasonable to conclude that there are performances of Spanish language copyrighted compositions on jukeboxes, but that such performances comprise only a small portion of all performances. We also find in this record evidence which supports a finding that many of these performances are of compositions licensed by other claimants. From this record we have no basis on which to make any judgment about jukebox performances of A.C.E.M.L.A. compositions or the value of the A.C.E.M.L.A. catalog in relation to the catalogs of other performing rights societies.

In all our distribution proceedings the Tribunal has been attentive to the limited resources of smaller claimants. But our determinations cannot rest on faith, hope and charity. We must have in the record of this proceeding or otherwise some benchmarks by which to judge a claim.

Records of other Tribunal proceedings contain considerable information about

[1] Statement of A.C.E.M.L.A., October 27, 1983, p. 2.

the other performing rights societies, but even recourse to such proceedings would not be of any avail in considering the A.C.E.M.L.A. claim. We have in other distribution proceedings looked to various indicia of value reflected in performance or licensing data not directly related to the particular use involved in the distribution. We find no such data in any record that would provide a basis for an award to A.C.E.M.L.A. In particular, we find persuasive the evidence submitted on behalf of ASCAP and BMI in response to the sample trade charts presented by A.C.E.M.L.A.

Michael W. Walsh

Michael W. Walsh filed a claim to jukebox royalties covering two identified musical compositions that he asserted were performed on jukeboxes in 1982. He listed jukeboxes in three establishments in New York State that he asserted contained these works during 1982. ASCAP, BMI and SESAC in a joint statement of July 25, 1984 responded to the evidence presented by Mr. Walsh. On the basis of the record before us, the Tribunal concludes that any royalty fees that could be directly related to the identified compositions would be sufficiently de minimus as not to justify an award.

Sammie Belcher, Jr.

Sammie Belcher, Jr. submitted no evidence in justification of his claim. The Tribunal makes no award to Mr. Belcher.

It is therefore ordered that $1,500 of the 1982 jukebox royalty fund be awarded to the Italian Book Corporation, and that the balance of the fund be awarded to the designated common agent of the ASCAP, BMI and SESAC. It is further ordered that the royalty fees not previously distributed be distributed in accordance with this award.

Distribution of Jukebox Royalty Fees

(Financial statement of royalty fees for compulsory licenses for Jukeboxes for 1982.)

Royalty fees deposited	$2,902,904.86
Interest Income	660,800.00
Gain on Matured Securities	104,203.34
Total	3,667,908.20
Less:	
Operating costs of the Copyright Office	149,867.00
Refunds issued	2,470.50
P.L. 97-276	700.00
P.L. 98-51	40,000.00
Cost of investments	358,823.29
Total cost of initial investments matured on 9/30/83	213,137.12
1/19/84 Distribution of fees	2,891,999.26
Total	3,656,997.17
Balance on hand 6/30/84	10,911.03
Face amount of securities due 9/27/84	365,000.00
Approximate amount for distribution on September 27, 1984	375,911.03

Commissioner Hall did not participate in this determination.

Dated: August 28, 1984.

Thomas C. Brennan,

Chairman.

[FR Doc. 84-23210 Filed 8-30-84; 8:45 am]

BILLING CODE 1410-12-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 28, 1984.

Change in closure determination for meeting of the USAF Scientific Advisory Board Ad Hoc Committee on a Large Rocket Test Facility, 18–19 September 1984, published in **Federal Register** on 27 August 1984, 49 FR 33923. The meeting will concern matters listed in section 552b(c) of Title 5, United States Code, specifically paragraph (3) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Harry C. Waters,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 84-23193 Filed 8-30-84; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Women's Educational Programs. The agenda will include a discussion of the Council's forums, planning activities for the coming year, site visits to WEEA grantees, and election of committee officers. This notice also describes the function of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: September 19, 1984, 7:00 p.m. to 10:00 p.m., September 20, 1984, 10:00 a.m. to 12:00 noon, and 1:45 p.m. to 4:00 p.m.; September 21, 1984, 9:00 a.m. to 12:15 p.m. and 1:30 p.m. to 3:30 p.m.

ADDRESS: The meeting will be held at the Capitol Holiday Inn, 550 C Street, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Sally Todd, Deputy Director, National Advisory Council on Women's Educational Programs, 425 13th Street, N.W., Suite 416, Washington, D.C., 20004, (202) 376–1038.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Public Law 95–561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approval programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Executive Committee will take place on September 19, 1984, from 7:00 p.m. to 10:00 p.m. The agenda will include discussion of the Forums, the Council's FY 1985 budget, unfinished and new business.

The meetings of the Civil Rights, Federal Policies, Practices, and Programs, and WEEA Program Committees will take place on September 21, 1984, from 9:00 a.m. to 10:00 a.m.

The agenda for the Civil Rights Committee will include the election of officers, the Sexual Harassment brochure, the Ambassadorship Program, unfinished and new business.

The agenda for the Federal Policies, Practices, and Programs Committee will include discussion of current legislation, unfinished and new business.

The agenda for the WEEA Program Committee will include discussion of site visits, unfinished and new business.

The meeting of the Council is open to the public. Records will be kept of the proceedings and will be available for public inspection at the Office of the National Advisory Council on Women's Educational Programs, 425 13th Street, NW., Suite 416, Washington, D.C. 20004.

Signed at Washington, D.C. on August 28, 1984.

Sally A. Todd,

Acting Executive Director.

[FR Doc. 84-23228 Filed 8-30-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Adult Education

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: September 24–26, 1984, 9:00 a.m. to 5:00 p.m.

ADDRESS: Hotel Stewart, 351 Geary Street, San Francisco, Calif.

FOR FURTHER INFORMATION CONTACT: Helen Banks, National Advisory Council on Adult Education, 425 13th St., NW., Washington, D.C. 20004, 202/376–8892.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is established to advise the Secretary on policy matters concerning the management of the Act, review program and administration effectiveness, and make reports and submit recommendations to the President and Congress relating to Federal adult education activities and services.

The meeting of the Council is open to the public. The proposed agenda includes: Oath of Office Ceremony, Review of Literacy Report, FY–84 & FY–85 Council Budgets, Committee Reports, ABE/ESL Program Visitation.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 425 13th St., NW., Suite 323, Washington, D.C. 20004, from the hours of 8:00 a.m. to 4:30 p.m.

Signed at Washington, D.C. on August 27, 1984.

Rick Ventura,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 84-23270 Filed 8-30-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forth coming meeting of the full Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 25–28, 1984, 9:00 A.M. until conclusion of business each day.

ADDRESS: Sheraton-Santa Fe Inn, 750 North St. Francis Drive, Santa Fe, New Mexico 87501 505/982–5591.

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, Pennsylvania Building, Suite 326, 425 13th Street, NW., Washington, D.C. 20004 (202)/376–8882).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilites under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92–318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to programs benefiting Indian children and adults.

The meeting will be open to the public. The proposed agenda includes:

(1) Chairman's Report.

(2) Executive Director's Report.

(3) Action on previous minutes.

(4) Committee discussions and reports.

(5) Review of NACIE's FY'84, FY'85, and FY'86 budgets.

(6) Plans for future NACIE activities.

(7) Regular Council business.

(8) Public Testimony.

(9) On-site visits to Santa Fe/ Albuquerque area (September 26–27, 1984).

Records shall be kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 425 13th Street, NW., Suite 326, Washington, D.C. 20004, from the hours of 8:00 a.m. to 4:30 p.m.

Dated: August 28, 1984. Signed at Washington, D.C.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education

[FR Doc. 84-23271 Filed 8-30-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Establishment of Performance Review Board; Names of Board Members

Section 4314(c) of title 5, United States Code (as amended by the Civil Service Reform Act of 1978), requires that the Department of Energy establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s) to review, evaluate, and make a final recommendation on performance appraisals assigned to Departmental members of the Senior Executive Service. The Performance Review Board established for the Department of Energy also makes written recommendations to the Executive Personnel Board or the Chairman, Federal Energy Regulatory Commission, regarding Senior Executive Service performance bonuses, awards, and performance-related actions.

Section 4314(c) of title 5, United States Code requires that notice of appointment of Performance Review Board members be published in the **Federal Register.** The following persons have been appointed to serve on the performance review board standing register for the Department of Energy:

William F. Anderson
Earl E. Gjelde
Charles E. Kay
Donald H. Pearlman
Emily S. DeRocco
James F. McAvoy
Robert H. Bauer
William S. Heffelfinger
Harry L. Peebles
J. Merle Schulman
Helene S. Markoff
K. Dean Helms
Cleo N. Mitchell, Jr.
Gene K. Fleming
Robert E. Greeves
John W. Polk
Morris L. Myers
Nathaniel H. Pierson
William V. Vitale
Joseph G. Coyne
Charles R. Tierney
Elizabeth E. Smedley
Gail T. Young
Carl W. Guidice
Arthur E. Guyer
McKinley E. Bryant

Berton J. Roth
Thomas J. Davin, Jr.
Vincent E. Mason, II
Edwin R. Itnyre
David G. Newman
Eric J. Fygi
Thomas C. Newkirk
Craig S. Bamberger
Theodore D. Miles
William H. Mellor, III
Melinda Carmen
Robert G. Rabben
James K. White
Ralph D. Goldenberg
Leon Silverstrom
Gordon W. Harvey
Matthew T. Abruzzo
William R. Partridge
Wayne I. Tucker
James U. DeFrancis
Constance Stuart
Christopher J. Warner
George Breznay
Thomas O. Mann
Richard T. Tedrow
Thomas L. Wieker
George J. Bradley, Jr.
Barton R. House
Harold Jaffe
Edward J. Hanrahan
William J. Silvey
Richard H. Williamson
Howard F. Perry
James S. Herod
David E. Patterson
Robert W. Davies
Robert J. Stern
Robert W. Barber
Richard D. Furiga
Joseph R. Maher
Howard S. Coleman
Robert L. San Martin
Melvin H. Chiogioji
Donna Fitzpatrick
Alan J. Streb
Frederick H. Morse
John E. Mock
Richard A. Benson
Louis V. Divone
James S. Kane
George Y. Jordy
Delmar D. Mayhew
William A. Wallenmeyer, Jr.
Richard H. Kropschot
James F. Lciss
Antoinette G. Joseph
John F. Clarke
J. Ronald Young
Robert W. Wood
Charles W. Edington
Donald K. Stevens
Louis C. Ianniello
Bernard Hildebrand
Nelia H. Davies
Ryszard Gajewski
James W. Culpepper
Francis C. Gilbert
John L. Gilbert
Ronald W. Cochran
Maurice J. Katz
Donald K. Gestson
James W. Vaughn, Jr.
John R. Longenecker
Franklin E. Coffman
Neal Goldenberg
Kermit O. Laughon
David B. LeClaire
Gene L. Rogers
John W. Shirley, Sr.
Charles H. Brown, Jr.
Thomas L. Foster
Robert M. Forssell
Carl H. Schmitt
Donald E. Erb
David B. Pye
Donald L. Bauer
Richard E. Harrington
Jeremiah E. Walsh
Augustine A. Pitrolo
Sun W. Chun
Paul T. Michael
James W. Workman
Milton C. Lorenz
Carl A. Corrallo
Avrom Landesman
Albert H. Linden, Jr.
Kenneth A. Vagts
Jimmie L. Petersen
John C. Geidl
Yvonne M. Bishop
Frank E. Lalley
Charles C. Heath
W. David Montgomery
Leonard A. Jacobvitz
Raymond G. Romatowski
Donald Ofte
James R. Nicks
Paul R. Wagner
Jack R. Roeder
William R. Cooper
Charles E. Troell
Hilary J. Rauch
Donald L. Bray
Fred C. Mattmueller
John P. Kennedy
Andrew E. Mravca
Troy E. Wade, II
Nick C. Aquilina
Jon P. Hamric
Richard A. Schwarz
Joe B. LaGrone
Percy Brewington, Jr.
John T. Milloway, Jr.
Ewin B. Kiser, Jr.
C. Raymond Somerlock
Herschel D. Hickman
James C. Hall
William P. Snyder
Richard A. DuVal
Donald W. Pearman, Jr.
Robert L. Morgan
Goetz K. H. Oertel
Thomas R. Clark
Ray D. Duncan
Richard C. Amick
Michael J. Lawrence
Edward S. Goldberg
Harry Geisinger
Warren L. Jamison
Robert J. Cross
Peter J. Johnson
Robert E. Ratcliffe
Edward W. Sienkiewicz, Jr.
James J. Jura
Robert L. McPhail
William H. Clagett, IV
Joe D. Hall
Lawrence R. Anderson
Scott P. Anger
Andrew W. Battese
Ernest Baynard
Raymond A. Beirne
Charles E. Bullock
Robert W. Cackowski
Bernard B. Chew
Lynne H. Church
William Connelly
Marilyn L. Doria
Quentin A. Edson
Philip L. Essley, Jr.
Russell E. Faudree, Jr.
Jerome M. Feit
Morris R. Fitzgerald
Lynn H. Hargis
Howard Kilchrist
Randolph E. Mathura
William G. McDonald
Louis W. Mendonsa
Gordon E. Murdock
Karen K. Nygaard
Kenneth M. Pusateri
William Satterfield
Michael Schopf
Leon J. Slavin
Joseph J. Solters
Robert J. Szekely
Anthony F. Toronto
Charles Teclaw
Maynard Ugol
Barbara J. Weller
Bernard Wexler
Kenneth A. Williams

Issued in Washington, D.C. on August 29, 1984.

Martha Hesse Dolan,

Assistant Secretary, Management and Administration.

[FR Doc. 84-23320 Filed 8-30-84; 8:45 am]
BILLING CODE 6450-01-M

Energy Information Administration

Proposed Revision of Form EIA-254; Quarterly Progress Report on Status of Reactor Construction

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of proposed revision to Form EIA-254, "Quarterly Progress Report on Status of Reactor Construction" and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA) of the U.S. Department of Energy (DOE) is proposing a revision of Form EIA–254, "Quarterly Progress Report on the Status of Reactor Construction." The proposed revised form will be titled, "Semiannual Report on the Status of Reactor Construction." After approval by the Office of Management and Budget (OMB) is obtained, the EIA will begin using the revised form in January 1985.

Comments: To obtain additional information or copies of the revised form contact: Justine Johnson, Office of Coal, Nuclear, Electric and Alternate Fuels; Energy Information Administration; U.S. Department of Energy, Mail Stop 2F–021; EI–531; Washington, D.C. 20585; (202)252–6330. Written comments must be received on or before October 1, 1984.

Background

The revised Form EIA–254 collects data on nuclear units for electric power generation that are planned or under construction by an electric utility. The form collects data that is used by various DOE offices for analysis and to answer congressional inquiries. In addition, the data are published at the *Survey of Nuclear Power Plant Construction Costs* (DOE/EIA–0439).

The primary data elements are respondent identification, name and location of nuclear electric generating units, contact name, address, telephone number, electrical capacity expressed as design electrical rating in net megawatts, unit construction status, and unit ownership. Estimated nuclear plant costs for the categories of direct, indirect, contingency, common facility costs, Allowance for Funds Used During Construction (AFUDC), and disbursed cost to date are also requested.

The chronological and labor data reported are: date first fuel is to be loaded, date unit is to be placed in commercial operation (month/year), total direct labor required for unit construction from site clearance to full-power licensing (man-hours), and direct labor expended to date.

The revised Form EIA–254 differs from the current verion in two ways: (1) The Form EIA–254 is now mandatory and (2) the frequency of reporting has been reduced from quarterly to semiannually. Other changes include: the manner in which the AFUDC is reported, the addition of questions on labor expended, and the deletion of most of the unit chronological data. As in the past, the revised version of the Form EIA–254 is designed for preprinted data that have been previously submitted. The preprinted data will need only to be verified and updated by the respondent. After the OMB approval is obtained, all U.S. electric utilities must file this form for each qualifying U.S. plant that is planned or under construction. A qualifying plant is any plant that is under construction or any planned nuclear fueled unit which will generate electricity for sale commercially. The Form EIA–254 must be submitted within 30 days after receipt. The number of person-hours required to complete the Form EIA–254 is estimated to be 1 hour per unit. Because this form will be filed semiannually for approximately 55 nuclear reactor units, the annual total industry burden is estimated to be 110 hours. From its information collection budget, the EIA will allocate 110 hours for the collection of the 1985 data.

Request for Comments

The Form EIA–254 is reproduced following this notice. The EIA invites prospective respondents to comment on the planned extension within 30 days of the publication of this notice. The following general guidelines are provided to assist the preparation of responses:

(As a potential respondent)

A. Are the instructions clear and sufficient?

B. Can the data be submitted in accordance with the response time specified in the instructions?

C. How many hours, including time for preparation and administrative review, will your utility require to complete and submit a form for each plant?

D. What is the estimated cost of completing this form, including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

E. How can the form be improved?

F. Do you know of other Federal, State, or local agencies that collect similar data? If you do, specify the agency and the means of collection.

(As a potential user)

A. When aggregated for publication in the "Semiannual Report on the Status of Reactor Construction," can you use data indicated on the form?

B. For what purposes would you use these data? Be specific.

C. How could the form be improved to better meet your specific needs?

D. Are these alternate sources of data and do you use them? What are their deficiencies?

Comments or summaries of comments submitted in response to this notice will be included in the request for the OMB approval of this data collection and will become a matter of public record.

Issued in Washington, D.C., August 28, 1984.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

BILLING CODE 6450-01-M

U.S. Department of Energy
Energy Information Administration

Form Approved
OMB No. XXXX-XXXX
(Expires XX-XX-XX)

SEMIANNUAL REPORT ON STATUS OF REACTOR CONSTRUCTION

This form is mandatory and authorized under the Atomic Energy Act of 1954 (P.L. 83-703) and the Federal Energy Administration Act of 1974 (P.L. 93-275). See General Information for confidentiality statement.

PART A - UNIT IDENTIFICATION DATA

1. Plant Name, Unit Number, and Location (City and State):

2. Design Electrical Rating (net megawatts, electrical):

3. Report for 6 Months Ending:

4. Contact Person:
   a. Name
   b. Title
   c. Company
   d. Address
   e. Telephone Number ( )

5. Unit Is (select one or more):
   - ☐ a. Planned (construction not started)
   - ☐ b. Under Construction
   - ☐ c. In Commercial Operation
   - ☐ d. Suspended/Deferred (specify month-year)
   - ☐ e. Cancelled (specify month-year)

6. Responding Utility Is (select one):
   - ☐ a. Sole Owner
   - ☐ b. Joint Owner and Construction Manager
   - ☐ c. Other (specify)

7. Certifying Official: I certify that the information provided herein is true and accurate to the best of my knowledge.
   a. Name
   b. Signature
   c. Title
   d. Date

PART B - UNIT CHRONOLOGICAL AND LABOR DATA

Item (a)	Previous Estimate (b)	Current Estimate (c)
1. Date First Fuel To Be Loaded (month-year)		
2. Date Unit To Be Placed in Commercial Operation (month-year)		
3. Total Direct Labor Required for Unit Construction from Site Clearance to Full Power Licensing (man-hours)		
4. Direct Labor Expended to Date (man-hours)		

U.S. Department of Energy
Energy Information Administration

SEMIANNUAL REPORT ON STATUS OF REACTOR CONSTRUCTION (continued)

PART C - UNIT COST DATA AT COMPLETION

Item (a)	Estimated Cost (thousands of dollars) Previous (b)	Current (c)
1. Direct Costs		
a. Land and Land Rights		
b. Structures and Improvements		
c. Reactor Plant Equipment		
d. Turbogenerator Units		
e. Accessory Electric Equipment		
f. Miscellaneous Power Plant Equipment		
g. Total Direct Cost (lines 1a to 1f)		
2. Indirect Cost		
3. Contingency Cost		
4. Common Facility Cost (for multiple-unit construction projects only; see instructions)		
5. Allowance for Funds Used During Construction (AFUDC)		
6. Total Unit Cost (lines 1g + 2 + 3 + 4 + 5)		

PART D - UNIT COST DATA TO DATE

Item (a)	Actual Cost (thousands of dollars) Previous (b)	Current (c)
1. Disbursed Cost to Date with AFUDC		
2. Disbursed Cost to Date Without AFUDC		
3. Disbursed Cost Plus Other Commitments to Date With AFUDC		
4. Disbursed Cost Plus Other Commitments to Date Without AFUDC		

NOTES:

BILLING CODE 6450-01-C

Semiannual Report on Status of Reactor Construction

General Information

I. Purpose

Form EIA–254, "Semiannual Report on Status of Reactor Construction", collects data on nuclear units for electric power generation that are planned or under construction by an electric utility. The data are utilized by various DOE offices for analyses, in statistical publications, and to answer Congressional inquiries.

II. Who Should Submit

Each electric utility in the United States and Puerto Rico responsible (i.e., the sole owner or construction manager for jointly owned units) for planned nuclear units or nuclear units under construction must submit one form for each such unit. If the respondent is not the sole owner or joint owner and construction manager of the unit, please describe your involvement under Part A, item 6.

III. Where and When to Submit

Mail one copy of Form EIA–254 in the enclosed envelope on or before the date indicated in the cover letter to:

Energy Information Administration
Nuclear and Alternate Fuels Division
Mail Stop 2F–021, Forrestal Building
Washington, D.C. 20585

Retain a completed copy of this form for your files. For additional information, write to the above address, or call Justine Johnson at: (202) 252–6330.

IV. What to Submit

Submit data on the total cost of the unit, even if the unit is jointly owned. For the first filing, complete and submit all of Part A and column c in Parts B, C, and D. For subsequent filings, a preprinted form will be sent. Update preprinted data in Part A by striking out incorrect data and entering correct data. Item 7 in Part A must be completed by a certifying official. Provide current data in column c of Parts B, C, and D. If data from previous reporting period have not changed, write "NC" (no change) in column c. The form EIA–254 need not be completed for a nuclear unit after it is in commercial operation and construction is completed and the total cost for the unit is firm.

V. Sanctions and Confidentiality Statements

This mandatory form is authorized under the Atomic Energy Act of 1954 (P.L. 83–703) and the Federal Energy Administration Act of 1974 (P.L. 93–275). The information will not be published by DOE in individually identifiable form, except as noted under item VI below. Upon receipt of a request for individually identifiable information, DOE will initiate the following procedures:

A. The information will be kept confidential to the extent that it satisfies the criteria in the Freedom of Information Act (FOIA) exemption for trade secrets and confidential commercial information and DOE regulations implementing the FOIA, and is prohibited from public release by the Trade Secrets Act, 18 U.S.C. Sec. 1905.

Upon receipt of a request for disclosure of this information under the FOIA, DOE shall, in accordance with the procedures and criteria provided in 10 CFR 1004.11, make a final determination of whether the information is exempt from disclosure. To assist in this determination, respondents should demonstrate to DOE that their information constitutes trade secrets or commercial or financial information whose release would be likely to cause substantial harm to their company's competitive position.

A letter accompanying the completed form that explains, on an element-by-element basis, if possible, why the information would cause the respondent substantial competitive harm if released to the public would aid in this determination. A new confidentiality statement need not be provided with each form if the statement submitted previously has not changed.

B. Requests from other Federal agencies for this data shall be evaluated in accordance with the DOE Policy on the Disclosure of Individually Identifiable Energy Information in the possession of the EIA (45 FR 59812 (1980)). Respondents should be aware that the information is also subject to release to state agencies for limited purposes when the state can assure protection of the information from release.

C. Except as otherwise provided by law, the information will also be made available in response to an order of a court of competent jurisdiction, or upon written request from: the Congress, any Congressional committee, the General Accounting Office, or other Congressional agencies authorized to receive such information.

VI. Releasable Data

In accordance with DOE FOIA regulations, 10 CFR 1004.11 et seq., EIA plans to release to the public upon request only the following Form EIA–254 data: Part A, items 1 through 6; Part B; Part C, item 6; and Part D, items 1 and 3.

Part C Instructions

Item

1 to 6—All estimated costs should be for the unit at completion of construction. Figures should exclude costs that would be included (when the unit goes into commercial operation) in the Federal Energy Regulatory Commission Uniform System of Accounts (US of A) accounts 350 through 359 (Transmission Plant), 360 through 373 (Distribution Plant), and 389 through 399 (General Plant). Also exclude all fuel costs.

1 to 6—Enter the estimated capital unit cost (except item 4, see below) using a current dollar basis (i.e., as disbursed). Report the total unit cost, even if the unit is jointly owned. Exclude all Allowance for Funds Used During Construction (AFUDC) costs, except in item 5.

1a to 1g—Include the cost of escalation during construction due to inflation. All US of A references are to indicate the type of data requested by line. Report as if construction work in progress amounts were allocated to the indicated accounts when the unit goes into commercial operation.

1a—Report per US of A account 320, Land and Land Rights. Include the cost of land and land rights used in connection with nuclear power generation. Include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leasehold, easements, water and water power rights, diversion rights, submersion rights, rights-of-way, and other like interests in land.

1b—Report per US of A account 321, Structures and Improvements. Include the cost in place of structures and improvements used and useful in connection with nuclear power generation. Include vapor containers and nuclear production roads and railroads in this account.

1c—Report per US of A account 322, Reactor Plant Equipment. Include the installed cost of reactors, reactor fuel handling and storage equipment, pressurizing equipment, coolant charging equipment, purification and discharging equipment, radioactive waste treatment and disposal equipment, boilers, steam and feed water piping, reactor and boiler apparatus and accessories and other reactor plant equipment used in the production of steam to be used primarily for generating electricity, including auxiliary superheat boilers and associated equipment in systems which

change temperatures or pressure of steam from the reactor system.

1d—Report per US of A account 323, Turbogenerator Units. Include the cost installed of main turbine-driven units and accessory equipment used in generating electricity by steam.

1e—Report per US of A account 324, Accessory Electric Equipment. Include the cost installed of auxiliary generating apparatus, conversion equipment, and equipment used primarily in connection with the control and switching of electric energy produced by nuclear power, and the protection of electric circuits and equipment, except electric motors used to drive equipment included in other accounts. Such motors shall be included in the account in which the equipment with which they are associated is included. Do not include transformers and other equipment used for changing the voltage or frequency of electric energy for the purpose of transmission or distribution.

1f—Report per US of A account 325, Miscellaneous Power Plant Equipment. Include the cost installed of miscellaneous equipment in and about the nuclear generating plant devoted to general station use, and which is not properly includible in any of the foregoing nuclear-power production accounts.

2—Enter the cost of general expense items that apply to the overall construction of a plant, not to a direct cost account. Indirect costs include construction management services, home office engineering and services, field office engineering and services, and owner's indirect costs. Exclude all operator training costs.

3—Enter all allowable for unforeseen or unpredictable costs resulting from design changes, work stoppages, overtime, and other such occurrences.

4—Enter the multiple-unit construction costs that cannot be attributed separately to each unit. Report all common facility costs on the Form EIA–254 of the unit that is expected to go into commercial operation first. Report under NOTES the unit number(s) of the other unit(s) for which common costs are being reported or, as appropriate, the unit number under which common costs are reported. Refer to the common cost section of US of A account 107, Construction Work in Progress—Electric.

5—Enter the amount of the AFUDC allowance to compensate utility debt and equity investors for the use of their money from the time funds for unit construction are spent until the unit goes into operation. Include the AFUDC for all the owners, if the unit is jointly owned. If AFUDC data are not available from another owner, specify under NOTES the name(s) of the other owner(s) of the unit for which AFUDC is not reported.

Part D. Instructions

Item

1 to 4—Enter the actual capital unit cost to date using a current dollar basis (i.e., as disbursed). Report the total unit cost, even if the unit is jointly owned. All costs should exclude the same US of A accounts noted in the first instruction in Part C; also exclude fuel costs.

1, 3—Include the amount of the AFUDC allowance (as per Part C, item 5 instruction) with the disbursement cost (item 1) and disbursed costs plus other commitments (item 3) figures. Include the AFUDC for all the owners, if the unit is jointly owned. If AFUDC data are not available from another owner, specify under NOTES the name(s) of the other owner(s) of the unit for which AFUDC is not reported.

[FR Doc. 84–23272 Filed 8–30–84; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP84–649–000]

Colorado Interstate Gas Co.; Request Under Blanket Authorization

August 28, 1984.

Take notice that on August 14, 1984, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP84–649–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that CIG proposes to transport natural gas for an eligible end-user under the authorization issued in Docket No. CP83–21–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport up to 5,000 Mcf of natural gas per day for the account of NGL Production Company (NGL) pursuant to a gas transportation agreement (Agreement) dated July 3, 1984.

CIG states that it would transport the gas for the account of NGL from existing points of interconnection between the Montana-Dakota Utilities Co. (Mondak) pipeline and the CIG pipeline in Park County, Wyoming, and Fremont County, Wyoming, to Northwest Pipeline Company (Northwest) in Sweetwater County, Wyoming, or at existing interconnections between Northwest and Mountain Fuel Resources, Inc. (Mountain Fuel), in Sweetwater County, Wyoming, and Uintah County, Utah. The Mountain Fuel delivery points would only be used subject to mutual agreement of Northwest, CIG, and Mountain Fuel for specific periods of time and for agreed-upon volumes of gas, it is stated. CIG indicates there would be no additional cost to NGL or CIG for using these additional delivery points.

CIG states that the gas is purchased by Overthrust Gas Brokers Company (OGBC) from Cities Service Oil Company and sold by OGBC to NGL pursuant to a gas purchase contract dated January 18, 1984. CIG indicates that NGL has agreed to pay OGBC $2.455 per million Btu for the gas which includes OGBC's agency fee of 12.0 cents per million Btu and reimbursement of 23.5 cents per million Btu for Mondak's transportation charge incurred in delivering the gas to CIG.

CIG proposes to charge NGL a rate of 36.08 cents per Mcf plus an added incentive charge of 2.5 cents per million Btu, it is indicated. These rates are set forth in CIG's Rate Schedule AIC–1 in CIG's FERC Gas Tariff, Original Volume No. 1, it is explained. CIG states that the proposed end-use of this gas is to replace fuel and shrinkage in the processing of Northwest's gas at NGL's processing plants.

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 § 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23238 Filed 8–30–84; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP84-158-001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

August 28, 1984.

Take notice that on August 8, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP84-158-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes to continue transporting natural gas on behalf of Ashland Oil, Inc. (Ashland), under the authorization issued in Docket No. CP84-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia explains that it filed, pursuant to § 157.205 of the Commission's Regulations, its original request for authorization to transport up to 225,000,000 Btu equivalent of natural gas per day on behalf of Ashland for use at Ashland's plant in Covington, Kentucky, on December 29, 1983. The Commission issued a notice of Columbia's request and, since no protest was filed with the Commission, Columbia was authorized to transport gas on behalf of Ashland for the term of the transportation agreement which is to expire on September 20, 1984, it is explained.

Columbia states that Ashland has requested an extension of the transportation service through June 30, 1985. Therefore, a new transportation agreement is being extered into which would provide that Columbia transport up to 225,000,000 Btu equivalent of natural gas per day on behalf of Ashland, it is explained. It is indicated that The Union Light, Heat & Power Company, the distributor serving Ashland, has the capacity to perform the transportation service without detriment or disadvantage to its other customers.

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 § 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23239 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-170-001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

August 28, 1984.

Take notice that on August 13, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP84-170-001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes an extension of its authority to transport natural gas on behalf of Bethlehem Steel Corporation (Bethlehem) under the authorization issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 11 billion equivalent of natural gas per day for Bethlehem through June 30, 1985. Columbia states that the gas to be transported would be purchased from Industrial Energy Services Company (IESCO) and Park-Ohio Energy, Inc. (Park-Ohio), and would be used as process gas and boiler fuel in Bethlehem's Steelton, Pennsylvania, plant.

It is indicated that Columbia has released certain gas supplies of IESCO and Park-Ohio and that these supplies are subject to the ceiling price provisions of sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is further indicated that Bethlehem has made arrangements to purchase this released gas from IESCO and Park-Ohio. Columbia states that it would receive the gas from IESCO and Park-Ohio and redeliver the gas to UGI Corporation (UGI), the distribution company serving Bethlehem, near Steelton, Pennsylvania. Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) 40.11 cents per dth equivalent for storage and transmission, exclusive of company-use and unaccounted-for gas, or (2) 44.93 cents per dth equivalent for storage, transmission and gathering, exclusive of company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS-1.

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 § 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23240 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-171-001]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

August 28, 1984.

Take notice that on August 13, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, filed in Docket No. CP8-171-001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Columbia proposes an extension of its authority to transport natural gas on behalf of Bethlehem Steel Corporation (Bethlehem) under the authorization issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 10 billion equivalent of natural gas per day for Bethlehem through June 30, 1985. Columbia states that the gas to be transported would be purchased from Industrial Energy Services Company (IESCO) and Park-Ohio Energy, Inc. (Park-Ohio), and would be used as process gas and boiler fuel in Bethlehem's Bethlehem, Pennsylvania, plant.

It is indicated that Columbia has released certain gas supplies of IESCO and Park-Ohio and that these supplies are subject to the ceiling price provisions of Sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978. It is further indicated that Bethlehem has made arrangements to purchase this released gas from IESCO and Park-Ohio. Columbia states that it would receive the gas from IESCO and Park-Ohio and redeliver the gas to UGI Corporation (UGI), the distribution company serving Bethlehem, near Hellerton, Pennsylvania. Further, Columbia states that depending upon whether its gathering facilities are involved, it would charge either (1) 40.11 cents per dth equivalent for storage and transmission, exclusive of company-use and unaccounted-for gas, or (2) 44.93 cents per dth equivalent for storage, transmission and gathering, exclusive of company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS–1. Columbia states that it would retain 2.85 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas, as set forth in Columbia's Rate Schedule TS–1.

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 § 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23241 Filed 8–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–610–000]

CP National Corp.; Filing

August 28, 1984.

The filing Company submits the following:

Take notice that on August 20, 1984, CP National Corporation ("CPN") tendered for filing related to a Residential Purchase and Sale Agreement (Agreement between CPN and The Bonneville Power Administration ("BPA"):

1. Bonnevile Power Administration's written report on Appendix 1 and Average System Cost submitted by CP National on April 1, 1984.

2. The Average System Cost as determined by Bonneville of 29.83 mills per kilowatt hour.

3. A revised Appendix 1 of CP National wherein the Average System Cost is 29.83 mills per kilowatt hour.

This filing is pursuant to section 205(c) of the Federal Power Act. The Agreement provides for the exchange of electric power between CPN and BPA for the benefit of CPN's residential and farm customers.

A copy of the letter submitting the filing was served upon BPA and "Industrial Customers of BPA."

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 11, 1984. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23242 Filed 8–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–619–000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Request Under Blanket Authorization

August 28, 1984.

Take notice that on July 30, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84–619–000 a request, as supplemented August 14 and 20, 1984, pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to construct and operate one new delivery point and appurtenant facilities in Meeker County, Minnesota, to accommodate natural gas deliveries to Western Gas Inc. (Western Gas), which would provide service for the community of Cosmos, Minnesota, under the authorization issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate a new town border station, 2.3 miles of 3-inch plastic branchline and regulation station necessary to deliver gas to Western Gas. Northern has estimated the cost of construction to be $127,568.

The town of Cosmos would utilize its natural gas for residential and commercial heating, it is asserted. Northern has estimated first year peak day and annual volumes of 113 Mcf and 15,000 Mcf, respectively.

Northern states that initial volumes delivered through the proposed facilities are within Western Gas' existing firm entitlement and that beyond the first year of gas service, Western Gas would be required to contract with Northern for the purchase of incremental firm entitlement to be commensurate with the peak day needs of Cosmos. Northern states that the firm entitlement increase will be the subject of a future separate application pursuant to section 7(c) of the Natural Gas Act.

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 § 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23243 Filed 8–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–620–000]

Northern Natural Gas Company, Division of InterNorth, Inc., Request Under Blanket Authorization

August 28, 1984.

Take notice that on July 30, 1984, Northern Natural Gas Company,

Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84–620–000 a request, as supplemented August 14 and 20, 1984, pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to construct and operate a delivery point and 5.0 miles of 4-inch branch line and appurtenant facilities to accommodate nautral gas deliveries to North Central Public Service (NCPS) for Ham Lake Township, Minnesota, under the authorization issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate one new town border station and associated branchline facilities for the delivery of natural gas to NCPS. Cost of the proposed facilities is estimated at $396,480.

The proposed town border station would supply natural gas to the Ham Lake Township primarily for residential and commercial heating, it is asserted. Northern has estimated peak day and annual volumes of 800 Mcf, and 120,000 Mcf, respectively.

Northern states that initial volumes delivered through the proposed facilities are within NCPS' existing firm entitlement and that beyond the first year of gas service, NCPS would be required to contract with Northern for the purchase of incremental firm entitlement necessary to increase its supplies to a level that would be commensurate with the peak day needs of Ham Lake. Northern states that the firm entitlement increase will be the subject of a future separate application pursuant to Section 7(c) of the Natural Gas Act.

Any person or the Commission's staff may, within 45 days after issuance of the instance 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 § 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 requests shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23244 Filed 8–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–632–000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Request Under Blanket Authorization

August 28, 1984.

Take notice that on August 3, 1984, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP84–632–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) that Northern proposes to construct and operate one new town border station in Chicago County, Minnesota, in order to establish a new single delivery point to accommodate natural gas deliveries to Peoples Natural Gas Company, Division of InterNorth, Inc. (Peoples), under the authorization issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The new town border station would enable Peoples to deliver natural gas to the North Branch Industrial Park for its commercial and residential needs, it is asserted.

Northern has estimated the cost of construction to be $37,408.

Northern further states that the additional volumes to be delivered through the proposed facilities are within Peoples' present entitlements.

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 § 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23245 Filed 8–30–84; 8:45 am]

BILLING CODE 6717–01–M

Oil Pipeline Tentative Valuation

August 28, 1984.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to section 19a of the Interstate Commerce Act.

Notice is hereby given that a tentative basic valuation is under consideration for the common carrier by pipeline listed below:

1982 Basic Report

Valuation Docket No. PV–1478–000 G & T Pipeline Company, P.O. Box 2511, Houston, Texas 77001

On or before October 8, 1984, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under Section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the company at its address shown above and an appropriate certificate of service must be attached to the petition. Persons specifically designated in Section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 84–23251 Filed 8–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–608–000]

Puget Sound Power & Light Co.; Filing

August 28, 1984.

Take notice that Puget Sound Power & Light Company ("Puget") on August 20, 1984, tendered for filing proposed changes in its Rate Schedule FERC No. 78 relating to the Centralia Transmission Agreement executed on September 22, 1980, between Puget and the City of

Seattle, City Light Department ("Seattle").

The Agreement generally requires Puget to provide capacity for the transmission of Seattle's share of the output from the Centralia Steam-Electric Generating Plant from BPA's C.W. Paul Substation to Puget's Talbot Hill Substation. Charges for service under the Agreement will increase from $1.41 per kilowatt per year to $1.44 per kilowatt per year, effective July 1, 1984. The increase is made pursuant to and in accordance with provisions of the Agreement calling for escalation in the event of certain increased costs incurred by Puget.

A copy of the filing was served upon Seattle.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 11, 1984. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23246 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-611-000]

Puget Sound Power & Light Co.; Filing

August 28, 1984.

Take notice that Puget Sound Power & Light Company ("Puget") on August 20, 1984, tendered for filing, as an initial rate schedule, Agreement for Standby Transmission Service dated as of April 1, 1984, between Puget and Public Utility District No. 1 of Whatcom County ("District").

The Agreement generally allows Puget to provide the District standby transmission service in the event of an interruption of the District's line. The initial rate is $140 per day for each day that capacity is made available to District. Service under the Agreement commenced on April 1, 1984.

A copy of the filing was served upon District.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests should be filed on or before September 11, 1984. 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 petition to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23247 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01

[Docket No. G-5045-001, et al.]

Shell Western E&P Inc., et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

August 28, 1984.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 11, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [3]	Pressure base
G-5045-001, D, Aug. 9, 1984	Shell Western E&P Inc., P.O. Box 4684, Houston, TX 77210.	United Gas Pipe Line Co., Weeks Island Field, Iberia Parish, LA.	([2])	
G-5716-000, D, Aug. 9, 1984	WTA Energy Inc., P.O. Box 30159, Amarillo, TX 79120.	Northern Natural Gas Co., Texas Panhandle Field, Carson County, TX.	([2])	
CI84-531-000, E, Aug. 10, 1984	Tenneco Oil Co. (successor in interest to Shell Western Exploration & Production, Inc.), P.O. Box 2511, Houston, TX 77001.	Northern Natural Gas Co., Kansas-Hugoton Field, Haskell County, KS.	([2])	14.73
CI84-532-000, E, Aug. 10, 1984	....do	Northwest Central Pipleine Corp., Kansas Hugoton Field, Haskell County, KS.	([2])	14.73
CI84-533-000, E, Aug. 10, 1984	....do	Colorado Interstate Gas Co., Kansas Hugoton Field, Grant County, KS.	([2])	14.73
CI84-534-000, E, Aug. 10, 1984	....do	Northern Natural Gas Co., Kansas Hugoton Field, various counties, KS.	([2])	14.73
CI84-535-000, E, Aug. 10, 1984	....do	Mobil Producing Texas & New Mexico Inc., Kansas Hugoton Field, Grant County, KS.	([2])	14.73
CI84-536-000, E, Aug. 10, 1984	....do	Northern Natural Gas Co., Kansas Hugoton Field, Grant County, KS.	([2])	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft [3]	Pressure base
CI84-537-000, E, Aug. 10, 1984	....do	Mobil Producing Texas & New Mexico Inc., Kansas Hugoton Field, Grant County, KS.	[3]	14.73
CI84-538-000, E, Aug. 10, 1984	....do	Northern Natural Gas Co., Kansas Hugoton Field, Haskell County, KS.	[3]	14.73
CI84-539-000, E, Aug. 10, 1984	....do	Northwest Central Pipeline Corp., Kansas Hugoton Field, various counties, Kansas.	[3]	14.73
CI84-540-000, E, Aug. 10, 1984	....do	Northern Natural Gas Co., Kansas Hugoton Field, Haskell County, KS.	[3]	14.73
CI84-541-000, E, Aug. 10, 1984	....do	....do	[3]	14.73
CI84-542-000, E, Aug. 10, 1984	....do	Panhandle Eastern Pipe Line Co., Kansas Hugoton Field, Grant County, KS.	[3]	14.73
CI84-543-000, E, Aug. 10, 1984	....do	Northern Natural Gas Co., Kansas Hugoton Field, Haskell County, KS.	[3]	14.73
CI84-544-000, E, Aug. 10, 1984	Phillips Petroleum Co. (successor in interest to Phillips Oil Co.), 336 HS&L Bldg., Bartlesville, OK 74004.	United Gas Pipe Line Co., Crescent Farms & Hollywood Fields, Terrebonne Parish, LA.	[4]	14.73
CI84-545-000, A, Aug. 13, 1984	Amoco Production Co. (USA), Post Office Box 50879, New Orleans, LA 70150.	Amoco Gas Co., South Timbalier Block 161, Offshore, LA.	[5]	15.025
CI85-547-000, D, Aug. 9, 1984	Edwin L. Cox, 3800 InterFirst One, Dallas, TX 75202.	Natural Gas Pipeline Co. of America, Camrick Area, Texas and Beaver Counties, OK.	[6]	
CI84-548-000, A, Aug. 17, 1984	Getty Oil Co., P.O. Box 1404, Houston, TX 77001	Tennessee Gas Pipeline Co., West Cameron Block 67, Offshore, LA.	[7]	
CI84-549-000 (C176-460), B, Aug. 13, 1984.	Texaco Inc., P.O. Box 60252, New Orleans, LA 70160.	Transcontinental Gas Pipe Line Corp., High Island 206 Field, Offshore, TX.	[8]	
G-4622-002, CI63-657-002, July 20, 1984.	Amoco Production Co., Donnell Drilling Co., 1925 Mercantile Dallas Bldg., Dallas, TX 75201.	El Paso Natural Gas Co., Levelland Gasoline Plant, Hockley County, TX.	[9]	
G-9299-000, D, Aug. 13, 1984	Phillips Petroleum Co., 336 HS&L Bldg., Bartlesville, OK 74004.	El Paso Natural Gas, Tunstill Plant, Reeves County, TX.	[10]	
G-12004-004, D, Aug. 13, 1984	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	Transcontinental Gas Pipe Line Corp., West Gueydan Field, Vermilion County, LA.	[11]	
C161-649-000, D, Aug. 15, 1984	Gulf Oil Corp., Post Office Box 2100, Houston, TX 77252.	Texas Gas Transmission Corp., Bayou Sale Field, St. Mary Parish, LA.	[12]	
CI65-739-003, D, Aug. 16, 1984	Shell Western E&P Inc., P.O. Box 4684, Houston, TX 77210.	ANR Pipeline Co., Kings Bayou Field, Cameron Parish, LA.	[13]	
CI72-685-001, D, Aug. 13, 1984	Phillips Petroleum Co., 336 HS&L Bldg., Bartlesville, OK 74004.	El Paso Natural Gas Co., Tunstill Plant, Reeves County, TX.	[14]	
CI74-184-002, D, Aug. 16, 1984	Pan Eastern Exploration Co., P.O. Box 1330, Houston, TX 77251-1330.	Panhandle Eastern Pipe Line Co., Hemphill County, TX.	[15]	
CI79-394-001, D, Aug. 15, 1984	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, TX 77001.	Northern Natural Gas Co., Domkey & Larena Fields, Beaver County, OK.	[16]	
CI80-341-001, E, Aug. 16, 1984	Phillips Petroleum Co. (successor in interest to Phillips Oil Co.), 336 HS&L Bldg., Bartlesville, OK 74004.	Tennessee Gas Pipeline Co., East Cameron Block 353 Field, Cameron Parish, LA.	[17]	14.73
CI80-403-001, E, Aug. 16, 1984	....do	Transcontinental Gas Pipe Line Corp., West Cameron Area, Offshore Cameron, LA.	[18]	14.73
CI84-546-000, B, Aug. 6, 1984	Orla Petco, Inc	Phillips Petroleum Co., Geraldine Field, Reeves County, TX.	[19]	
CI84-550-000, B, Aug. 13, 1984	James Joseph LaRosa, GPC 3355, Chart Code 2930.	Consolidated Gas Supply Corp., Coal District, Harrison County, WV.	[20]	
CI84-551-000, B, Aug. 15, 1984	Gulf Oil Corp., P.O. Box 2100, Houston, TX 77252	Equitable Gas Co., Glenville West Field, Gilmer County, WV.	[21]	
CI84-552-000 (CI84-248), B, Aug. 16, 1984.	Phillips Oil Co., 336 HS&L Bldg., Bartlesville, OK 74004.	Florida Gas Transmission Co., Nueces Bay Field, Nueces County, TX.	[22]	

[1] Acreage released to lessors effective May 2, 1984.
[2] Buyer has determined that five oil wells producing casinghead gas and which are located on committed and dedicated acreage do not qualify for connection. Buyer has released the wells on the dedicated acreage from the contract.
[3] Tenneco Oil Company is acquiring this property as of April 1, 1984.
[4] Effective December 1, 1983, Phillips Oil Co. assigned to Applicant, its interest in various leases in the Crescent Farms and Hollywood Fields in Terrebonne Parish, Louisiana.
[5] Applicant is filing under Gas Purchase Contract dated July 20, 1984.
[6] Depletion of reserves. Wells ceased to produce in January, 1981.
[7] Applicant is filing under Gas Purchase Contract dated August 6, 1984.
[8] All Texaco acreage committed to this Gas Rate Schedule has been assigned to Huffco Petroleum Corp.
[9] Change in delivery point.
[10] The gathering system serving the wells for which abandonment is sought was rendered inoperable and is uneconomical to repair.
[11] Mobil Oil Exploration & Producing Southeast Inc. assigned 100% of its rights, title and interest of the property to the Great Southern Oil & Gas Inc.
[12] Two leases have been completely released and the third lease has been partially released.
[13] Leases released to lessors effective July 13, 1984.
[14] The gathering system serving the wells for which abandonment is sought was rendered inoperable and is uneconomical to repair.
[15] In order for Panhandle to receive this gas four transportation agreements needed to be negotiated. Panhandle was unable to work out these agreements. Gas was never produced in commercial quantities attributable to Pan Eastern Exploration Company's interest.
[16] Depleted reserves.
[17] Effective December 1, 1983, Phillips Oil Co. assigned to Applicant, its interest in the OCS-G-2262 and produced from "A" Platform in Block 353 in the East Cameron Area, South Addition, Offshore Cameron Parish, Louisiana.
[18] Effective December 1, 1983, Phillips Oil Co. assigned to Applicant, its interest in the West Cameron Area, Block 33 Field, Offshore Cameron Parish, Louisiana.
[19] Purchaser (Phillips Petroleum Co.) has discontinued operation of the Gathering System due to unprofitability.
[20] Wells have not produced since 1976.
[21] The only lease covered by the contract dated September 21, 1971, as amended, between Gulf and Equitable was cancelled on August 10, 1983 and the last well on the lease was plugged and abandoned as of the same date.
[22] All leases have been assigned.

Filing Code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total succession. F—Partial succession.

[FR Doc. 84-23248 Filed 8-30-84; 8:45 am]
BILLING CODE 6717-01

[Docket No. CP77-52-007]

Trunkline Gas Co.; Petition To Amend

August 28, 1984.

Take notice that on July 30, 1984, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP77-52-007 a petition to amend the Commission's order issued December 14, 1978, in Docket No. CP77-52-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize a change in the transportation service which Trunkline provides to Gulf Oil Company (Gulf), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that presently Trunkline is transporting natural gas for Gulf pursuant to a transportation agreement dated September 24, 1976, as amended October 10, 1977. It is stated that this service was authorized by the order issued December 14, 1978. It is further stated that Trunkline performs this service under Rate Schedule T–26 of its FERC Gas Tariff, Original Volume No. 2.

Trunkline proposes under the terms of Amendment No. 2 that the contract quantity would, on April 1, 1984, increase to 120,000 Mcf of gas per day, and on April 1, 1985, the contract quantity would be reduced to 62,208 Mcf for a period to two years. It is asserted that at the end of that two-year period, Gulf would nominate a contract quantity, within the limits provided in the Amendment, for the next two-year period.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 18, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23249 Filed 8–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP84–643–000]

United Texas Transmission Company, et al.; Compiaint, Petition for Declaratory Order and Petition for Investigation

August 28, 1984

Take notice that on August 10, 1984, United Texas Transmission Company (UTTCO), 600 Travis—P.O. Box 1478, Houston, Texas 77001, filed a complaint and petition in Docket No. CP84–643–000 pursuant to Rules 206 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.206 and 385.207) requesting that the Commission find that certain natural gas sales by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), to Entex, Inc. (Entex), and which Entex allegedly resells to Houston Lighting & Power (HL&P), are in violation of the Natural Gas Act, that the Commission direct Tennessee to cease its violations, and that the Commission initiate an investigation, all as more fully set forth in the petition on file with the Commission and open to public inspection.

UTTCO asserts Tennessee holds certain authorizations to make sales of natural gas of up to 20,332 Mcf per day to Entex at eight designated locations in Mississippi, under Tennessee's Rate Schedules G and GS, and to make overrun sales at the same designated locations, under Tennessee's Rate Schedule R. UTTCO states that notwithstanding the volumetric and geographic limitations of the certificates and rate schedules, filings by Tennessee in Docket No. ST84–771–000 and its affiliate, Channel Industries Gas Company (Channel, a Texas intrastate pipeline), in Docket No. ST84–794–000, show that Tennessee is making sales to Entex of up to 100,000 Mcf of gas per day for resale to HL&P's Cedar Bayou power plant near Houston, Texas.

UTTCO asserts that Tennessee has no certificate authority to make unlimited interruptible sales to Entex for resale to customers geographically removed from the areas to which the underlying service certificate relates nor to new customers at any location. UTTCO alleges that, stripped of the participation by Entex, the transaction is a massive off-system sale by Tennessee to HL&P, and that the transaction is an attempt by Tennessee to displace other suppliers in a market Tennessee is not certificated to serve. UTTCO further alleges Tennessee, Entex and Channel purportedly used Section 311 of the Natural Gas Policy Act of 1978 as authority to carry out the transaction.

UTTCO requests that the Commission (a) issue an order requiring Tennessee and Entex to show cause why they should not be held in violation of Section 7 of the Natural Gas Act and institute an immediate investigation into the matters set forth in UTTCO's complaint; (b) immediately order Tennessee to cease and desist from the sales to Entex for resale outside the specified Mississippi service areas and issue an appropriate declaratory order that such sales are in violation of the Natural Gas Act; and (c) grant UTTCO such other relief as may be just, including that necessary to compensate for harm done. If the Commission is unable to issue such orders, UTTCO requests that the Commission institute an evidentiary hearing on these matters and any other related matters.

Pursuant, to Rule 213 of the Commission's Rules of Practice and Procedure, Tennessee, Entex and Channel are to respond within 30 days from the date of this notice.

Any person desiring to be heard or to make any protest with reference to said petition and complaint should on or before September 27, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23250 Filed 8–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI84–555–000]

ANR Production Co.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited-Term Partial Abandonment Authorization

August 27, 1984.

Take notice that on August 17, 1984, ANR Production Company (ANR or Applicant), of 5075 Westheimer, Suite 1100 West, Houston, Texas 77056, filed an application for Limited-Term Partial Abandonment and Limited-Term Blanket Certificate of Public Convenience and Necessity and Request for Expedited Review pursuant to sections 4 and 7 of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act.

The certificate would authorize (1) the partial abandonment of the sale to Transcontinental Gas Pipe Line Corporation (Transco) from Mustang Island Block A–85; (2) a limited-term certificate of public convenience and necessity for the short-term sale of gas

from Mustang Island Block A–85 using a spot sales format; and (3) the transportation of gas under ANR's spot sales program by any willing intrastate pipeline, Hinshaw pipeline or interstate pipeline.

Applicant seeks authorization for the period from the date of authorization through December 31, 1985.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23230 Filed 8–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI84–556–000]

Cenergy Exploration Co.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited-Term Partial Abandonment Authorization

August 27, 1984.

Take notice that on August 17, 1984, Cenergy Exploration Company (Cenergy or Applicant), of 10210 N. Central Expressway, Suite 500, Dallas, Texas 75231, filed an application for Limited-Term Partial Abandonment and Limited-Term Blanket Certificate of Public Convenience and Necessity and request for Expedited Review pursuant to sections 4 and 7 of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act.

The certificate would authorize (1) the partial abandonment of the sale to Transcontinental Gas Pipe Line Corporation (Transco) from Vermilion Block 348; (2) a limited-term certificate of public convenience and necessity for the short-term sale of gas Vermilion Block 348 using a spot sales format; (3) the transportation of gas under pipeline, Hinshaw pipeline or interstate pipeline.

Applicant seeks authorization for the period from the date of authorization through December 31, 1985.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protest and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 5, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–23231 Filed 8–30–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 5 and Project No. 2776]

The Montana Power Co. and the Confederated Salish and Kootenai Tribes of the Flathead Reservation; Availability of Environmental Assessment

August 31, 1984.

The Montana Power Company (MPC) was issued a fifty-year license for the Kerr Project in 1930. The original license expired on May 22, 1980, and is currently under annual license to MPC. Competing applicants for the new license are MPC and the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

This notice is being issued in light of the Presiding Judge's order of July 11, 1984, and in light of the decision in *Confederated Tribes and Bands of the Yakima Indian Nation* v. *FERC*, Nos. 82–7561, 82–7562, and 83–7038 (9th Cir. Jun. 7, 1984).

An Environmental Assessment of the project has been prepared by the Commission staff. A section on project safety has been included in this assessment. This notice solicits comments from the public indicating any concerns above and beyond those noted in the Environmental Assessment, including whether an environmental impact statement is needed.

The Commission staff, in preparing this Environmental Assessment, analyzed the need for power, the proposed project and alternatives, and the environmental impacts.

The Environmental Assessment makes the following findings. Issuance of a license for the Kerr Project would perpetuate conditions that have existed for almost 50 years. Lands used for project purposes would continue to be preempted from other uses. Continued operation of the Kerr Project by either MPC or the Tribes would not result in any additional impacts or exacerbate those impacts that have occurred or would continue to occur under the operational regime proposed by either applicant. The development of appropriate mitigative measures would ensure that the future operation of the project would not significantly affect the environmental resources of the project area.

On the basis of the record and staff's independent environmental analysis, the issuance of a license for the Kerr Project with appropriate mitigative measures would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, staff concludes that an Environmental Impact Statement is not required.

The Environmental Assessment will be available for public review at the following libraries:

1. Polson City Library, 1st Street East, Polson, Montana.

2. Flathead County Library, 247 1st Avenue East, Kalispell, Montana.

3. Missoula Public Library, 301 East Main, Missoula, Montana.

All comments should be filed within 20 days of the date of this notice and addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should clearly show the project name

and number (Project Nos. 5 & 2776) on the first page.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23229 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-274-004]

Mountain Fuel Resources, Inc.; Filing

August 27, 1984.

Take notice that on August 16, 1984, Mountain Fuel Resources, Inc. (Resources) tendered for filing and acceptance Substitute Original Sheet No. 76 to its FERC Gas Tariff, First Revised Volume No. 1 and Substitute Original Sheet Nos. 8, 9, 10, and 12 to its FERC Gas Tariff, Original Volume No. 3.

Resources states that it has incorporated certain suggestions and requests made by the Staff of the Commission into the tendered tariff sheets as follows: Sheet No. 76 is revised to reflect the revisions to Appendix A to Resources' Form of Service Agreement; Sheet No. 8 is revised to include a $0.29199/Dth rate as Resources' temporary transportation rate applicable to services conditioned upon adherence to § 284.103 of the Commission's regulations; Sheet Nos. 9 and 10 are revised to clarify reference to gathering service as not being subject to the jurisdiction of the Commission, to exclude reference to gathering under Resources' Rate Schedule X-33, and to include gathering as a service performed under Rate Schedules X-22, X-23 and X-31; Sheet No. 10 is revised to exclude reference to temporary transportation for Pacific Gas and Electric Company; and Sheet No. 12 is revised to reference the applicable charges and reimbursements set forth on Resources' Statement of Effective Rates in Original Volume No. 3 of its FERC Gas Tariff.

Resources states that it has further revised Sheet No. 8 to state the currently effective GRI charge applicable to transportation for end-users and those customers that do not include a GRI charge in their rates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol 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, 385.214). All such petitions or protests should be filed on or before September 4, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23232 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-47-012]

Northwest Pipeline Corp.; Compliance With Opinion 213

August 27, 1984.

Take notice that on August 13, 1984, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance as a part of its FERC Gas Tariff the following tariff sheets:

First Revised Volume No. 1

Fifteenth Revised Sheet No. 10
Tenth Revised Sheet No. 10-A
Second Revised Sheet No. 81

Original Volume No. 2

Tenth Revised Sheet No. 2
Fifth Revised Sheet No. 2-A
Fifth Revised Sheet No. 2-B

The above mentioned tariff sheets are revised to incorporate the reassignment of debt costs and the capitalization structure between Northwest's Rate Schedule T-1 and all other services performed by Northwest under the terms of the Commission's Opinion 213 in Docket No. RP81-47-000 dated April 5, 1984. In the event the Commission does not accept certain of the above-listed tariff sheets for filing, Northwest has requested that Alternate Fifteenth Revised Sheet No. 10 and Alternate Tenth Revised Sheet No. 10-A of its FERC Gas Tariff, Revised Volume No. 1 and Alternate Fifth Revised Sheet No. 2-B of its FERC Gas Tariff, Original Volume No. 2 be made effective in lieu of Fifteenth Revised Sheet No. 10, Tenth Revised Sheet No. 10-A and Fifth Revised Sheet No. 2-B.

An affective date of June 1, 1984, is requested for all tariff sheets referenced in this docket.

A copy of this filing has been served on all parties on record in Docket No. RP81-47-000 and all affected state agencies.

Any persons desiring to be heard or protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE. Washington, DC. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before September 4, 1984. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23233 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-34-000]

Roche Products, Inc.; Complaint

August 27, 1984.

Take notice that on August 9, 1984, Roche Products, Inc. (Roche) submitted for filing its complaint pursuant to section 385.206 of the Commission's Rules of Practice and Procedure.

Roche states in this complaint that Puerto Rico Electric Power Authority (PREPA) is in contravention of §§ 292.303 and 292.401 of the Commission's regulations. Roche states that PREPA refuses to purchase energy and capacity from qualifying facilities, refuses to sell energy and capacity to qualifying facilities in accordance with § 292.305 of the Commission's regulations, and refuses to make such interconnections with qualifying facilities necessary to accomplish purchases and sales required by § 292.303. Further Roche states that PREPA has not offered to operate in parallel with any qualifying facility which complies with applicable standards and has not implemented subpart C of the Commission's regulations under section 210 of the Public Utility Regulatory Policies Act of 1978.

According to Roche in every application for certification filed prior to the application filed by Roche Products, Inc., PREPA has intervened. Lacking a substantive basis for challenge, it merely petitioned, according to Roche, for an evidentiary hearing or in the alternative for the proceeding to be held in abeyance pending PREPA's submission of a petition for rulemaking.

Roche states that because PREPA has refused to recognize even one qualifying facility and has challenged all applicants for qualifying status, even when it has no basis for doing so, there is some question as to PREPA's good faith.

Wherefore, Roche requests that:

PREPA be ordered to implement that regulations enumerated above expeditiously and in good faith.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol 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). All such motions or protests should be filed on or before September 13, 1984. 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-23234 Filed 8-30-84; 8:45 am]

BILLING CODE 6717-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the supply of approximately 1,950 grams of plutonium and 11,130 grams of depleted uranium to the Power Reactor and Nuclear Fuel Development Corp., Tokai-Mura, Japan, for use in the fabrication of mixed oxide fuels for the fast breeder reactor program. The United States Nuclear Regulatory Commission has issued license number XSNM 2070 for the export of this material to Japan.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of this nuclear material will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 27, 1984.

George J. Bradley, Jr.,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 84-23173 Filed 8-30-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51528; TSH-FRL 2634-6]

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-19244 beginning on page 29451, in the issue of Friday, July 20, 1984, make the following correction: On page 29452, second column, the second line under the heading "PMN 84-925" should read "Chemical. (G) Substituted substituted".

BILLING CODE 1505-01-M

Certain Chemicals; Premanufacture Notices

Correction

In FR Doc. 84-19739 beginning on page 30238 in the issue of Friday, July 27, 1984, make the following corrections:

1. On page 30240, first column, the number at the beginning of the ninth line should read "100' and the two less-than/equal-to signs in the last line should be greater-than signs.

2. On page 30240, third column, the less-than/equal-to sign in the ninth line under the heading PMN-84-971 should be a greater-than sign.

BILLING CODE 1505-01-M

[OPTS-51534; FRL-2662-5]

Toxic Substances; Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-six PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84-1074, 84-1075, 84-1076, 84-1077 and 84-1078—November 17, 1984.

PMN 84-1079, 84-1080, 84-1081, 84-1082, 84-1083, 84-1084, 84-1085 and 84-1086—November 18, 1984.

PMN 84-1087, 84-1088, 84-1089, 84-1090, 84-1091, 84-1092, 84-1093, 84-1094, 84-1095, 84-1096, 84-1097, 84-1098 and 84-1099—November 20, 1984.

Written comments by:

PMN 84-1074, 84-1075, 84-1076, 84-1077 and 84-1078—October 18, 1984.

PMN 84-1079, 84-1080, 84-1081, 84-1082, 84-1083, 84-1084, 84-1085 and 84-1086—October 19, 1984.

PMN 84-1087, 84-1088, 84-1089, 84-1090, 84-1091, 84-1092, 84-1093, 84-1094, 84-1095, 84-1096, 84-1097, 84-1098 and 84-1099—October 21, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51534]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460 (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-1074

Manufacturer. Essex Specialty Products, Inc.

Chemical. (G) Polyurethane polymer.

Use/Production. (S) Polyurethane polymer for use in compounded sealants and adhesives. Prod. range: 50,000-250,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 2 workers, up to 2 hrs/da.

Environmental Release/Disposal. No release.

PMN 84-1075

Manufacturer. Confidential.

Chemical. (G) Propargyl ester.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: 85–360 kg/yr.

Toxicity Data. Acute oral: 155 mg/kg; Acute dermal: 0.05 g/kg; Irritation: Skin—Not determined.

Exposure. Confidential.

Environmental Release/Disposal. 0.05 to less than 1 kg/batch released to land. Disposal by incinceration and landfill.

PMN 84–1076

Manufacturer. The Dow Chemical Company.

Chemical. (S) Benzene, 1-(1-phenylethenyl)-3-(1-phenylethyl).

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: dermal, a total of 1 worker.

Environmental Release/Disposal. Less than 0.005 to 0.01 kg/hr, less than 1 kg/day and 0.5 kg/drum released to air with less than 1 kg/day to less than 0.5 kg/drum to water. Disposal by incineration and navigable waterway after treatment.

PMN 84–1077

Manufacturer. Confidential.

Chemical. (G) Polyamine ion exchange resin.

Use/Production. (S) Industrial water demineralization and metals extraction. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Less than 1 kg/batch released to air, water or landfill. Disposal by incineration, landfill and navigable waterway.

PMN 84–1078

Manufacturer. The Dow Chemical Company.

Chemical. (G) Partial sodium salt of aminomethylene phosphonic acid.

Use/Production. (G) Scale inhibitor. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: dermal, a total of 1 worker.

Environmental Release/Disposal. Release to water. Disposal by navigable waterway after treatment.

PMN 84–1079

Manufacturer. The Dow Chemical Company.

Chemical. (G) Alkylated diphenyl oxide.

Use/Production. (S) Site-limited and industrial intermediate for sulfonated product to be used on site to manufacture surfactants and sold to others as a raw material to make sulfonated surfactants. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Moderate, Eye—Slight.

Exposure. Manufacture and use: dermal.

Environmental Release/Disposal. Release to air and water. Disposal by navigable waterway after treatment.

PMN 84–1078

Manufacturer. Confidential.

Chemical. (G) Cyclic phosphite.

Use/Production. (G) Polymer stabilizer. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames Test: No mutagenic activity; 14 Day dietary toxicity study: Negative; LC_{50} 96 hr (Bluegill): >1.000 mg/1.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–1081

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Styrene acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. Release to land. Disposal by controlled landfill.

PMN 84–1082

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Styrene acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. Release to land. Disposal by publicly owned treatment works (POTW) and controlled landfill.

PMN 84–1083

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. Release to land. Disposal by controlled landfill.

PMN 84–1084

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Acrylic copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker.

Environmental Release/Disposal. Release to water and land. Disposal by POTW and controlled landfill.

PMN 84–1085

Importer. Confidential.

Chemical. (G) Polymer of aliphatic diamines, and alkanediol polyester, a monoalcohol polyether, and aliphatic diisocyanates.

Use/Import. (S) One of the polymers in a fabric finish—for the treatment of industrial fabrics. Prod. range: 100,000–500,000 kg/yr.

Toxicity Data. None expected.

Exposure. None expected.

Environmental Release/Disposal. Release negligible.

PMN 84–1086

Importer. Marubeni America Corporation.

Chemical. (G) Caprolactone modified by hydroxy ethyl acrylate.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. Ames Test: Negative; TLm_{24} (Fish)—6 parts per million (ppm); TLm_{48} (Fish) 6 ppm; TLm_{96} (Fish) 6 ppm.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

PMN 84–1087

Manufacturer. Confidential.

Chemical. (G) Modified polyester.

Use/Production. (G) Coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 14 workers, up to 6 hrs/da.

Environmental Release/Disposal. No release.

PMN 84–1088

Manufacturer. Confidential.

Chemical. (G) Polyester.

Use/Production. (G) Coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 14 workers, up to 6 hrs/da.

Environmental Release/Disposal. No release.

PMN 84–1089

Manufacturer. Confidential.

Chemical. (G) Modified, maleated metal resinate.

Use/Production. (S) Industrial publication gravure printing inks. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 6 workers.

Environmental Release/Disposal. Less than 0.2 kg/batch released to water with 20 kg/batch to land. Disposal by sanitary landfill and plant air oxidation lagoon.

PMN 84–1090

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84–1091

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84–1092

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84–1093

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84–1094

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84–1095

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84–1096

Manufacturer. Confidential.

Chemical. (G) Fatty acid, carbomonocyclic ester.

Use/Production. (S) Site-limited captive intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Male and female—Between 0.5 and 5.0 g/kg; Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and use: dermal, a total of 28 workers, up to 8 hrs/da, up to 275 da/yr.

Environmental Release/Disposal. 2 to 18 kg/batch released to air.

PMN 84–1097

Importer. Confidential.

Chemical. (G) Alkyl phosphate ester amine salt.

Use/Import. (S) Industrial and consumer softener and water repellent for leather. Import range: Confidential.

Toxicity Data. Acute oral: 10,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant.

Exposure. Processing: dermal, a total of 4 workers.

Environmental Release/Disposal. Disposal by on-site biological treatment.

PMN 84–1098

Manufacturer. Georgia-Pacific Corporation.

Chemical. (G) Acetal interpolymer.

Use/Production. (G) Chemical stabilizer. Prod. range: 10,000–20,000 kg/yr.

Toxicity Data. Acute oral: 2.5 g/kg; Irritation: Eye—Slight to no irritation; LC_{50}—4,000 ppm.

Exposure. Manufacture: dermal, a total of 2 workers, up to 4 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. No relase.

PMN 84–1099

Importer. Molecular Rearrangement, Inc.

Chemical. (S) 4-anilino-4'-hydroxy azo benzene.

Use/Import. (S) Industrial light sensitive dyestuff for film. Import range: 50–150 lbs/yr.

Toxicity Data. No data submitted.

Exposure. Use: dermal.

Environmental Release/Disposal. No release.

Dated: August 27, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–23048 Filed 8–30–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59169; FRL–2662–4]

Toxic Substances; Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing

purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by September 17, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS–59169]" and the specific TME number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Managment Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

TME 84–78

Close of Review Period. October 6, 1984.

Manufacturer. Confidential.

Chemical. (G) Modified, maleated metal resinate.

Use/Production. (S) Industrial publication gravure printing inks. Prod. range: Confidential.

Toxicity Data. No data on the TME substance submitted.

Exposure. Manufacture: dermal, a total of 6 workers.

Environmental Release/Disposal. Less than 0.2 kg/batch released to water with 20 kg/batch to land. Disposal by sanitary landfill and plant air oxidation lagoon.

TME 84–79

Close of Review Period. October 6, 1984.

Manufacture. Confidential.

Chemical. (G) Alkyl phosphate potassium salt.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: August 27, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–23049 Filed 8–30–84; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2662–8]

Availability of Environmental Impact Statements Filed August 20, 1984 Through August 24, 1984

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

EIS No. 840378, Draft, AFS, TX, NM, OK, Cibola National Forest and Kiowa, Rita Blanca, Black Kettle and McClellan Creek National Grasslands, Land and Resource Management, Due: December 10, 1984, Contact: C. Phil Smith (505) 766–2185.

EIS No. 840379, Final, FHW, AR, Pine Bluff Railroad Demonstration Project, Jefferson County, Due: October 1, 1984, Contact: Paul Pool (501) 378–5355.

EIS No. 840380, Draft, EPA, REG, Volatile Organic Liquid Storage Tanks, VOC Emissions, Standards of Performance, Due: October 15, 1984, Contact: James Durham (919) 541–5671.

EIS No. 840381, Draft, COE, IA, Mississippi River Lock and Dam 11 Hydropower Development, Dubuque County, Due: October 15, 1984, Contact: (309) 788–6361 EXT 6384.

EIS No. 840382, Final, BLM, NV, White Pine Power Project, 1500 MW Coal-Fired Electric Generating Station, Development, Right-of-Way, White Pine County, Due: October 1, 1984, Contact: Ed Tilzey (702) 784–5448.

EIS No. 840383, Final, AFS, WA, Early Winters Alpine Winter Sports Study, Ski Development, Permit, Okanogan National Forest, Okanogan County, Due: October 1, 1984, Contact: Michael Lunn (509) 422–2704.

EIS No. 840384, Draft, COE, NJ, Molly Ann's Brook Flood Control Project, Passic County, Due: October 15, 1984, Contact: Lou Benard (212) 264–3609.

EIS No. 840385, Draft, COE, NY, VT, Narrows of Lake Champlain Federal Channel, Maintenance Dredging, Whitehall to Benson Landing, Due: October 15, 1984, Contact: Karen Gustina (212) 264–4662.

EIS No. 840386, DSuppl, EPA, SC, Georgetown Harbor Area, Ocean Dredged Material Disposal Site, Designation, Georgetown, Horry and Eley Counties, Due: October 15, 1984, Contact: Theodore Bisterfeld (404) 881–3776.

EIS No. 840387, Draft, FHW, NC, Bogue Sound (Third) Bridge, Construction, US 70 to NC–58, Carteret County, Due: October 15, 1984, Contact: Ken Bellamy (919) 755–4346.

Dated: August 28, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84–23159 Filed 8–30–84; 8:45 am]

BILLING CODE 6560–50–M

[A–2–FRL–2663–6]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Action.

SUMMARY: The purpose of this notice is to announce that between August 1, 1983, and June 30, 1984, the U.S. Environmental Protection Agency, Region II, issued ten final determinations relative to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart. (See **SUPPLEMENTARY INFORMATION**)

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Eng., Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264–4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA has made final determinations relative to the sources listed below:

Name of applicant	Type of source	Location	Type of final action	Date of final action
New York City Department of General Services.	Installation of two 750 KW emergency diesel engines.	New York, NY	PSD nonapplicability	Sept. 13, 1983.
Auburn Steel Company, Inc	Expansion of steel furnance capacity	Auburn, NY	Final PSD permit	Sept. 27, 1983.
IBM	Installation of 5 emergency units	Owego, NY	Modification of PSD permit	Oct. 12, 1983.
Consolidated Gas Supply Corporation.	Turbine replacement at gas transmission station.	Tompkins County, NY	Final PSD permit	Oct. 31, 1983.
Schering-Plough Corporation (SPC).	Construction of a new oil and gas-fired boiler to replace old equipment.	Chatham, NJ	Final PSD permit	Nov. 22, 1983.
Procter and Gamble Co	Request for use of natural gas as back-up fuel to wood-fired boiler.	Staten Island, NY	Modification of PSD permit	Nov. 25, 1983.
New York Power Authority	700 MW coal and refuse-fired steam generating facility.	Arthur Kill Station, Staten Island, NY	Denial of PSD permit	Feb. 6, 1984.
VIRCO	New petroleum refinery	St. Croix, Virgin Islands	Denial of PSD permit extension request	Mar. 30, 1984.
Roche Products, Inc	Cogeneration facility	Manati, Puerto Rico	Final PSD permit	June 12, 1984.
Tishman Speyer Crown Realties	Cogeneration facility	375 Hudson Street, New York, NY	Final PSD permit	June 12, 1984.

The notice contains only a list of the sources which have received final determinations. Copies of these determinations and related materials are available for public inspection at: Environmental Protection Agency, Region II Office, Permits Administration Branch, Office of Policy and Management, 26 Federal Plaza, Room 432, New York, New York 10278 (212) 264–4711.

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register.** Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: August 22, 1984.

Richard T. Dewling,

Acting Regional Administrator.

[FR Doc. 84–23197 Filed 8–30–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of July 16–17, 1984

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on July 16–17, 1984.[1]

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting suggests that the expansion in economic activity is continuing at a strong pace, but there are indications of moderation in some sectors. In May and June, industrial production and retail sales expanded further, though at a somewhat slower pace than earlier in the year. Nonfarm payroll employment rose substantially further in both months and the civilian unemployment rate fell to 7.1 percent in June. Housing starts declined in May to a rate appreciably below the average in the first fourth months of 1984. Information on outlays and spending plans continues to suggest strength in business fixed investment. Since the beginning of the year, average prices and the index of average hourly earnings have risen more slowly than in 1983.

M1 grew rapidly in May and June after having changed little in April, while M2 continued to expand moderately. M3 growth slowed somewhat in June but was relatively strong over the second quarter. From the fourth quarter of 1983 through June, M1 grew at a rate somewhat below the upper limit of the Committee's range for 1984; M2 increased at a rate a little below the midpoint of its longer-run range, while M3 expanded at a rate above the upper limit of its range. Total domestic nonfinancial debt continued to grow in the second quarter at a pace above the Committee's monitoring range for the year, reflecting very large government borrowing along with strong private credit growth. Interest rates have fluctuated considerably since the May meeting of the Committee. Financial markets were affected by concerns arising from international debt problems. On balance, rates on private short-term securities rose further, while rates on Treasury bills were about unchanged; in long-term debt markets, rates on most private obligations changed little while those on Treasury bonds declined.

The foreign exchange value of the dollar against a trade-weighted average of major foreign currencies has risen considerably further since mid-May to a level above its peak in early January. The merchandise trade deficit rose further in April–May compared with the first quarter; an increase in oil and non-oil imports exceeded a slight rise in exports.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee agreed at this meeting to reaffirm the ranges for monetary growth that it had established in January: 4 to 8 percent for M1 and 6 to 9 percent for both M2 and M3 for the period from the fourth quarter of 1983 to the fourth quarter of 1984. The associated range for total domestic nonfinancial debt was also reaffirmed at 8 to 11 percent for the year 1984. It was anticipated that M3 and nonfinancial debt might increase at rates somewhat above the upper limits of their 1984 ranges, given developments in the first half of the year, but the Committee felt that higher target ranges would provide inappropriate benchmarks for evaluating longer-term trends in M3 and credit growth. For the 1985 the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1984 to the fourth quarter of 1985, of 4 to 7 percent for M1, 6 to 8½ percent for M2, and 6 to 9 percent for M3. The associated range for nonfinancial debt was set at 8 to 11 percent.

The Committee understood that policy implementation would require continuing appraisal of the relationships not only among the various measures of money and credit but also between those aggregates and nominal GNP, including evaluation of conditions in domestic credit and foreign exchange markets.

In the short run, the Committee seeks to maintain existing pressures on reserve positions. This action is expected to be consistent with growth in M1, M2, and M3 at annual rates of around 5½, 7½, and 9 percent respectively during the period from June to September. Somewhat greater reserve restraint would be acceptable in the event of more substantial growth of the monetary aggregates, while somewhat lesser restraint might be acceptable if growth of the monetary aggregates slowed significantly. In either case, such a change would be considered only in the context of appraisals of the continuing strength of the business expansion, inflationary pressures, financial market conditions, and the rate of credit growth. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 8 to 12 percent.

[1] The Record of policy actions of the Committee for the meeting of July 16–17, 1984, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

By order of the Federal Open Market Committee, August 27, 1984.

Stephen H. Axilrod,

Secretary

[FR Doc. 84-23142 Filed 8-30-84; 8:45 am]

BILLING CODE 6210-01-M

DeMotte Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 21, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 Souith LaSalle Street, Chicago, Illinois 60690:

1. *DeMotte Bancorp*, Demotte, Indiana; to become a bank holding company by acquiring 80 percent or more of the voting shares of Demotte State Bank, Demotte, Indiana.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Volunteer Bancshares, Inc.*, Jackson, Tennessee; to acquire 100 percent of the voting shares of the successor by merger to Milan Banking Company, Milan, Tennessee; and to merge with First Selmer Bancshares, Inc., Selmer, Tennessee, thereby indirectly acquiring First National Bank of Selmer, Selmer, Tennessee.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Financial Bancorp, Inc.*, Trinidad, Colorado; to become a bank holding company by acquiring 90 percent of the voting shares of Trinidad National Bank, Trinidad, Colorado.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Overton Bancshares, Inc.*, Fort Worth, Texas; to acquire 80 percent of the voting shares of the following banks: Ridglea National Bank, Fort Worth, Texas, and First National Bank Mansfield, Mansfield, Texas.

2. *University Bancorporation, Inc.*, College Station, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of University National Bank, College Station, Texas.

Board of Governors of the Federal Reserve System, August 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23144 Filed 8-30-84; 8:45 am]

BILLING CODE 6210-01-M

First Wisconsin Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 20, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to engage *de novo* through its subsidiary, Elanco Investment Services, Inc., Milwaukee, Wisconsin, in brokerage services and related securities credit activities. Notice is for approval to expand the geographic scope of activities to include the entire United States.

Board of Governors of the Federal Reserve System, August 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23143 Filed 8-30-84; 8:45 am]

BILLING CODE 6210-01-M

Midland Bank PLC; Application to Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 20, 1984.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California, 94105:

1. *Midland Bank Plc*, London, England; to engage *de novo* through its subsidiary, Midland International Trade Services (USA) Corporation, New York, New York, in making acquiring, or servicing loans or other extensions of credit for its own account or for the account of others, including but not limited to the businesses of commercial finance, factoring and asset based financing, and including the secured and unsecured financing of trade, commodity and construction activities, domestically, abroad, and in international commerce.

Board of Governors of the Federal Reserve System, August 27, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23145 Filed 8-30-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 24.

Public Health Service

Health Resources and Services Administration

Subject: Requirements to Disclose HMO Financial Information to Members (0915-0064)—extension/no change
Respondents: Health maintenance organizations
OMB Desk Officer: Fay S. Iudicello

National Institutes of Health

Subject: Evaluation of NCI Training of Maxillofacial Prosthodontists—new collection
Respondents: NCI sponsored prosthodontists
Subject: Evaluation of Statewide Hypertension Programs—new collection
Respondents: Hypertension program administrators and service providers
Subject: University of Iowa's 65+ Rural Health Study Final Household Interview—new collection
Respondents: Individuals participating in the epidimiologic study on aging in Iowa
Subject: Yale University's Health and Aging Project Final Household Interview—new collection
Respondents: Individuals participating in the epidemiologic study on aging in New Haven, Connecticut
Subject: East Boston Neighborhood Health Center's Senior Health Project Final Household Interview—new collection
Respondents: Individuals participating in the epidemiologic study on aging in East Boston, Massachusetts
Subject: Iowa 65+ Rural Health Study Substudy #3 "Iowa Bereanement Substudy"—new collection
Respondents: Individuals participating in the epidemiologic study on aging in Iowa
Subject: Yale University's Health and Aging Project Substudy #3 "Adjustment to Widowhood"—new collection
Respondents: Individuals participating in the epidemiologic study on aging in New Haven, Connecticut
OMB Desk Officer: Fay S. Iudicello

Centers for Disease Control

Subject: National Disease Surveillance Program—II Case Summaries (0920-0004)—revision
Respondents: State and territorial health departments
Subject: Uranium Miners—Low Dose Investigation Follow up Survey—new collection
Respondents: Uranium miners who were examined by the Public Health Service between 1950 and 1960.
OMB Desk Officer: Fay S. Iudicello

Alcohol, Drug Abuse and Mental Health Administration

Subject: Preliminary Study of Commonalities Underlying the Addicative Process—new collection
Respondents: Individuals
Subject: Epidemiologic Catchment Area Program—UCLA Site (0930-0088)—extension/no change
Respondents: Individuals
Subject: Community Support Program Client Follow up Study (0930-0097)—extension/no change
Respondents: Individuals, State and local governments
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: Quarterly Periodic Interim Payment (PIP) Report—existing collection
Respondents: Medicare fiscal intermediaries
Subject: Information Collected on Provider Refunds, Section 3401 of Intermediary Manual, and Section 7080 of Carrier Manual—new collection
Respondents: Health care providers participating in Medicare Revision
Subject: Revision to the Medicaid State Plan Preprint, Supplement 9 to Attachment 267 for Transfer of Resources (0938-0193)—revision
Respondents: Medicaid State agencies
Subject: End Stage Renal Disease Medical Information System (0938-0064)—revision
Respondents: End stage renal disease facilities
Subject: End Stage Renal Disease Billing Supplement Form (0938-0230)—revision
Respondents: End stage renal disease facilities
Subject: Departmental Clinical Lab Survey Report Form (0938-0032)—existing collection
Respondents: State survey agencies
Subject: Blood Bank Inspection Checklist (0938-0170)—existing collection
Respondents: State survey agencies
Subject: Preclearance of Information Collection for Evaluation of the Social/Health Maintenance Organizations (S/HMO) Demonstrations—new collection
Respondents: Social health maintance organizations
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Representative Payee Custody Report (Conditional Approval)—new collection
Respondents: Parents and spouses with custody of beneficiaries

Subject: Statement of Care and Responsibility for Beneficiary (0960–0109)—extension no change
Respondents: Individuals and institutions having custody of beneficiaries
Subject: Statement of Employer (0960–0030)—extension no change
Respondents: Certain employees paying wages
OMB Desk Officer: Robert J. Fishman

Office of the Secretary

Subject: A Comparison of Private and Public Social Services Programs—new collection
Respondents: State or local governments, businesses, non-profit institutions
OMB Desk Officer: Robert J. Fishman

Office of Human Development Services

Subject: Referral for WIN Registration (Individuals) (IM–3) (0980–0111)—extension/no change
Respondents: State governments
OMB Desk Officer: Robert J. Fishman

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (name of OMB Desk Officer)

Date: August 24, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84–23174 Filed 8–30–84; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 84G–0191]

Amerace Corp.; Filing of Petition for Affirmation of GRAS Status; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice that announced that Amerace Corp. had filed a petition (GRASP 3G0285) proposing affirmation that an insoluble lactase enzyme preparation is generally recognized as safe (GRAS) for use in making lactose hydrolyzed whey, lactose hydrolyzed whey permeate, and lactose hydrolyzed milk permeate. The notice was published in the **Federal Register** of June 18, 1984.

FOR FURTHER INFORMATION CONTACT: Vivian Prunier, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 202204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In FR Doc. 84–16157 appearing at page 24952 in the **Federal Register** of Monday, June 18, 1984, the following corrections are made in the third column under **"SUPPLEMENTARY INFORMATION":** (1) in the fifth and sixth lines from the bottom of the first paragraph, *"Aspergillus niger"* is corrected to read *"Aspergillus oryzae"* and (2) in the next to the last line and the last line in the first paragraph, "whey permeate, and milk permeate" are corrected to read "lactose hydrolyzed whey permeate, and lactose hydrolyzed milk permeate".

Dated: August 23, 1984.

Taylor M. Quinn,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 84–23151 Filed 8–30–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 82P–0252]

Power Technology Inc.; Availability of Approved Variance for Laser-Aimed Firearms

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that an extension of a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for an alignment laser product termed "laser-aimed firearm" manufactured by Power Technology, Inc. The electronic product is intended to be mounted onto a customer-supplied weapon and, as an alignment device, will aid in improving aiming speed and accuracy.

DATES: The variance became effective January 19, 1983, and ended January 19, 1984. The extension of the variance was approved on April 20, 1984, and ends January 19, 1989.

ADDRESS: The application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Glenn E. Conklin, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted Power Technology, Inc., P.O. Box 9769, Little Rock, AR 72219, an extension of its variance from certain provisions of the performance standard for laser products for its laser-aimed firearm product line.

The specific requirements of the standard for which a variance has been granted pertain to the performance features of a remote-control connector (§ 1040.10(f)(3)), key control (§ 1040.10(f)(4)), emission indicator (§ 1040.10(f)(5)(ii)), and beam attenuator (§ 1040.10(f)(6)). All other provisions of the performance standard remain applicable to the product. CDRH considers the laser-aimed firearm to be a surveying, leveling, or alignment laser product as defined in § 1040.10(b)(35). Thus, the product is required to comply with all provisions of § 1040.11(b), inlcuding the emission radiant power limit of 5 milliwatts between 400 nanometers and 710 nanometers. The 5-year extension of the variance will allow for the continuing distribution of this product into commerce.

CDRH has determined that: (a) The requirements of §§ 1040.10(f)(3), (4), (5)(ii), and (6) are not appropriate for the product; and (b) suitable means of radiation safety and protection are provided by constraints on the physical and optical design and on the labeling of the product. The laser system incorporated into the laser-aimed firearm can be turned on only by using a normally off momentary switch whose actuation is significantly distinct, but not necessarily physically separate, from the trigger action of the weapon itself to prevent inadvertent firing of the weapon. In addition, labels and instructions that are provided to users of laser-aimed firearms, servicing dealers, and distributors are required to include adequate information and instructions to assure that individuals who are untrained in the safe use of lasers can use the product safely.

Power Technology, Inc., is to establish and maintain current records with respect to the radiation safety of the laser-aimed firearms, especially with regard to those sold to the general public. These records are to include copies of all written communications between the manufacturer and dealers, distributors, and purchasers concerning radiation safety including complaints, investigations, instructions, or explanations affecting the use, repair,

adjustment, maintenance, or testing of the listed product. Therefore, on April 20, 1984, FDA approved the requested extension by letter to the manufacturer from the Deputy Director, CDRH. The variance will terminate on January 19, 1989.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1984.

Maurice D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-23150 Filed 8-30-84; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Meeting; Advisory Board on Child Abuse and Neglect

Agency Holding the Meeting: Administration for Children, Youth and Families.

Time and Date: 9:00 a.m. to 5:30 p.m.—Thursday, September 27, 1984.

Place: Department of Transportation, 7th and D Streets, SW., Washington, D.C., Room 6332/4/6.

Status: Advisory Board meetings are open for public observation. However, because of security precautions at all Government buildings, persons wishing to attend the meeting, but who do not have Government identification, should call the contact person listed below for information about access to the building.

Matters to be Considered: At this meeting, the Advisory Board will discuss the status of the Child Abuse and Neglect Legislation; a briefing presented to the Secretary of the Department of Health and Human Services on the National Center on Child Abuse and Neglect; Fiscal Year 1985 Plans for Discretionary Child Abuse and Neglect Activities; Fiscal Year 1984 Discretionary Grants to States; Status of a Coordination Effort Between the Office of Juvenile Justice and Delinquency Prevention and the National Center on Child Abuse and Neglect; Results of the Children's Trust Fund Symposium held on June 21 and other current child abuse and neglect activities.

Contact Person for More Information: Arlene Taylor, National Center on Child Abuse and Neglect, P.O. Box 1182, Washington, D.C. 20013; (202) 245-2840.

Dated: August 24, 1984.

Philip Jarmack.

HDS Committee Management Officer.

[FR Doc. 84-23172 Filed 8-30-84; 8:45 am]

BILLING CODE 4130-01-M

Health Resources and Services Administration

Health Maintenance Organizations

AGENCY: Public Health Service, Health Resources and Services Administration, HHS.

ACTION: Notice; qualified health maintenance organizations.

SUMMARY: This notice sets forth the names, addresses, service areas, and dates of qualification of entities determined by the Secretary to be federally qualified health maintenance organizations (HMOs).

FOR FURTHER INFORMATION CONTACT: Frank H. Seubold, Ph.D., Associate Director for Health Maintenance Organizations, Bureau of Health Maintenance Organizations and Resources Development, Room 9-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443-4106.

SUPPLEMENTAL INFORMATION: Regulations (42 CFR 110.605(d)) issued under Title XIII of the Public Health Service Act (the Act) require that a list and description of all newly qualified HMOs be published on a periodic basis in the **Federal Register**. This notice is an accumulation of information regarding those HMOs that have been qualified since the last such list was published on July 13, 1984. There are three categories of qualified HMOs: operational, transitionally qualified, and preoperational (see 42 CFR 110.602 and 110.603).

The following entities have been determined to be qualified HMOs under Section 1310(d) of the Act (42 U.S.C. 300e-9(d)): (Operational Qualified Health Maintenance Organizations: 42 CFR 110.603(a)).

1. Maxicare Health Insurance Company (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 732 North Jackson Boulevard, Milwaukee, Wisconsin 53202. The service area for the Milwaukee/Waukesha regional component comprises the following zip codes:

53005	53150	53214
53007	53151	53215
53012	53154	53216
53022	53172	53217
53024	53186	53218
53029	53202	53219
53046	53203	53220
53051	53204	53221
53072	53205	53222
53074	53206	53223
53080	53207	53224
53089	53208	53225
53092	53209	53226
53103	53210	53227
53110	53211	53228
53130	53212	53233
53132	53213	

The service area for the Appleton/Sheboygan regional component comprises the following zip codes:

53001	53088	54915
53011	54129	54931
53013	54232	54940
53014	54245	54942
53015	54106	54944
53023	54113	54947
53042	54130	54949
53061	54136	54950
53070	54150	54951
53073	54169	54952
53075	54170	54961
53081	54911	54983
53085	54914	

Date of qualification: June 8, 1984.

2. Group Health of Spokane, Inc. (Staff Model, see section 1310(b)(1) of the Act), Great Western Freeway Plaza Building, W. 1500 4th Avenue, Spokane, Washington 99204-1639. On June 30, 1983, the Group Health Cooperative of Puget Sound, Inc. (GHC), a not-for-profit corporation, purchased substantially all of the assets and business of INA Healthplan of Washington, Inc. (INAHW), a federally qualified, for-profit HMO. On the date of purchase, the assets and business of INAHW were transferred to Group Health of Spokane, Inc. (GHS), a wholly-owned affiliate of GHC certified to operate as a not-for-profit HMO by the State of Washington, effective July 1, 1983. Subsequently, the not-for-profit GHS was approved for Federal qualification, and the Federal qualification for INAHW was voluntarily relinquished. The service area comprises all of Spokane County and zip codes 99008, 99013, 99029, and 99034.

Date of qualification: June 20, 1984.

3. Virginia Health Plan, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 8550 Lee Highway, Suite 600, Fairfax, Virginia 22031. The service area comprises the counties of Arlington, Fairfax, and Price William, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Date of qualification: June 27, 1984.

4. HMO of Kansas, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), P.O. Box 110, Topeka, Kansas 66601. The service area for the Topeka regional component comprises the following zip codes in the following towns:

Auburn	66402
Berryton	66490
Burlingame	66413
Carbondale	66414
Delia	66418
Denison	66419
Dover	66420
Eskridge	66423
Grantville	66429
Harveyville	66431
Hoyt	66440
Lawrence	66044
Lecompton	66050
Maple Hill	66507
Mayetta	66509
Meriden	66512
Oskaloosa	66066
Overbrook	66524
Ozawkie	66070
Pauline	66619
Perry	66073
Rossville	66533
St. Marys	66536
Scranton	66537
Silver Lake	66539
Tecumseh	66542
Topeka	66601
Topeka	66603—66612
Topeka	66614—66618
Valley Falls	66088
Wakarusa	66546

The service area for the Wichita regional component comprises the following zip codes in the following towns:

Andale	67001
Andover	67002
Augusta	67210
Beaumont	67012
Belle Plaine	67013
Bentley	67016
Benton	67017
Burns	66840
Burrton	67020
Cassoday	66842
Cheney	67025
Clearwater	67026
Colwich	67030
Conway Springs	67031
DeGraff	66840
Derby	67037
Douglass	67039
ElDorado	67042
Elberg	67041
Garden Plain	67050
Goddard	67053
Greenwich	67055
Halstead	67056
Haven	67543
Haverhill	67042
Haysville	67060
Kechi	67067
Latham	67072
Leon	67074
Maize	67101
Mayfield	67103
Milton	67106
Mount Hope	67108
Mulvane	67110
Murdock	67111
McConnell AFB	67221
Newton	67114
North Newton	67117
NE Wichita	67230, 67238
Oxford	67119
Peck	67120
Potwin	67123
Reece	67045
Rock	67131
Rosalia	67132
Rosehill	67133
Sedgwick	67135
Towanda	67144
Udall	67146
Valley Center	67147
Viola	67149
Wellington	67152
Whitewater	67154
Wichita	67201–67220
Wichita	67223
Wichita	67226–67228
Wichita	67231–67233
Wichita	67235, 67236
Wonsevu	66801
Yoder	67585

Date of qualification: July 20, 1984.

(Transitionally Qualified Health Maintenance Organizations; 42 CFR 110.603(b))

5. SHARE Health Plan of Iowa, Inc. (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 950 Office Park Road, Suite 200, West Des Moines, Iowa 50265. The service area comprises Polk County and Warren County.

Date of qualification: June 20, 1984.

(Preoperational Qualified Health Maintenance Organizations; 42 CFR 110.603(c))

6. Health Plan of Mid America (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), 4510 Bellview, Suite 104, Kansas City, Missouri 64111. The service area comprises the counties of Johnson, Leavenworth, and Wyandotte in Kansas; the counties of Jackson, Clay, and Platte in Missouri; and zip codes 64087 and 64102 in Cass County, Missouri.

Date of qualification: July 24, 1984.

(Qualified Regional Components: 42 CFR 110.603(e))

7. HMO of Florida, Orlando (Direct Contract Model, see section 1310(b)(2)(B) of the Act), an operational qualified regional component of HMO of Florida, Jacksonville, Florida 32216. The service area comprises the counties of Orange, Osceola, and Seminole; zip codes 32711, 32726, 32727, 32757, 32778, and 32784 in Lake County; and zip codes 32780, 32815, 32901, 32903, 32920, 32922, 32925, 32931, 32935, 32937, 32952, 32955, and 32959 in Brevard County.

Date of qualification: June 4, 1984.

8. Maxicare—Northern California (Individual Practice Association Model, see section 1310(b)(2)(A) of the Act), an operational qualified regional component of Maxicare, Hawthorne, California 90250. The service area comprises San Francisco County, San Mateo County, Santa Clara County, Alameda County, and Contra Costa County.

Date of qualification: July 3, 1984.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:30 a.m. and 4:30 p.m. on Tuesdays and Thursdays, except for Federal holidays, in the Office of Health Maintenance Organizations, Bureau of Health Maintenance Organizations and Resources Development, Department of Health and Human Services, Rm. 9–11, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Questions about the qualification review process or requests for information about qualified HMOs should be sent to the same office.

Dated: August 27, 1984.

John H. Kelso,

Acting Administrator.

[FR Doc. 84–23196 Filed 8–30–84; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–84–1439]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of

information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information colleciton requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Public Housing Manager Certification Compliance
Office: Public and Indian Housing
Form number: None
Frequency of submission: Annually
Affected Public: State or Local Governments
Estimated burden hours: 1,500
Status: New
Contact: Odessa W. Burroughs, HUD, (202) 472–4703; Robert Neal, OMB, (202) 395–7316

Proposal: Community Development Block Grant Small Cities Application Package
Office: Community Planning and Development
Form number: HUD–4124
Frequency of submission: Annually
Affected Public: State or Local Governments
Estimated burden hours: 20,000
Status: Reinstatement
Contact: Cornelia B. Robertson, HUD, (202) 755–6322; Robert Neal, OMB, (202) 395–7316

Proposal: Funding Formula Data Collection Forms
Office: Public and Indian Housing
Form number: HUD–52720, 52720A, 52720B, 52720C, 52720D, 52721, 52721A, 52722A, and 52722B
Frequency of submission: Annually
Affected Public: State or Local Governments
Estimated burden hours: 13,800
Status: Reinstatement
Contact: Joan DeWitt, HUD, (202) 426–1872; Robert Neal, OMB, (202) 395–7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 31, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-23201 Filed 8-30-84; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. N-84-1440]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application—Project Mortgage Insurance/NH–ICF
Office: Housing
Form number: HUD–92013, 92013–NH–ICF, and 92013–HOSP
Frequency of submission: On Occassion
Affected public: Non-Profit Institutions and Businesses or Other For-Profit
Estimated burden hours: 33,251
Status: Reinstatement
Contact: Joseph Malloy, HUD (202) 755–6223, Robert Neal, OMB, (202) 395–7316

Proposal: Manufactured Home Procedural and Enforcement Regulations—Monitoring Inspection Fees
Office: Housing
Form number: NCSBCS–301, 302, 303, and 304
Frequency of submission: Monthly
Affected public: Businesses or Other For-Profit
Estimated burden hours: 10,951
Status: Revision
Contact: James C. McCollom, HUD (202) 755–7920, Robert Neal, OMB, (202) 395–7316

Proposal: Urban Development Action Grant Program
Office: Community Planning and Development
Form number: SF–424, HUD–3440, 3441, 3442, 3443, 3444, 3445, and 3446
Frequency of submission: On Occasion and Semi-Annually
Affected public: State or Local Governments
Estimated burden hours: 71,155
Status: Extension
Contact: Sheila Platoff, HUD, (202) 755–7362, Robert Neal, OMB, (202) 395–7316

Authority. Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 14, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-23203 Filed 8-30-84; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-84-1441]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been 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.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Application for Insurance Benefits
Office: Administration
Form number: HUD-27011
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 46,800
Status: Revision
Contact: John L. Stahl, HUD, (202) 755-5163; Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 21, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-23202 Filed 8-30-84; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-7282]

Oregon Conveyance of Public Lands, Order Providing for Opening of Land

Correction

In FR Doc. 84-20813, beginning on page 31501, in the issue of Tuesday, August 7, 1984, make the following corrections:

1. On page 31502, in the second column, under the line, "T. 40 S., R. 42 E.," insert,

"Secs. 16 and 36.
T. 41 S., R. 42 E.,".

2. In the third column, in the first paragraph, in the third line, "(8,335.95)" should read "(8,335.95".

3. Also in the third column, in the fourth line under "**Willamette Meridian**", "E½ and" should read "E½, and".

BILLING CODE 1505-01-M

[A-19064]

Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, (BLM), Interior.

ACTION: Notice of Realty Action—Exchange, Public Lands in Mohave County, Arizona.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 21 N., R. 19 W.,
section 2, lots 1-4, S½N½, S½.
Comprising 640.52 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from John P. Buss of North Hollywood, California.

Gila and Salt River Meridian, Arizona

T. 25 N., R. 14 W.,
section 27, all.
Comprising 640 acres, more or less.

The exchange involves only the surface estate of the public selected lands and the private offered lands.

The purpose of the exchange is to acquire the non-Federal lands near the Music Mountains northeast of Kingman, Arizona, which have a high potential for wildlife development and livestock grazing. The exchange is consistent with the Bureau of Land Management land use plans and would result in a public benefit.

The above lands will be subject to an approval to determine their value. If it is determined that the values are not equal, an adjustment may be made in the total number of acres to be exchanged, or a cash payment not to exceed 25 percent of the value of the public lands may be made to equalize values.

Lands to be transferred from the United States will be subject to the following reservations:

1. A right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 [26 Stat. 391; U.S.C. 945).

2. All minerals in the subject are reserved to the State of Arizona as granted by the Act of Congress, June 24, 1910.

3. Subject to such restrictions as may be imposed by the County Flood plain Administrator in accordance with the "Amended Floodplain Regulation for the Unincorporated Area of Mohave County, Arizona," as adopted by the Mohave County Board of Supervisors by Resolution No. 82-1 of May 17, 1982, and recorded in Book 824, page 895 of Official Records, Mohave County, Arizona.

4. Subject to right-of-way A–19236, A–19238, A–19239, and A–19240, for road purposes for the Mohave County Board of Supervisors under Title V, section 501 of the Act of October 21, 1976 (43 U.S.C. 1761).

5. Subject to right-of-way AR–033346 for telephone purposes for American Telephone and Telephone Company, under the Act of March 4, 1911 (36 Stat. 1253, as amended; 43 U.S.C. 961).

6. Subject to the right of the grazing allottee, James Briggs, to continue his grazing use of the parcel until May 8, 1986. Grazing fees will be paid to the new landowner, but may not exceed the fees charged by the Bureau of Land Management for that year.

Private lands to be acquired by the United States will be subject to the following reservation:

1. All minerals in the subject are reserved to the Santa Fe Pacific Railroad Company as set forth in Book 75 of Deeds, page 329, Mohave County, Arizona.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

SUPPLEMENTARY INFORMATION: Detailed information concerning this exchange may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: August 21, 1984.

Marlyn V. Jones,

District Manager.

[FR Doc. 84–23115 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–32–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Pennzoil Exploration and Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 2045, Block 270, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 23, 1984.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 23, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84–23152 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Fire Island National Seashore; Availability of Land Protection Plan

AGENCY: National Park Service, Fire Island National Seashore

ACTION: Notice of the availability of Land Protection Plan

Notice:

The Land Protection Plan for Fire Island National Seashore is now available. The Plan outlines a program to manage and protect private or non-Federal lands within the authorized boundaries with techniques other than direct federal purchase of property.

The Plan has been revised to incorporate comments received during a thirty day comment period which ended in March 1983.

Copies of the Plan may be obtained from the Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchoque, New York, 11772; or from the North Atlantic Regional Office, 15 State Street, Boston, Massachusetts, 01970.

This Plan will be approved by the Regional Director, North Atlantic Regional Office thirty (30) days from the date of this notice.

Dated: August 22, 1984.

Herbert S. Cables, Jr.,

Regional Director.

[FR Doc. 84–23161 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30505]

Alabama Southern Railroad Company, Inc. and the Alabama Great Southern Railroad Company—Acquisitions, Operations and Trackage Rights-Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 10901 (1) acquisition by Alabama Southern Railroad Company, Inc. (ASR) of Southern Railroad Company's 10.3-mile line of railroad from York, AL to Lilita, AL, (2) acquisition by ASR from the Alabama Great Southern Railroad Company (AGS) of trackage rights at York, AL; (3) acquisition by AGS from ASR of trackage rights over the line in (1) above at York and 3,000 feet eastward; and (4) acquisition by ASR from the Sumter & Choctaw Railway Company of the latter's 3.5-mile line from Lilita to Bellamy, AL.

DATES: This exemption will be effective on August 31, 1984. Petitions to reopen must be filed by September 20, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30505 to:.

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Charles H. White, Jr., 1000 Potomac Street, NW., Washington, DC 20007

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 24, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Commissioner Gradison concurred in part and dissented in part with a separate expression. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84–23171 Filed 8–30–84; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-No. 218X)]

Burlington Northern Railroad Company—Abandonment—In Boulder and Weld Counties, Co.; Exemption

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments*. The line to be abandoned is between milepost 22.17, near Lafayette, and milepost 26.00 near Erie, a distance of 3.83 miles in Boulder and Weld Counties, CO.

BN has certified (1) that no local or overhead traffic has moved over the line for at least 2 years, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Colorado has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines*, 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective on September 30, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by September 10, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 20, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Peter M. Lee, Assistant General Solicitor, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 24, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84–23168 Filed 8–30–84; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

Anderson, Clayton and Co., Interfirst Plaza, 1100 Louisiana Street, Suite 3800, Houston, Texas 77002
Mailing Address: P.O. Box 2538, Houston, Texas 77252

2. Wholly-owned subsidiaries which will participate in the operations and state of incorporation:

(i) Gaines Foods, Inc., Red Oak Plaza, West Red Oak Lane, White Plains, New York 10604. Incorporated in the State of Delaware.

(ii) Great Southwest Warehouses, Inc., 3721 Dacoma Street, P.O. Box 2588, Houston, Texas 77252. Incorporated in the State of Texas.

(iii) Igloo Corporation, 1001 West Belt Drive, P.O. Box 10332, Houston, Texas 77024. Incorporated in the State of Delaware.

1. Parent corporation and address of principal office: Cedar River Truck Company, Inc., Powers, Michigan 49847.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporations: Cedar River Lumber Company, Inc.—Michigan.

1. Parent corporation and address of principal office: Hillenbrand Industries, Inc., Highway 46, Batesville, Indiana.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(I) Batesville Casket Company, Inc., Indiana corporation
(II) Hill-Rom Company, Inc., Indiana corporation
(III) American Tourister, Inc., Indiana corporation
(IV) Batesville International Corporation, Indiana corporation
(V) Medeco Security Locks, Inc., Virginia corporation

1. Parent corporation and address of principal office: IC Industries, Inc., One Illinois Center, 111 East Wacker Drive, Chicago, Illinois 60601.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

Abex Corporation, Six Landmark Square, Stamford, Connecticut 06902–2268 (Incorporated in Delaware)
Accent International, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
Alton Manufacturing Company, 4830 Transport Drive, Dallas, Texas 75247 (Incorporated in Texas)
Bolingbrook 55 Corporation, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Illinois)
Boston Bean Pot, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Massachusetts)
Bubble-Up Company, Inc., 2800 North Talman Avenue, Chicago, Illinois 60618 (Incorporated in Delaware)
Chesley Industries, Inc., 20775 Chesley Drive, Farmington, Michigan 48024 (Incorporated in Michigan)
Chicago Intermodal Company, 233 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Delaware)
Cosmic Enterprises, Inc., 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Delaware)
Cosmic Stores, Inc., 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in New York)
Cove Development Corporation, 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
Cypress Bend Corporation, 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Florida)

Dad's Root Beer Company, 2800 North Talman Avenue, Chicago, Illinois 60618 (Incorporated in Illinois)
Environ of Inverray, Inc., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Florida)
Friend Brothers, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Massachusetts)
GM&O Land Company, 233 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Mississippi)
Gas Welding, Inc., 401 South Rohlwing, Addison, Illinois 60101 (Incorporated in Illinois)
Genadco Advertising Agency, Inc., 1745 North Kolmar Avenue, Chicago, Illinois 60639 (Incorporated in Illinois)
Helvetia Redevelopment Corporation, 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Missouri)
Helvetia Leasing Corporation, 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
Hussmann Acceptance Company, 12999 St. Charles Rock Road, Bridgeton, Missouri 63044 (Incorporated in Missouri)
Hussmann Corporation, 12999 St. Charles Rock Road, Bridgeton, Missouri 63044 (Incorporated in Delaware)
Hussmann Refrigeration, Inc., 12999 St. Charles Rock Road, Bridgeton, Missouri 63044 (Incorporated in Missouri)
Huth Manufacturing Corporation, 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in California)
IC Equipment Leasing Company, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Illinois)
IC Equities, Inc., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
IC Industries, Inc., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
IC Leasing, Inc., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
IC Products Company, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
ICP Holding Corp., 111 E. Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Indiana)
Illinois Center Corporation, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
International Stamping Co., Inc., 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Wisconsin)
Kolmar Products Corporation, 1745 North Kolmar Avenue, Chicago, Illinois 60639 (Incorporated in Wisconsin)
Krack Corporation, 401 South Rohlwing, Addison, Illinois 60101 (Incorporated in Illinois)
Midas International Corporation, 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Delaware)
Midas Properties, Inc., 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in New York)
Midas Realty Corporation, 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Delaware)
Mississippi Valley Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Delaware)
Muffler Corporation of America, 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Illinois)
Wine & Spirits Enterprises, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Missouri)
North Carolina Corp., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Massachusetts)
Oak Village Development Corp., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Delaware)
Pepsi-Cola General Bottlers, Inc., 1745 North Kolmar Avenue, Chicago, Illinois 60639 (Incorporated in Delaware)
Pet Incorporated, 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
LaSalle Properties, Inc., 900 Commerce Road East, Suite 107, New Orleans, Louisiana 70123 (Incorporated in Louisiana)
Mid-America Improvement Corporation, 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Illinois)
S & T South, Inc., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Illinois)
St. Louis Lithographing Company, 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Missouri)
South Properties, Inc., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Illinois)
Southland Canning & Packing Co. Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Louisiana)
Spartanburg Dairy, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Georgia)
Stuckey's Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
Stuckey's Stores, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
William Underwood Company (Maine), 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Maine)
William Underwood Company (Mass.), 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Massachusetts)
California Specialty Stores, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in California)
Richardson & Robbins Co., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
S & T of Mississippi, Inc., 111 East Wacker Dr., 27th Floor, Chicago, Illinois 60601 (Incorporated in Mississippi)
Violet Packing Co., Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Louisiana)
Hussmann International, Inc., 12999 St. Charles Rock Road, Bridgeton, Missouri 63044 (Incorporated in Delaware)
Illinois Central Export Corporation, Six Landmark Square, Stamford, Connecticut 06902–2268 (Incorporated in Delaware)
Krack Corporation International, 401 South Rohlwing, Addison, Illinois 60101 (Incorporated in Delaware)
Pet International Sales, Inc., 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
Hussmann Distributing Company, Inc., 10420 Baur Boulevard, St. Louis, Missouri 63132 (Incorporated in Delaware)
IC Acquisition Company, 400 South Fourth Street, St. Louis, Missouri 63102 (Incorporated in Delaware)
Mexican Holding Co., 12999 St. Charles Rock Road, Bridgeton, Missouri 63044 (Incorporated in Missouri)
Midas Euro, Inc., 225 North Michigan Avenue, Chicago, Illinois 60601 (Incorporated in Delaware)

1. Parent corporation and address of principal office: QST Industries, Inc., 231 South Jefferson Street, Chicago, IL.

2. Wholly-owned subsidiaries which will participate in operations and States of incorporation are as follows:

(i) Quick Service Textiles, Inc., Illinois.

(ii) Samuel Haber's Sons, Illinois.

(iii) Dallas Bias Fabrics, Texas.

(iv) Dallas Bias Fabrics of El Paso, Texas.

(v) Dal-Bac Manufacturing, Texas.

Withdrawal of Notice of Intent to Engage in Compensated Intercorporate Hauling Operations.

Parent Corporation: Larry E. Self d/b/a Action Drywall, 102 Cedar Lane, Chattanooga, TN 37421. Published at 49 FR 30255, July 27, 1984.

James H. Bayne,

Secretary.

[FR Doc. 84-23167 Filed 8-30-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30540]

Southern Railway Co.—Exemption—Acquisition and Operation in Huntsville, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the acquisition and operation by the Southern Railway Company of 2.15 miles of railroad abandoned by Seaboard System Railroad, Inc., at Huntsville in Madison County, AL.

DATES: This exemption is effective on August 31, 1984. Petitions to reopen must be filed by September 20, 1984.

ADDRESS: Send pleadings referring to Finance Docket No. 30540 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Nancy S. Fleischman, 1050 Connecticut Avenue, NW. Suite 740, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystem, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Decided: August 27, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-23227 Filed 8-30-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84-16]

B. Ruppe Drugstore, Inc., Albuquerque, NM; Hearing

Notice is hereby given that on April 23, 1984, the Drug Enforcement Administration, Department of Justice, issued to B. Ruppe Drugstore, Inc., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke its DEA Certificate of Registration, AB6412100, and deny its application for renewal of such registration as a retail pharmacy under 21 U.S.C. 323(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Thursday, September 13, 1984, in Room 8323, U.S. District Court, Federal Building, 500 Gold Avenue, SW., Albuquerque, New Mexico.

Dated: August 27, 1984.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 84-23204 Filed 8-30-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 83-7]

Revocation of Schedule II Registration; Ralph E. Lambert, M.D.

On March 7, 1983, the Deputy Assistant Administrator of the Drug Enforcement Administration, Office of Diversion Control, issued an Order to Show Cause proposing to revoke the certificate of registration, AL3378824, of Ralph E. Lambert, M.D., of Westwego, Louisiana. Dr. Lambert requested a hearing on the issues raised by the Order to Show Cause and, on June 23, 1983, the hearing in this matter was held in New Orleans, Louisiana. Administrative Law Judge Francis L. Young presided throughout these proceedings.

On December 14, 1983, the Administrative Law Judge transmitted the record of these proceedings to the Administrator pursuant to 21 CFR 1316.65(c). The Administrator has considered this record in its entirety and, pursuant to the provisions of 21 CFR 1316.66, hereby issues his final order in this matter. The Administrator adopts the findings of fact and conclusions of law of the Administrative Law Judge in their entirety. Judge Young found, as does the Administrator, that Dr. Lambert was convicted of felony offenses relating to controlled substances. There is, therefore, a lawful or statutory basis for the revocation of Dr. Lambert's registration. 21 U.S.C. 824(a)(2).

After considering all of the facts and circumstances in the record of this case, including the underlying conduct which led to Dr. Lambert's arrest and conviction as well as mitigating evidence relating to the doctor's medical practice, Judge Young recommended that the Administrator revoke only that portion of Dr. Lambert's registration pertaining to narcotic and non-narcotic controlled substances listed in Schedule II. Judge Young further recommended that Dr. Lambert's Schedule II privileges be restored after a period of one year, provided that DEA does not become aware of any future conduct on the part of this registrant inconsistent with the public interest.

The Administrator, after a great deal of consideration, has decided to follow the Administrative Law Judge's recommendation that the revocation in this case be limited to Schedule II. This should not be construed as in any way minimizing the very serious nature of the crimes of which Dr. Lambert was convicted. Further, the Administrator declines to follow the Administrative Law Judge's suggestion that Dr. Lambert's Schedule II privileges be restored after the passage of one brief year. An application for registration in Schedule II will be given due consideration when filed. However, the Administrator will not commit DEA to any date certain for approval of such application. In leaving this registrant with the authority to prescribe controlled substances in Schedules III, IV and V, the Administrator expects that Dr. Lambert will strictly comply with all Federal and state laws and regulations relating to controlled substances. Should the Administrator learn of any future misconduct on the part of this individual, he will not hesitate to initiate new proceedings to revoke the remainder of this registration.

Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824, as redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that DEA Certificate of Registration AL3378824 be, and it hereby is, revoked with respect to controlled substances in Schedule II only. The revocation herein shall be effective October 1, 1984.

Dated: August 27, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-23179 Filed 8-30-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 82-26]

Augustus E. Stewart, D.O.; Revocation of Registration

On September 21, 1982, the Drug Enforcement Administration [DEA] issued an Order to Show Cause initiating proceedings to revoke DEA Certificate of Registration AS5409316, previously issued to Augustus E. Stewart, D.O. [Respondent], of 4541 West Indian School Road, Phoenix, Arizona. The Order to Show Cause, which also sought to deny the Respondent's pending application for renewal of his registration, alleged that the Respondent lacked requisite state authorization to prescribe or dispense controlled substances and that he had materially falsified an application for such registration. Respondent requested a hearing on the issues raised by the Order to Show Cause and this matter was placed on the docket of Administrative Law Judge Francis L. Young.

Subsequently, the Government dismissed the charge of material falsification and moved for summary judgment on an amended Order to Show Cause which alleged that by order dated January 7, 1982, the Arizona Board of Osteopathic Examiners in Medicine and Surgery [hereinafter, "the Board"] had placed Respondent's license to practice osteopathic medicine on probation for a period of five years, provided, *inter alia*, that he prescribe, dispense or administer no controlled substances listed in Schedules II or III. The Administrative Law Judge provided the Respondent an opportunity to respond to the Government's motion but no such response was ever received. In an opinion dated December 15, 1982, Judge Young concluded that the Respondent indeed lacked requisite authority to be registered to handle controlled substances in Schedules II and III and recommended that the Respondent's registration be revoked with respect to those schedules. Judge Young further recommended that Respondent be granted a registration limited to Schedules IV and V. The Administrative Law Judge forwarded his opinion, together with the administrative record of this proceeding, to the Administrator on January 11, 1983.

A copy of the Administrative Law Judge's opinion was sent to the Respondent, through his attorney, on December 15, 1982. Nevertheless, on January 7, 1983, Respondent submitted another application for renewal of his registration in all schedules. Accordingly, final action in this matter was deferred pending investigation of this application. Investigation of the Respondent's activities as an osteopathic physician had continued following the Board's probation order. On September 30, 1983, the Board entered a summary suspension of the Respondent's license to practice osteopathic medicine and surgery in Arizona. Subsequently, on March 29, 1984, the Board permanently revoked the Respondent's license. No appeal of that order was taken and the Respondent is no longer practicing osteopathic medicine in Arizona.

This agency has consistently held that if a registrant or applicant is without authority to handle controlled substances in the state in which he practices or proposes to practice, DEA is without statutory authority to issue or to maintain a registration. *Michael C. Barry, M.D.*, [no docket number], 48 FR 33777 (1983); *Floyd A. Santner, M.D.*, Docket No. 79-23, 47 FR 51831 (1982). Accordingly, pursuant to the provisions of 21 U.S.C. 824(a)(3), Respondent's registration must be revoked and all pending applications for renewal thereof denied.

Pursuant to the authority vested in the Attorney General by sections 303 and 304 of the Controlled Substances Act, 21 U.S.C. 823 and 824, as redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that DEA Certificate of Registration AS5409316 be, and it hereby is, revoked, effective immediately. All pending applications for renewal of such registration are hereby denied.

Dated: August 27, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-23178 Filed 8-30-84; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 82-15]

K & B Successors, Inc.; Revocation of Registration

On March 30, 1982, the then Acting Administrator of the Drug Enforcement Administration (DEA) issued to K & B Successors, Inc., of New York, New York, an Order to Show Cause proposing to revoke the Respondent's DEA Certificate of Registration, AK5260132, authorizing the Respondent to dispense controlled substances in the course of its business as a retail pharmacy. On April 19, 1982, the Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and this matter was placed on the docket of Administrative Law Judge Francis L. Young.

On May 4, 1982, following a telephone conference with counsel for both sides, the Administrative Law Judge ordered that further proceedings be held in abeyance pending his receipt of notification as to whether the Government desired to proceed with the prosecution of this matter in light of certain alleged changes in the ownership of the Respondent pharmacy. On September 10, 1982, Government counsel notified the Administrative Law Judge that the Government was ready to proceed with the case and requested that proceedings leading toward a hearing be resumed. Prehearing statements were subsequently filed, a prehearing conference was held by telephone and, on November 24, 1982, Judge Young issued his Prehearing Ruling in this matter. In his Prehearing Ruling the judge granted the Government's motion to include as a subject of this proceeding DEA Certificate of Registration AK1799812, which certificate had been issued to the Respondent in October, 1982. Judge Young ruled that this amendment would not prejudice the Respondent and that the essence of this proceeding would not be altered in any way.

The hearing in this matter was held in Washington, D.C., on January 6, 1983. Thereafter, counsel for both sides filed proposed findings of fact and conclusions of law for consideration. On March 23, 1983, Judge Young issued his Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and a Recommended Decision, hereinafter referred to as the Administrative Law Judge's "opinion." Copies of the opinion were mailed to counsel for both sides. The Respondent filed exceptions to the judge's opinion. Subsequently, the Administrative Law Judge transmitted the entire record of these proceedings to the Administrator for his consideration. The Administrator has reviewed the record herein and, pursuant to the provisions of 21 CFR 1316.67, hereby issues his final order, based upon such findings of fact and conclusions of law hereinafter set forth.

The Administrator adopts the rulings, findings of fact, conclusions of law and the decision recommended by the Administrative Law Judge in their entirety. While the Administrator has chosen to reiterate some of the findings

in this final order, his failure to do so in all cases should not be construed as in any way limiting his total adoption of Judge Young's most complete and well considered opinion in this matter.

The Administrator finds that the Respondent, K & B Successors, Inc., is duly incorporated under the laws of the State of New York and operates a retail pharmacy which is licensed and registered by the New York State Department of Education. Commencing in September, 1972, and continuing until January, 1982, Alvin Brod and Sidney Korn were the sole principals and shareholders of the Respondent pharmacy. Each owned fifty percent of the stock. Mr. Brod was President and Mr. Korn was Secretary/Treasurer. Mr. Brod was also the managing pharmacist while Mr. Korn, who was not a pharmacist, was in charge of medical sales to physicians.

The State of New York requires the use of triplicate prescription forms for all prescriptions for Schedule II controlled substances. These forms are issued to individual practitioners. They are numbered and they are not transferable between doctors. The state maintains a record of the dates of issuance as well as the serialization of the forms issued to each practitioner. Losses or thefts of triplicate blanks must be reported to the state. When a practitioner issues such a Schedule II prescription, he keeps the third copy for his records and gives the first two to the patient. The pharmacy filling the prescription keeps the first copy and sends the second copy to Albany on a monthly basis. Prescriptions for controlled substances in Schedule III, IV or V are written on the more familiar single-page "white" prescription blanks.

In late January or early February, 1980, DEA Compliance Investigator Donald H. Brown received information to the effect that an individual had been providing a well-known musician with complete pads of New York State triplicate prescription forms, as well as "white" prescription blanks, on a weekly basis. This individual reportedly had an arrangement with a pharmacist who had been providing him with drugs, also on a weekly basis. Further investigation revealed that at least once a week the musician engaged the services of a limousine service to be driven from his home in Greenwich, Connecticut, to the apartment of the cooperating individual. He would stay there for a short while after which he and the informant would drive to the K & B Pharmacy in New York. He would then enter the pharmacy, later to emerge carrying a brown paper bag. He and the informant would then return to the latter's apartment. Later, he would return to the limousine with a smaller bag and would be driven home.

Telephone toll records subpoenaed by DEA revealed that on each of these occasions, the musician called the Respondent pharmacy from his home. He later told DEA personnel that he would call Mr. Brod to find out if his drugs were ready. Receiving an affirmative reply, he would then call for the limousine and make the trip to New York. The stops at the informant's apartment were for the purpose of facilitating the arrangement that he had with the informant whereby that individual supplied the blank prescriptions in return for a portion of the drugs the musician purchased, without valid prescription, from the pharmacy. The package which he bought from Mr. Brod was slightly different each time. Mr. Brod varied the drugs in order to avoid suspicion. A typical package might contain 25 to 50 Dilaudid; 180 Desoxyn, Biphetamine, Dexadrine or other amphetamine-type drug; 200 to 300 Quaalude or Tuinal; and a variety of Schedule III, IV or V medications. Mr. Brod often sold the Schedule II items in quantities of 180 so that he could write prescriptions of 60 each for his files.

These purchases occurred on a weekly basis beginning sometime in mid-1977 and were described as "really getting into full gear" in mid-1978. The musician stated that the weekly package of drugs which he purchased from Mr. Brod cost him $1,200 to $1,500 per week. The purchases ended in June 1980, when the investigation openly focused on the pharmacy.

On June 5, 1980, Investigator Brown and an investigator of the New York State Bureau of Narcotics Enforcement served on the Respondent pharmacy a grand jury subpoena for all of the pharmacy's Schedule II prescription files. While serving the subpoena, the investigators noticed a large stock of triplicate prescriptions which still had the second copy attached. Respondents admitted that they had been lax in sending these copies off to Albany. Although they were told to bring those copies in with the remainder of the subpoenaed records, the copies were sent to Albany where analysis of the 457 prescriptions submitted showed 215 of them to be fraudulent in one way or another. On June 11, 1980, the date on which the subpoena was returnable, the Respondent had not complied. After a telephone call from an Assistant U.S. Attorney, advising Korn and Brod that they were in contempt of the grand jury, one prescription file was brought in. Finally, on June 16, 1980, after repeated telephone calls, they surrendered the remainder of their Schedule II prescriptions. On that day, they brought in twelve files containing approximately 1,000 prescriptions each. Upon analysis, it was found that these prescriptions bore the serial numbers of sets which had been reported stolen. Some were found to have been purportedly written by doctors other than those to whom they had been issued by the state. In some cases, prescriptions had been filled out so as to indicate that they had been filled by the pharmacy on a date which predated that on which the prescription form had been issued by the authorities in Albany. All of the blanks which the informant had recalled giving to the musician were found among the prescriptions belatedly surrendered by Messrs. Korn and Brod.

Subsequently, it was revealed that during the same two-year period during which they had been selling drugs to the musician Korn and Brod had been receiving blank prescriptions from him for the purpose of being able to account in their files for the drugs illegally sold to him. But, instead of filling out the prescriptions and putting them into their files, they had been throwing them in to a box in their basement. Accordingly, when they received the grand jury subpoena for all of their Schedule II prescription files, they knew that those files could not account for all of the drugs they had been selling illegally. After receiving the subpoena, the two men took their records to Mr. Brod's home where, using a blackboard or large chart, they began to reconstruct the pharmacy records going back to 1977 or early 1978. The pharmacy's purchasing records dictated the number of prescriptions which would have to be falsified in order to cover a given quantity of drugs during a given period of time. Additionally, since many of the prescription blanks had consecutive serial numbers, they had to be spread out and "buried" in the files. Sitting around the Brod's dining room table and under Mr. Brod's direction, Mrs. Brod, Mrs. Korn, and their children filled out prescriptions. Ten to twelve thousand prescriptions had to be forged in this manner, explaining why it took the Respondents from June 5 to June 16, 1980, to comply with the subpoena. This enormous effort to bury prescriptions was not effective, however, and did not deceive the investigators.

On July 31, 1980, a plea bargaining agreement was entered into whereby Alvin Brod agreed to enter a plea of guilty to one count of an information

charging conspiracy to unlawfully dispense, distribute and possess with intent to distribute thousands of dosage units of Schedule II narcotic and nonnarcotic controlled substances. On December 23, 1980, in the United States District Court for the Southern District of New York, Mr. Brod was convicted of violating 21 U.S.C. 846 and Mr. Korn was convicted of aiding and abetting in the distribution of Schedule II controlled substances in violation of 21 U.S.C. 841(a)(1) and 841(b)(1)(B), and 18 U.S.C. 2. These are felony offenses relating to controlled substances.

On or about January 4, 1982, Alvin Brod and Sidney Korn resigned their offices and directorships in the Respondent corporation and the corporation redeemmed Mr. Korn's shares for an agreed sum of money. Mr. Brod's shares were transferred to his wife, Ruth Brod. Mrs. Brod is the current President, sole director, officer and shareholder of the Respondent corporation. Alvin Brod continues to be employed by the Respondent. He handles medical sales and waits on trade. A supervising pharmacist, Mr. Solomon Feingold, is responsible for the pharmacy aspect of the business. Mr. Feingold fills and handles prescriptions, keeps records and inventories of controlled substances and fills out all DEA forms. As of the date of the hearing in this matter, Mr. Feingold was not lawfully empowered to order Schedule II controlled substances on behalf of the owner, Mrs. Brod. She admitted that she had never executed a power of attorney and did not know of the requirement.

The Respondent asserts that the operation of the pharmacy is not presently under the control of any individual who has been convicted of a crime relating to controlled substances. Therefore, Respondent urges that its registration ought not be removed.

Mr. Brod and Mr. Korn have been convicted of controlled substance-related felony offenses. Their convictions resulted from their activities while they were co-owners, officers and directors of the Respondent pharmacy, and while Mr. Brod was its managing or supervising pharmacist. Their illicit sales of controlled substances were centered around the pharmacy. They diverted controlled substances from the pharmacy and abused its registration. The Drug Enforcement Administration has consistently held that under such circumstances there is a lawful basis for the revocation of the pharmacy's DEA registration. *Arenstein v. California State Board of Pharmacy*, 265 C.A. 179, 71 Cal. Rptr. 357 1968); *Leonard S. Cohen, t/a Senate Drug Store*, Docket No. 72–5, 38 FR 9522 (1973); *Norman Bridge Drug Co., Inc.*, Docket No. 74–22, 41 FR 3108 (1976); *Big-T Pharmacy, Inc.*, Docket No. 80–34, 47 FR 51830 (1982); *Lawson & Sons Pharmacy and Fenwick Pharmacy*, [No. docket number], 48 FR 16140 (1983).

The Administrator concludes, as did the Administrative Law Judge, that there is a lawful and statutory basis for the revocation of this pharmacy's DEA registration pursuant to 21 U.S.C. 824(a)(2).

The Respondents assert that there are sufficient mitigation circumstances to compel a conclusion that the K & B Pharmacy, now under the ownership, control and supervision of Ruth Brod, should remain in the business of dispensing controlled substances. The Administrative Law Judge saw no merit in this contention, nor does the Administrator. Alvin Brod, who callously disregarded his public trust as a registered pharmacist, remains on the premises. His wife, an obsentee owner, supervises the business by visiting for an hour or so once a week while maintaining full time employment as a social welfare examiner in Nassau County, New York, some miles distant from K & B's Manhattan location. Under the present and contemplated arrangement, Mr. Brod and the supervising pharmacist would be together daily in a store measuring nine by twenty-two feet in its totality. Supposedly, the pharmacist will go about his duties effectively ignoring and being ignored by Mr. Brod. As Judge Young points out, Mr. Feingold's corporate employer has but one stockholder, one officer and one director, Mr. Brod's wife, who only comes to the store once a week, who is not a trained pharmacist, and who has not been shown to possess any significant experience in operating a pharmacy. The influence that Mr. Brod will doubtlessly continue to exert over this tiny pharmacy's operations is bound to be pervasive. Under all of the facts and circumstances present in the record of this proceeding, the Administrator concludes that Mr. Brod's continued association with this pharmacy would be an intolerable affront to the public interest as manifested in the Controlled Substances Act.

Even if the Respondent did not insist upon Mr. Brod's continued employment on the premises, the Administrator would be hard pressed to find mitigation sufficient to warrant a decision in favor of this pharmacy. The new owner, Mrs. Brod, is not above engaging in corrupt activity if her husband's welfare and business are at stake. For a period of about ten days she, with her husband and children, and Mr. and Mrs. Korn and their children, diligently set about the forging of several thousands of prescriptions for dangerous drugs in a bizarre effort to falsify the Respondent's controlled substance records. She claims that she did not really appreciate what she was doing. Neither the Administrative Law Judge nor the Administrator find this assertion to be credible. Mrs. Brod was married to a pharmacist for many years. She is an educated woman. No matter what she thought was the purpose of this recordkeeping marathon, she knew that she had no authority to fill out prescriptions and sign physicians' names to them. She knew that the same was true with respect to her children. Yet she did these things, in consort with her husband, children and others, on a massive scale and over a period of several days. Judge Young concluded that he was unable to find that the pharmacy would be in safe and reliable hands if entrusted to the supervision of Mrs. Brod. The Administrator agrees with that conclusion. Society cannot tolerate the presence of individuals within the pharmacy profession who abdicate their professional responsibility and permit themselves to become conduits by which dangerous controlled substances reach the illicit marketplace. The registrations of K & B Successors, Inc., must be revoked.

Having concluded that there is a lawful basis for the revocation of the Respondent pharmacy's DEA registrations and having further concluded that the public interest demands such revocation, it is the Administrator's decision that these registrations be revoked. Accordingly, pursuant to the authority vested in the Attorney General by section 304 of the Controlled Substances Act, 21 U.S.C. 824, and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator orders that DEA Certificates or Registration AK5260132 and AK1799812 be, and they hereby are, revoked, effective October 1, 1984.

Dated: August 27, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84-23177 Filed 8-30-84; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Departmental Management
Market Study of the Readers of Disabled USA
OIPA-1
One time only
Individuals or households
760 responses; 99 hours; 1 form

To comply with the pre-testing requirements of OMB Bulletin 81-16, OIPA and the President's Committee on Employment of the Handicapped will conduct a direct-mail survey of a randomly selected group of subscribers to *Disabled USA*. The data will be used to determine the usefulness of the information in the publication.

Market Study of the Readers of Current Wage Developments
OIPA-2
One time only
Individuals or households
320 responses; 32 hours; 1 form

To comply with the pre-testing requirements of OMB Bulletin 81-16, OIPA and the BLS will conduct a direct-mail survey of a randomly selected group of subscribers to *Current Wage Developments*. The data will be used to determine the usefulness of the information in the publication.

Market Study of the Readers of Resource Guide to Labor-Management Cooperation
OIPA-3
One time only
Individuals or households
320 responses; 24 hours; 1 form

To comply with the pre-testing requirements of OMB Bulletin 81-16, OIPA and the Labor-Management Services Administration will conduct a direct-mail survey of a randomly selected group of subscribers to *Resource Guide to Labor-Management Cooperation*. The data will be used to determine the usefulness of the information in the publication.

Market Study of the Readers of A Woman's Guide to Her Job Rights
OIPA-4
One time only
Individuals or households
480 responses; 63 hours; 1 form

To comply with the pre-testing requirements of OMB Bulletin 81-16, OIPA and the Women's Bureau will conduct a direct-mail survey of a randomly selected group of subscribers to *A Woman's Guide to Her Job Rights*. The data will be used to determine the usefulness of the information in the publication.

Extension

Employment and Training Administration
Program Monitoring Report and Job Service Complaint Form
1205-0039; ETA 5-148 and ETA 8429
On occassion; quarterly
State or local governments
208 responses; 5,608 hours; 2 forms

The forms are necessary as part of compliance with NAACP v. Marshall, and with Department of Labor regulations (20 CFR Parts 651, 653, and 658) under the Wagner-Peyser Act, as amended by the JTPA, regarding the establishment and functioning of State employment services. The forms will allow the public to file complaints and State agencies to provide appropriate reports.

Extension

Mine Safety and Health Administration
Rock Bolt Test Procedures and Rock Bolt Anchorage Capacity Tests
1219-0086
On occasion
Businesses or other for profit; small businesses or organizations
450 respondents; 7,200 hours

Requires metal and nonmetal mine operators that use rock bolting to perform anchorage method tests and anchorage capacity tests. Records are required to be kept of the test results. The purpose of the records are to establish that tests have been made and that adequate anchorage is achieved.

Signed at Washington, D.C. this 28th day of August, 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84-23269 Filed 8-30-84; 8:45 am]
BILLING CODE 4510-23-M

Employment and Training Administration

Federal Committee on Apprenticeship; Renewal

Notice is given that after consultation with the General Services Administration, it has been determined that the FCA, whose charter expires September 27, 1984, is hereby renewed for the period October 1, 1984, to September 30, 1986. This action is necessary and in the public interest.

The Committee will be an effective instrument for providing assistance through advice and counsel to the Secretary of Labor and the Assistant Secretary of Labor for Employment and

Training in their development and implementation of administration policies addressing critical skill shortage occupations with particular current emphasis in the defense industry; in carrying out their program responsibilities in the apprenticeship and other structured training, and by furnishing recommendations on such matters as training for the employed, the disadvantaged, minorities and women.

The Committee will consist of 10 representatives of employers, 10 representatives of organized labor, and 5 representatives of the public, including one or more educators.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed on September 27, 1984.

Interested persons are invited to submit comments regarding the renewal of the Federal Committee on Apprenticeship. Such comments should be addressed to: Mrs. M. M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 601 D Street, NW., Room 6314, Washington, D.C. 20213.

Signed at Washington, D.C., this August 27, 1984.

Raymond J. Donovan

Secretary of Labor.

[FR Doc. 84-23288 Filed 8-30-84; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 84-124; Exemption Application No. L-4723 et al.]

Grant of Individual Exemptions; Local 723 Teamsters Welfare Fund of Northern New Jersey, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Local 723 Teamsters Welfare Fund of Northern New Jersey (the Plan) Located in Montville, New Jersey

[Prohibited Transaction Exemption 84-124; Exemption Application No. L-4723]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the sale for $48,500 in cash (plus one-half of the original closing costs), of an undivided one-half interest (the One-Half Interest) in certain improved real property by Teamsters Local 723 Welfare Fund Holding Company, Inc. (the holding company of the Plan) to Local 723 Holding Company (the holding company of Local 723 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America) provided the amount paid for the One-Half Interest is not less than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 15, 1984 at 49 FR 24824.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Tasty Baking Company Pension Plan (the Plan) Located in Philadelphia, Pennsylvania

[Prohibited Transaction Exemption 84-125; Exemption Application No. D-4961]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lease of certain real property by the Plan to Tasty Baking Company (the Employer) and the possible future cash sale of the Property by the Plan to the Employer, provided the terms and conditions of the transactions are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party, and that any purchase by the Employer is at no less than fair market value at the date of sale.

Effective Date: If granted, the proposed exemption will be effective July 1, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 29, 1984 at 49 FR 26842.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Mainland Pathology Associates, Inc. Employees' Pension Trust (the Plan) Located in La Marque, Texas

[Prohibited Transaction Exemption 84-126; Exemption Application No. D-5010]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the prior sale by the Plan of an improved parcel of real property to Kurt Weiss, M.D. and Frances J. Weiss, his wife, parties in interest with respect to the Plan, provided that the price paid was not less

than the fair market value of the property at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27850.

Effective Date: The effective date of the exemption is April 10, 1979.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Retirement Plan of Shape Corporation (the Plan) Located in Grand Haven, Michigan

[Prohibited Transaction Exemption 84–127; Exemption Application No. D–5161]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, for a period of seven years, to the proposed loans (the Loans) by the Plan of up to 25% of its assets to Shape Corporation, the Plan sponsor, provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party at the time of consummation of each transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27854.

Temporary Nature of Exemption: This exemption is temporary in nature and will expire seven years after the date of grant with respect to the making and holding of any Loan.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Rainier News, Inc. Profit Sharing Plan (the Plan) Located in Everett, Washington

[Prohibited Transaction Exemption 84–128; Exemption Application No. D–5261]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective January 1, 1975 through May 31, 1984, to the loan of $100,000 made on September 14, 1974, by the Plan to Mr. Robert L. Spencer, provided the terms of the loan were not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the loan was made.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984 at 49 FR 27859.

Effective Date: This exemption is effective from January 1, 1975 through May 31, 1984.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Jamestown Clinic, Ltd. Employees' Retirement Plan (the Plan) Located in Jamestown, North Dakota

[Prohibited Transaction Exemption 84–129; Exemption Application No. D–5274]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a lease, effective July 1, 1984, of certain improved real property by the Plan to Jamestown Clinic, Ltd., the sponsor of the Plan; provided that such lease is on terms and conditions at least equivalent to those which the Plan would receive in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 29, 1984 at 49 FR 26844.

Effective Date: This exemption is effective July 1, 1984.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Metro Bank Corp. Retirement Plan (the Retirement Plan) and The Metro Bank Corp. Profit Sharing Plan (the Profit-Sharing Plan; collectively, the Plans) Located in Denver, Colorado

[Prohibited Transaction Exemption 84–130; Exemption Application Nos. D–5404 and D–5405]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plans of two notes (the Notes) to the Metro National Bank, the sponsor of the Plans, for cash in the amount of the greater of the outstanding balances of the Notes or the fair market value of the Notes at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 6, 1984, at 49 FR 27860.

For further Information Contact: Richard Small of the Department, telephone (202) 523–7222. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 28th day of August 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-23200 Filed 8-30-84; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-4644]

Withdrawal of the Proposed Exemption Involving the Medical Radiologic Consultants, P.C. Employee Savings & Profit Sharing Retirement and Trust (the Plan) Located in Saginaw, MI

In the **Federal Register** dated April 24, 1984 (49 FR 17612), the Department of Labor (the Department) published a notice of pendency of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of pendency concerned an application filed on behalf of Medical Radiologic Consultants, P.C. (the Employer) and involved a proposed loan of $50,000 (the Loan) by the Plan to the Employer and the guarantee of the repayment of the Loan by the principal stockholder of the Employer.

By letter dated June 22, 1984, the applicant's representative notified the Department that the applicant was no longer seeking an exemption for the Loan. Therefore, the Department is hereby withdrawing the notice of pendency.

Signed at Washington, D.C., this 14th day of August 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-23185 Filed 8-30-84; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[84-70]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, adn other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB reviewer.

DATE: Comments must be received in writing by September 10, 1984. If you anticipate commenting on a form but find the time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546. Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

Reports

Title: Employment Inquiry.
Type of Request: Reinstatement of a previously approved collection for which approval has expired.
Frequency of Report: As required.
Type of Respondent: Individuals or households, businesses or other for-profit, federal agencies or employees.
Annual Reporting Hours: 175.

Abstract-Need/Users: The NASA Form 606 is used as a pre-employment reference check to obtain pertinent information about qualifications and chartacter of applicants selected for appointment to other than scientific positions with NASA.

Title: NASA Contractor Financial Management Reports.
Type of Request: Reinstatement of a previously approved collection for which approval has expired.
Frequency of Report: Monthly.
Type of Respondent: Businesses or other for-profit.
Annual Reporting Hours: 184,800.

Abstract-Need/Users: The NASA Form 533 series is the basic financial management program evaluation which is used to report actual and projected data assuring that contractor performance is realistically planned and supported by dollar resources.

Title: DoD Industrial Plant Equipment Requisition (NASA Use).
Type of Request: Reinstatement of a previously approved collection for which approval has expired.
Frequency of Report: On occasion.
Type of Respondent: Businesses or other for-profit, non-profit institutions, small businesses or organizations.
Annual Reporting Hours: 34.

Abstract-Need/Users: The DoD Form 1419 provides a standard format and procedure by both NASA and DoD for obtaining, certifying, and acting upon contractor requirements for Government equipment.

L. W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 84-23146 Filed 8-30-84; 8:45 am]

BILLING CODE 7510-01-M

[84-71]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission. The NASA Supplement to the Federal Acquisition Regulation has been previously cleared by OMB (2700-0043), subject to submission of the clearance requests for specific reporting and recordkeeping requirements.

Copies of the proposed forms, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by September 10, 1984. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Review and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546. Kenneth Allen, Office of

Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453–2941.

Report

Title: NASA FAR Supplement, Part 18–23, Environment, Conservation and Occupational Safety.
Type of Request: Existing regulation (no change proposed).
Frequency of Report: On occasion.
Type of Respondent: Small and Large Businesses, State and Local Governments and Non-Profit Institutions.
Annual Responses: 750.
Annual Burden: 30,000 hours.

Abstract-Need/Users: Where unique facility safety or health requirements exist, including hazardous deliverables or operations, suitable contractor safety and health plans are required, as are accident reports.

L. W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 84–23147 Filed 8–30–84; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Design Arts Advisory Panel (Overview Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Section) to the National Council on the Arts will be held on September 17, 1984, from 9:00 a.m. to 5:30 p.m. in room MO–9 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be policy and guidelines.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Gary O. Larson,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–23264 Filed 8–30–84; 8:45 am]

BILLING CODE 7537–01–M

Map Application Announcement for Fiscal Year 1985

AGENCY: Institute of Museum Services, NFAH.

ACTION: Map application announcement for fiscal year 1985. This grant application announcement applies only to the Museum Assessment Program (MAP).

Following the date of publication of this announcement, the Institute of Museum Services (IMS) will be receiving applications for grants under the Museum Assessment Program (MAP) for Fiscal Year 1985.

Nature of Program: The Director of IMS makes grants under the Museum Assessment Program to assist museums in carrying out institutional assessments. The program is designed to help museums—particularly those with small budgets—to provide better services and broaden their bases of private and other non-Federal financial support through an independent professional assessment of their programs and operations. A museum as defined in 45 CFR 1180.3 may apply for a MAP grant. A museum which receives a MAP grant for a fiscal year may not receive another MAP grant in the same or any sequential fiscal year. Accordingly, a museum which received a grant under the MAP program in Fiscal Years 1981, 1982 or 1984 (the only prior year in which grants were made) is ineligible for such assistance in Fiscal year 1985 or any subsequent year.

A museum must use the grant for assessment assistance to pay for: expenses of institutional assessment such as registration fees; surveyor honoraria; travel and other expenses of surveyor; and technical assistance materials. The amount of a MAP grant may not exceed $1000.

Grant Application Procedures: The Director considers an application (on a form supplied by IMS) by a museum for a grant for assessment assistance only if (1) The museum applies for assessment to an appropriate professional organization as defined in the regulations and (2) that the professional organization notifes IMS that the application (to the professional organization) for assessment is complete and that the museum applying for assessment is eligible to participate as a museum as defined in 45 CFR 1180.3 of the regulations. The American Association of Museums (AAM) is an organization which has been designated as an appropriate professional organization. To participate in the assessment program, a museum MUST APPLY TO AAM and complete the self-study questionnaire and IMS MAP application provided by AAM. IMS supplies the AAM with application forms and instructions. These are then forwarded by AAM to applicant museums. IMS applications are supplied to AAM until available funds are exhausted or until April 26, 1985, whichever first occurs. Interested museums should contact AAM for further information: The American Association of Museums, 1055 Thomas Jefferson Street, NW., Washington, D.C. 20007. Telephone: (202)338–5300.

The Director of IMS approves applications meeting the MAP requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications are approved for awards, subject to the availability of funds, until a given date in the fiscal year established by publication in the **Federal Register**. For Fiscal Year 1985, IMS establishes two such dates, October 26, 1984 and April 26, 1985. If a musuem's MAP application is received on or before the indicated date, it will be processed together with other MAP applications received during that period. Applications received after the indicated date will be processed during the subsequent period. In no event will applications received after April 26, 1985 be processed for Fiscal Year 1985 awards. There are no selection criteria. Matching requirements do not apply.

Applicable Regulations: Applicable regulations may be found in 45 CFR 1180.70–.76.

FOR FURTHER INFORMATION CONTACT: Michele N. Rossi, Confidential Assistant to the Director, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 (202)786–0536.

Dated: August 28, 1984.

Susan E. Phillips,

Director, Institute of Museum Services.

[FR Doc. 84–23263 Filed 8–30–84; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for the Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for the Mathematical Sciences

Date and Time: September 17–18, 1984—9:00 a.m. each day

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550

Type of Meeting: 9/17 Open—9:00 a.m. to 3:30 p.m., 9/17 Closed—3:30 p.m. to 5:30 p.m., 9/18 Open—9:00 a.m. to finish

Contact Person: Dr. Judith S. Sunley, Deputy Division Director, Division of Mathematical Sciences, Room 304, National Science Foundation, Washington, D.C. 20550. Telephone (202) 357–9669. Anyone planning to attend this meeting should notify Dr. Sunley no later than September 12, 1984.

Purpose of Committee: To provide advice and recommendations concerning support for research in the mathematical sciences.

Agenda:

Monday, September 17, 1984—9:00 a.m. to 3:30 p.m.—Open

Introductory Remarks
Current Status of the Division including:
1. organization and staff
2. FY 1985 Budget estimates
3. FY 1984 activity wrap-up
4. special projects report
5. current implementation of past initiatives

Mathematical sciences at other Federal agencies
Impact of other Foundation programs
1. Science and Engineering Education
2. International programs
3. Office of Advanced Scientific Computing
4. Others

Current plans for the future

Monday, September 17, 1984—3:30 p.m. to 5:30 p.m.—Closed

Discussion and review of pending proposals with policy implications.

Tuesday, September 18, 1984—9:00 a.m. to finish—Open

Plans for the future
1. graduate research fellowships
2. emphasis on graduate students, post-docs, young investigators
3. project-style support
4. scientific areas of emphasis within the mathematical sciences
5. institutes

Other business

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

August 28, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–23258 Filed 8–30–84; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Biological, Behavioral, and Social Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological, Behavioral, and Social Sciences (BBS)

Date and Time: September 19 & 20, 1984; 9:00 a.m. to 5:00 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550

Type of Meeting: Open

Contact Person: Dr. David T. Kingsbury, Assistant Director, Biological, Behavioral, and Social Sciences, (202) 357–9854, Room 506, National Science Foundation, Washington, D.C. 20550

Summary of Minutes: May be obtained from the contact person named above.

Purpose of Advisory Committee: The Advisory Committee for BBS provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BBS.

Agenda:

Review and discussion of the information sciences in NSF, including presentations by active researchers in the field. General discussion of the FY 1986 initiatives which relate to BBS. Discussion of NSF general operating/management philosophy. Plans will be made for subsequent meetings of the committee.

Dated: August 28, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–23259 Filed 8–30–84; 8:45 am]

BILLING CODE 7555–01–M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer That Contributes to a Multiemployer Plan: J.J.W. Trucking, Ltd., dba James J. Williams (Case No. 120–535)

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974 to J.J.W. Trucking, Ltd., dba James J. Williams. A notice of the request for exemption was published in the **Federal Register** on June 21, 1984 (49 FR 25549). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESS: The request for an exemption, the comment thereon (discussed below), and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW, Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (190) at the above address.

FOR FURTHER INFORMATION CONTACT: Deborah Murphy, Attorney, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW, Washington, DC 20006; (202) 254–4860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 4204(a)(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), a sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser furnish a bond or escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on variances for sales of assets (29 CFR Part 2643), the PBGC will approve a request for an exemption if it determines that approval of the request is warranted, in that it—

(1) would more effectively or equitably carry out the purposes of Title IV of ERISA; and

(2) would not significantly increase the risk of financial loss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of an exemption request in the **Federal Register**, and to give interested parties an opportunity to comment on the proposed exemption.

Decision

On June 21, 1984 (49 FR 25549), the PBGC published a notice of the pendency of a request from J.J.W. Trucking, Ltd., dba James J. Williams (formerly Michaud-Wyman, Inc.) ("Michaud-Wyman"), for an exemption from the bond/escrow requirement of ERISA section 4204(a)(1)(B), in connection with the purchase by Michaud-Wyman of substantially all the assets of J.D.R. Enterprises, Inc. (formerly J.J.W. Trucking, Ltd., dba James J. Williams) ("J.D.R."). The agreement recited an effective date of July 1, 1983; the agreement was made, and the sale closed, on August 30, 1984.

In connection with the sale, Michaud-Wyman assumed J.D.R.'s responsibilities, under a collective bargaining agreement with Local 690 of the Western Conference of Teamsters, to contribute to the Western Conference of Teamsters Pension Trust Fund (the "Fund") for substantially the same number of contribution base units for which J.D.R. had an obligation to contribute.

The amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) is $49,832.71 (the average annual contributions of J.D.R. for the three plan years preceding the sale). J.D.R.'s potential withdrawal liability to the Fund is estimated to be $67,010.72.

Michaud-Wyman is a new corporation, and thus was unable to submit financial statements in compliance with PBGC regulation (29 CFR 2643.2(d)(7)). It did submit unaudited financial statements for its short first year of operations ending December 31, 1983, showing a net loss of $25,111.25 and net assets of $19,888.75.

Michaud-Wyman stated that the request for an exemption should be granted on a *de minimis* basis. The average annual contributions made by all employers to the Fund for the three plan years preceding the plan year in which the sale occurred was $470,590,339. Thus, the amount of the bond/escrow is about one-hundredth of one percent of the amount of employer contributions.

The Fund, by counsel, submitted a comment on Michaud-Wyman's exemption request, objecting to any waiver of the bond/escrow requirement on the ground that such a waiver would increase the Fund's risk of financial loss. In support of this objection, it noted that Michaud-Wyman had negative working capital of $290,000 on December 31, 1983; operating losses exceeding $25,000 for the six-month period ending that date; and an investment of only $45,000 by its shareholders. It also pointed out that the shareholders personally guaranteed the purchase contract and that their personal assets are limited, making further investment in Michaud-Wyman unlikely.

However, the issue is not whether a waiver would cause any increase in the plan's risk of loss, but whether it would cause a significant increase. "[W]hen the amount of the bond/escrow is very small in comparison to the total annual contributions to a plan, an exemption from the bond/escrow requirement would not significantly increase the risk of financial loss to the plan." *Heinemann's, Inc., et al.*, 48 FR 29638, 29639 (June 27, 1983) (bond of about one-eighth of one percent of total annual contributions waived). In such a case, the financial condition of the purchaser is irrelevant. Accordingly, the PBGC concludes that the points raised by the Fund do not provide a basis for denying Michaud-Wyman's request for a waiver.

Based on the facts of this case and the representations and statements made in connection with the exemption request, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title V of ERISA and would not significantly increase the risk of financial loss to the plan. Therefore, the PBGC hereby grants the request for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to Michaud-Wyman's purchase of assets from J.D.R. The granting of such an exemption does not constitute a determination by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). That determination is made by the plan sponsor.

Issued at Washington, D.C., on this 24th day of August, 1984.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-22926 Filed 8-30-84; 8:45 am]

BILLING CODE 7708-01-M

SMALL BUSINESS ADMINISTRATION

Region VIII Advisory Council Meeting; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Fargo, North Dakota, will hold a public meeting at 9:30 a.m., Tuesday, October 2, 1984, at the Federal Building, Room 319, 657–2nd Avenue North, Fargo, North Dakota, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration and others attending.

For further information, write or call Robert L. Pinkerton, District Director, U.S. Small Business Administration, 657–2nd Avenue North, Fargo, North Dakota 58102—(701) 237–5771, extension 5131.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 27, 1984.

[FR Doc. 84-23266 Filed 8-30-84; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council Meeting; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, Montana, will hold a public meeting at 9:30 a.m. on Friday, October 5, 1984, at the Federal Office Building, 301 South Park, Room 389, Helena, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626—(406) 449–5381.

Jean M. Nowak,

Director, Office of Advisory Councils.

August 27, 1984.

[FR Doc. 84-23267 Filed 8-30-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Regulatory Flexibility Criteria and Guidance

On July 29, 1982 (47 FR 32825), the Federal Aviation Administration published in the **Federal Register** proposed definitions of small entities, significant economic impact, and guidance for making determinations required by the Regulatory Flexibility Act of 1980. Comments were requested from the public on these proposed definitions, and seven comments were received. On July 15, 1983, the FAA adopted an Agency Order (Order 2100.14) which establishes definitions and guidelines for use in implementing the Regulatory Flexibility Act.

Comments

Seven commented on the proposed definitions, and these are discussed briefly below:

Three commenters indicated that FAA should use a standard for small business adopted by the Civil Aeronautics Board of an air carrier provising air transportation only with aircraft up to 60 seats or 18,000 pounds payload capacity. While the CAB definition may be satisfactory for its purpose, FAA does not believe that it takes into account the concept of scale economies, which FAA's definition incorporates.[1] These economies operate without regard to the size of aircraft operated. Adoption of the definition that all operators of a certain size aircraft are "small" or "large" businesses would also result in an anomaly of never having a "small business" operafor of large aircraft.

Two commenters questioned the need for a floor of 11 entities as a threshold number representing a "substantial number." The language of the FAA Order adopts 11 as a minimum number, because FAA believes that "substantial number" was never meant to apply to a few entities. In view of possible cases in which the total number of entities affected is small, the FAA order allows for judgement on the part of the rulemaking official to find a number lower than 11 to be a substantial number.

Two comments involved airports. One commenter believed that the FAA definition of small entity should include all privately owned—public use airports. FAA agrees FAA's Order adopts this approach that all such airports are small entities. One commenter believed FAA should consider enplanements at an airport, as well as the population of the entity which runs the airport. FAA believes that enplanements are not necessarily relevant since an airport could have limited or no air carrier service and therefore a small number of enplanements, and yet be an important general aviation facility and be a large business by any reasonable standard. FAA believes that the proper standard relates the airport to the size of the entity which must pay compliance costs of any airport regulations, rather than the number of passengers that might use scheduled air service.

Several comments suggested that the numbers of employees in size thresholds was too small, or seemed disparate. One commenter argued that the proposed standards for SIC's 3724 and 3728 were too low. Upon review, FAA changed the final standards to reflect a higher employment level for SIC 3728 because the group of firms with 250 to 499 employees actually achieved the lowest production cost per dollar of shipment value, and the value of the proposed standars is set at the midpoint of the next smallest first size class, 100 to 249. A commenter noted the disparity between the thresholds in SIC's 3721 and 3724, but these remain unchanged in FAA's Order. While the disparity is present, we believe it is related to the nature of the industry. As outlined in FAA's invitation for public comment on the proposed definitions, the highest scale economies of firm in SIC 3724 occur at a larger size of firm than for firms in SIC 3721.

One commenter argued that the "economies of scale" argument is not appropriate, and that FAA should use SBA criteria for employment thresholds. However, FAA review of our methodology indicates that it is an appropriate alternative. The SBA standards present problems, as outlined in our invitation for public comment. These need not be reiterated here. The concept of establishing size thresholds for determining whether an entity is small, and another threshold for what constitutes significant economic impact is based on a belief that the SBA standards are often not based on economic criteria or that FAA lacks and cannot easily obtain the data to apply the criteria. Furthermore, the efficiency of different size firms—or the economies of scale—bears on whether a firm should be considered large or small, within the intent of the Regulatory Flexibility Act.

A commenter suggested use of an employee threshold of 200 for SIC 4583, aircraft repair facilities. Upon review, this recommendation was accepted.

Several comments argued against specific proposed thresholds, but provided no data supporting alternative thresholds. These include a commenter requesting an operator fleet size of 19, rather than 9, and a commenter recommending a lower cost threshold for commuters. These comments, since unsupported, were rejected. A commenter suggested a $5,000 threshold of significant cost for aircraft repair facilities. While this suggestion is not specifically adopted, the FAA has decided to use the lowerst threshold, $3,000 in annualized cost, when no specific cost threshold has been determined.

Finally, a commenter recommended that "independently owned and operated" should be dropped from the definitions as it is not statutorily necessary to retain this language in the Agency definition. However, FAA believes it is central to the intent of the legislation, and supported by the legislative history of the Act, that the protection of the act should extend to independent operations, not divisions or subsidiaries of large conglomerates. The phrase is kept in the FAA Order.

Accordingly FAA publishes the following order 2100.14 entitled, "Regulatory Flexibility Criteria and Guidance".

Issued in Washington, D.C. on August 7, 1984.

Harvey B. Safeer,

Director of Aviation Policy and Plans, APO–1.

Department of Transportation

Federal Aviation Administration

[2100.14]

July 15, 1983.

Subject: Regulatory Flexibility Criteria and Guidance

1. *Purpose.* This order provides guidance on FAA's procedures for implementing the Regulatory Flexibility Act of 1980 (Public Law 96–354, September 19, 1980). The order provides guidance for the conduct of regulatory flexibility analyses and reviews. It also provides criteria for rulemaking officials to apply when determining if a proposed or existing rule has a significant economic impact on a substantial number of small entities.

2. *Distribution.* This order is distributed to the division level in Washington, the regions and the Mike Monroney Aeronautical Center. It is of interest to all responsible for changing and maintaining the Federal Aviation Regulations.

3. *General provisions.* An FAA official exercising regulatory issuance authority, who must determine whether an existing Federal Aviation Regulation or a proposed change has a significant economic impact on a substantial number of small entities, shall use the definitions and criteria in paragraphs 4 through 9. However, if paragraph 8 does not contain a small entity definition for the type of entity the proposed or existing regulation affects, the official shall use the Small Business Administration's (SBA) definition in Title 13 of the Code of Federal Regulations. Also, if paragraph 9 does not contain a significant cost threshold for the type of entity the proposed or existing regulation affects, the official shall use the lowest significant cost threshold in paragraph 9. When, using these criteria, an FAA rulemaking official finds or believes that a proposed rule would have, or an existing rule has, a significant economic impact on a substantial number of small entities, the

[1] See for example, *Economic Regulation of Domestic Air Transport*, George W. Douglas and James C. Miller II, Brookings Institution, 1974.

official shall prepare a regulatory flexibility analysis or review of that rule and follow paragraph 7 of this order.

4. *Small entities.* Small entities are those small businesses and small not-for-profit organizations which are independently owned and operated and have no more employees or own no more aircraft than the threshold levels listed in paragraph 8; and airports operated by small governmental jurisdictions which have no more population than the threshold level listed in paragraph 8.

5. *Substantial number of small entities.* A substantial number of small entities means a number which is not less than eleven and which is more than one-third of the small entities subject to a proposed or existing rule, or any number of small entities subject to the rule which is substantial in the judgment of the rulemaking official.

a. *Small entities subject to the rule.* A small entity subject to the rule is one required by the rule to alter its practices. Included are those small entities already in voluntary compliance with a proposed rule and those small entities prevented by the rule from engaging in an aviation activity.

b. *Notices of proposed rulemaking or final rules containing multiple unrelated rule changes.* A notice of proposed rulemaking (NPRM) or final rule may include two or more substantive rule changes or unrelated that each affects different small entities. A substantial number of small entities subject to that NPRM or final rule means a substantial number of small entities subject to any one of the changes.

6. *Significant economic impact on a small entity.* A significant economic impact on a small entity means annualized net compliance cost to that entity, which when adjusted for inflation is greater than or equal to the threshold significant cost level for the entity type shown in paragraph 9. Annualized net compliance cost includes uniform annualized costs for purchase of capital items.

a. *Notices of proposed rulemaking or final rules containing multiple closely related rules changes.* An NPRM or final rule may include two or more substantive rule changes so closely related that they affect the same small entities. If, for any entity, the total annualized net compliance cost, adjusted for inflation, of all rule changes proposed in that NPRM or final rule equals or exceeds the threshold significant cost level for that entity, each such rule change in that NPRM or final rule has a significant economic impact on that small entity.

7. *Small entity impact considered in a regulatory flexibility analysis or review.* Whenever an FAA rulemaking official conducts a Regulatory Flexibility analysis or review, the official shall, in that analysis or review, consider the effects of the rule not only on the small entities directly subject to the rule, but also on other small entities with a direct economic relationship (i.e. customer relationship where money, goods or services are exchanged) to those small entities directly subject to the rule.

8. *Size thresholds for small entities.* Size thresholds for entity types and Standard Industrial Classifications are:

Standard industrial classification(s)	Entity type	Size threshold
3721	Aircraft and aircraft parts manufacturers	75 employees.
3724	Aircraft engine and engine parts manufacturers.	375 employees.
3728	Manufacturers of aircraft parts and auxiliary equipment not elsewhere classified.	175 employees.
4511	Operators of aircraft for hire [1]	9 aircraft owned, but not necessarily operated.
4582	Airports	49,999 [2] [3] population in town, city or county which operates the airport.
4582	Aircraft repair facilities	200 employees.
7629		
7699		
8299	Pilot schools	10 employees.
Does not apply	Not-for-profit aviation organizations	The same standard applicable to an equivalent for profit aviation enterprise.

[1] Entity types are those entities to which FAA regulations apply in 14 CFR, Parts 121, 127 and 135.
[2] If two or more towns, cities, or counties operate an airport jointly, the populations should be totaled to determine whether the airport is small.
[3] Privately owned, public-use airports are considered small.

9. *Threshold significant regulatory costs.* Threshold annualized cost levels for entity types and Standard Industrial Classifications are:

Standard industrial classification	Entity type	Threshold annualized cost levels (in December 1981 dollars)
3721	Aircraft and aircraft parts manufacturers	$12,000
3724	Aircraft engine and engine parts manufacturers	19,000
3728	Manufacturers of aircraft parts and auxiliary equipment not elsewhere classified.	9,000
4511	Operators of aircraft for hire:	
	Scheduled (Entire fleet has a seating capacity of over 60)[1].	77,000
	Other scheduled [1]	43,000
	Unscheduled	3,000
4582	Airports	5,000
4582	Aircraft repair facilities	
7629		
7699		
8299	Pilot schools	
Does not apply	Not-for-profit aviation organizations	

[1] A scheduled operator is one holding out to the public air transportation service for passengers from identified air terminals at a set time announced by timetable or schedule published in a newspaper, magazine, or other advertising medium.

J. Lynn Helms,
Administrator.

[FR Doc. 84-23139 Filed 8-30-84; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Denial of Petition To Commence Defect Proceeding

This notice sets forth the reasons for the denial of a petition to commence a proceeding to determine whether to issue an order pursuant to section 152(b) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1412(b).

On September 8, 1983, Alan R. Schwartz of Washington, DC petitioned for an investigation of a possible safety-related defect in 1975–76 model Fiat 124 passenger cars, specifically to determine whether they contain the same rust defect as the 1970–74 models recalled by the manufacturer.

As part of its earlier investigation (agency file C7–20), NHTSA had included the 1975 and 1976 models. By those years the 124 line had been scaled down to the Sport Coupe (discontinued after 1975) and the Spider. As of September 1978 the agency's files showed only a total of 8 complaints for

the two model years in question. Since that time only two additional complaints have been received, neither alleging accident or injury. The agency believes that the improvement in rust protection demonstrated after 1974 is due to corrective actions taken by Fiat, to improve corrosion resistance on the 124 Spiders and Coupes.

NHTSA concluded that there was no reasonable possibility that an order of the nature requested would be issued at the conclusion of an investigation, and denied the petition on February 3, 1984.

(Secs. 124, 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1410a, 1412); delegations of authority of 49 CFR 1.50 and 501.8)

Issued on August 20, 1984.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 84–23175 Filed 8–30–84; 8:45 am]

BILLING CODE 4910–59–M

Petitions To Commence Defect Proceedings; Denials

This notice sets forth the reasons for the denials of petitions to commence a preceeding to determine whether to issue an order pursuant to section 152(b) of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1412(b).

On January 7, 1984, Ms. Faith Little of Washington, D.C., petitioned NHTSA to commence a defect proceeding with respect to an alleged timing belt failure in 1981–82 Ford Escort and Mercury Lynx passenger cars. Ms. Little believes that "sudden engine failure while on the road is always a safety hazard".

The agency reviewed its files and found 14 similar complaints; however there were no reports of safety problems. Ford Motor Company advised that it had taken several actions in connection with the problem including extension of warranty to cover belt breakage, for 60,000 miles or 5 years, extension of warranty to cover engine damage associated with timing belt breakage, and improvement of timing belt material. It also reported that it had made an engineering change beginning with 1983 model year vehicles so that belt breakage would not cause damage to the engine.

Accordingly, the agency determined that there was not a reasonable possibility that an order requiring notification and remedy of a safety related defect would be issued at the conclusion of an investigation, and on July 17, 1984, Ms. Little's petition was denied.

Mr. Van Storm of Los Angeles, California, asked the agency on March 23, 1984, to investigate an alleged seat belt defect in 1983 and 1984 model Ford F250 HD pickup trucks, specifically that the belt would cause a blister on the occupant's neck because of the reel location.

No complaints of a similar nature appeared in the agency's files for 1982–84 Ford pickups. NHTSA examined the upper torso restraint in a 1983 Ford truck, with four adult males of different heights and weights and observed no interference between the neck and webbing. The petition was denied on July 17, 1984, as the agency determined that there was no reasonable possibility that at the conclusion of the investigation an order would be issued requiring the manufacturer to notify and remedy a safety related defect.

The agency received a petition dated November 20, 1983, from Mr. Thomas J. Wade of Glens Falls, New York, concerning alleged problems in his 1978 Plymouth Horizon: Transaxle lockup, lack of power steering assist, electrical system failures, and excessive engine oil consumption. Mr. Wade did not indicate to the agency that these problems had presented safety hazards.

The agency reviewed Mr. Wade's complaints. While transaxle lockup can possibly occur, an agency engineering study has disclosed no evidence that such lockup presents a safety-related hazard. With respect to power steering, there can be some stickiness when the unit is cold, but manual steering is not affected. Electrical problems were apparently caused by the Horizon's alternator, and this was considered a normal maintenance item. As for excessive oil consumption, in view of warning signals presented to a vehicle owner, such as leaks, the agency has not considered this a safety related problem.

Accordingly the agency determined that there was not a reasonable possibility that an order requiring notification and remedy of a safety related defect would be issued at the conclusion of an investigation, and on June 7, 1984, Mr. Wade's petition was denied.

(Secs. 124, 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1410(a), 1412); delegations of authority at 49 CFR 1.50 and 501.8).

Issued on August 20, 1984.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 84–23176 Filed 8–30–84; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Advisory Committee on the International Monetary System; Meeting

Notice is hereby given that the Advisory Committee on the International Monetary System will meet at the Treasury Department on September 14, 1984.

The meeting is called in order to obtain the opinions of the participants in the Advisory Committee regarding international monetary questions to be discussed at the annual meeting of the Board of Governors of the International Monetary Fund on September 24–27 and the related meeting of the Interim Committee of the Board of Governors on September 22.

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), has been made that this meeting is for the purpose of considering matters falling within the exemption to public disclosure set forth in 5 U.S.C. 552b(c)(1) and that the public interest requires such meetings to be closed to public participation. The matters to be discussed concern the foreign relations of the United States, some of which are the subject of negotiations with other governments. Public disclosure of the matters discussed could be expected to cause identifiable harm to the national security of the United States.

Any comment or inquiry with respect to this notice can be addressed to Barry S. Newman, Director, Office of International Monetary Policy, U.S. Department of the Treasury, Washington, D.C. 20220, (202) 566–5081.

Dated: August 8, 1984.

Beryl W. Sprinkel,

Under Secretary for Monetary Affairs.

[FR Doc. 84–23261 Filed 8–30–84; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Public Law 92–463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Executive House Hotel, 1515 Rhode Island Avenue, NW, at Scott Circle, Washington, DC 20005, on October 15 and 16, 1984. The meeting will be for the purpose of reviewing proposed cooperative studies

and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8:00 a.m., on October 15 and 16, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. James A. Hagans, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202–389–3702), prior to September 28, 1984.

The meeting will be closed from 8:00 a.m. to 5:30 p.m. on October 15, and from 8:00 a.m. to 12:45 p.m. on October 16, for consideration of specific proposals in accordance with provisions set forth in subsection 10(d) of Pub. L. 92–463, as amended by section 5(c) of Pub. L. 94–409, and subsection (c)(6) and (c)(9)(B) of section 552b, title 5, United States Code. During this portion of the meeting, discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: August 27, 1984.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84–23191 Filed 8–30–84; 8:45 am]

BILLING CODE 8320–01–M

Geriatrics and Gerontology Advisory Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Geriatrics and Gerontology Advisory Committee will be held in Room 817 at the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC, on September 17 and 18, 1984. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Administrator and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Educational and Clinical Centers established by the Department of Medicine and Surgery.

The sessions will convene at 8:30 a.m. both days. These sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Mrs. Von Hudson, Program Assistant, Office of the Chief Medical Director, Veterans Administration Central Office (phone 202/389–2298) prior to September 12, 1984.

Dated: August 23, 1984.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84–23190 Filed 8–30–84; 8:45 am]

BILLING CODE 8320–01–M

Veterans Administration Wage Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 92–463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Veterans Administration Wage Committee for calendar year 1983 has been issued.

The report summarizes activities of the Committee on matters related to wage surveys and pay schedules for Federal prevailing rate employees. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications, Reading Room, LM 133, Madison Building, Washington, DC. 20540

Veterans Administration, Office of the Committee Secretary, VA Wage Committee, Room 1108, 810 Vermont Avenue, NW., Washington, DC. 20420.

Dated: August 27, 1984.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 84–23192 Filed 8–30–84; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 171
Friday, August 31, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1.

COMMODITY CREDIT CORPORATION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 34123, August 28, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., August 28, 1984.

STATUS: Open.

CHANGE IN MEETING: Changes order in which previous items 3 through 16 were presented; corrected titles of previous items 10, 13, 14, 16; and added item 17.

3. Memorandum re: Current Status of Polish Indebtedness.

4. Resolution re: Ratification of Policy Docket Cz-161a, Revision 4, Amendment 3, Policies for Collection, Settlement, and Adjustment of Certain Claims By or Against Commodity Credit Corporation.

5. Report re: Cash Management Report.

6. Memorandum re: Peanut Loan and Purchase Program for the 1982 through 1985 Marketing Years, XCP-31a, Advisory Memorandum No. 2.

7. Memorandum re: Tobacco Price Support Program for the 1982 and Subsequent Crops, XCP-40a, Advisory Memorandum No. 2.

8. Docket XCP-98a, Amendment 1 re: Milk Price Support Program 1982-83 through 1984-85 Marketing Years.

9. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.

10. Report re: Status of Commodity Donation Programs.

11. Report re: Status of Ultra-High Temperature (UHT) Milk Pilot Program.

12. Report Re: Status Report on $90 Million African Assistance Sales Program.

13. Resolution re: Ratification of Docket Cz-266, Resolution No. 21, Amendment 2, Commodities Available for Pub. L. 480 During Fiscal Year 1984.

14. Resolution re: Ratification of Sale of CCC-Owned Nonfat Dry Milk to CONASUPO.

15. Resolution re: Ratification of Repurchase Offers on Export Credit Guarantees for Sudan and Peru.

16 Report re: Status of Export Credit Sales and Guarantee Programs.

17. Resolution re: Raisin Export Recovery Program.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Ashworth, Secretary Commodity Credit Corporation, Post Office Box 2415, Room 3086 South Building, U.S. Department of Agriculture, Washington, D.C. 20013; telephone (202) 447-8165.

Dated: August 29 1984.

Richard A. Ashworth,

Secretary, Commodity Credit Corporation.

[FR Doc. 84-23373 Filed 8-29-84; 3:58 pm]

BILLING CODE 3410-05-M

2

FEDERAL ELECTION COMMISSION

DATE: Wednesday, September 5, 1984.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE: Thursday, September 6, 1984.

PLACE: 1325 K Street, N.W., Washington, D.C. (fifth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential Primary Matching Funds
Draft Advisory Opinion No. 1984-36: Gordon K. Gayer on behalf of American Health Capital, Inc.
State and local elections and the Federal Campaign Law Brochure
Treatment of income taxes paid relating to investment income—1984 Presidential Primary Matching Fund recipients
Finance Committee Report
Routine Administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-23290 Filed 8-29-84; 10:28 am]

BILLING CODE 6715-01-M

3

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11 a.m., Wednesday, September 5, 1984, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed establishment of emergency computer backup within the Federal Resrve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 29, 1984.

Jame McAfee,

Associate Secretary of the Board.

[FR Doc. 84-23330 Filed 8-29-84; 1:04 pm]

BILLING CODE 6210-01-M

4

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, September 5, 1984.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, D.C. 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.

2. Review of Central Liquidity Facility Lending Rate.

3. Central Liquidity Facility Agent Reimbursement Rate for FY'85.

4. Central Liquidity Facility Reserving Targets for FY'85.

5. Review of Appeal of Regional Director's Denial of Merger Proposal: Arkansas Central Federal Credit Union (Continuing) and Benton County Government Employees Federal Credit Union (Merging).

6. Review of Appeals of Regional Director's Denial of C.G.A. Federal Credit Union's (Brooklyn, New York) request to amend its field of membership.

7. Proposed Rule: Federal Credit Union Ownership of Fixed Assets, Part 701.36, NCUA Rules and Regulations

* * * * *

TIME AND DATE: 10:30 a.m., Wednesday, September 5, 1984.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Merger. Closed Pursuant to Exemptions (8) and (9)(A)(ii).
3. Personnel Actions. Closed Pursuant to Exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 84–23373 Filed 8–29–84; 3:58 pm]

BILLING CODE 7537–01–M

5

POSTAL RATE COMMISSION

TIME AND DATE: 8:30 a.m., Tuesday, September 4, 1984.

PLACE: Conference Room, Room 500, 2000 L Street, NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The interlocutory matters in Docket No. R84–1, Postal Rate and Fee Changes.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 500, 2000 L Street, NW., Washington, D.C. 20268, Telephone (202) 254–3880.

Charles L. Clapp,

Secretary.

[FR Doc. 84–23289 Filed 8–29–84; 10:11 am]

BILLING CODE 7715–01–M

6

POSTAL SERVICE

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, September 10, 1984, at the USPS Training Center in Potomac, MD, and at 9:30 a.m. on Tuesday, September 11, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the September 10 meeting is closed to public observation. The September 11 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245–3734.

At its meeting on August 6, 1984, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for September 10. (See 49 FR 32489, August 14, 1984.) The agenda item of the meeting to be closed concerns strategic planning in connection with continued collective bargaining negotiations involving the Postal Service and four labor organizations respresenting certain postal employees.

Agenda

Monday Session, September 10 (Closed)

1. Strategic Planning—Collective Bargaining.

Tuesday Session, September 11 (Open)

1. Minutes of the Previous Meeting, August 6–7, 1984.
2. Remarks of the Postmaster General.
   (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)
3. USPS Tentative Budget Program.
   (Mr. Coughlin, Senior Assistant Postmaster General, Finance Group, will discuss the Postal Service's tentative budget program for fiscal year 1986 with the Board.)
4. Postal Rate Commission Budget.
   (Under the Postal Reorganization Act, the Postal Rate Commission periodically proposes and submits to the Postal Service a budget for the Commission's expenses. The budget is to be considered approved as submitted if the Governors do not act to adjust it by unanimous written decision. This matter is included on the agenda to give the Governors an opportunity to act on the Commission's budget.)
5. Briefing on INTELPOST.
6. Briefing on status of the "clusterbox" program.
   (Mr. Hagburg, Assistant Postmaster General, Delivery Services Department, will brief the Board on the status of the Neighborhood Distribution and Collection Box Unit Program.)
7. Capital Investments:
   a. Austin, Texas (General Mail Facility).
   b. Beaumont, Texas (General Mail Facility and Vehicle Maintenance Facility).
   c. O'Hare Field, Chicago, IL (Airmail Facility).
   d. New York City (Vehicle Maintenance Facility and parking garage).
   e. 5,000 Integrated Retail Terminals (Automation of post office window services).
   f. Central Processing Units for Postal Data Centers.
8. Viewing film "*What's in the Mail Today*".
9. Consideration of tentative agenda for the October 2–3, 1984, meeting in Cleveland, Ohio.

David F. Harris,

Secretary.

[FR Doc. 84–23288 Filed 8–29–84; 10:11 am]

BILLING CODE 7710–12–M

7

TENNESSEE VALLEY AUTHORITY

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:15 a.m. (EDT), Wednesday, August 29, 1984.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following items are added to the previously announced agenda:

Real Property Transactions

5. Supplement to Contract No. TV–53306A between TVA and Monroe County, Tennessee, amending payment of obligations of County for exercise of option to purchase 474 acres adjacent to the Niles Ferry Industrial Park and providing for assumption by County of certain TVA responsibilities for land management of the Tellico Reservoir shoreland located in the County.

Unclassified

7. Supplement to Contract No. TV–60001A between TVA and the Agency for International Development (AID) to provide additional AID funding to continue work being performed by TVA for AID in providing assistance to medium-size cities in underdeveloped countries in programs to conserve energy and natural resources.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that

TVA business requires the subject matter of this meeting be changed to include the additional items shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Richard M. Freeman,

Director.

John B. Waters,

Director.

[FR Doc. 84-23332 Filed 8-29-84; 1:19 pm]

BILLING CODE 8120-01-M

federal register

Friday
August 31, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473, (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The Numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alaska: AK82-5152	October 22, 1982.
Minnesota:	
MN83-2001	Jan. 14, 1983.
MN83-2057	July 29, 1983.
MN83-2058	July 29, 1983.
MN83-2059	July 29, 1983.
MN84-5015	May 25, 1984.
Missouri: MO84-4025	Apr. 27, 1984.
Mississippi:	
MS83-1015	Apr. 1, 1983.
MS83-1014	Mar. 3, 1983.
New York: NY83-3027	July 22, 1983.
Ohio: OH83-5127	Dec. 23, 1983.
Tennessee:	
TN83-1087	Nov. 25, 1983.
TN83-1088	Nov. 25, 1983.
TN84-1005	Mar. 9, 1984.
Utah: UT83-5120	Sept. 30, 1983.
Washington: WA83-5110	June 3, 1983.
Wisconsin: WI83-2041	May 13, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The Numbers of the decisions being superseded and their dates of Publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Arkansas: AR83-4006 (AR84-4053)	Jan. 7, 1983.
Kentucky:	
KY83-1061 (KY84-1026)	Sept. 16, 1983.
KY83-1063 (KY84-1027)	Sept. 16, 1983.
KY83-1062 (KY84-1028)	Sept. 16, 1983.
Tennessee:	
TN82-2060 (TN84-1023)	Nov. 19, 1982.
TN83-1086 (TN84-1024)	Nov. 25, 1983.

Signed at Washington, D.C., this 24th day of August 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. AK82-5125 - MOD. #8
(47 FR 47150 - October 22, 1982)
Statewide, Alaska

	Basic Hourly Rates	Fringe Benefits
Change:		
PLUMBERS; STEAMFITTERS:		
Area 2	$25.20	$5.60
Area 3	22.65	6.85
Add:		
LABORERS & POWER EQUIPMENT OPERATORS, receive 10% premium while performing tunnel or underground work.		

DECISION #MO84-4025-MOD #2
(49 FR 18220-April 27,1984)
Cass, Clay, Jackson, Platte, Ray, Henry, Johnson & Lafayette Counties, Missouri; Johnson & Wyandotte Counties, Kansas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Cement Masons (Building Construction):		
Zone 1	$15.395	2.33
Elevator Constructors	16.89	2.69+ a
Elevator Constructors' Helpers	70%JR	2.69+ a
Elevator Constructors' Helpers (Prob.)	50%JR	2.69+ a
Ironworkers:		
Zone 1	17.25	3.25
Plumbers	18.46	2.70
Roofers:		
Roofers	16.48	2.91

DECISION No. MS 83-1015
MOD. # 5
(48 FR 14312 - April 1, 1983)
Hinds County, Mississippi

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	$14.54	$2.05
Carpenter Classifications:		
Carpenters	12.00	.70
Power Saw Operators (1 HP or Over)	12.25	.70
Fiber Glass Insulation Application	12.15	.70
Millwrights	12.60	.70
Piledrivermen	12.35	.70
Cement Mason Classifications:		
Cement Masons	10.70	1.10
Float Machine Operators	10.90	1.10
Glaziers	12.63	.02
Lathers	11.00	.70
Plasterers	11.25	1.10
Line Construction:		
Linemen	13.43	1.10 + 3%
Cable Splicer	13.73	1.10 + 3%
Groundman	8.13	1.10 + 3%

DECISION No. MS83-1014
MOD. # 3
(48 FR 12646 - March 3, 1983)
Warren County, Mississippi

	Basic Hourly Rates	Fringe Benefits
CHANGE		
Asbestos Workers	$14.54	$2.05
Glazers	12.63	.02

DECISION NUMBER MN83-2001 - MOD. #3
(48 FR 1910 - January 14, 1983)
Anoka, Benton, ... Winona & Wright Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Cement Masons:		
Area 4	$17.58	$.95
Area 10	15.20	.95
Ironworkers:		
Area 1	17.10	3.64
Area 2	15.22	3.85
Painters:		
Area 1:		
Brush & Roller	16.06	2.68
Structural Steel & Bridges	16.81	2.68
Area 4:		
Brush	14.61	1.93
Structural Steel & Bridges	15.21	1.93
Laborers:		
Area 1:		
Class 1	12.35	2.85
Class 2	12.50	2.85
Class 3	12.55	2.85
Class 4	12.70	2.85
Class 5	12.80	2.85
Class 6	13.05	2.85
Area 2:		
Class 1	10.00	2.75
Class 2	10.15	2.75
Class 3	10.20	2.75
Class 4	10.35	2.75
Class 5	10.45	2.75
Class 6	10.70	2.75
Area 3:		
Class 1	12.15	1.70
Class 2	12.30	1.70
Class 3	12.35	1.70
Class 4	12.50	1.70
Class 5	12.60	1.70
Class 6	12.85	1.70
Area 4:		
Class 1	11.88	3.00
Class 2	12.03	3.00
Class 3	12.08	3.00
Class 4	12.23	3.00
Class 5	12.33	3.00
Class 6	12.58	3.00

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Laborers (Cont'd):		
Area 5:		
Class 1	$12.68	$2.20
Class 2	12.83	2.20
Class 3	12.88	2.20
Class 4	13.03	2.20
Class 5	13.13	2.20
Class 6	13.33	2.20
Power Equipment Operators:		
Area 1:		
Group 1	16.16	2.65
Group 2	15.63	2.65
Group 3	15.46	2.65
Group 4	15.34	2.65
Group 5	13.22	2.65
Group 6	12.48	2.65
Area 2:		
Group 1	15.52	2.65
Group 2	14.99	2.65
Group 3	14.83	2.65
Group 4	14.70	2.65
Group 5	12.59	2.65
Group 6	11.87	2.65
Area 3:		
Group 1	13.78	2.65
Group 2	12.89	2.65
Group 3	12.70	2.65
Group 4	12.59	2.65
Group 5	11.16	2.65
Group 6	10.66	2.65

DECISION NUMBER MN83-2057 - MOD. #3
(48 FR 34614 - July 29, 1983)
Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, & Washington Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers	$18.32	3.94
Bricklayers; Stonemasons	16.88	2.94

DECISION NUMBER MN83-2057 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Carpenters; Millwrights; & Piledrivermen:		
Commercial Building:		
Carpenters & Piledrivermen	$15.86	$3.87
Electricians:		
Anoka (Anoka & Fridley Twps. & Cities of Andover, Anoka, Columbia Hgts., Coon Rapids, Fridley, Hilltop, Ramsey & Spring Lake Park), Carver, Hennepin, & Scott Counties:		
Commercial Building:		
Electricians	17.76	29.6%
Cable Splicers	18.26	29.6%
Elevator Constructors:		
Mechanic	17.935	3.00+a
Helpers	70%JR	3.00+a
Helpers (Prob.)	50%JR	
Ironworkers	17.10	3.64
Lathers; Drywall Hangers	16.05	3.71
Painters:		
Exclu. Dakota, Ramsey & Washington Cos.:		
Brush; Roller; & Wallpaper Sandblaster; Spray; & Structural Steel	16.81	2.68
Residential of 8 units or less	80%JR	2.68
Sanders	12.76	1.72
Tapers	17.01	1.72
Pipefitters; Plumbers; & Steamfitters:		
Dakota, Ramsey & Washington Cos.:		
Plumbers	16.53	5.58
Pipefitters; Steamfitters	16.72	5.39
Remaining Cos.:		
Plumbers	14.95	7.4+b
Plasterers:		
Anoka (Extreme eastern section) Co.	14.05	3.72
Tile Setters	16.65	2.32

Change:	Basic Hourly Rates	Fringe Benefits
Laborers:		
Site Preparation, Excavation & Incidental Paving:		
Class 1	$12.35	$2.85
Class 2	12.50	2.85
Class 3	12.55	2.85
Class 4	12.70	2.85
Class 5	12.80	2.85
Class 6	13.05	2.85
Power Equipment Operators:		
Building Construction:		
Class 1	19.09	2.65
Class 2	18.75	2.65
Class 3	17.95	2.65
Class 4	17.34	2.65
Class 5	17.00	2.65
Class 6	16.83	2.65
Class 7	15.32	2.65
Class 8	14.20	2.65
Class 9	13.64	2.65
Site Preparation, Excavation & Incidental Paving:		
Class 1	16.16	2.65
Class 2	15.63	2.65
Class 3	15.46	2.65
Class 4	15.34	2.65
Class 5	13.22	2.65
Class 6	12.48	2.65

DECISION NUMBER MN83-2058 - MOD. #4
(48 FR 34617 - July 29, 1983)
Benton, Sherburne, & Stearns Counties, Minnesota

Change:	Basic Hourly Rates	Fringe Benefits
Asbestos Workers	$18.32	$3.94

DECISION NUMBER MN83-2058 (Cont'd)

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits
Carpenters:		
Building Construction:		
Benton (Exclu. Little Rock & Skaja) Co., Sherburne (Except Southern Tip), & Stearns Cos.:		
Carpenters; Millwrights; & Piledrivermen:		
Commercial Building inclu. 4 story apartments	$14.93	$1.10
Residential, inclu. single dwellings, duplexes, row houses, town houses, & walk-up apartments not to exceed 3 stories in height above ground	11.40	1.10
Sherburne (Southern Tip) Co.:		
Commercial Building:		
Carpenters; Piledrivermen	15.86	3.87
Electricians:		
Benton, Sherburne (Haven, Palmer, Santiago, Becker & Clear Lake Twps.), & Stearns Cos.:		
Electrical Installations over $75,000.00	15.75	13.5%+ 1.57
Electrical Installations under $75,000.00	13.31	13.5%+ 1.57
Ironworkers	17.10	3.64
Lathers; Drywall Hangers	16.05	3.71
Painters:		
Sherburne (Eastern 2/3) Co.:		
Brush; Paperhangers; & Rollers	16.06	2.68
Sandblasting; Spray; & Steel	16.81	2.68
Residential of 8 units or less	80%JR	2.68
Sanders	12.76	1.72
Tapers	17.01	1.72

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits
Plumbers; Steamfitters:		
Benton, Sherburne (Western ½), & Stearns Cos.	$14.88	$3.36
Sherburne (Eastern ½) Co.:		
Plumbers	14.95	7.14
Tile Setters	16.65	2.32
Laborers:		
Site Prepraration, Excavation & Incidental Paving:		
Benton & Stearns Cos.:		
Class 1	10.00	2.75
Class 2	10.15	2.75
Class 3	10.20	2.75
Class 4	10.35	2.75
Class 5	10.45	2.75
Class 6	10.70	2.75
Sherburne Co.:		
Class 1	12.35	2.85
Class 2	12.50	2.85
Class 3	12.55	2.85
Class 4	12.70	2.85
Class 5	12.80	2.85
Class 6	13.05	2.85
Power Equipment Operators:		
Building Construction:		
Class 1	19.09	2.65
Class 2	18.75	2.65
Class 3	17.95	2.65
Class 4	17.34	2.65
Class 5	17.00	2.65
Class 6	16.83	2.65
Class 7	15.32	2.65
Class 8	14.20	2.65
Class 9	13.64	2.65
Site Preparation, Excavation & Incidental Paving:		
Benton (E. of the Western Right-of-Way of Hwy #10), Sherburne (Exclu. area South of the Northern Boundary of T-33-N & East of the Western Boundary of R-27-W), & Stearns (East of the Western Right-of-Way of Minn. Hwy #15) Cos.:		

DECISION NUMBER MN83-2058 (Cont'd)

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits
Power Equipment Operators (Cont'd):		
Group 1	$15.52	$2.65
Group 2	14.99	2.65
Group 3	14.83	2.65
Group 4	14.70	2.65
Group 5	12.59	2.65
Group 6	11.87	2.65
Benton (Rem. of Co.) & Stearns (Rem. of Co.) Cos.:		
Group 1	13.78	2.65
Group 2	12.89	2.65
Group 3	12.70	2.65
Group 4	12.59	2.65
Group 5	11.16	2.65
Group 6	10.66	2.65
Sherburne (Rem. of Co.) Co.:		
Group 1	16.16	2.65
Group 2	15.63	2.65
Group 3	15.46	2.65
Group 4	15.34	2.65
Group 5	13.22	2.65
Group 6	12.48	2.65

DECISION NUMBER MN83-2059 - MOD. #2
(48 FR 34620 - July 29, 1983)
Carlton, Cook, Itasca, Koochiching, Lake, & St. Louis Counties, Minnesota

Change:
Cement Masons; Plasterers:
Building Construction:
Carlton, Cook, Lake, & St. Louis (Exclu. area N. of White Face River) Cos.:
Cement Masons 15.85 .95
Plasterers 15.50 1.50
Itasca & St. Louis (N. of White Face River) Cos.:
Cement Masons 15.20 .95
Residential:
Itasca & St. Louis (N. of White Face River) Cos.:
Cement Masons 13.00 .95

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits
Cement Masons (Cont'd):		
Site Preparation, Excavation, & Incidental Paving:		
Carlton, Cook, Lake & St. Louis (S. of T 55 N) Cos.	$17.58	$.95
Itasca & St. Louis (N. of T 55 N) Cos.	15.20	.95
Electricians:		
Carlton, Cook, Itasca (S. part, inclu. Blackberry, Goodland, & Wawina), Lake, & St. Louis (Bounded on the north by the lines of Kelsey Twp. extended East & West) Cos.	15.75	32%
Itasca (Exclu. section S. of a line extending East & West of the South line of Grand Rapids & Trout Lake Twp.), Koochiching, & St. Louis (Northern part bounded by the South line of Ellsburg Twp. extended East & West) Cos.:		
Exclu. Residential Up to & Inclu. 6-plexes under one roof:		
Electrical Installations above $14,000.00:		
Electricians	13.56	26½%+ .96
Cable Splicers	14.11	26½%+ .96
Electrical Installations less than $14,000.00:		
Electricians	11.01	26½%+ .96
Cable Splicers	11.56	26½%+ .96
Ironworkers	15.22	3.85
Painters:		
Residential & Commercial Repaint:		
Brush	12.00	1.93
Paperhangers; Spray; Steel; & Tapers	12.60	1.93
New Commercial Building:		
Brush	14.61	1.93
Paperhangers; Spray; Steel; & Tapers	15.21	1.93

DECISION NUMBER MN83-2059 (Cont'd)

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits
Plumbers; Steamfitters:		
Koochiching Co.:		
Heavy Commercial Building over $25,000.00	$18.37	$2.25+d
Residential & Light Commercial Building not to exceed $25,000.00	13.85	2.25+d
Roofers:		
Itasca, Koochiching, & St. Louis (N 2/3) Cos.	13.58	1.52
Tile Setters:		
Exclu. St. Louis (Duluth) Co.	16.65	2.32
Laborers:		
Site Preparation, Excavation, & Incidental Paving:		
Carlton, Cook, Lake, & St. Louis (S. of T 55N) Cos.:		
Class 1	11.88	3.00
Class 2	12.03	3.00
Class 3	12.08	3.00
Class 4	12.23	3.00
Class 5	12.33	3.00
Class 6	12.58	3.00
Itasca & St. Louis (N. of T 55N) Cos.:		
Class 1	12.68	2.20
Class 2	12.83	2.20
Class 3	12.88	2.20
Class 4	13.03	2.20
Class 5	13.13	2.20
Class 6	13.33	2.20
Koochiching Co.:		
Class 1	10.00	1.40
Class 2	10.15	1.40
Class 3	10.20	1.40
Class 4	10.35	1.40
Class 5	10.45	1.40
Class 6	10.70	1.40
Power Equipment Operators:		
Building Construction:		
Class 1	19.09	2.65
Class 2	18.75	2.65
Class 3	17.95	2.65
Class 4	17.34	2.65

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits
Power Equipment Operators (Cont'd):		
Class 5	$17.00	$2.65
Class 6	16.83	2.65
Class 7	15.32	2.65
Class 8	14.20	2.65
Class 9	13.64	2.65
Site Preparation, Excavation, & Incidental Paving:		
Carlton, Itasca (E. of the Western Right-of-Way of Minn. Hwy 6), & Koochiching (E. of a N-S line from the Canadian border to Pelland, the Western Right-of-Way of U.S. Hwy 71, from Pelland to Big Falls & Minn. Hwy 6) Cos.:		
Group 1	15.52	2.65
Group 2	14.99	2.65
Group 3	14.83	2.65
Group 4	14.70	2.65
Group 5	12.59	2.65
Group 6	11.87	2.65
Cook, Lake, & St. Louis Cos.:		
Group 1	16.16	2.65
Group 2	15.63	2.65
Group 3	15.46	2.65
Group 4	15.34	2.65
Group 5	13.22	2.65
Group 6	12.48	2.65
Itasca (Rem. of Co.) & Koochiching (Rem. of Co.) Cos.:		
Group 1	13.78	2.65
Group 2	12.89	2.65
Group 3	12.70	2.65
Group 4	12.59	2.65
Group 5	11.16	2.65
Group 6	10.66	2.65
Add:		
Footnote:		
d. 2 paid holidays: 4th of July and Labor Day		

DECISION NUMBER MN84-5015 - MOD. #1
(49 FR 22184 - May 25, 1984)
Aitkin, Becker,...Wright and Yellow Medicine Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Asbestos Workers:		
Area 3	$18.32	$3.94
Electricians:		
Area 1	15.75	32%
Area 4:		
Electrical Installations over $75,000.00	15.75	13.5%+ 1.57
Electrical Installations under $75,000.00	13.31	13.5%+ 1.57
Area 6:		
Electrical Installations over $75,000.00	15.75	13.5%+ 1.57
Electrical Installations under $75,000.00	12.53	13.5%+ 1.57
Area 9:		
Electrical Installations over $75,000.00	15.75	13.5%+ 1.57
Electrical Installations under $75,000.00	12.58	13.5%+ 1.57
Area 10:		
Electricians	17.76	29.6%
Cable Splicers	18.26	29.6%
Ironworkers:		
Area 1	15.22	3.85
Area 2	17.10	3.64
Lathers; Drywall Hangers:		
Area 1	16.05	3.71
Tile Setters:		
Area 2	16.65	2.32
Truck Drivers:		
Area 11	11.75	

Change (Cont'd):	Basic Hourly Rates	Fringe Benefits
Laborers:		
Area 10:		
Group 1	$11.75	$1.35
Group 2	11.80	1.35
Group 3	11.85	1.35
Group 4	11.90	1.35
Group 5	12.00	1.35
Group 6	12.05	1.35
Group 7	12.10	1.35
Power Equipment Operators:		
Class 1	19.09	2.65
Class 2	18.75	2.65
Class 3	17.95	2.65
Class 4	17.34	2.65
Class 5	17.00	2.65
Class 6	16.83	2.65
Class 7	15.32	2.65
Class 8	14.20	2.65
Class 9	13.64	2.65

DECISION NO. NY83-3027 - MOD. #3
(48 FR 33622 - July 22, 1983)
Nassau & Suffolk Counties, New York

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.14	8.53
BOILERMAKERS	21.06	.04+ .37%
BRICKLAYERS	18.19	6.57
CARPENTERS		
Nassau County (Remainder of County)		
Building, Residential, Heavy & Highway	17.66	6.78
DIVERS	20.87	8.015
ELECTRICIANS		
Building	19.65	.70+ 35.5%
Wiring of single or multiple family dwellings & apartments up to and including 2 stories	13.30	34%
Installation of television receivers, radio receivers, record receivers, record players and associated apparatus and antenna and home appliances and closed circuit TV and multiple outled distribution systems, sound and intercommunication systems and commercial electromechancial devices and appliances where such is not part of an electrical contract	11.075	a
ELEVATOR CONSTRUCTORS	18.80	3.69+ b+c
ELEVATOR CONSTRUCTORS HELPERS	14.10	3.69+ b+c
ELEVATOR CONSTRUCTORS HELPERS (Probationary)	9.40	
MODERNIZATION & REPAIR ELEVATOR CONSTRUCTORS	15.94	3.69+ b+c
MODERNIZATION & REPAIR ELEVATOR CONSTRUCTOR HELPER	11.95	3.69+ b+c

MODERNIZATION & REPAIR	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS HELPER (Probationary)	9.40	
GLAZIERS	18.55	6.10
IRONWORKERS		
Structural	16.00	13.00
Ornamental	16.58	9.30
LABORERS		
Building	14.75	5.38
Heavy & Highway		
Concrete & curb form setters, asphalt rakers	12.47	.75+13% +d
Aspahlt Workers & roller boys, asphalt top shovelers & smoothers, asphalt tampers, jackhammers, & drill men, hoppermen, carpenters' tenders, pipejoiners & setters, concrete laborers (structures), stone spreading laborers, trackmen grading & excavating laborers, yard laborers puddlers on concrete pavement, asphalt plant (batcher & hoppermen), all other unskilled laborers	11.68	.75+13% +d
MILLWRIGHTS	17.79	7.66
PAINTERS		
Nassau County (Inwood, Lawrence, Cedarhurst, Woodmere, Hewlett, Hewlett Bay, East Rockaway, part of Rockville Center, Atlantic Beach, Long Beach, Lido Beach, Point Lookout, Gibson, and part of Valley Stream		
Painters	15.16	.01+30%
Spray	18.41	.01+30%
Fire Escapes	17.33	.01+30%
Nassau County (Remainer of County) & Suffolk Co.		
Painters & Drywall Finishers	19.98	5.28
Spraying; scaffold or rolling scaffold over 18 ft.	18.61	5.28

DECISION NO. NY83-3027 - MOD. #3
CONTINUED

	Basic Hourly Rates	Fringe Benefits
PAINTERS (CONT'D)		
Sandblasting; structural steel	20.24	5.28
Repaint of hospitals, schools and apartment houses	13.55	5.28
PAPERHANGERS	16.84	5.28
PLASTERERS	14.75	5.00
PLUMBERS		
Nassau County Building, Heavy & Highway Construction	16.72	5.17
Residential (Jobbing repair to present plumbing systems that does not change the existing roughing or any minor alterations job where the change to the existing roughing does not have a labor cost in excess of $1,500)	11.25	4.01
Suffolk County	18.75	6.20
SPRINKLER FITTERS & STEAMFITTERS	19.82	7.00
Refrigeration, Air Conditioning and Oil Burner Maintenance and Installation Mechanics (Installation of commercial equipment where the combined horsepower does not exceed 5 horsepower; Installation of air cooling, heating and air conditioning on any job where the combined horsepower does not exceed 10 horsepower)	13.98	1.57
STONE DERRICKMEN & RIGGERS	17.44	9.07
STONE MASONS	18.00	3.75

DECISION NO. TN84-1005
MOD # 1
(49 FR 9082 - March 9, 1984)

Davidson County, Tennessee

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS:		
Mechanics	$12.18	$3.00+a
Helpers	8.53	3.00+a
Probationary Helpers	6.09	
Plasterers	11.90	1.11

DECISION NO. TN83-1088
MOD # 4
(48 FR 53272 - November 25, 1983)

Shelby County, Tennessee

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTORS		
Mechanics	14.68	3.29+b
Helpers	10.28	3.29+b
Probationary Helpers	7.34	

DECISION NO. TN83-1087
MOD # 6
(48 FR 53270 - November 25, 1983)

Hamilton, Marion, Polk and Rhea Counties, Tennessee

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Wiremen	$14.40	$1.25+12%
Cable Splicers	14.65	1.25+12%
ELEVATOR CONSTRUCTORS:		
Mechanics	13.505	3.29+a
Helpers	9.45	3.29+a
Probationary Helpers	6.75	
LINE CONSTRUCTION:		
Linemen and Operators of Hole Digging Equipment and Tractor With Winch	14.40	1.25+11⅓%
Cable Splicers	14.65	1.25+11⅓%
Operator of Hole Digging Equipment without Winch	12.37	1.25+11⅓%
Groundmen	10.20	1.25+11⅓%
PAINTERS:		
Tanks, Steel Towers, Stacks, Bridges & Pumping Stations	11.75	1.20
SHEET METAL WORKERS:		
Hamilton County	13.83	2.39+3%
All Other Counties	14.33	2.39+3%

DECISION NUMBER OHS3-5127 - MOD. #5
(48 FR 56903 - December 23, 1983)
Adams, Allen,...Wood & Wyandot Counties, Ohio

Change:

	Basic Hourly Rates	Fringe Benefits
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:		
Area 19	$19.47	$3.40+a
Cement Masons:		
Area 14	19.47	3.40+a
Marble Setters; Terrazzo Workers; & Tile Setters:		
Area 17	19.47	3.40+a
Plasterers:		
Area 11	19.47	3.40+a

MODIFICATIONS P. 11

DECISION NO. WA83-5110 - Mod#17 (48 FR 25108 - June 3, 1983) Statewide Washington	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ROOFERS:		
Area 6:		
Roofers	$14.60	$2.90
Handling irritating material (Coal Tar, Epoxy)	16.06	2.90
OMIT:		
ROOFERS:		
Area 6:		
Handling irritating material (Coal Tar, Epoxy) in confined area		
ADD:		
CARPENTERS:		
Area 1:		
All construction, remodeling, repair, or renovation of buildings under $2,000,000.00 (excluding mechanical and electrical work) and bridges and related work under $500,000.00:		
All classifications receive 80% of the published basic hourly rates plus full fringes.		
LABORERS (Area 1), POWER EQUIPMENT OPERATORS (Area 1), AND TRUCK DRIVERS (Area 1):		
All projects or components of projects less than the dollar amounts listed below:		
All classifications receive 80% of the published basic hourly rates plus full fringes:		
Paving $ 75,000.00		
Crushing 200,000.00		
Grading, and Clearing 350,000.00		
Bridges and related work 500,000.00		
Utilities Unlimited		
Buildings 2,000,000.00		
(Paving within 45 mile radius of Spokane or Lewiston shall receive full rate.) On projects involving more than one component, each component shall be considered separately in determining the wage that applies to that component.		
ALL OTHER WORK NOT COVERED ABOVE: Receive full rates		

DECISION NO. WI83-2041-MOD#3 (48 FR-21811-May 13, 1983) Statewide Wisconsin	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters & Piledrivermen:		
Area 1		
Carpenters	$12.90	$2.65
Piledrivermen	13.16	2.65
Area 3		
Carpenters	14.71	2.36
Piledrivermen	14.80	2.36
Area 4		
Carpenters	15.11	1.96
Piledrivermen	15.20	1.96
Area 5		
Carpenters	14.29	2.12
Piledrivermen	14.49	2.12
Area 6		
Carpenters	14.65	4.03
Piledrivermen	15.82	4.16
Area 7		
Carpenters & Piledrivermen	14.00	3.05
Area 8		
Carpenters & Piledrivermen	15.86	3.87

DECISION NO. UT83-5120 - MOD. #7 (48 FR 44992 - September 30, 1983) Statewide, Utah	Basic Hourly Rates	Fringe Benefits
CHANGE:		
IRONWORKERS:		
Fence Erectors; Structural; Ornamental; Reinforcing	$16.65	$3.35

SUPERSEDEAS DECISION

STATE: ARKANSAS COUNTY: STATEWIDE
DECISION NO. AR84-4053 DATE: Date of Publication
SUPERSEDES DECISION #AR83-4008 dated January 7, 1983 in 48 FR 927
DESCRIPTION OF WORK: Construction, alteration, and/or repair of streets, highways, runways and water & sewer utilities, (but does not include structures on highway rest areas).

	Basic Hourly Rates	Fringe Benefits
Bricklayers	$7.00	
Carpenters	7.00	
Concrete Finishers	7.00	
Electricians	8.50	
Ironworkers:		
Structural	6.10	
Reinforcing	5.30	
Laborers:		
Air tool operator	5.00	
Asphalt heater operator	5.00	
Asphalt raker	5.70	
Carpenter helper	5.00	
Chain saw operator	5.00	
Checker grade	5.30	
Concrete finisher helper	5.00	
Concrete joint sealer	5.00	
Concrete saw operator	5.00	
Formsetter	5.30	
Laborer	3.80	
Pipelayer	5.30	
Powderman	6.20	
Vibratorman	5.00	
Painter	6.00	
Pile driver leadman	6.00	
Power Equipment Operators:		
Aggregate spreader oper.	5.60	
Asphalt plant fireman	4.70	
Asphalt plantdrier oper.	4.70	
Batch plant oper.	5.60	
Bulldozer Operators:		
Finish	6.70	
Rough	5.50	
Bull float operator	5.50	
Concrete curing machine operator	5.50	
Concrete mixer operator:		
Less than 5 sacks	5.00	
5 sacks and over	6.00	
Backhoe op.- rubber tired (1 yard or less)	5.90	
Cherry picker operator	5.90	
Concrete paver operator	6.50	
Concrete spreader oper.	6.50	
Crane, derrick, dragline, shovel, backhoe opers.:		
1½ yard or less	6.50	
over 1½ yards	7.00	

Power Equipment OP. cont.	Basic Hourly Rates	Fringe Benefits
Crusher operator	$5.50	
Distributor operator	5.50	
Drill operator (wagon or truck)	5.50	
Elevating grader oper.	6.50	
Euclid or like equipment operator (bottom or end dump)	5.10	
Finishing machine oper.	5.90	
Forklift operator	4.90	
Form grader operator	4.90	
Front end loader oper.:		
Finish	6.50	
Rough	5.50	
Hydro seeder operator	5.00	
Mechanic	6.70	
Mechanic Helper	5.10	
Motor patrol operator:		
Finish	6.70	
Rough	5.50	
Mulching machine oper.	5.00	
Oiler and greaser	5.30	
Pile driver operator	6.00	
Pug mill operator	5.00	
Roller operator (self propelled)	5.10	
Scraper operator:		
Finish	6.70	
Rough	5.50	
Sod slicing machine op.	4.80	
Stabilizer mixing machine operator	5.50	
Tractor operator (crawler type)	5.00	
Tractor operator (farm and wheel)	5.00	
Tractor operator wheel type (with attachments 1 yd. or under	5.40	
Trenching machine oper.	5.40	
Stonemasons	7.00	
Truck Drivers:		
Distributor truck driver	5.30	
Semi-trailer	5.30	
Lowboy driver	5.50	
Transit mix truck driver	5.30	

	Basic Hourly Rates	Fringe Benefits
Truck driver (heavy-maximum pay load in excess of 3,000 lbs.)	$5.00	
Truck driver (light-maximum pay load 3,000 lbs.)	4.70	
Well drillers	6.70	
Welders: receive rate prescribed for craft performing operation to which welding is incidental.		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standeards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Kentucky

COUNTIES: Allen, Ballard, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Edmonson, Fulton, Graves, Hancock, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, McCracken, Mclean, Marshall, Muhlenberg, Ohio, Simpson, Todd, Trigg, Union, Warren and Webster

DECISION NUMBER: KY84-1026

DATE: Date of Publication

Supersedes Decision Number KY83-1061 dated September 16, 1983 in 48 FR 41706

DESCRIPTION OF WORK: HEAVY AND HIGHWAY CONSTRUCTION PROJECTS

	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS	$18.05	3.175
CARPENTERS:		
Highway Construction	11.70	2.05
Heavy Construction	12.60	2.05
CEMENT MASONS	13.65	2.00
ELECTRICIANS	16.24	13-1/4% +1.25
IRONWORKERS	18.10	2.46
LABORERS:		
Group I	10.50	2.20
Group II	10.75	2.20
Group III	10.80	2.20
Group IV	11.40	2.20
PAINTERS:		
Brush and Roller	15.90	2.50
Spray, Sandblast and Power Tools	16.90	2.50
PILEDRIVERMEN:		
Highway Construction	11.95	2.05
Heavy Construction	12.85	2.05
PLUMBERS & PIPEFITTERS	17.51	2.13
POWER EQUIPMENT OPERATORS		
Highway Construction Projects:		
Class A	13.65	2.75
Class B	11.23	2.75
Class C	11.61	2.75
Class D	10.97	2.75
POWER EQUIPMENT OPERATORS		
Heavy Construction Projects (Including bridges across commercially navigable rivers):		
Class A	$14.95	2.75
Class B	12.12	2.75
Class C	11.32	2.75
Class D (50¢ above Class A rate)		
TRUCK DRIVERS:		
Truck Helper	12.10	1.85
Drivers - three (3) tons and under, greaser, tire changer and truck mechanic helper	12.15	1.85
Drivers - Winch Truck and A-Frame Truck when used in transporting material	12.26	1.85
Truck Mechanic	12.38	1.85
Drivers - over three (3) tons, truck-mounted rotary drills, semi-trailers or pole trailers, dump trucks (tandem axle), distributors, mixer trucks (all types)	12.45	1.85
Drivers - Euclid and other heavy earth moving equipment and low-boy, pavement breakers	12.46	1.85
WELDERS: Receive rate for craft performing operation to which welding is incidental.		

CLASSIFICATION DEFINITIONS

LABORERS:
GROUP I - General Laborers; asphalt plant laborers; concrete laborers; asphalt laborers; storm and sanitary sewer laborers; carpenter tenders; cement mason tenders; mesh handlers and placers; landscaping and seeding; planters and treetrimmers; sign, guardrail, and fence installers; grade checkers; aging and curing of concrete; truck spotters and dumpers; batch truck dumpers; rip-rap and grouters; dredging laborers; right-of-way laborers; wrecking and demolition laborers; drill helpers and all hand digging and hand back filling.

GROUP II - Wagon drills; jack hammers; paving breakers; chain saw; concrete saw; paving joint machine; vibrator operator; power driven Georgia buggy or wheelbarrow; sand blaster and concrete chippers; green concrete cutting; brickmasons tenders and motar mixer; pipe layers; joint makers; batter board man (sanitary and storm sewer); dry cement handlers; concrete rubbers; walk-behind tamper machine; walk-behind trenching machine; surface grinderman; hand-operated grouter and grinder machine operator; deck hand; scow man; burner and welder.

GROUP III - Powderman and blaster; side rail setters (including rail-paved ditches); tunnel laborers (free air); gunnite operator and mixer man; gunnite nozzleman; asphalt luteman and rakeman; air tract driller (all types); grout pump operator.

GROUP IV - Tunnel blasters; tunnel muckers (free air); miners and drillers (free air); caisson workers (free air).

OPERATING ENGINEERS
(Highway Construction Projects);
CLASS A - Auto patrol; batcher plant; bituminous paver; cableway; central compressor plant operator; clamshell; concrete mixer (21 cu. ft. or over); truck-mounted concrete pump; crane; crusher plant; derrick; derrick boat; ditching and trenching machine; dragline; elevating grader and all types of loaders; hoe-type machine; hoisting engine (two or more drums); locomotive; motor scraper; bulldozer; mechanic; orangepeel bucket; piledriver; power blade; roller (bituminous); scarifier; shovel; tractor shovel; truck crane; push dozer; high lift; all types of boom cats; core drills; tow or push boat; A-Frame winch truck; concrete paver; grade-all; hoist (two or more drums); hyster; pumpcrete; sideboom; all rotary drills; mucking machine; rock spreader attached to equipment; scoopmobile; KeCal loader; tower cranes (French, German, and other types); hydro-crane; backfiller; gurries; subgrader; tailboom.

CLASSIFICATION DEFINITIONS (CONT'D)

OPERATING ENGINEERS (CONT'D):
CLASS B - All air compressors (over 900 cu. ft. per min.); bituminous mixer; concrete mixer (under 21 cu. ft.); elevator (one drum or buck hoist); welding machine; form grader; roller (rock); tractor (50 HP or over); bull float; finish machine; outboard motor boat; electric vibrator; compactor/self-propelled compactor; boom-type tamping machine; truck crane oiler; switchman or brakeman; mechanic helper; whirley oiler; tractair and road widening trencher; joint sealing machine; throttle valve man; tugger; well points; flexplane; fireman and hoist (one drum); skid-mounted or trailer-mounted concrete pumps; fork lift (regardless of lift height); Ross carrier; dredge engineer and elevator (regardless of ownership when used to hoist building material).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributor; cement gun; conveyor; grout pump; mud jack; paving joint machine; pump; roller (earth); tamping machine; tractors (under 50 HP); vibrator; oiler; concrete saw; burlap and curing machine; hydro seeder; power form handling equipment; deckhand oiler and hydraulic post driver.

POWER EQUIPMENT OPERATORS - HEAVY CONSTRUCTION PROJECTS:

CLASS A - Auto patrol; batcher plant; bituminous paver; cableway; central compress plant operator; clamshell; concrete mixer (21 cu. ft. or over); truck-mounted concrete pump; crane; crusher plant; derrick; derrick boat; ditching and trenching machine; dragline; elevating grader and all types of loaders; hoe-type machine; hoisting engine; mechanic welder; locomotive; motor scraper; bulldozer; mechanic; orangepeel bucket; piledriver; power blade; roller (bituminous); scarifier; shovel; tractor shovel; truck crane; push dozer; high lift; all types of boom cats; core drills; tow or push boat; A-Frame winch truck; concrete paver; grade-all; hoist (two or more drums); hyster; pumpcrete; side boom; all rotary drills; mucking machine; rock spreader attached to equipment; scoopmobile; KeCal loader; tower cranes (French, German, and other types); hydrocrane; backfiller; gurries; subgrader; tailboom; Letourneau or carry-all scoop.

CLASS B - All air compressors (over 900 cu. ft. per min. or greater capacity); bituminous mixer; concrete mixer (under 21 cu. ft.); welding machine; form grader; roller (rock); tugger; tractor (50 HP and over); bull float; finish machine; outboard motor boat; well points; flexplane; fireman; boom-type tamping machine; truck crane oiler; greaser on grease facilities servicing heavy equipment; switchman or brakeman; joint sealing machine; mechanic helper; whirley oiler; tractair and road-widening trencher; electric vibrator compactor/self-propelled compactor; throttle valve; elevator (one drum or buck hoist); power sweeper (riding type); core drill and caisson drill helper (truck mounted); skid-mounted or trailer-mounted concrete pumps; forklift (regardless of lift height); Ross carrier; dredge engineer; elevator (regardless of ownership when used to hoist building material).

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATOR (CONT'D):

CLASS C - Bituminous distributor; cement gun; conveyor; group pump; mud jack; paving joint machine; pump; roller (earth); tamping machine; tractors (under 50 HP); vibrator; oiler; concrete saw; burlap and curing machine; hydro seeder; power form handling equipment; deckhand; steerman; hydraulic post driver; core drill; caisson drill helper (track or skid-mounted).

CLASS D - Operators on cranes with booms one hundred fifty feet (150) and over (including jib) shall receive fifty ($.50) cents above Class A rate.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contractclauses 29 CFR 5.5(a)(1)(ii)(A).

SUPERSEDEAS DECISION

STATE: KENTUCKY

COUNTIES: Adair, Barren, Bell, Breathitt, Casey, Clay, Clinton, Cumberland, Estill, Floyd, Garrard, Green, Harlan, Hart, Jackson, Johnson, Knott, Knox, Lawrence, Laurel, Lee, Leslie, Letcher, Lincoln, McCreary, Magoffin, Martin, Menifee, Metcalfe, Monroe, Morgan, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Russell, Taylor, Wayne, Whitley and Wolfe

DECISION NO.: KY84-1027 DATE: Date of Publication

Supersedes Decision Number KY83-1063 dated September 16, 1983 in 48 FR 41709.

DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	13.15	1.85
CEMENT MASON	13.00	1.85
ELECTRICIANS	15.66	3% + 1.00
IRONWORKERS:		
Structural	13.25	1.85
Reinforcing	13.05	1.85
LABORERS:		
Laborers - general, steam Jenny	11.20	1.85
Hand blade operator, batch truck dumper, deck hand or scow man	11.45	1.85
Power driven tool operator of following: wagon drill, chain saw, jack hammer, concrete saw, sand blaster, concrete chipper, pavement breaker, vibrator, power wheel barrow, power buggy	11.55	1.85
Sewer pipe layer, bottom man, dry cement handler, concrete rubber, mason tender	11.55	1.85
Asphalt lute and rakeman, siderail setter	11.60	1.85
Gunnite nozzleman, gunnite operator	11.70	1.85
Tunnel laborer (freeair)	11.75	1.85
Tunnel mucker (freeair)	11.80	1.85
Tunnel miner, blaster and driller (freeair)	12.15	1.85
Laborers (Cont'd):		
Caisson Worker	12.70	1.85
Powderman	12.80	1.85
Drill operator of percussion type drills which are both powered and propelled by an independent air supply	14.00	1.85
PAINTERS:		
Guard rail	10.00	1.75
Structural	13.20	1.75
PILEDRIVERMEN	12.80	1.85
PLUMBERS & PIPEFITTERS	15.63	2.00
TRUCK DRIVERS:		
Drivers, 3 tons and under	11.78	1.85
Drivers, over 3 tons	11.99	1.85
Drivers, truck mounted rotary drill	11.99	1.85
Drivers, semi-trailer or pole trailer	11.65	1.85
Drivers, dump truck, tandem axle	11.65	1.85
Drivers, euclid and other heavy earth moving equipment and low boy	12.56	1.85
Drivers, winch truck and A-Frame when used in transporting material	11.55	1.85
Truck mechanic	11.75	1.85
Truck helper	11.45	1.85
Tire changer and truck mechanic helper	11.78	1.85
Drivers of distributors	11.65	1.85

DECISION NO.:KY84-1027 Page 2

	Basic Hourly Rates	Fringe Benefits
Drivers on pavement breakers	11.80	1.85
Driver on mixer trucks (all types)	11.70	1.85
Greaser on greasing facilities	12.65	1.85
POWER EQUIPMENT OPERATORS:		
Class A	14.55	1.85
Class B	12.30	1.85
Class C	12.65	1.85
Class D	12.06	1.85

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses 29 CFR 5.5(a)(1)(ii)(A).

	Basic Hourly Rates	Fringe Benefits

WELDERS: Receive rate for craft performing operation to which welding is incidental.

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS:

Class A - Auto patrol, batcher plant, bituminous paver, cableway, clamshell, concrete mixer (21 cu. ft. or over), concrete pump, crane crusher plant, derrick, derrick boat, ditching and trenching machine, dragline, dredge engineer, elevator (regardless of ownership when used for hoisting any building material), elevating grader and all types of loaders, hoe-type machine, hoisting engine, locomotive, letourneau or carry-all scoop, bulldozer, mechanic, orangepeel bucket, piledriver, power blade, roller (bituminous), scarifier, shovel, tractor shovel, truck crane, well points, winch truck, push dozer, grout pump, high lift, fork lift, (regardless of lift height), all types of boom cats, multiple operator, core drill, tow or push boat, A-Frame winch truck, concrete paver, gradeall, hoist, hyster, material pump, pumpcrete, Ross Carrier, sheep foot, side boom, throttlevalve man, rotary drill, power generator, mucking machine, rock spreader attached to equipment, scoopmobile, KeCal loader, tower cranes (French, German and other types), hydrocrane, tugger, backfiller gurries, subgrader, electric vibrator compactor, welder burner.

Class B - All air compressors (200 cu. ft. per min. orgreater capacity), bituminous mixer, concrete mixer (under 21 cu. ft.), welding machine, form grader, roller (rock), tractor (50 H.P. and over), bull float, finish machine, outboard motor boat, flexplane, fireman, boom type tamping machine, truck crane oiler, switchman or brakeman, mechanic helper, whirley oiler, self-propelled compactor, tractair and road widening trencher.

Class C - Greaser on grease facilities servicing heavy equipment.

Class D - Bituminous distributor, cement gun, conveyor, mud jack, paving joint machine, pump, roller (earth), tamping machine, tractors (under 50 H.P.), vibrator, oiler, air compressors (under 200 cu. ft. per min. capacity), concrete saw, burlap and curing machine, hydro seeder, power form handling equipment, deckhand oiler, hydraulic post driver.

SUPERSEDEAS DECISION

STATE: KENTUCKY

COUNTIES: Anderson, Bath, Bourbon, Boyd, Boyle, Bracken, Breckinridge, Bullitt, Carroll, Carter, Clark, Elliott, Fayette, Fleming, Franklin, Gallatin, Grayson, Grant, Greenup, Hardin, Harrison, Henry, Jefferson, Jessamine, Larue, Lewis, Madison, Marion, Mason, Meade, Mercer, Montgomery, Nelson, Nicholas, Oldham, Owen, Robertson, Rowan, Scott, Shelby, Spencer, Trimble, Washington, and Woodford

DECISION NUMBER: KY84-1028 DATE: Date of Publication

Supersedes Decision Number KY83-1062 dated September 16, 1983 in 48 FR 41707.

DESCRIPTION OF WORK: HEAVY & HIGHWAY CONSTRUCTION PROJECTS.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	12.96	1.85
CEMENT MASONS	13.14	3.32
CEMENT MASON on suspended scaffold	13.39	3.32
ELECTRICIANS	16.14	13⅓% + 1.25
IRONWORKERS	13.50	4.72
LABORERS:		
Group I	10.50	2.20
Group II	10.75	2.20
Group III	10.80	2.20
Group IV	11.40	2.20
PAINTERS:		
Spray, sandblast and waterblast	11.62	1.28
Brush	11.17	1.28
PILEDRIVERMEN	13.21	1.85
PIPEFITTERS	17.25	3.22
PLUMBERS	15.98	3.55
POWER EQUIPMENT OPERATORS HIGHWAY CONSTRUCTION		
Class A	13.65	2.75
Class B	11.23	2.75
Class C	11.61	2.75
Class D	10.97	2.75
POWER EQUIPMENT OPERATORS HEAVY CONSTRUCTION INCLUDING BRIDGES ACROSS COMMERCIALLY NAVIGABLE RIVERS:		
Class A	14.95	2.75
Class B	12.12	2.75
Class C	11.32	2.75
Class D (50¢ above Class A rate)		

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Drivers - single axle dump and flat bed trucks	12.34	71.50a
Drivers - Semi-trailer or pole trailer when used to pull building materials and equipment	12.34	71.50a
Driver - dump truck, tandem axle	12.34	71.50a
Driver - Euclid and other heavy earth moving equipment and low boy	12.44	71.50a
Driver - Winch truck and A-Frame truck when used in transporting materials and Ross Carrier	12.44	71.50a
Drivers - Fork lift truck when used to transport building materials	12.44	71.50a
Truck mechanic	12.34	71.50a
Truck helper	12.05	71.50a
Greaser, tire changer and mechanic helper	12.16	71.50a
Driver of distributors	12.34	71.50a
Driver on pavement breakers	12.44	71.50a
Driver on mixer trucks (all types)	12.37	71.50a
Mobile batch truck helper	12.05	71.50a

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTE:
a - Per week per employee who has been employed a minimum of twenty (20) work days within any ninety (90) consecutive day period for that employer.

CLASSIFICATION DEFINITIONS

LABORERS:
GROUP I - General Laborers; asphalt plant laborers; concrete laborers; asphalt laborers; storm and sanitary sewer laborers; carpenter tenders; cement mason tenders; mesh handlers and placers; landscaping and seeding; planters and treetrimmers; sign, guardrail, and fence installers; grade checkers; aging and curing of concrete; truck spotters and dumpers; batch truck dumpers; rip-rap and grouters; dredging laborers; right-of-way laborers; wrecking and demolition laborers; drill helpers and all hand digging and hand back filling.

GROUP II - Wagon drills; jack hammers; paving breakers; chain saw; concrete saw; paving joint machine; vibrator operator; power driven Georgia buggy or wheelbarrow; sand blaster and concrete chippers; green concrete cutting; brickmasons tenders and motar mixer; pipe layers; joint makers; batter board man (sanitary and storm sewer); dry cement handlers; concrete rubbers; walk-behind tamper machine; walk-behind trenching machine; surface grinderman; hand-operated grouter and grinder machine operator; deck hand; scow man; burner and welder.

GROUP III - Powderman and blaster; side rail setters (including rail-paved ditches); tunnel laborers (free air); gunnite operator and mixer man; gunnite nozzleman; asphalt luteman and rakeman; air tract driller (all types); grout pump operator.

GROUP IV - Tunnel blasters; tunnel muckers (free air); miners and drillers (free air); caisson workers (free air).

CLASSIFICATION DEFINITIONS

OPERATING ENGINEERS
(Highway Construction Projects);
CLASS A - Auto patrol; batcher plant; bituminous paver; cableway; central compressor plant operator; clamshell; concrete mixer (21 cu. ft. or over); truck-mounted concrete pump; crane; crusher plant; derrick; derrick boat; ditching and trenching machine; dragline; elevating grader and all types of loaders; hoe-type machine; hoisting engine (two or more drums); locomotive; motor scraper; bulldozer; mechanic; orangepeel bucket; piledriver; power blade; roller (bituminous); scarifier; shovel; tractor shovel; truck crane; push dozer; high lift; all types of boom cats; core drills; tow or push boat; A-Frame winch truck; concrete paver; grade-all; hoist (two or more drums); hyster; pumpcrete; sideboom; all rotary drills; mucking machine; rock spreader attached to equipment; scoopmobile; KeCal loader; tower cranes (French, German, and other types); hydro-crane; backfiller; gurries; subgrader; tailboom.

CLASS B - All air compressors (over 900 cu. ft. per min.); bituminous mixer; concrete mixer (under 21 cu. ft.); elevator (one drum or buck hoist); welding machine; form grader; roller (rock); tractor (50 HP or over); bull float; finish machine; outboard motor boat; electric vibrator; compactor/self-propelled compactor; boom-type tamping machine; truck crane oiler; switchman or brakeman; mechanic helper; whirley oiler; tractair and road widening trencher; joint sealing machine; throttle valve man; tugger; well points; flexplane; fireman and hoist (one drum); skid-mounted or trailer-mounted concrete pumps; fork lift (regardless of lift height); Ross carrier; dredge engineer and elevator (regardless of ownership when used to hoist building material).

CLASS C - Greaser on grease facilities servicing heavy equipment.

CLASS D - Bituminous distributor; cement gun; conveyor; grout pump; mud jack; paving joint machine; pump; roller (earth); tamping machine; tractors (under 50 HP); vibrator; oiler; concrete saw; burlap and curing machine; hydro seeder; power form handling equipment; deckhand oiler and hydraulic post driver.

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS - HEAVY CONSTRUCTION PROJECTS:

CLASS A - Auto patrol; batcher plant; bituminous paver; cableway; central compress plant operator; clamshell; concrete mixer (21 cu. ft. or over); truck-mounted concrete pump; crane; crusher plant; derrick; derrick boat; ditching and trenching machine; dragline; elevating grader and all types of loaders; hoe-type machine; hoisting engine; mechanic welder; locomotive; motor scraper; bulldozer; mechanic; orangepeel bucket; piledriver; power blade; roller (bituminous); scarifier; shovel; tractor shovel; truck crane; push dozer; high lift; all types of boom cats; core drills; tow or push boat; A-Frame winch truck; concrete paver; grade-all; hoist (two or more drums); hyster; pumpcrete; side boom; all rotary drills; mucking machine; rock spreader attached to equipment; scoopmobile; KeCal loader; tower cranes (French, German, and other types); hydrocrane; backfiller; gurries; subgrader; tailboom; Letourneau or carry-all scoop.

CLASS B - All air compressors (over 900 cu. ft. per min. or greater capacity); bituminous mixer; concrete mixer (under 21 cu. ft.); welding machine; form grader; roller (rock); tugger; tractor (50 HP and over); bull float; finish machine; outboard motor boat; well points; flexplane; fireman; boom-type tamping machine; truck crane oiler; greaser on grease facilities servicing heavy equipment; switchman or brakeman; joint sealing machine; mechanic helper; whirley oiler; tractair and road-widening trencher; electric vibrator compactor/self-propelled compactor; throttle valve; elevator (one drum or buck hoist); power sweeper (riding type); core drill and caisson drill helper (truck mounted); skid-mounted or trailer-mounted concrete pumps; forklift (regardless of lift height); Ross carrier; dredge engineer; elevator (regardless of ownership when used to hoist building material).

CLASS C - Bituminous distributor; cement gun; conveyor; group pump; mud jack; paving joint machine; pump; roller (earth); tamping machine; tractors (under 50 HP); vibrator; oiler; concrete saw; burlap and curing machine; hydro seeder; power form handling equipment; deckhand; steerman; hydraulic post driver; core drill; caisson drill helper (track or skid-mounted).

CLASS D - Operators on cranes with booms one hundred fifty feet (150) and over (including jib) shall receive fifty ($.50) cents above Class A rate.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contractclauses 29 CFR 5.5(a)(1)(ii)(A).

SUPERSEDEAS DECISION

STATE: TENNESSEE COUNTIES: CARTER, GREENE, HAWKINS, JOHNSON, SULLIVAN, UNICOI, & WASHINGTON

DECISION NO.: TN84-1023 DATE: Date of Publication

Supersedes Decision Number TN82-2060, dated November 19, 1982 in 47 FR 52323.

DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS - (does not include single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
BOILERMAKERS	$13.20	
CARPENTERS	7.10	.01
CEMENT MASONS	5.71	
ELECTRICIANS	6.94	
ELEVATOR CONSTRUCTORS:		
Mechanics	12.78	$3.00+a
Helper	8.95	3.00+a
Probationary Helpers	6.39	
GLAZIERS	5.74	
IRONWORKERS	7.96	
LABORERS:		
Unskilled	3.72	
Asphalt Rakers	4.44	
LATHERS	6.17	
PAINTERS	$ 5.00	
PLASTERERS	6.00	
PLUMBERS & PIPEFITTERS	5.99	
ROOFERS	5.46	
SHEET METAL WORKERS	10.53	3%+ 2.06
SOFT FLOOR LAYERS	7.20	
TILE SETTERS	6.00	
TRUCK DRIVERS	4.32	
POWER EQUIPMENT OPERATORS:		
Backhoe	5.00	
Bulldozer	4.50	
Crane	9.50	
Fork Lift	6.00	
Front End Loader	6.55	
Motor Grader	5.85	
Roller	5.30	
Scraper - Pan	4.50	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTES:

a - Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day, Friday after Thanksgiving Day; Christmas Day. Vacation Pay Credit: Employer contributes 8% of the basic hourly rate for employees with 5 years or more of service, or 6% of the basic hourly rate for employees with 6 months to 5 years of service.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: TENNESSEE

COUNTIES: ANDERSON, KNOX, MONROE AND ROANE

DECISION NO.: TN84-1024

DATE: Date of Publication

Supersedes Decision No.TN83-1086 dated November 25, 1983 in 48 FR 53269.

DESCRIPTION OF WORK: BUILDING CONSTRUCTIONPROJECTS (does not include single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$15.64	$2.16
BOILERMAKERS	16.20	3.375
BRICKLAYERS, STONEMASONS, MARBLE MASON, TILE SETTERS & TERRAZZO WORKERS:		
Roane County	14.67	1.55
Anderson, Knox & Monroe Counties	12.71	.60
CARPENTERS & SOFT FLOOR LAYERS	12.91	1.48
CEMENT MASONS	12.61	
ELECTRICIANS:		
Anderson (Oak Ridge A.E.C. Area & Oak Ridge Townsite only) and Roane Counties:		
Wiremen	13.66	1.50 +3%$
Cable Splicers	14.48	1.50 +3%$
Anderson (Remainder of County), Knox & Monroe Counties:		
Wiremen & Technicians	13.56	1.75 +3%$
Cable Splicers	14.06	1.75 +3%$
ELEVATOR CONSTRUCTORS:		
Mechanics	12.78	3.00+a
Helpers	8.95	3.00+a
Probationary Helpers	6.39	
IRONWORKERS:		
Reinforcing	13.15	2.05
Structural & Ornamental	13.29	2.05
LATHERS	11.64	.27
LINE CONSTRUCTION:		
Anderson (Oak Ridge A.E.C. Area & Oak Ridge Townsite only) & Roane Counties:		
Linemen & Equipment Operators	13.66	1.50 +3%$
Cable Splicers	14.48	1.50 +3%$
Groundmen	12.73	1.50 +3%$
Anderson (Remainder of County), Knox & Monroe Counties:		
Linemen, Heavy Equipment Oprs. & Hole Diggers	$12.26	$1.05 +3%$
Truck drivers with winch	9.60	1.05 +3%$
Truck drivers w/o winch	9.10	1.05 +3%$
Groundmen	9.20	1.05 +3%$
MILLWRIGHTS	14.15	1.28
PAINTERS	12.56	1.67
PILEDRIVERMEN	13.16	1.43
PLASTERERS	14.38	
PLUMBERS AND PIPEFITTERS	14.35	1.92
ROOFERS	10.50	.25
SHEET METAL WORKERS:		
Knox County	14.08	3%+ 2.18
Anderson, Monroe & Roane Counties	14.58	3%+ 2.18
SPRINKLER FITTERS	14.57	3.23
LABORERS:		
GROUP I	8.81	1.00
GROUP II	8.96	1.00
GROUP III	8.99	1.00
GROUP IV	9.11	1.00
GROUP V	9.31	1.00
GROUP VI	9.61	1.00
TUNNEL CLASSIFICATIONS:		
GROUP I	8.81	1.00
GROUP II	9.21	1.00
GROUP III	9.36	1.00
GROUP IV	9.51	1.00
GROUP V	9.61	1.00

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Trucks up to 3 tons, and including 4 yd. dump trucks, struck measure and pickup trucks	$8.37	$.90+b
Trucks 3 to 5 tons and including 5 yd. dump trucks, struck measure	8.79	.90+b
Trucks 5 tons and over including dump trucks over 6 yds., struck measure, special equipment as Ready-mix concrete trucks, tank trucks, floats, lowboys, winch trucks, semi-trailers, any type trucks pulling or towing equipment	9.15	.90+b
Greaser, tire repairmen, tire changer and oiler	8.49	.90+b

[FR Doc. 84-22963 Filed 8-30-84; 8:45 am]
BILLING CODE 4510-27-C

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
GROUP A	$12.59	$1.80
GROUP B	11.00	1.80
GROUP C	9.62	1.80
GROUP D	8.75	1.80

CLASSIFICATIONS DEFINITIONS

LABORERS

GROUP I - Construction laborers

GROUP II Form setter and stripper, pipelayer, asphalt raker, jackhammer operator, air tool operator, vibrator, operator, chain saw operator, barco tamp operator, mortar mixer, plasterer tender, all power driven tool operators, hod carriers, power buggy, yarner, potman, snakeman, grademan

GROUP III - Acetylene Burner

GROUP IB - Wagon drill operator

GROUP V - Powderman

GROUP VI - Caisson hole man

TUNNEL CLASSIFICATIONS

GROUP I - Laborers, outside:

GROUP II - Tunnel laborers

GROUP III _ Chuck tenders

GROUP IV - Nozzleman; concrete gun operator

GROUP V - Tunnel miner

POWER EQUIPMENT OPERATORS

GROUP A - Backhoes; cableways, ross carrier; clamshells; cranes; derricks; draglines; turnapulls, pans; scrapers; scoops; head tower machines; end loaders; locomotives (over 20 tons); shovels; dozers; fork-lifts (over 8' lift); core drills; foundation drills; graders; mechanics; welders; winch truck with A-Frame; skimmer scoops; locomotive cranes; overhead cranes; skid rigs; piledrivers; side boom tractors; euclid loaders; derrick boat; dredge boats; hoist (any size handling steel or stone); engines used in connection with hoists material; mucking-machines; cherry pickers; tower cranes; skylift gradall.

DECISION NO. TN84-1024

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP B - Tractors; farm type Tractors (with attachments); Central compressor plants; elevators (used for hoisting building materials); central mixing plants; hoist (not handling steel or stone); Pump-crete machine; concrete pumps; backfillers (other than cranes); tracmobile; crushing plant; elevating grader; earth augers; fork-lifts (8' lift or under); paving machine (blacktop/concrete); boat operator or engineer (30 tons or over); blacktop rollers; switchman; locomotive (under 20 tons); Maintainers.

GROUP C - Asphalt plant; barber-green type loader; engine tender (other than steam); mixers (over 2 bags, not to include central plants); pumps (not more than 3); scrifiers; spreader box (bituminous); asphalt mixers; Portable compressors (not more than 3); roller; sub-grader machine; tractors (farm type without attachments); cable head tower engineman; dredge booster pump; boat operator or engineers (under 30 tons); finishing machine; fireman & oiler (combination); motor crane oiler & driver; welding machines (not more than 3); heaters (stationary or portable, not more than 5); compressors (portable, not more than 3); greaser or fuel truck.

GROUP D - Air compressor (1 portable); fireman; portable crushers; welding machine (1); conveyors; pump (1); Oiler; heater (1).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

FOOTNOTES:

a - Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Friday after Thanksgiving Day; Christmas Day. Vacation Pay Credit: Employer contributes 8% of the basic hourly rate for employees with 5 years or more of service, or 6% of the basic hourly rate for employees with 6 months to 5 years of service.

b - $41.00 per week, per employee

federal register

Friday
August 31, 1984

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Early Seasons, Bag Limits and Possession of Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, common snipe, gallinules; teal in September, in the contiguous United States; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and special falconry seasons during 1984–85. The taking of these migratory birds is prohibited unless hunting seasons are specifically provided. The rules will permit the hunting of these species within specified periods of time beginning as early as September 1, as has been the case in past years.

DATE: Effective on August 31, 1984.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, 1717 H Street, NW., Washington, D.C., telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

On March 23, 1984, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (49 FR 11120) a proposal to amend 50 CFR Part 20, with comment periods ending June 21, July 16 (later extended to July 18) and August 17 (later extended to August 29), 1984, respectively, for the 1984–85 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico and the Virgin Islands; other early seasons; and the late seasons. That document dealt with the establishment of hunting seasons, hours, areas and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. On June 13, 1984, the Service published in the **Federal Register** (49 FR 24417) a second document consisting of a supplemental proposed rulemaking dealing with both the early and late season frameworks. On July 9, 1984, the Service published for public comment in the **Federal Register** (49 FR 28026) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early season migratory bird hunting regulations. On July 19, 1984, the Service published in the **Federal Register** (49 FR 29238) a fourth document consisting of final frameworks for Alaska, Puerto Rico and the Virgin Islands. On August 7, 1984, the Service published a fifth document (49 FR 31421) consisting of a final rulemaking for the early season frameworks for migratory game bird hunting regulations from which State wildlife conservation agency officials selected early season hunting dates, hours, areas and limits for the 1984–85 season. On August 20, 1984, the Service published a sixth document in the **Federal Register** (49 FR 33090) consisting of a proposed rulemaking dealing specifically with frameworks for late season migratory bird hunting regulations. The final rule described here is the seventh in a series of proposed, supplemental and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe and gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and special falconry seasons.

These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Nontoxic Shot Regulations

On August 13, 1981, the Service published in the **Federal Register** (46 FR 40879) final rules describing nontoxic shot zones for waterfowl hunting. When eaten by waterfowl, spent lead pellets can have a toxic effect. Nontoxic shot zones reduce availability of lead pellets in selected waterfowl feeding areas.

Amendments to these regulations were published in the **Federal Register** (47 FR 32546; July 28, 1982 and 48 FR 26457; June 8, 1983). These amendments relate to changes in Maine, Massachusetts, Indiana, Nebraska, Michigan, Illinois, Texas and Florida.

Waterfowl hunters are advised to become familiar with State and local regulations regarding the use of nontoxic shot for waterfowl hunting.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of the environmental assessments are available from the Service.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] ". . . by taking such action necessary to insure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

Subsequently, the Service initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On July 5, 1984, the Chief, Office of Endangered Species, gave a biological opinion that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory

game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Regulatory Flexibility Act and Executive Order 12291

In the Federal Register dated March 23, 1984 (at 49 FR 11124), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20340.

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of John P. Rogers, Chief.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the Federal Register dated July 19, 1984 (at 49 FR 29238).

Regulations Promulgation

After analysis of migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the early proposals (49 FR 11120, March 23, 1984; 49 FR 24417, June 13, 1984; and 49 FR 28026, July 19, 1984), the Service published in the Federal Register on July 19, 1984 (49 FR 29238) final early season frameworks for Alaska, Puerto Rico, the Virgin Islands; and on August 7, 1984 (49 FR 31421), those for the contiguous United States and Hawaii. Copies of the final frameworks were also sent to the officials of the State conservation agencies and to conservation agency officials in Puerto Rico and the Virgin Islands who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 1, as has been the case in past years, and benefit the public by relieving existing restrictions.

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 23, June 13, and July 9, 1984, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect immediately upon publication.

Accordingly, each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of Title 50, Chapter I, Subchapter B, Part 20, Subpart K, are amended as set forth below.

The rules that eventually will be promulgated for the 1984–85 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 704 et seq.), as amended.

List of Subjects in 50 CFR Part 20

PART 20—[AMENDED]

Exports, Hunting, Imports, Transportation, Wildlife.

1. Section 20.101 is revised to read as follows:

§ 20.101 Seasons, limits and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, the open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits, and areas for hunting the species designated in this section are prescribed as follows:

(a) *Puerto Rico.*

	Doves	Pigeons
Daily bag limit	10 singly or in the aggregate of all permitted species.	5
Possession limit	10 singly or in the aggregate of all permitted species.	5

Season dates: Sept. 1 to Oct. 30, 1984.
Shooting hours: One-half hour before sunrise to sunset daily.

Restrictions: Only the following species of doves and pigeons may be hunted during the open season: Zenaida dove (*Tortola cardosantera*); white-winged dove (*Tortola aliblanca o cubanita*); mourning dove (*Tortola rabilarga o rabiche*); and scaly-naped pigeon (*Paloma turca o torcaz*).

Closed Areas

No season is prescribed for doves and pigeons on Mona Island in order to protect the reduced population of white-crowned pigeon (*Columba leucocephala*), known locally as "Paloma cabeciblanca."

No season is prescribed for doves and pigeons in the Municipality of Culebra and on Desecheo Island.

No season is prescribed in the El Verde Closure Area consisting of those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

No season is prescribed for doves and pigeons of any species in all of Cidra Municipality and in portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: Beginning on Highway 172 as it leaves the

Municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavata, west along the Rio Guavata to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality, and westerly, northerly, and easterly along the Cidra Municipality boundary to the point of beginning.

Check Commonwealth Regulations for Additional Restrictions

(b) *Puerto Rico.*

	Ducks	Coots	Common gallinules	Common snipe
Daily bag limits	4	Closed	6	6
Possession limits	8	Closed	12	12

Season dates: Nov. 10 to Dec. 10, 1984 and Feb. 2 to Feb. 25, 1985.
Shooting hours: One-half hour before sunrise until sunset daily.

Restrictions: No season is prescribed for waterfowl in the Municipality of Culebra and on Desecheo Island. The season is closed on the ruddy duck (*Oxyura jamaicensis*); Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*); purple gallinule (*Porphyrula martinica*) and coots (*Fulica americana* and *Fulica caribaea*).

Check Commonwealth Regulations for Additional Restrictions

Note.—Local names for game birds: Ruddy duck (*Oxyura jamaicensis*)—Pato rojo (protected); purple gallinule (*Porphyrula martinica*)—Gallareta azul (protected); and Puerto Rican plain pigeon (*Columba inornata wetmorei*)—Paloma sabanera (protected).

(c) *Virgin Islands.*

	Zenaida dove	Scaly-naped pigeon	Ducks
Daily bag limits	10	5	4
Possession limits	10	5	8

Season dates:
Zenaida dove and scaly-naped pigeon: Sept. 1 through Oct. 30, 1984.
Ducks only: Dec. 1, 1984 through Jan. 24, 1985.
Shooting hours: One-half hour before sunrise until sunset daily.

Restrictions: No open season is prescribed for ground or quail doves, or other pigeons in the Virgin Islands. The season is closed on the ruddy duck (*Oxyura jamaicensis*); Bahama pintail (*Anas bahamensis*); West Indian whistling (tree) duck (*Dendrocygna arborea*); fulvous whistling (tree) duck (*Dendrocygna bicolor*); masked duck (*Oxyura dominica*), and purple gallinule (*Porphyrula martinica*).

Check Commonwealth Regulations for Additional Restrictions

Note.—Local names for game birds: Zenaida dove (*Zenaida aurita*)—mountain dove; bridled quail dove (*Geotrygon mystacea*)—Barbary dove, partridge (protected); ground dove (*Columbina passerina*)—stone dove, tobacco dove, rola, tortolita (protected); and scaly-naped pigeon (*Columba squamosa*)—red-necked pigeon, scaled pigeon.

2. Section 20.102 is revised to read as follows:

§ 20.102 Seasons, limits and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Shooting hours: One-half hour before sunrise to sunset daily.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Open Seasons—Ducks, Geese, Cranes and Common Snipe

Area	
Northern: State Game Mgmt. Units 11–13 and 17–26.	Sept. 1 to Dec. 16.
Gulf Coast: State Game Mgmt. Units 5–7, 9, 14–16 and Unimak Island.	Sept. 1 to Dec. 16.
Southeast: State Game Mgmt. Units 1–4.	Sept. 1 to Dec. 16.
Pribilof and Aleutian Islands: State Game Mgmt. Unit 10 except Unimak Island.	Oct. 8 to Jan. 22.
Kodiak: State Game Mgmt. Unit 8	Oct. 8 to Jan. 22.

DAILY BAG AND POSSESSION LIMITS

Area	Ducks [1]	Geese [2]	Emperor geese	Brant	Common snipe	Sandhill cranes
Northern	10–30	6–12	2–4	2–4	8–16	2–4
Gulf Coast	8–24	6–12	2–4	2–4	8–16	2–4
Southeast	7–21	6–12	2–4	2–4	8–16	2–4
Pribilof and Aleutian Islands	7–21	6–12	2–4	2–4	8–16	2–4
Kodiak	7–21	6–12	2–4	2–4	8–16	2–4

[1] In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species: Scoter, eider, oldsquaw, harlequin and American and red-breasted mergansers.
[2] No more than 4 daily, or 8 in possession may be any combination of Canada and/or white-fronted geese, provided that: in Units 1–9, 14–16 and 18, no more than 2 daily, or 4 in possession, may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is prohibited from September 1 to September 15. In Units 9(E), 10 (except Unimak Island) and 18, the taking of Canada geese is prohibited. In Unit 1(C), the taking of snow geese is prohibited.

3. Section 20.103 is revised to read as follows:

§ 20.103 Seasons, limits and shooting hours for mourning and white-winged doves and wild pigeons.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Mourning Doves—Eastern Management Unit.*

In all States except Alabama, Illinois, Tennessee and Louisiana:	
Daily bag limit	12
Possession limit	24
In Illinois, Louisiana and Tennessee:	
Daily bag limit	15
Possession limit	30
In Alabama:	
Daily bag limit	15
Possession limit	15

Shooting hours: One-half hour before sunrise until sunset daily except as noted otherwise.
Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in:	
Alabama:	
North Zone: [1] All of Autauga, Barbour, Bullock, Butler, Chilton, Choctaw, Clarke, Conecuh, Crenshaw, Dallas, Elmore, Lee, Lowndes, Macon, Marengo, Monroe, Montgomery, Pike, Russell, Washington and Wilcox Counties.	
One-half hour before sunrise to sunset.	Sept. 15 to Oct. 26 and Dec. 15 to Jan. 1.
Remaining counties in North Zone:	
12 noon to sunset	Sept. 15 to Sept. 24.
One-half hour before sunrise to sunset.	Sept. 25 to Oct. 26 and Dec. 15 to Jan. 1.
South Zone: [1] One-half before sunrise to sunset.	Oct. 6 to Nov. 24 and Dec. 22 to Dec. 31.
Connecticut	Closed.
Delaware (12 noon to sunset)	Sept. 1 to Sept. 29 and Oct. 15 to Oct. 27 and Dec. 17 to Jan. 12.
Florida: [2]	
12 noon to sunset	Oct. 6 to Oct. 28.
One-half hour before sunrise to sunset.	Nov. 10 to Nov. 25 and Dec. 15 to Jan. 14.
Georgia:	
North Zone: [3]	
12 noon to sunset	Sept. 1.
One-half hour before sunrise to sunset.	Sept. 2 to Oct. 2 and Nov. 22 to Nov. 25 and Dec. 8 to Jan. 10.
South Zone: [3]	
12 noon to sunset	Sept. 29.
One-half hour before sunrise to sunset.	Sept. 30 to Oct. 30 and Nov. 22 to Nov. 25 and Dec. 8 to Jan. 10.
Illinois (12 noon to sunset)	Sept. 1 to Oct. 30.
Indiana (12 Noon to sunset)	Sept. 1 to Oct. 30.
Kentucky (11 a.m. to sunset)	Sept. 1 to Oct. 31 and Dec. 1 to Dec. 9.

Louisiana:	
North Zone: [4] 12 noon to sunset.	Sept. 1 to Sept. 9 and Oct. 13 to Nov. 4 and Dec. 8 to Jan. 4.
South Zone: [4] 12 noon to sunset.	Oct. 13 to Nov. 18 and Dec. 8 to Dec. 30.
Maine	Closed.
Maryland:	
12 noon to sunset	Sept. 1 to Oct. 20.
One-half hour before sunrise to sunset.	Nov. 15 to Nov. 24 and Dec. 22 to Dec. 31.
Massachusetts	Closed.
Michigan	Closed.
Mississippi (One-half hour before sunrise to sunset).	Sept. 1 to Sept. 23 and Oct. 20 to Nov. 18 and Dec. 21 to Jan. 6.
New Hampshire	Closed.
New Jersey	Closed.
New York	Closed.
North Carolina:	
12 noon to sunset	Sept. 1 to Sept. 29.
One-half hour before sunrise to sunset.	Nov. 17 to Nov. 24 and Dec. 14 to Jan. 15.
Ohio	Closed.
Pennsylvania:	
12 noon to sunset	Sept. 1 to Oct. 18.
One-half hour before sunrise to sunset.	Nov. 3 to Nov. 24.
Rhode Island:	
12 noon to sunset	Sept. 10 to Sept. 30.
One-half hour before sunrise to sunset.	Oct. 20 to Nov. 7 and Dec. 17 to Jan. 15.
South Carolina (One-half hour before sunrise to sunset).	Sept. 1 to Oct. 6 and Nov. 17 to Nov. 24 and Dec. 21 to Jan. 15.
Tennessee:	
12 noon to sunset	Sept. 1.
One-half hour before sunrise to sunset.	Sept. 2 to Sept. 29 and Oct. 13 to Oct. 20 and Dec. 15 to Jan. 6.
Vermont	Closed.
Virginia:	
12 noon to sunset	Sept. 8 to Oct. 27.
One-half hour before sunrise to sunset.	Nov. 19 to Nov. 24 and Dec. 22 to Jan. 4.
West Virginia:	
12 noon to sunset	Sept. 1 to Nov. 1.
One-half hour before sunrise to sunset.	Dec. 24 to Dec. 31.
Wisconsin	Closed.

[1] In Alabama, the South Zone is defined as: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: remainder of the State.

[2] In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is 24 mourning and white-winged doves in the aggregate, of which not more than 8 may be white-winged doves.

[3] In Georgia, the North Zone is defined as that area lying north of a division line as follows: U.S. Highway 280 from Columbus to the Little Ocmulgee River, down the Little Ocmulgee to the Ocmulgee River, southwesterly along the Ocmulgee River to the western border of Jeff Davis County, south along the western border of Jeff Davis County, east along the southern border of Jeff Davis and Appling Counties, north along the eastern border of Appling County to the Altamaha River, east along the Altamaha River to the eastern border of Tattnall County, north along the eastern boundary of Tattnall County, north along the western border of Evans County to Candler County, east along the northern border of Evans County to Bulloch County, north along the western border of Bulloch County to Highway 301, then northeast along Highway 301 to the South Carolina line.

[4] In Louisiana, the North Zone is defined as that area lying north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell, and Interstate Highway 10 from Slidell to the Mississippi State line. The South Zone consists of the remainder of Louisiana.

(b) *Mourning Doves—Central Management Unit.*

In Missouri:

Daily bag limit	10
Possession limit	20
In Nebraska and Texas:	
Daily bag limit	12
Possession limit	24
In Arkansas, Colorado, Kansas, New Mexico, North Dakota, Oklahoma, South Dakota, Wyoming and Montana:	
Daily bag limit	15
Possession limit	30

Shooting hours: One-half hour before sunrise until sunset daily except as noted otherwise.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in:	
Arkansas	Sept. 1 to Sept. 30 and Dec. 15 to Jan. 13.
Colorado	Sept. 1 to Oct. 15.
Iowa	Closed.
Kansas	Sept. 1 to Oct. 30.
Minnesota	Closed.
Missouri	Sept. 1 to Nov. 9.
Montana	Sept. 8 to Nov. 6.
Nebraska	Sept. 1 to Oct. 15.
New Mexico [1]	Sept. 1 to to Sept. 30 and Nov. 17 to Dec. 16.
North Dakota	Sept. 1 to Oct. 30.
Oklahoma	Sept. 1 to Oct. 15.
South Dakota	Sept. 1 to Sept. 30.
Texas: [2] [3]	
North Zone	Sept. 1 to Nov. 9.
Central Zone	Sept. 1 to Oct. 30 and Jan. 5 to Jan. 14.
South Zone [4]	Sept. 20 to Nov. 12 and Jan. 5 to Jan. 20.
Wyoming	Sept. 1 to Oct. 15.

[1] In New Mexico, the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of these species.

[2] In Texas, the three zones are North, South and Central as follows:

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then southeast on U.S. 87 to the Port Lavaca Channel and along the Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between between the North and South Zones.

[3] In Texas, the daily bag limit is 12 mourning, white-winged and white-tipped doves in the aggregate, of which no more than 2 can be white-winged doves and 2 can be white-tipped doves; and the possession limit is 24, of which no more than 4 may be whitewings and 4 may be whitetips.

[4] In Texas, the mourning dove season in the special white-winged dove area of the South Zone is September 20–November 8 and January 5–January 20.

(c) *Mourning Doves—Western Management Unit.*

In Washington:	
Daily bag limit	10
Possession limit	20
In Arizona:	
Daily bag limit	12
Possession limit	24
In California, Idaho, Nevada, Oregon and Utah:	
Daily bag limit	15
Possession limit	30

Shooting hours: One-half hour before sunrise until sunset.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in:	
Arizona [1]	Sept. 1 to Sept. 23 and Nov. 28 to Jan. 13.
California [2]	Sept. 1 to Oct. 15 and Nov. 17 to Dec. 1.
Idaho	Sept. 1 to Oct. 30.
Nevada [2]	Sept. 1 to Oct. 30.
Oregon	Sept. 1 to Sept. 30.
Utah	Sept. 1 to Sept. 30.
Washington	Sept. 1 to Sept. 15.

[1] In Arizona, during September 1 through 23 the daily bag limit is 12 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 24 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves. During November 28 through January 13, the bag and possession limits are 12 and 24 mourning doves, respectively.

[2] In those counties of California (Imperial, Riverside and San Bernardino) and Nevada (Clark and Nye) having a season on white-winged doves, the daily bag limit is 15 and the possession limit is 30 mourning and white-winged doves, singly or in the aggregate of these species; however, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

Notice.—Hawaii—Subject to the applicable provisions of the preceding sections of this part, mourning doves may be taken in accordance with the State regulations.

(d) *White-winged Doves.*

Shooting hours: One-half hour before sunrise until sunset except as noted otherwise.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in—	Season dates	Limits	
		Bag	Poss.
Arizona (Statewide)	Sept. 1 to Sept. 23.	[1]6	[1]12
California:			
Counties of Imperial, Riverside and San Bernardino.	Sept. 1 to Oct. 15 and Nov. 17 to Dec. 1.	[2]10	[2]20
Remainder of State	Closed.		
Nevada:			
Counties of Clark and Nye.	Sept. 1 to Oct. 30.	[2]10	[2]20
Remainder of State	Closed.		
New Mexico	Sept. 1 to Sept. 30 & Nov. 17 to Dec. 16.	[3]15	[3]30
Texas: [4]			
Area in South Zone	Sept. 1, 2, 8 and 9.	[5]10	[5]20
Remainder of State: See mourning dove regulations.			

[1] In Arizona, during September 1 through 23 the daily bag limit is 12 mourning and white-winged doves in the aggregate of which no more than 6 may be white-winged doves. The possession limit after opening day is 24 mourning and white-winged doves in the aggregate of which no more than 12 may be white-winged doves.

[2] In designated counties of California and Nevada, the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species; however, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

[3] In New Mexico, the daily bag limit is 15 and the possession limit is 30 white-winged and mourning doves, singly or in the aggregate of both species.

[4] SPECIAL WHITE-WINGED DOVE AREA IN SOUTH ZONE—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along state Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

(5) In Texas, the daily bag limit in the special white-winged dove area is 10 white-winged, mourning and white-tipped doves in the aggregate of which no more than 2 may be mourning doves and 2 may be white-tipped doves. Possession limit is twice the daily bag limit.

(e) *Band-tailed Pigeons.*

Shooting hours: One-half hour before sunrise until sunset.

Check State Regulations for Additional Restrictions, Including Area Descriptions

Seasons in—	Season dates	Limits	
		Bag	Poss.
Arizona [1]	Oct. 12 to Nov. 10.	5	10
California:			
Counties of Alpine, Butte, Del Norte, Glen, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity.	Sept. 29 to Oct. 28.	5	5
Remainder of State	Dec. 8 to Jan. 6	5	5
Colorado: In all lands west of U.S. Interstate 25 and Small Game Management Units 80, 81, 82 and 83.	Sept. 1 to Sept. 30.	5	10
Nevada: [1] Carson City, Churchill, Douglas, Humboldt, Lyon, Mineral, Pershing, Washoe, and Storey Counties only.	Sept. 1 to Sept. 30.	5	5
New Mexico:			
North Zone [2]	Sept. 1 to Sept. 20.	5	10
South Zone [2]	Oct. 1 to Oct. 20	5	10
Oregon	Sept. 1 to Sept. 30.	5	5
Utah	Sept. 1 to Sept. 30.	5	10
Washington	Sept. 1 to Sept. 30.	5	5

[1] Each hunter must have for Arizona a special bird permit stamp issued by the State and for Nevada a special permit issued by the State.

[2] In New Mexico, the *North Zone* is defined as that area lying north and east of a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 to the Texas State line. The *South Zone* is defined as that area lying south and west of the North Zone.

4. Section 20.104 is revised to read as follows:

§ 20.104 Seasons, limits and shooting hours for rails, woodcock and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	[1] 25	See footnote [2]	[3] 5	8
Possession limit	[1] 25	do	10	16

Shooting Hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.
Check State regulations for additional restrictions, including area descriptions.

Seasons in the Atlantic Flyway

Connecticut	Sept. 1 to Nov. 9	Sept. 1 to Nov. 9	Oct. 20 to Dec. 1	Oct. 20 to Dec. 1.
Delaware	do	do	Oct. 15 to Oct. 27 and Nov. 19 to Jan. 9.	Oct. 15 to Oct. 27 and Nov. 19 to Jan. 31.
Florida	do	do	Dec. 1 to Feb. 3	Nov. 3 to Feb. 17.
Georgia	Sept. 12 to Nov. 20	Sept. 12 to Nov. 20	Nov. 20 to Jan. 23	Nov. 20 to Feb. 28.
Maine	Sept. 1 to Nov. 9	Closed	Oct. 1 to Nov. 30	Sept. 1 to Dec. 16.
Maryland	do	Sept. 1 to Nov. 9	Oct. 15 to Nov. 23 and Dec. 7 to Dec. 31.	Oct. 1 to Jan. 15.
Massachusetts	do	Closed	Deferred	Sept. 1 to Dec. 15.
New Hampshire	Closed	do	Oct. 1 to Dec. 4	Oct. 1 to Dec. 4.
New Jersey: [4]				
North Zone	Sept. 1 to Nov. 9	Sept. 1 to Nov. 9	Oct. 6 to Nov. 29	Oct. 6 to Jan. 19.
South Zone	do	do	Oct. 27 to Dec. 1 and Dec. 15 to Jan. 2.	Do.
New York:				
Long Island	Closed	Closed	Oct. 1 to Nov. 23	Closed.
Remainder of State	Sept. 1 to Nov. 9	do	do	Sept. 1 to Nov. 23.
North Carolina	Sept. 6 to Nov. 14	Sept. 6 to Nov. 14	Nov. 12 to Jan. 15	Nov. 12 to Feb. 26.
Pennsylvania	Sept. 1 to Nov. 9	Closed	Oct. 20 to Nov. 10	Oct. 20 to Dec. 15.
Rhode Island	Sept. 15 to Nov. 23	Sept. 15 to Nov. 23	Oct. 20 to Dec. 7 and Dec. 17 to Jan. 1.	Sept. 15 to Dec. 7 and Dec. 17 to Jan. 8.
South Carolina	Sept. 21 to Oct. 27 and Nov. 20 to Dec. 22.	Sept. 21 to Oct. 27 and Nov. 20 to Dec. 22.	Nov. 22 to Jan. 25	Nov. 14 to Feb. 28.
Vermont	Sept. 29 to Dec. 7	Closed	Oct. 1 to Dec. 4	Sept. 29 to Dec. 7.
Virginia	Sept. 8 to Nov. 16	Sept. 8 to Nov. 16	Oct. 29 to Jan. 1	Oct. 17 to Jan. 31.
West Virginia	Sept. 3 to Nov. 11	Closed	Oct. 13 to Dec. 16	Sept. 3 to Dec. 18.

Seasons in the Mississippi Flyway

Alabama [5]	Nov. 12 to Jan. 20	Nov. 12 to Jan. 20	Nov. 28 to Jan. 31	Nov. 14 to Feb. 28.
Arkansas	Sept. 1 to Nov. 9	Closed	Nov. 3 to Jan. 6	Nov. 17 to Feb. 28.
Illinois	do	do	Oct. 1 to Dec. 4	Sept. 8 to Dec. 23.
Indiana	do	do	Sept. 22 to Nov. 25	Sept. 1 to Dec. 16.
Iowa [6]	do	do	Sept. 15 to Nov. 18	Do.
Kentucky	Deferred	do	Oct. 1 to Dec. 4	Oct. 1 to Dec. 4.
Louisiana	Sept. 22 to Sept. 30 and Nov. 3 to Jan. 2.	Sept. 22 to Sept. 30 and Nov. 3 to Jan 2.	Dec. 8 to Feb. 10	Nov. 3 to Feb 17.
Michigan [7]	Sept. 15 to Nov. 14	Closed	Sept. 15 to Nov. 14	Sept. 15 to Nov. 14.
Minnesota	Sept. 1 to Nov. 4	do	Sept. 1 to Nov. 4	Sept. 1 to Nov. 4.
Mississippi	Oct. 20 to Dec. 28	Oct. 20 to Dec. 28	Dec. 22 to Feb. 24	Nov. 10 to Feb. 24.
Missouri	Sept. 1 to Nov. 9	Closed	Oct. 1 to Dec. 4	Oct. 1 to Dec. 4.
Ohio	do	do	Sept. 21 to Nov. 24	Sept. 1 to Nov. 24 and Dec. 7 to Dec. 28.
Tennessee	Deferred	do	Oct. 13 to Nov. 18 and Feb. 1 to Feb. 28.	Nov. 19 to Feb. 28.
Wisconsin	do	do	Sept. 15 to Nov. 18	Deferred.

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Seasons in the Central Flyway				
Colorado [8]	Sept. 1 to Nov. 9	Closed	Closed	Sept. 1 to Nov. 9 and Dec. 8 to Dec. 30.
Kansas	Sept. 15 to Nov. 23	do	Oct. 1 to Dec. 4	Sept. 15 to Dec. 30.
Montana [8]	Closed	do	Closed	Deferred.
Nebraska [9]	Sept. 1 to Nov. 9	do	Sept. 15 to Nov. 18	Sept. 1 to Dec. 15.
New Mexico [8]	Sept. 8 to Nov. 16	do	Closed	Sept. 8 to Dec. 9.
North Dakota	Closed	do	do	Sept. 29 to Nov. 27.
Oklahoma	Sept. 1 to Nov. 9	do	Nov. 20 to Jan. 23	Oct. 20 to Feb. 3.
South Dakota [10]	Closed	do	Closed	Sept. 1 to Oct. 31.
Texas	Sept. 1 to Nov. 9	Sept. 1 to Nov. 9	Deferred	Deferred.
Wyoming [8]	Sept. 22 to Nov. 30	Closed	Closed	Sept. 22 to Jan. 6.
Seasons in the Pacific Flyway				
Colorado [8]	Sept. 1 to Nov. 9	Closed	Closed	Sept. 1 to Nov. 9 and Dec. 8 to Dec. 30.
Montana [8]	Closed	do	do	Deferred.
New Mexico [8]	Sept. 8 to Nov. 16	do	do	Sept. 8 to Dec. 9.
Wyoming [8]	Sept. 22 to Nov. 30	do	do	Sept. 22 to Dec. 23.

[1] The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.
[2] In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.
[3] In Pennsylvania and Rhode Island, the woodcock bag limit is 3 daily and 6 in possession.
[4] For description of zones or management units within a State, see State regulations.
[5] In Alabama, the rail limits are 15 daily and 15 in possession.
[6] In Iowa, shooting hours are sunrise to sunset. Rail limits are 15 daily and 25 in possession.
[7] See State regulations for listing of certain Great Lakes waters where the season is to open concurrently with the duck season.
[8] The Central Flyway portion consists of: *Colorado* and *Wyoming*—the area lying east of the Continental Divide; *Montana*—the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; *New Mexico*—the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.
[9] In Nebraska, the rail limits are 10 daily and 20 in possession.
[10] In South Dakota, the snipe limits are 5 daily and 15 in possession.

NOTE.—Some States may select rail, woodcock, and snipe seasons at the time they select their duck seasons in August. Consult waterfowl regulations to be published later for information concerning these seasons.

NOTE.—No seasons are prescribed for woodcock. Snipe seasons have been deferred by all other States in the Pacific Flyway. Consult waterfowl regulations to be published later for information concerning the snipe season in Montana.

5. Section 20.105 is amended by revising paragraphs (a)-(c) and by amending paragraph (d).

§ 20.105 Seasons, limits and shooting hours for waterfowl, coots and gallinules.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) *Sea Ducks.*

(1) An open season for taking scoter, eider and oldsquaw ducks is prescribed according to the following table during the period between September 15, 1984, and January 20, 1985, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island and Connecticut; in those coastal waters of New York lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the Town of Riverhead to Red Cedar Point in the Town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island and emergent vegetation in New Jersey, South Carolina and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated and designated as special duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

(2) The daily bag limit is 7 and the possession limit is 14, singly or in the aggregate of these species. During the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregrate of these species.

(3) Shooting hours are one-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Seasons in:	
Connecticut	Sept. 21–Jan. 5.
Delaware	Sept. 22–Jan. 5.
Georgia	Nov. 22–Jan. 19.
Maine	Oct. 1–Jan. 15.
Maryland	Deferred.
Massachusetts	Deferred.
New Hampshire	Sept. 15–Dec. 30.
New Jersey	Oct. 6–Jan. 19.
New York (Long Island only)	Sept. 23–Jan. 7.
North Carolina	Deferred.
Rhode Island	Do.
South Carolina	Do.
Virginia	Do.

(4) Notwithstanding the provisions of this Part 20, the shooting of *crippled* waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Vriginia and Maryland in those areas described, delineated and designated in their respective hunting regulations as being open to sea duck hunting.

Note.—States with deferred seasons may select sea duck seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(b) *Teal.* September season: An open season for teal ducks (blue-winged, green-winged and cinnamon) is prescribed according to the following table in those areas which are described, delinated and designated in the hunting regulations of the following States:

Daily bag limit	4
Possession limit	8

Shooting hours: Sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Seasons in the Mississippi Flyway:	
Alabama [1]	Sept. 8–Sept. 16.
Arkansas	Sept. 15–Sept. 23.
Illinois [2]	Sept. 8–Sept. 16.
Indiana [3]	Sept. 1–Sept. 9.
Louisiana	Sept. 22–Sept. 30.
Mississippi	Sept. 15–Sept. 23.
Missouri	Sept. 8–Sept. 16.
Ohio	Sept. 7–Sept. 15.
Seasons in the Central Flyway:	
Colorado [4], [5]	Sept. 1–Sept. 9.
Kansas	Sept. 15–Sept. 23.
New Mexico [5]	Sept. 8–Sept. 16.
Oklahoma	Do.
Texas	Sept. 15–Sept. 23.

[1] In Alabama, shooting hours in Mobile Delta north of the causeway and south of the L&N Railroad are sunrise to 12 noon.
[2] In Illinois, the shooting hours are from 7 a.m.–4 p.m. local time by State regulation.
[3] In Indiana, the Kankakee and LaSalle Fish and Wildlife Areas, and portions of Atterbury, Hovey Lake, Jasper-Pulaski and Piegon River Fish and Wildlife Areas are closed to teal hunting by State regulations.
[4] Only in Lake and Chaffee Counties, and that portion of Colorado east of U.S. Highway-Colorado State Highway 85 from the Wyoming State line to its intersection with U.S. Interstate Highway 25 to the New Mexico State line.
[5] Central Flyway portion only.

(c) *Gallinules.*

Daily bag limit	15
Possession limit	30

Shooting hours: One-half hour before sunrise to sunset.

Check State Regulations for Additional Restrictions

Seasons in the Atlantic Flyway:	
Connecticut	Sept. 1–Nov. 9.
Delaware	Do.
Florida [1]	Do.
Georgia	Oct. 12–Oct. 14 and Nov. 22–Nov. 25 and Dec. 8–Jan. 19.
Maine	Sept. 1–Nov. 9.
Maryland	Do.
Massachusetts	Do.
New Hampshire	Closed.
New Jersey	Sept. 1 to Nov. 9
New York:	
Long Island	Closed.
Remainder of State	Sept. 1–Nov. 9.
North Carolina	Sept. 6–Nov. 14.
Pennsylvania	Sept. 1–Nov. 9.
Rhode Island	Sept. 15–Nov. 23.
South Carolina	Sept. 21–Oct. 27 and Nov. 20–Dec. 22.
Vermont	Sept. 29–Dec. 7.
Virginia	Deferred.
West Virginia	Do.
Seasons in the Mississippi Flyway:	
Alabama [2]	Nov. 12–Jan. 20.
Arkansas	Nov. 10–Jan. 18.
Illinois	Closed.
Indiana	Sept. 1–Nov. 9.
Iowa	Closed.
Kentucky	Deferred.
Louisiana	Sept. 22–Sept. 30 and Nov. 3–Jan. 2.
Michigan	Deferred.
Minnesota	Do.
Mississippi	Oct. 20 to Dec. 28.
Missouri	Closed.
Ohio	Sept. 1 to Nov. 9.
Tennessee	Deferred.
Wisconsin	Do.
Seasons in the Central Flyway:	
Colorado [3]	Closed.
Kansas	Closed.
Montana [3]	Deferred.
Nebraska	Closed.
New Mexico [3]	Oct. 16 to Dec. 24.
North Dakota	Closed.
Oklahoma	Sept. 1 to Nov. 9.
South Dakota	Closed.
Texas	Sept. 1 to Nov. 9.
Wyoming [3]	Closed.
Seasons in the Pacific Flyway:	
All States and portions thereof.	Deferred.

[1] The gallinule season in Florida applies to the common gallinule only. There is no open season on the purple gallinule in Florida.
[2] In Alabama, the gallinule limits are 15 daily and 15 in possession.
[3] Seasons apply to Central Flyway portion of State only.

Note.—States with deferred seasons may select gallinule seasons at the time they select their waterfowl seasons in August. Consult waterfowl regulations to be published later for information concerning these later seasons.

(d) *Waterfowl and coots in Atlantic, Mississippi, Central and Pacific Flyways.*

Atlantic Flyway

Flywaywide Restrictions.

Shooting (including hawking) hours: One half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

	Season dates	Limits: Bag	Limits: Possession
* * * * *			
Florida:			
Ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit.	Sept. 22 to Sept. 26	4	8
* * * * *			

Mississippi Flyway

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

* * * * *

	Season dates	Limits: Bag	Limits: Possession
* * * * *			
Iowa:			
Ducks	Sept. 12 to Sept. 26	[1]	[1]
* * * * *			
Kentucky:			
Ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit.	Sept. 12 to Sept. 16	4	8
* * * * *			
Tennessee:			
Ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit.	Sept. 15 to Sept. 19	4	8
* * * * *			

[1] Limits to conform to those set for the regular season.

* * * * *

6. Section 20.106 is amended by revising the Central and Pacific Flyways as follows:

§ 20.106 Seasons, limits and shooting hours for sandhill cranes.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes, and with shooting hours from one-half hour before sunrise until sunset in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley) the season has been deferred.

(b) In the New Mexico counties of Chaves, Curry, De Baca, Eddy, Lea, Quay and Roosevelt, the inclusive dates for the regular season are October 27, 1984, through January 27, 1985. In the New Mexico experimental sandhill crane season hunt areas, each permittee may take no more than 3 cranes, each of which must be tagged upon taking. In Area 1 (those portions of Dona Ana, Luna and Sierra Counties west of Interstate Highway 25, north of Interstate Highway 10, east of New Mexico Highways 26 and 27 between Deming and Hillsboro, and south of New Mexico Highway 90), and Area 2 (that portion of Luna County south of Interstate Highway 10), the inclusive season dates are October 27 through October 29, 1984; December 15 through December 17, 1984; and January 12 through January 14, 1985. Each person participating in the experimental season must obtain and have in his possession while hunting, a valid special permit issued by New Mexico.

(c) In Oklahoma (that portion west of I–35) the season has been deferred.

(d) In Texas that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6

to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary the season has been deferred.

(e) In North Dakota, in Zone 1 (the area east of a line starting on the east shore of Lake Oahe at the South Dakota border, then north on this shore to Bismarck, then north on U.S. Highway 83 to Canada; and west of a line starting where ND No. 14 enters Canada, then south on ND No. 14 to U.S. Highway 83, then south on U.S. Highway 83 to South Dakota) the inclusive dates are Sept. 8–Nov. 4; in Zone 2 (that area east of Zone 1 and west of U.S. Highway 281) the inclusive dates are Sept. 8–Sept. 28.

(f) In Montana (the Central Flyway portion except that area south of I–90 and west of the Bighorn River), the season has been deferred.

(g) In South Dakota, the inclusive season dates are September 29 through November 4, 1984.

(h) In Wyoming, in Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston Counties, the inclusive season dates are September 22 through November 18, 1984.

Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting, a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to an authorized law enforcement official upon request.

Pacific Flyway: In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season has been deferred.

In the Wyoming experimental sandhill crane-Canada goose hunt areas (Bear River drainage and Star Valley of Lincoln County), hunting is by State permit only with limits of 2 sandhill cranes and 3 Canada geese per season. The inclusive season dates are September 1 through September 14, 1984.

* * * * *

7. Section 20.109 is revised as follows:

§ 20.109 Extended seasons, limits and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit	3 singly or in the aggregate.
Possession limit	6 singly or in the aggregate.

These limits apply during both regular hunting seasons and extended falconry seasons.

Hawking hours: One-half hour before sunrise until sunset daily.

Check State Regulations for Additional Restrictions

Atlantic Flyway	
Florida:	
Mourning doves and white-winged doves.	Sept. 29 to Jan. 13.
Woodcock	Oct. 27 to Feb. 10.
Snipe	Nov. 3 to Feb. 17.
Ducks, mergansers and coots.	Oct. 13 to Dec. 2 and Dec. 8 to Jan. 13.
Gallinules and rails	Sept. 1 to Dec. 13.
Maryland:	
Mourning doves	Sept. 1 to Oct. 20 and Nov. 15 to Jan. 10.
Rails	Sept. 1 to Dec. 16.
Woodcock	Oct. 15 to Dec. 2 and Dec. 5 to Jan. 31.
Snipe	Oct. 1 to Jan. 15.
Gallinules	Sept. 1 to Dec. 16.
Ducks, coots, geese	Deferred.
Pennsylvania:	
Mourning doves	Sept. 1 to Dec. 15.
Ducks, mergansers, coots and geese.	Oct. 1 to Jan. 7.
Virginia:	
Woodcock and snipe	Oct. 17 to Jan. 31.
Mourning doves and rails	Sept. 24 to Dec. 3 and Dec. 20 to Jan. 4.
Mississippi Flyway	
Illinois:	
Mourning doves, woodcock and rails.	Sept. 1 to Dec. 16.
Snipe	Sept. 10 to Dec. 25.
Teal	Sept. 8 to Sept. 16.
Ducks, mergansers and coots.	Oct. 1 to Jan. 6.
Iowa:	
Ducks, coots, rails, snipe woodcock and mergansers.	Sept. 22 to Jan. 6.
Geese	Sept. 29 to Jan. 6.
Michigan:	
Woodcock, snipe, and rails	Sept. 1 to Dec. 16.
Ducks, mergansers, coots, gallinules and geese.	Sept. 29 to Jan. 13.
Minnesota:	
Woodcock, snipe and rails	Sept. 1 to Dec. 16.
Ducks, mergansers, coots, gallinules and geese.	Sept. 29 to Jan. 13.
Mississippi:	
Ducks, mergansers and coots.	Nov. 3 to Dec. 14.
Mourning doves	Sept. 29 to Oct. 14 and Nov. 26 to Dec. 16.
Missouri: Mourning doves	Sept. 1 to Dec. 16.
Wisconsin:	
Rails, woodcock, snipe and gallinules.	Do.
Ducks, mergansers and coots.	Oct. 1 to Jan. 15.
Central Flyway	
New Mexico:[1]	
Mourning doves, white-winged doves and band-tailed pigeons.	Sept. 1 to Nov. 6 and Nov. 17 to Dec. 26.
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay and Roosevelt Counties.	Oct. 13 to Jan. 27.
Ducks, mergansers, coots and gallinules.	Oct. 15 to Jan. 20.
Canada and white-fronted geese.	Do.
Snow, blue and Ross' geese	Nov. 14 to Feb. 28.
Texas:	
Mourning doves (statewide)	Sept. 1 to Nov. 30 and Jan. 5 to Jan. 20.
Rails and gallinules	Sept. 1 to Dec. 16.
White-winged doves	Sept. 1 to Nov. 30 and Jan. 5 to Jan. 20.
Wyoming:	
Mourning doves	Sept. 1 to Oct. 15.
Snipe and rails	Sept. 22 to Nov. 30.
Pacific Flyway	
Idaho:	
Mourning doves only	Sept. 1 to Oct. 30.
New Mexico:[1]	
Mourning doves, white-winged doves and band-tailed pigeons.	Sept. 1 to Nov. 6 and Nov. 17 to Dec. 26.
Ducks, mergansers, coots and gallinules.	Oct. 6 to Jan. 20.
Geese	Do.
Oregon: Mourning doves and band-tailed pigeons.	Sept. 1 to Dec. 16.
Utah:	
Mourning doves	Sept. 1 to Sept. 30.
Snipe	Oct. 1 to Jan. 15.
Ducks, mergansers and coots.	Do.
Wyoming:	
Mourning doves	Sept. 1 to Oct. 15
Snipe and rails	Sept. 22 to Nov. 30.

[1] In New Mexico, the aggregate bag and possession limits of all species are 3 and 6, respectively.

Note.—See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

Dated: August 17, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84–22547 Filed 8–30–84; 8:45 am]

BILLING CODE 4310–55–M

federal register

Friday
August 31, 1984

Part IV

Nuclear Regulatory Commission

10 CFR Parts 50 and 51

Waste Confidence Decision and Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licenses; Final Rules

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 51

Waste Confidence Decision

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Waste Confidence Decision.

SUMMARY: The Nuclear Regulatory Commission initiated a rulemaking proceeding on October 25, 1979 to assess generically the degree of assurance now available that radioactive waste can be safely disposed of, to determine when such disposal of off-site storage will be available, and to determine whether radioactive wastes can be safely stored on-site past the expiration of existing facility licenses until off-site disposal or storage is available. This proceeding became known as the "Waste Confidence Rulemaking" and was conducted partially in response to a remand by the U.S. Court of Appeals for the D.C. Circuit. *State of Minnesota* v. *NRC*. 602F 2d 412 (1979). The Commission also stated that in the event it determined that on-site storage of spent fuel would be necessary or appropriate after the expiration of facility licenses, it would propose a rule addressing the environmental and safety implications of such storage.

The Commission's decision is summarized in the following findings:

(1) The Commission finds reasonable assurance that safe disposal of high level radioactive waste and spent fuel in a mined geologic repository is technically feasible.

(2) The Commission finds reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the years 2007–09, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of existing commercial high level radioactive waste and spent fuel originating in such reactor and generated up to that time.

(3) The Commission finds reasonable assurance that high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all high-level radioactive waste and spent fuel.

(4) The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of that reactor's operating licenses at that reactor's spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations.

(5) The Commission finds reasonable assurance that safe independent onsite or offset spent fuel storage will be made available if such storage capacity is needed.

In keeping with its commitment to issue a rule providing procedures for considering environmental effects of extended onsite storage of spent fuel in licensing proceedings, the Commission is issuing, elsewhere in this issue, final amendments to 10 CFR Parts 50 and 51.

FOR FURTHER INFORMATION CONTACT: Dennis Rathbun or Clyde Jupiter, Office of Policy Evaluation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (202) 634–3295, or Sheldon Trubatch, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; telephone (202) 634–3224.

The Commission's Decision

In the Matter of RULEMAKING on the Storage and Disposal of Nuclear Waste (Waste Confidence Rulemaking)

[PR–50, –51 (44 FR 61372)]

August 22, 1984.

Contents

Decision

1.0 Introduction

1.1 Initiation of the Waste Confidence Rulemaking Proceeding

In response to the remand of the U.S. Court of Appeals for the District of Columbia Circuit (*State of Minnesota* v. NRC, 602 F.2d 412 (1979)), and as a continuation of previous proceedings conducted in this area by NRC (44 FR 61372), the Commission initiated a generic rulemaking proceeding on October 25, 1979. In its Notice of Proposed Rulemaking, the Commission stated that the "purpose of this proceeding is solely to assess generically the degree of assurance now available that radioactive waste can be safely disposed of, to determine when such disposal or off-site storage will be available, and to determine whether radioactive wastes can be safely stored on-site past the expiration of existing facility licenses until off-site disposal or storage is available." The Commission also stated that in the event it determined that on-site storage of spent fuel would be necessary or appropriate after the expiration of facility licenses, it would propose a rule addressing the environmental and safety implications of such storage. The Commission recognized that the scope of this generic proceeding would be broader than the Court's instruction, which required the Commission to address the questions of whether off-site storage for spent fuel would be available by the expiration of reactor operating licenses and if not, whether spent fuel could continue to be safely stored on-site (44 FR 61373).

However, the Commission believed that the primary public concern was whether nuclear waste could be disposed of safely rather than with an off-site solution to the storage problem per se. Moreover, as stated in the **Federal Register** Notice of October 25, 1979, the Commission committed itself to reassess its basis for reasonable assurance that methods of safe permanent disposal of high level waste would be available when they are needed. In conducting that reassessment, the Commission noted that it would "draw upon the record compiled in the Commission's recently concluded rulemaking on the environmental impacts of the nuclear fuel cycle (44 FR 45362–45374 [August 2, 1979])" (44 FR 61373).

The Department of Energy (DOE), as the lead agency on nuclear waste management filed its statement of position (PS) on April 15, 1980. Statements of position were filed by 30 participants by June 9, 1980, and were followed by cross statements (CS) from 21 of the participants by August 11, 1980.

1.2 Establishment of the Working Group

On May 28, 1980, the Commission directed the staff to form a Working Group to advise the Commission on the adequacy of the record to be compiled in this proceeding, to review the participants' submissions and identify issues in controversy and any areas in which additional information would be needed. The Working Group submitted a report to the Commission on January 29, 1981. The report summarized the record, identified key issues and controversies, and commented on the adequacy of the record for considering the key issues. The participants were invited to submit comments on the adequacy of the Working Group's summary of the record and its identification and description of the issues. Such comments were made by 20 participants by March 5, 1981.

1.3 Commission's Order for Oral Presentations

The Commission found additional limited proceedings to be useful to allow the participants to state their basic

positions directly to the Commissioners and to enable the Commissioners to discuss specific issues with them. In addition, the Commission invited comment on the following policy developments: (1) the Administration's announcement[1] of a policy favoring commercial reprocessing of spent fuel and instructing the Secretary of Energy to proceed swiftly toward deployment of a means of storing and disposing of commercial high-level radioactive waste, and (2) the submission of information to the Presiding Officer in this proceeding by DOE on March 27, 1981, concerning the DOE decision to "discontinue [its] efforts to provide federal government-owned or controlled away-from-reactor (AFR) [spent fuel] storage facilities." The participants were asked to comment on the significance to the proceeding of issues, particularly institutional concerns, resulting from these policy developments and to comment on the merits of DOE's new projection of spent fuel storage requirements and on the technical and practical feasibility of DOE's suggested alternative storage methods.

To implement the additional limited proceedings, the Commission consolidated the participants into the following identifiable groups: (a) federal government, (b) state and local participants, (c) industry, and (d) public interest groups (Second Prehearing Memorandum and Order, November 6, 1981). Prehearing statements (PHS) were provided by the consolidated groups, as well as by individual participants. The oral arguments were presented to the Commissioners on January 11, 1982.

The extensive record, comprised of all written and oral submissions provides the primary basis for the Commission's decision regarding the safe storage and disposal of spent fuel and nuclear waste. However, while the Commission was preparing this Waste Confidence decision, the Nuclear Waste Policy Act of 1982 (NWPA) was enacted. The Commission found that this Act had a significant bearing on the Commission's decision, and the Commission has considered the NWPA in reaching its conclusions. The Commission believes that the NWPA had its most significant impact in narrowing the uncertainties surrounding institutional issues. Moreover, although the NWPA is intrinsically incapable of resolving technical issues, it will establish the necessary programs, milestones, and funding mechanisms to enable their resolution in the years ahead.

[1] Presidential Nuclear Policy Statement, October 9, 1981.

The Commission's preliminary decision in the Waste Confidence proceeding was served on the consolidated participants on May 17, 1983. However, the parties to this proceeding had not yet had an opportunity to comment on what implications, if any, the NWPA had on the Commission's decision. Further, the Commission's discussion of the safety of dry storage of spent nuclear fuel, in its preliminary decision, relied substantially on material not yet in the record. Therefore, the preliminary decision was issued as a draft decision. The Commission requested the consolidated groupings of participants to comment on either or both of these issues. In addition, the Commission found that onsite storage after license expiration might be necessary or appropriate, and therefore, in accordance with its notice initiating this proceeding, it proposed a rule to establish how the environmental effects of extended onsite storage would be considered in licensing proceedings (48 FR 22730, May 20, 1983), as amendments to 10 CFR Parts 50 and 51.

Subsequently, in response to public comments on the proposed amendments to 10 CFR Part 51, the Commission reopend the comment period to address the environmental aspects of the fourth finding of the Commission's Waste Confidence decision, on which the proposed amendment to Part 51 is based (48 FR 50746, November 3, 1983). Public comments were requested on: (1) The environmental aspects of the fourth finding—that the Commission has reasonable assurance that, if necessary, spent fuel can be stored without significant environmental effects for at least 30 years beyond the expiration of reactor operating licenses at reactor spent fuel storage basins, or at either onsite or offsite independent spent fuel storage installations; (2) the determination that there are no significant non-radiological consequences which could adversely affect the environment if spent fuel is stored beyond the expiration of operating licenses either at reactors or at independent spent fuel storage installations; and (3) the implications of comments on items (1) and (2) above for the proposed amendment to 10 CFR Part 51.

After reviewing these additional comments, the Commission found no reason to modify its fourth finding or the supporting determination.

The analysis of comments, together with the Commission's response is summarized in the Addendum to the Commission's decision.

The Commission notes that two relevant developments have occurred subsequent to the closing of the record in the Waste Confidence proceeding. They are the publication of DOE's draft Mission Plan for the Civilian Radioactive Waste Management Program (April, 1984) and the Commission's concurrence in DOE's General Guidelines for Recommendation of Sites for Nuclear Waste Repositories (July 3, 1984). These developments are a matter of public record, and in the case of the Commission's concurrence was the conclusion of a separate public proceeding. The Commission has considered the effects of these developments on its previously announced decision in this proceeding and determined that these developments do not substantially modify the Commission's previous conclusions.

The decision is summarized as five Commission findings in Section 2.0. The detailed rationale for these findings, including references to the record developed in this proceeding, is contained in the Appendix to this document. The Commission considers these five findings to be a response to the mandate of the U.S. Court of Appeals for the District of Columbia Circuit and, in addition, a generic determination that there is reasonable assurance that radioactive waste can and will be safely stored and disposed of in a timely manner.

In keeping with its commitment to issue a rule providing procedures for considering environmental effects of extended onsite storage of spent fuel in licensing proceedings, final amendments to 10 CFR Parts 50 and 51 are being issued simultaneously with this decision.

2.0 Commission Findings [2]

(1) The Commission finds reasonable assurance that safe disposal of high level radioactive waste and spent fuel in a mined geologic repository is technically feasible.

(2) The Commission finds reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent

[2] All findings by the Commission in this proceeding are limited to the storage and disposal of high-level radioactive waste and spent fuel generated by nuclear power reactors required to be licensed under sections 103 or 104 b of the Atomic Energy Act of 1954 (42 U.S.C. 2133 and 2134(b)), and to facilities intended for such storage or disposal. The Commission's findings in this proceeding do not address the storage and disposal of high-level radioactive waste or spent fuel resulting from atomic energy defense activities, research and development activities of the Department of Energy, or both. This is consistent with the Nuclear Waste Policy Act of 1982, section 8(c).

fuel will be available by the years 2007–09, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of existing commercial high level radioactive waste and spent fuel originating in such reactor and generated up to that time.

(3) The Commission finds reasonable assurance that high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all high-level radioactive waste and spent fuel.

(4) The Commission finds reasonable assurance, that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of that reactor's operating license at that reactor's spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations.

(5) The Commission finds reasonable assurance that safe independent onsite or offsite spent fuel storage will be made available if such storage capacity is needed.

3.0 Future Actions by the Commission

The Commission's Waste Confidence decision is unavoidably in the nature of a prediction. While the Commission believes for the reasons set out in the decision that it can, with reasonable assurance, reach favorable conclusions of confidence, the Commission recognizes that the possibility of significant unexpected events remains open. Consequently, the Commission will review its conclusions on waste confidence should significant and pertinent unexpected events occur, or at least every 5 years until a repository for high-level radioactive waste and spent fuel is available.

.0 For Further Information Contact

Dennis Rathbun or Clyde Jupiter, Office of Policy Evaluation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (202) 634–3295, or Sheldon Trubatch, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; telephone (202) 634–3224.

Dated at Washington, D.C. this 22nd day of August, 1984. Commissioner Zech did not participate in this action.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Addendum to the Commission's Waste Confidence Decision

Introduction

On May 17, 1983, the Commission issued its proposed decision in the Waste Confidence proceeding, and asked the consolidated groups of participants to comment on two aspects of the decision: the implications of the Nuclear Waste Policy Act (NWPA) for the decision and the Commission's discussion of the safety of dry storage of spent nuclear fuel, which relied substantially on material not in the record. The analysis of these comments is subdivided into several issue categories and presented, with NRC's responses, in Part I below. The membership of the consolidated groups responding to the Commission's request as well as the abbreviations used to identify the groups are provided in Section 3 of Part I.

Subsequently, in response to public comments on the Commission's proposed amendment to 10 CFR Part 51 (48 FR 22730, May 20, 1983), the Commission reopened (48 FR 50746, November 3, 1983) the comment period to address the environmental aspects of the fourth finding of the Commission's proposed Waste Confidence decision on which the proposed amendment to Part 51 is based. Public comments were requested on: (1) The environmental aspects of the fourth finding—that the Commission has reasonable assurance that, if necessary, spent fuel can be stored without significant environmental effects for at least 30 years beyond the expiration of reactor operating licenses at reactor spent fuel storage basins, or at either onsite or offsite independent spent fuel storage installations; (2) the determination that there are no significant non-radiological consequences which could adversely affect the environment if spent fuel is stored beyond the expiration of operating licenses either at reactors or at independent spent fuel storage installations; and (3) the implications of comments on items (1) and (2) above for the proposed amendment to 10 CFR Part 51. The analysis of public comments and NRC's responses are presented in Part II of this document. The list of respondents to this reopened comment period and the abbreviations used to identify them are given in Section 4 of Part II.

The Commission notes that two relevant developments have occurred subsequent to the closing of the record in the Waste Confidence proceeding. They are the publication of DOE's draft Mission Plan of the Civilian Radioactive Waste Management Program (April, 1984) and the Commission's concurrence in DOE's General Guidelines for Recommendation of Sites for Nuclear Waste Repositories (July 3, 1984). These developments are a matter of public record, and in the case of the Commission's concurrence was the conclusion of a separate public proceeding. The Commission has considered the effects of these developments on its previously announced decision in this proceeding and determined that these developments do not substantially modify the Commission's previous conclusions.

Part I. Analysis of the Consolidated Groups' Comments on the Commission's Waste Confidence Decision and NRC Responses

1. Effect of the Nuclear Waste Policy Act on the Commission's Decision

A. General

(1) *Summary of Comments.* The Consolidated Industry Group agreed with the Commission's view that the NWPA contains provisions pertinent to all of the major elements relevant to mined geologic disposal of high level radioactive wastes (Industry, p. 3). The Industry Group called attention to the comprehensive nature of the NWPA which authorizes DOE to undertake steps leading to the construction, operation and maintenance of a deep geologic test and evaluation facility; requires DOE to prepare a waste management mission plan; establishes a prescribed schedule for repository siting, construction and operation; defines the decision-making roles of affected states and Indian tribes in repository site-selection and evaluation; provides for the continuity of Federal management of the nuclear waste program and continued funding; and facilitates the establishment of an overall integrated spent fuel and waste management system. The Industry Group suggested that these features of the Act should increase the Commission's confidence that waste can and will be disposed of safely. The Group pointed out that the Act also contains special procedures to facilitate the licensing of spent fuel storage capacity expansion and transshipments; directs DOE research, development and cooperation with utilities in developing dry storage and rod compaction; and provides for federally supplied interim storage capacity to supplement that of industry (Industry, pp. 4–8).

The Industry Group believed that the NWPA's enactment—in and of itself—provides a sound basis for confidence that institutional difficulties can and will continue to be resolved. At the same time, Industry stated that the NWPA's enactment was not essential for the Commission to reach an affirmative decision in this proceeding (Industry, p. 9).

In contrast, the Consolidated Public Interest Group (CPIG) believed that the NWPA provides an insufficient basis for the Commission's decision in this proceeding with respect to the availability or timing of a nuclear waste repository. The CPIG contended that the NWPA contains many areas of ambiguity, and gave as examples:

(i) Section 114(a) of the NWPA requires DOE to make a recommendation to the President for the first repository site, accompanied by the preliminary comments by the Commission concerning the suitability of three alternative candidate sites for licensing under 10 CFR Part 60. DOE interprets this section to require such preliminary comments *before* site characterization begins * * * The Commission staff interprets that section * * * to require a judgment of suitability under 10 CFR Part 60 *after* site characterization has occurred.

(ii) DOE originally interpreted Sec. 112(f) to permit continuation of ongoing site characterization at Hanford before completion of the DOE siting guidelines. DOE now concedes that such site characterization work must await completion of an environmental assessment prepared in accordance with final DOE siting guidelines (CPIG, pp. 2–3).

(2) *NRC Response.* The Commission has considered the effect of enactment of the Nuclear Waste Policy Act of 1982 and concludes that the Act provides support for timely resolution of technical uncertainties and reduces uncertainties in the institutional arrangements for the participation of affected states and Indian tribes in the siting and development of repositories and in the long-term management, direction and funding of the repository program. The bases for the Commission's conclusion are set forth in the decision and will not be repeated here. The passage of the Act provides evidence of a strong national commitment to the solution of the radioactive waste management problem.

The Commission recognizes the possibility of differing interpretations regarding the implementation of the NWPA. With respect to CPIG's discussion of Section 114(a), the Commission is unaware of any differences between DOE and NRC in the interpretation of this section of the Act. We note that DOE's recommendation of a repository site to the President would necessarily be made after DOE's preliminary determination that three sites are suitable for development. DOE and NRC now agree that the preliminary determination of site suitability for the alternative sites should be made following site characterization (Commission's Final Decision on the U.S. Department of Energy's General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories [July 3, 1984]).

Concerning Section 112(f), DOE has continued site characterization at Hanford during formulation of the siting guidelines; in accordance with the views of the states and environmental groups, DOE has deferred drilling of the exploratory shaft pending the completion of the guidelines, submission of the site characterization plan to NRC and preparation of an environmental assessment of site characterization activities.

B. Technical Aspects

(1) *Summary of Comments.* The Consolidated Industry Group believed that the Act contained provisions pertinent to all of the major elements relevant to disposal (Industry, p. 3). The Consolidated Public Interest Group, on the other hand, contended that the NWPA did not resolve technical uncertainties concerning repository development and safety (CPIG, p. 5). The Consolidated State Group did not believe that the NWPA supported a finding of confidence because it failed to resolve technical questions and merely set target dates for deciding on the site of the first waste repository. The State Group noted that if technical problems are not resolved by the dates proposed by Congress, the milestone dates will have to be postponed. The State Group contended too that, although the Act authorizes DOE to conduct research on unresolved technical issues, the research could uncover additional problems (States, p. 2). However, DOE pointed out that the NWPA provides for a focused, integrated and extensive research and development program for the deep geologic disposal of high-level waste and spent fuel. DOE believed that Sec. 215 of the Act enhances confidence in the timely availability of disposal facilities by authorizing a research facility to develop and demonstrate a program for waste disposal. DOE also stated that the schedule for a Test and Evaluation Facility would require the *in situ* testing described in Sec. 217 of the Act to begin not later than May 6, 1990, thus allowing for research and development results to be incorporated in the repository which is scheduled to open in 1998 (DOE, pp. 11, 12).

(2) *NRC Response.* As the record of this proceeding shows, there are no known technical problems that would make safe waste disposal impossible. Clearly, further engineering development and site-specific evaluations will be required before a repository can be constructed. The Commission did not propose to rely on the NWPA as the basis for resolving technical uncertainties. Rather, the Commission found that the NWPA provides a framework for facilitating the solution of the remaining technical issues. Title II of the Act authorizes DOE to undertake steps leading to the construction, operation and maintenance of a deep geologic test and evaluation facility and to conduct the necessary research and development as well as to establish a demonstration program. The schedule set forth in the Act is consistent with the objective of assuring repository operation within the time period discussed in the Waste Confidence decision. The "Mission Plan" which is required by the Act will provide an effective management tool for assuring that the many technical activities are properly coordinated and that results of research and development projects are available when needed.

C. Institutional Aspects

(1) *Summary of Comments.* The Consolidated State Group believed that the NWPA failed to resolve institutional questions. The States argued that their cooperation cannot be assumed in the event that the general public in the vicinity of a proposed site is opposed to the location. Further, the States contended that, if a site is vetoed by a host state or Indian tribe, there is no assurance that Congress will vote to override the veto. Moreover, if the veto is overridden, a legal challenge is likely and the outcome is uncertain (States, p. 3).

The Consolidated Public Interest Group also believed that the NWPA has not significantly reduced institutional uncertainties regarding participation and objections of affected states and Indian tribes. As examples of institutional difficulties, CPIG pointed out that state officials and Indian tribes still have concerns regarding the adequacy of time to monitor and comment upon agency proposals, the lack of agency response to their concerns, and inadequate funding to support their full participation. Further, CPIG noted that the Act (Sec. 115) provides states and Indian tribes with

strong new authority to veto the siting of a repository within their borders (CPIG, p. 5).

DOE, on the other hand, believed that Sections 116 and 117 of the NWPA will reduce Federal-state institutional uncertainties (DOE p. 9).

I(2) *NRC Response.* It would be unrealistic to expect that the NWPA will resolve all institutional issues. However, it does provide specific statutory procedures and arrangements for accomplishing such resolution. The right of affected states and Indian tribes to disapprove a site designation under the NWPA might create uncertainty in gaining the needed approvals. Nevertheless, the NWPA's establishment of a detailed process for state and tribal participation in the development of repositories and for the resolution of disputes should minimize the potential for substantial disruption of plans and schedules. The Commission does not expect that the NWPA can eliminate all disagreement about development of waste repositories. However, in providing for information exchange, financial and technical assistance to affected groups, and meaningful participation of affected states and tribes in the decision-making process, the Act should minimize the potential for direct confrontations and disputes.

D. Funding Aspects

(1) *Summary of Comments.* The Consolidated Industry Group expressed its general belief that the NWPA assures adequate funding for interim storage and disposal of radioactive waste (Industry, pp. 6, 7). Similarly, DOE believed that the funding mechanism provided by the NWPA should largely remove uncertainties in assuring adequate resources to complete the program (DOE, pp. 10, 11). On the other hand, the Consolidated States Group contended that, since the law can be changed at any time, the NWPA assures neither an adequate level of funding nor a prolonged Congressional commitment (States, p. 4).

(2) *NRC Response.* The Commission believes that the general approach prescribed by the NWPA is to operate DOE's radioactive waste program on a full cost recovery basis. It seems clear that Congress intended to establish a long-term program for waste management and disposal, with built-in reviews and adjustments of funding as necessary to meet changing requirements. In this regard, the Act provides that DOE must annually review the amount of the established fees to determine whether collection of the fees will provide sufficient revenues to offset the expected costs. In the event DOE determines that the revenues being collected are less than the amount needed to recover costs, DOE must propose to Congress an adjustment to the fees to ensure full cost recovery. The Act also provides that, if at any time, the monies available in the waste fund are insufficient to support DOE's nuclear waste program, DOE will have the authority to borrow from the Treasury. The Commission believes that long-term funding provisions of the Act will ensure adequate financial support for DOE's nuclear waste program for FY 1984 and beyond.

The Commission believes that uncertainties regarding the adequacy of financial management of the nuclear waste program have also been reduced by the NWPA requirement that an Office of Civilian Radioactive Waste Management be established within the Department of Energy. This Office is to be headed by a Director, appointed by the President with Senate confirmation, who will report directly to the Secretary of Energy. Further, the Act stipulates that an annual comprehensive report of the activities and expenditures of the Office will be submitted to Congress and that an annual audit of the Office will be conducted by the Comptroller General, who will report the results to Congress.

Some concern has been expressed that the Congress may amend the funding provisions of the NWPA and thereby undermine the financial stability of the Federal radioactive waste management program. Commenters have not provided any basis for this belief. The Commission considers this possibility to be most unlikely. It is reasonable to assume that the long-range public health and safety and political concerns which motivated the Congress over the past several years to pass the NWPA will continue to motivate the Congress in considering amendments to the NWPA.

E. Schedule

(1) *Summary of Comments.* DOE contended that the NWPA provides additional assurance that a repository will be available by 1998. As the basis for this belief, DOE stated that sections 111 through 125 of the NWPA provide specific schedules and reporting requirements for the timely siting, development, construction, and operation by 1998 of a repository for high level waste and spent fuel (DOE, p. 6). DOE believed that these schedules and reporting requirements will ensure that deadlines are met. The Commission notes that DOE recognizes that there has been a delay of about 1-year in its schedule for meeting early milestones such as publication of its siting guidelines; nevertheless, DOE continues to maintain that its date for completion of repository development will be met (DOE Draft Mission Plan for the Civilan Radioactive Waste Management Program, April 1984).

The Consolidated Public Interest Group, however, did not believe that the provision of specific dates in the NWPA gives assurance that they will be met. CPIG cited, for example, the delay in preparing DOE's site selection guidelines, which were due by June 1983, and were expected to be delayed further (CPIG, p. 4).

Further, the CPIG contended that a date for the availability of a repository is not certain since both the President and the NRC have explicit authority to reject any or all site proposals that are submitted to them (CPIG, p. 4). Also, CPIG believed that the legislation contemplates the possibility of delay beyond satutory deadlines and NWPA's legislative history indicates that the timing of repository availability remains uncertain (CPIG, p. 5).

(2) *NRC Response.* One of the primary purposes of the NWPA is "to establish a schedule for the siting, construction, and operation of repositories that will provide reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository." (Sec. 111(b)(1)). The Commission believes this purpose will be achieved.

As the Commission noted in the proposed decision, the Congress would not be able to legislate the schedules for the accomplishment of fundamental technical breakthroughs if it believed that such breakthroughs were necessary. They are not necessary. Rather, it is the Commission's judgment that the remaining uncertainties can be resolved by the planned step-by-step evaluation and development based on ongoing site studies and research programs. The Commission believes the Act provides means for resolution of those institutional and technical issues most likely to delay repository development, both because it provides an assured source of funding and other significant institutional arrangements; and because it provides detailed procedures for maintaining progress, coordinating activities and rectifying weaknesses.

The Commmission believes that the milestones established by the Act are generally consistent with the schedules presented by DOE in the Waste

Confidence proceeding and that those milestones are generally reasonable. Achievement of the scheduled first date of repository operation is further supported by other provisions of the Act which specify means for resolution of issues most likely to delay repository completion. One of the earlier milestones-publication of DOE's general guidelines for the recommendation of sites for a repository—was about a year behind schedule and the Commission was concerned that his delay could result in corresponding delays in DOE's nomination of at least five sites for characterization work. However, DOE has indicated in its draft Mission Plan (April, 1984) that the subsequent milestones have been scheduled to provide completion of the first repository by 1998. The Commission believes that the timely attainment of a repository does not require DOE's program schedule to adhere strictly to the milestones set out in the NWPA over the approximately 15 year duration of the repository development program. Delays in some milestones as well as advances in others can be expected.

The Commission has no evidence that delays of a year or so in meeting any of the milestones set forth in the NWPA would delay the repository availability date by more than a few years beyond the 1998 date specified in the NWPA. The Commission found reasonable assurance that a repository would be available by 2007–09, a decade later than that specified in the NWPA, and a date which allows for considerable slippage in the DOE schedule. The Act also requires that any Federal agency that determines that it cannot comply with the repository development schedule in the Act must notify both the Secretary of Energy and Congress, provide reasons for its inability to meet the deadlines, and submit recommendations for mitigating the delay. The Commission notes that the Act also clarifies how the requirements of the National Environmental Policy Act are to be met. These provisions of the Act, as well as the provisions for research, development and demonstration efforts regarding waste disposal, increase the prospects for having the first respository in operation not later than the first few years of the next century.

The repository development schedule may have to accommodate such contingencies as vetoes of proposed repository sites, prolonged public hearings, protracted litigation, possible project reorientation, or delay in promulgation of siting guidelines. The schedule now incorporated into the Act allows substantial time for these possibilities.

2. Discussion of the Safety of Dry Storage

A. Summary of Comments

DOE believed that the availability of dry storage techniques provides further reasonable assurance of the ability to safely store nuclear wastes at least 30 years beyond the expiration of reactor operating licenses. DOE stated that the citations quoted in the Commission's rationale are reliable and representative of the literature in the area, and that the Commission's technical judgment on dry storage conforms with DOE's experience and is accurate and correct (DOE, p. 16). The Consolidated Industry Group also stated that the pertinent points in the Commission's discussion appear to be adequately supported with appropriate references (Industry, pp. 10, 11).

In further support of the safety of dry storage, DOE cited the following:

—Extensive world-wide experience shows that dry fuel handling and storage is safe and efficient. Irradiated fuel has been handled, shipped, and safely stored under dry conditions since the mid-1940's. All types of irradiated fuel have been handled dry at hot cells, where a variety of phenomena have been observed in detail. The passive nature of most dry storage concepts contributes to the safety of interim storage by not requiring active cooling systems involving moving parts (DOE, p. 16).

—Regarding specific experience, DOE stated that a reactor fuel has been successfully stored in dry vaults licensed under Part 50 at the Hallam sodium-cooled graphite research reactor in Nebraska and the Fort St. Vrain HTGR prototype facility in Colorado. In addition, dry storage of zircaloy-clad fuel has been successfully conducted in drywells and in air-cooled vaults at DOE's Nevada Test Site. There is favorable foreign experience with dry storage at Wylfa, Wales in Great Britain, at Whitesell in Canada, in the Federal Republic of Germany, in France where vault dry storage of vitrified waste is routine, and in Japan, where a dry storage vault has been recently constructed (DOE, p. 17).

—To date, all dry storage tests have indicated satisfactory storage of zircaloy-clad fuel without cladding failure over the temperature range of 100 degrees C to 570 degrees C, in inert atmospheres. Existing data which support the conclusion that spent fuel can be stored safely in an inert atmosphere for at least 30 years is being augmented by additional ongoing research (DOE, pp. 17, 18).

None of the consolidated groups of participants offered comments which were critical of the Commission's discussion of the safety of dry storage.

B. NRC Response

The Commission is confident that dry storage installations can provide continued safe storage of spent fuel at reactor sites for at least 30 years after expiration of the reactor operating licenses.

3. List of Respondents

Consolidated Participants as Respondents to the Commission's Waste Confidence Decision

1. Department of Energy (DOE)
2. Consolidated States Representative [1] (States)
3. Consolidated Public Interest Representative [2] (CPIR)
4. Consolidated Industry Representative [3] (Industry)

PART II: Commission Consideration of Additional Comments on Its Fourth Finding

1. Introduction

On November 3, 1983, the Commission reopened the comment period in this proceeding to receive comments on: (1)

[1] The Consolidated States Group consists of the Attorney General of the State of New York, Minnesota (by its Attorney General and the Minnesota Pollution Control Agency), Ohio, South Carolina and Wisconsin. The remaining participants previously consolidated in the States Group have not joined in these comments.

[2] The Consolidated Public Interest Group is represented here by the Natural Resources Defense Council, Inc., the New England Coalition on Nuclear Pollution, the Sierra Club, the Environmental Coalition on Nuclear Power, Wisconsin's Environmental Decade, Mississippians Against Disposal, Safe Haven, Ltd., John O'Neill, Jr., and Marvin Lewis.

[3] The Consolidated Industry Group is represented by: American Institute of Chemical Engineers; American Nuclear Society; Association of Engineering Geologists; Atomic Industrial Forum; Bechtel National; Consumers Power; General Electric; Neighbors for the Environment; Scientists and Engineers for Secure Energy; Tennessee Valley Authority; the Utilities Group (Niagara Mohawk Power Corporation, Omaha Public Power District, Power Authority of the State of New York, and Public Service Company of Indiana, Inc.); and the Utility Nuclear Waste Management Group—Edison Electric Institute. In order to emphasize the independent nature of its participation, the American Nuclear Society has chosen to proceed separately. ANS continues to protest its assignment to the Consolidated Industry Group and has offered separate comments on the Commission's Waste Confidence decision. Since only the consolidated groups of participants were invited to comment on the proposed decision, the ANS's separate comments are not discussed here. Further, TVA, as a Federal agency, wishes to stress the independent nature of its paticipation.

The environmental aspects of its fourth finding—that it has reasonable assurance that, if necessary, spent fuel can be stored without significant environmental effects for at least 30 years beyond the expiration of reactor operating licenses at reactor spent fuel storage basins, or at either onsite or offsite independent spent fuel storage installations; (2) the determination that there are no significant non-radiological consequences which could adversely affect the environment if spent fuel is stored beyond the expiration of operating licenses either at reactors or at independent spent fuel storage installations; and (3) implications of comments on items (1) and (2) above for the proposed amendment to 10 CFR Part 51 (48 FR 50746).

The Commission has considered those comments and, for the reasons discussed below, finds no reason to substantively modify its fourth finding or other related aspects of its decision in this proceeding. The Commission has, however, made revisions in its fourth finding to clarify its original intent.

Thirteen comments were received. Seven commenters identified various reasons which they believed argued against the finding.[4] Six commentors supported the finding.[5] In addition to the issues on which the Commission specifically requested comments, some commentors raised additional issues regarding the Commission's compliance with the National Environmental Policy Act (NEPA).

2. Environmental Aspects of Extended Storage of Spent Fuel

A. Radiological Consequences of Spent Fuel Storage

The Commission's proposed fourth finding stated:

> The Commission finds reasonable assurance that, if necessary, spent fuel can be stored safely without significant environmental effects for at least 30 years beyond the expiration of reactor operating licenses at reactor spent fuel storage basins, or at either onsite or offsite independent spent fuel storage installations.

The public was invited to submit additional comments on the environmental aspects of this finding. Those comments, and the Commission's responses to them, are set out below.

The State of Minnesota ("Minnesota"), through its Attorney General, and the Sierra Club believe that an event at the spent fuel pool for Prairie Island Nuclear Generating Station ("Prairie Island") indicates that irradiated spent fuel assemblies are degrading rapidly with time. In December 1981, during a fuel transfer operation at Prairie Island, the top nozzle assembly separated from the remainder of a spent fuel assembly due to stress corrosion cracking of the spent fuel assembly while it was in the spent fuel pool. Minnesota and the Sierra Club acknowledge that this separation was an isolated event; over 5,000 similar spent fuel assemblies have been moved successfully at other plants. These commentors also acknowledge that television examination showed no corrosion cracking of similarly designed fuel assemblies at other nuclear power plants: Zion, Trojan, Kewanee and Point Beach. They also acknowledge that even though the water contaminant contributing to stress corrosion cracking has never been identified, the possibility that it may have been sulfates has led the Commission to suggest that Prairie Island monitor the sulfate levels of its spent fuel pool.

However, the Sierra Club contended [6] that the NRC staff essentially ignored the opinion of Mr. Earl J. Brown, an NRC engineer, that sulfate contamination is a generic problem at Pressurized Water Reactors (PWRs). The Sierra Club also believes that television inspection of spent fuel assemblies in spent fuel pools cannot reveal the initial signs of stress corrosion cracking. For these reasons, the Sierra Club and Minnesota believe that there is no assurance that spent fuel can be stored safely in spent fuel pools for 30 years after reactor shut down or for 60 years after irradiation.

The NRC investigated the Prairie Island event and found it to be an isolated event without generic impact. The staff also concluded that if a fuel assembly were to drop due to top nozzle failures, such an event would not lead to a criticality hazard in a spent fuel pool and that such an accident would result in radiation levels at the site boundary well within the limits in 10 CFR Part 100. The NRC Staff Assessment Report ("SAR") and associated memoranda, although already publicly available in the Commission's Public Document Room, have been added to the docket of this proceeding. That SAR concluded that the event was caused by intergranular stress-corrosion cracking due to an unidentified corrodant temporarily present in the spent fuel pool.

As for the Sierra Club's specific comments, the staff recognized that sulfate contamination was suspected to have contributed to the corrosion and recommended that licensees administratively control sulfate level concentrations in spent fuel pools. Such monitoring had been recommended by Mr. Brown as the only action that should be taken in response to the incident. Although Mr. Brown stated that in his opinion the event was a "potential" generic issue for PWRs, subsequent staff investigation revealed that the event was an isolated incident. The staff also considered the properties of the steel used in the spent fuel assemblies and acknowledged that they could have contributed to the event. However, the absence of any similar events for 5,000 other spent fuel assemblies indicated that the type of steel was not critical. Accordingly, the Commission finds no basis for reconsidering the Safety Assessment Report's finding that the Prairie Island event was an isolated incident and recommendation that sulfate control was an adequate response, or for altering its conclusion concerning the potential environmental impacts of stored spent fuel.

Wisconsin, Safe Haven, Ltd. and NRDC contended that the environmental effects of extended spent fuel storage are site specific and should be considered on a case-by-case basis.[7] Safe Haven believes that the individuality of each plant and its environmental surroundings necessitate separate evaluations of extended storage of spent fuel, but identified no site-specific factors which would result in significant environmental impacts. NRDC listed some site specific factors: geology, hydrology, seismicity, ecological factors and individual proposals for spent fuel management and storage. However, NRDC did not suggest how these factors could lead to significant site-specific environmental impacts that would preclude the

[4] Department of Law of the State of New York, Marvin Lewis, Sierra Club, Safe Haven, Ltd., Attorney General of the State of Minnesota, Department of Justice of the State of Wisconsin and Natural Resources Defense Council, Inc.

[5] Scientists and Engineers for Secure Energy, Inc. American Institute of Chemical Engineers, American Nuclear Society, Utility Nuclear Waste Management Group—Edison Electric Institute, and U.S. Department of Energy.

[6] Sierra Club also stated that the staff did not consider an Oak Ridge report (ORNL 3684, Nov. 1964) which identified water vapor as contributing to corrosion of the type of steel used in spent fuel assemblies. That report is not germane to light water reactor fuel because it addressed the sensitization of stainless steel in a high temperature gas cooled reactor environment, which is very different from the environment of a light water reactor. Refer to the discussion in Sec. 2.4A of the Appendix to the Commission's decision.

[7] Safe Haven also suggested that a full environmental and safety review should accompany any utility's proposed plans submitted pursuant to 10 CFR 50 (§ 50.54(aa)) for extended storage of spent fuel. The Commission will treat its review of any such utility proposal in accordance with the established procedures for considering any application for a license amendment.

Commission from making a generic finding. Similarly, Wisconsin listed as relevant factors proximity to population centers, highways, geologic faults, dams, flood plains or shorelines affected by erosion, but offered no suggestion of how these factors could affect the Commission's generic determination. For example, there has been no discussion of why the Commission's seismic design requirements, though site specific, are not generically adequate to assure that spent fuel can be stored for up to 30 more years in a spent fuel pool designed to withstand the largest expected earthquake at each reactor site. Mr. Marvin Lewis contended that the fourth finding had no basis because the Commission had little or no experience with storing spent fuel for 30 years or with storing fuel that could be up to 70 years old. Mr. Lewis also asserted that the pyrophoricity of the zircaloy tubes containing spent fuel for 30 years presents and unknown fire danger. This comment is based on a private communication to Mr. Lewis regarding the condition of the spent fuel at Three Mile Island, Unit 2. By the terms of that letter, any fire danger associated with pyrophoricity of zircaloy arises from the accident conditions at TMI–2. NRC has previously studied the effects of loss of water from pools on the temperature of stored spent fuel (NUREG/CR–0649, "Spent Fuel Heatup Following Loss of Water During Storage" [March, 1979]). While this study noted that oxidation could become self-sustaining for temperatures in the neighborhood of 850–950° C (NUREG/CR–0649, page 13), the study shows that such oxidation can only occur for extreme temperature conditions and for spent fuel that has been stored for a relatively brief storage period. In order for rapid oxidation to occur, the age of the spent fuel (30,000 MWD/MT burnup) would have to be in the range of less than 10 days to less than two years, depending on the density at which it is stored (see page 55, Figure 17 of NUREG/CR–0649). Moreover, one must assume a continuing oxygen supply adequate to sustain the oxidation. Any damaged spent fuel such as that from TMI–2, would be canned to avoid particulate loss and would have already aged several years. Neither the heat load leading to temperatures capable of initiating rapid oxidation nor the presence of an adequate supply of oxygen to sustain a pyrophoric reaction would seem to be present in any storage configuration or under conditions that would receive NRC approval. While it is correct that spent fuel has not been stored for over 30 years, the record shows that utilities have successfully stored spent fuel for over 20 years, and that there are no known physical processes which would indicate that it is impractical to extrapolate that experience to make predictions about the behavior of spent fuel for 70 years of storage.

The Utility Nuclear Waste Management Group—Edison Electric Institute and the U.S. Department of Energy referred to several documents in the record which show that the relatively low energy content of spent fuel and the relatively benign static environment of spent fuel storage render insignificant the radiologic impacts arising from extended storage of spent fuel. As discussed in more detail below, these documents also show that there are no significant non-radiologic environmental impacts arising from such extended storage. Under these circumstances, the Commission finds that it has sufficient experience with spent fuel storage to predict spent fuel behavior during 70 years of storage and to find that such storage will not result in significant environment effects.

B. Non-Radiological Consequences of Spent Fuel Storage

The Commission's fourth finding rested in part on the Commission's determination that there are no significant non-radiological consequences due to the extended storage of spent fuel which could adversely affect the environment. The public was invited to comment also on this finding and to provide a detailed discussion of any such environmental impacts. Mr. Marvin Lewis asserted that the continuous storage of spent fuel under water for 30 years or more requires unprecedented institutional guarantees. He also noted that there had been no consideration of financial, economic and security implications of storage for 30 or more years. Mr. Lewis did not expand upon these assertions to explain how they would result in significant non-radiological environmental consequences. In any event, the more than twenty years of experience with storing spent fuel demonstrates that storage of spent fuel for 30 years or more does not require unprecedented institutional guarantees or raise unique questions regarding finances, economics or the security of extended spent fuel storage. Further, the Commission will require all reactor licensees, 5 years before expiration of their operating license to provide a plan for managing the spent fuel prior to disposal. Moreover, the record documents referred to by UNWMG–EEI, DOE and AIF show that there are no significant non-radiological environmental impacts associated with the extended storage of spent fuels. The amount of heat given off by spent fuel decreases with time as the fuel ages and decays radioactively. No additional land needs to be devoted to storage facilities because reactor sites have adequate space for additional spent fuel pools or dry storage installations. The additional energy and water needed to maintain spent fuel storage is also environmentally insignificant. No commentor has challenged these assessments of environmental impacts and the Commission has no reason to question their validity. Under these circumstances, the Commission has no reason to reassess its prior determination that extended storage of spent fuel will present no significant non-radiological consequences which could adversely affect the environment.

3. Commission Compliance With NEPA

Several participants challenged the Commission's compliance with NEPA. The States of New York ("New York") and Wisconsin contend that since its inception, this proceeding has focused on the availability and safety of spent fuel storage, and has been conducted outside the scope of NEPA. New York supports this contention with the following quote from the First Prehearing Conference Order (February 1, 1980):

> This rulemaking proceeding does not involve a major federal action having a significant impact on the environment, and consequently an environmental impact statement is not required by NEPA . . .

New York asserts that this statement caused the participants not to consider NEPA in their filings. Accordingly, New York believes that the Commission cannot now transform the Waste Confidence Proceeding into a NEPA proceeding. In New York's view, joined by the Natural Resources Defense Council, Inc. ("NEDC"), NEPA required the Commission to prepare an environmental impact statement ("EIS") or environmental assessment to consider the environmental impacts of spent-fuel storage at reactor sites beyond the expiration dates of reactor licenses. The Utility Nuclear Waste Management Group-Edison Electric Institute ("UNWMG–EEI") believes that it has been clear from the outset of this proceeding that the Commission intended to develop environmental regulations appropriate to the issues considered here. UNWMG–EEI cites several factors in support of its position:

(1) this proceeding was the direct outgrowth of a NEPA case, *Minnesota* v. *NRC*, 602 F.2d 412 (D.C. Cir. 1979); (2) the Notice of Proposed Rulemaking explicitly stated a Commission intent to deal with environmental aspects of spent fuel storage; (3) the proceeding was docketed under Part 51, the Commission's regulations implementing NEPA; (4) the Commission stated that it would draw on the record of the rulemaking on environmental impact of the nuclear fuel cycle (Table S–3) and included in the NRC Data Bank for this proceeding sources of information on the environmental impacts of spent fuel storage; and (5) several participants included in their statements information pertaining to the environmental impacts of spent fuel storage.

The Commission believes that from the very beginning of this proceeding, participants were on notice that environmental aspects of spent fuel storage were under consideration. The notice initiating this proceeding stated, in pertinent part:

> If the Commission finds reasonable assurance that safe, off-site disposal for radioactive wastes from licensed facilities will be available prior to expiration of the facilities' licenses, it will promulgate a final rule providing that the *environmental and safety implications of continued on-site storage after the termination of licenses* need not be considered in individual licensing proceedings. In the event the Commission determines that on-site storage after license expiration may be necessary or appropriate, it will issue a proposed rule providing *how that question will be addressed.*
>
> * * * * *
>
> Based on the material received in this proceeding and on any other relevant information properly available to it, the Commission will publish a proposed or final rule in the **Federal Register.** Any such final rule will be effective thirty days after publication.
>
> 44 FR 61372, 61273–61374 (1979). (Emphasis supplied).

It is clear from this notice that if the Commission found that onsite storage after termination of reactor operating licenses would be necessary or appropriate, then it would propose a rule for dealing with the question of environmental and safety implications of continued onsite storage. New York's reference to the statement in the First Prehearing Conference Order is inapposite. That statement addressed the issue of whether a decision in this proceeding would be a proposal for major federal action having significant impact on the environment so as to require an EIS. The Presiding Officer found that the decision itself would not require an EIS. His decision in no way implied a change in the scope of the proceeding as announced in the notice initiating it.

There is also nothing about the Commission's fourth finding which requires an EIS. Neither New York nor NRDC has explained how this finding is a major federal action having a significant impact on the human environment. The finding provides a basis for a rule that provides that environmental impacts from extended storage of spent fuel are so insignificant as not to be required to be included in an impact statement. The validity of such a rule depends on the procedures used to promulgate it and the record supporting it. An EIS is not required because such a rule itself has no environmental impacts, significant or otherwise.[8] To require an EIS here would be essentially to require an EIS to show that no EIS is required. Clearly such a result would be incorrect. Accordingly, the Commission finds that NEPA does not require an EIS to support the fourth finding.

4. List of Respondents

Respondents to the Commission's November 3, 1983 Order (48 FR 50746) To Reopen the Period for Limited Comment on the Environmental Aspects of the Commission's Fourth Finding in the Waste Confidence Proceeding

1. Attorney General of the State of New York (N.Y.)
2. Marvin Lewis (Lewis)
3. Sierra Club Radioactive Waste Campaign (Sierra)
4. Scientists and Engineers for Secure Energy, Inc. (SE2)
5. Safe Haven, Ltd. (S.H.)
6. American Institute of Chemical Engineers (AICE)
7. Atomic Industrial Forum, Inc. (AIF)
8. Utility Nuclear Waste Management Group—Edison Electric Institute (UNWMG–EEI)
9. Natural Resources Defense Council, Inc. (NRDC)
10. Attorney General of the State of Wisconsin (Wis.)
11. U.S. Department of Energy (DOE)
12. American Nuclear Society (ANS)
13. Attorney General of the State of Minnesota (Minn.)

Appendix—Rationale for Commission Findings in the Matter of the Waste Confidence Proceeding

Table of Contents

1.0 Introduction

The rationale for the five Commission findings resulting from the Waste Confidence proceeding is summarized below. This rationale is based principally on the record of the proceeding which includes participants' position statements, cross-statements, pre-hearing and oral statements (in the discussion below, the participants are identified by the citations defined in the Reference Notation at the end of this document). The Commission also relied on the provisions of the Nuclear Waste Policy Act of 1982 (NWPA), and other substantive material not originally included in the record relating to the discussion of the safety of dry storage of spent nuclear fuel in the Commission's Fourth Finding; the NWPA and the dry storage material have now been incorporated into the record along with the relevant comments of participants in this proceeding.

The Commission notes that two relevant developments have occurred subsequent to the closing of the record in the Waste Confidence proceeding.

[8] See, for example, *Natural Resources Defense Council, Inc., v. U.S. Nuclear Regulatory Commission*, 547 F.2d 633, 653, n. 57 (D.C. Cir. 1976), *reversed on other grounds, sub nom, Vermont Yankee Nuclear Power Corp.* v. *NRC*, 435 U.S. 519 (1978).

They are the publication of DOE's draft Mission Plan for the Civilian Radioactive Waste Management Program (April, 1984) and the Commission's concurrence in DOE's General Guidelines for Recommendation of Sites for Nuclear Waste Repositories (July 3, 1984). These developments are a matter of public record, and in the case of the Commission's concurrence was the conclusion of a separate public proceeding. The Commission has considered the effects of these developments on its previously announced decision in this proceeding and determined that these developments do not substantially modify the Commission's previous conclusions.

2.0 Rationale for Commission Findings

2.1 First Commission Finding

The Commission finds reasonable assurance that safe disposal of radioactive waste and spent fuel in a mined geologic repository is technically feasible.

The Commission finds that safe disposal of high-level radioactive waste and spent fuel is technically possible and that it is achievable using existing technology. Although a repository has not yet been constructed and its safety and environmental acceptability demonstrated, no fundamental breakthrough in science or technology is needed to implement a successful waste disposal program. Those participants who questioned the availablity of a repository did not contend that fundamental scientific breakthroughs were required, but questioned whether technical problems could be resolved in a timely manner. The record supports the conclusion that the safe disposal of high level radioactive waste and spent nuclear fuel from licensed facilities can be accomplished.

The Department of Energy's (DOE) position is that disposal in mined geologic repositories can meet the goal of providing safe and effective isolation of radionuclides from the environment (DOE PHS pp. 2, 4; Tr. p. 11). A number of participants stated that waste containment and isolation from the biosphere are scientifically feasible (USGS PS p. 4; NRDC PS p. 9; UNWMG–EEI PS, Doc. 1 p. 22, Doc. II p. II–6; Consolidated Industry Group Tr. p. 16; Consolidated States Group Tr. p. 98). This view is consistent with the conclusions of the *Report to the American Physical Society by the Study Group on Nuclear Fuel Cycles and Waste Management (Rev. Mod. Phys.*, Vol. 50, No. 1, Pt. II, p. S6, Jan. 1980) and the *Report to the President of the Interagency Review Group on Nuclear Waste Management* (Final Report, March, 1979, p. 38).

The conclusion that safe radioactive waste disposal is technically feasible is based on consideration of the basic features of repository design and the problems to be solved in developing the final design. A mined geologic repository for disposal of high-level radioactive waste, as developed during the past three decades, will be based on application of the multi-barrier approach for isolation of radionuclides. The high-level radioactive waste or spent fuel is to be contained in a sealed package and any leakage from the package is to be retarded from migrating to the biosphere by engineered barriers. These engineered barriers include backfilling and sealing of the drifts and shafts of the mined repository. We believe that the isolation capability and long-term stability of the geologic setting provide a final barrier to migration to the biosphere.

The selection of a suitable geologic setting is one of the key technical problems which DOE must solve. Other problems include development of waste packages that can contain the waste until the fission product hazard is greatly reduced and engineered barriers that can effectively retard migration of radionuclides out of the repository. The Commission recognizes that these three problems are not only the ones which DOE's program must solve, but they are critical components of the multi-barrier approach for nuclear waste isolation. Much of the discussion in this proceeding has focused on these problems. We have reviewed each of these issues and have concluded that they do not present an insoluble problem which will prevent safe disposal of radioactive waste and spent fuel.

A. The Identification of Acceptable Sites

There is general agreement among the participants that the period during which the wastes must be isolated from the biosphere is at least several millenia and that such prolonged isolation can be achieved in a deep mined respository provided the geologic setting is suitable. The geologic setting is the "final" isolating barrier. If the waste package and engineered barriers fail to perform as expected, the geologic barrier must prevent harmful quantities of radioactive materials from entering the human environment.

The Commission believes that technically acceptable sites exist and can be identified. In many locations in the continental United States there are geologic media potentially suitable for a waste repository. These media occur in large, relatively homogeneous and unfaulted formations and have properties (e.g., mechanical strength, thermal stability, impermeability to water which qualify them as potential host rocks for radioactive wastes. The potential host rocks include those being investigated by DOE—that is, domed salt, bedded salt, tuff, basalt, granite, and shale (DOE PS pp. II–70 to II–80.). Thousands of square miles of the United States are underlain with formations containing extensive masses of such potential host rocks. Moreover, more than one-half of the United States is underlain with rock that has been stable against significant deformation and disruption for over ten million years. The potential sites being investigated by DOE are in regions of relative tectonic stability (USGS PS pp. 19, 23, 24, 25, 26, 28; Tr. p. 236).

Host rock suitability and formation stability are not the only relevant technical factors to be considered in repository site selection. Geohydrologic conditions—particularly the absence of significant groundwater flow from the repository to the biosphere—must be favorable for effective isolation of the wastes (USGS PS p. 11). DOE's investigations reveal that the hydrologic characteristics of a major portion of the sites underlain with stable formations of potential host rock appear to be suitable for repository location (Tr. p. 236; DOE PS p. II–77).

These general conclusions about the extent of potential repository sites are based on the results of DOE's site exploration program (DOE PS Appendix B) and the extensive body of earth-sciences information available at the United States Geological Survey—the Federal agency principally concerned with earth-sciences issues and, under a DOE–USGS Memorandum of Understanding, a primary source of geologic, hydrologic and mineral resource data for the National Waste Terminal Storage program (USGS PS p. 2 and Appendix A; DOE PS p. III–44).

DOE's site exploration efforts are focused on four host rocks (domed salt, bedded salt, basalt, and tuff) in six regions (Gulf Interior, Paradox Basin, Permian Basin, Salina Basin, DOE Hanford Site, DOE Nevada Test Site) (DOE PS Appendix B). Although investigations of granite sites in the U.S. have been limited, DOE is developing data on the potential of granite as a host rock in collaboration with foreign investors. A Swedish-American cooperative program (DOE's Lawrence Berkeley Laboratory is the U.S. principal in the program) has involved a series of *in situ* tests in a granite formation

conducted at the Stripa mine in Sweden. The investigations included determinations of thermally induced stresses and deformations in the granite rock mass. Another cooperative study at Studsvik in Sweden involved experiments in nuclide migration in fractured subsurface crystalline rocks (DOE PS p. II–258).

Some participants objected to the fact that most of DOE's site exploration involved federally-owned or -controlled areas, arguing that this would result in ignoring sites that were technically better (NRDC PS p. 17; Tr. p. 206). This objection, apparently based on the assumption that Federal lands investigated were limited in area and geologic diversity, is not supported by the record. The Federal lands being investigated by DOE are extensive and geologically diverse; moreover, they are more readily accessible to DOE and some of them, such as Nevada Test Site, have been previously subjected to extensive geologic assessment. These latter factors are significant advantages (DOE PS Appendix B; UNWMG–EEI CS p. IV. B–4). Although, as the United States Geological Survey pointed out, there may be advantages from a purely earth-science viewpoint in examining all parts of the country for their potential as repositories, time and resource limitations require that site exploration efforts be concentrated in limited regions fairly early so that detailed site-specific characterization efforts can be undertaken in a timely way (USGS PS p. 17).

A specific site has not yet been identified as technically acceptable, and investigations of potential sites have shown some to be unsuitable. This does not necessarily mean that DOE's site selection program will be unsuccessful in identifying technically acceptable sites. The elimination of some sites is to be expected in a pursuit of the site selection program and is not, as some participants implied, an indication that suitable sites cannot ultimately be found.

Although the record of this proceeding does not show that DOE has progressed far enough in site characterization to confirm the existence of an acceptable site, the record does indicate that DOE's site characterization and selection program is technically sound. The data obtained in each stage of the screening process are analyzed and compared against criteria that must be satisfied for adequate performance of the total isolation system. DOE's program is providing information on site characteristics at a sufficiently large number and variety of sites and geologic media to support the expectation that one or more technically acceptable sites will be identified (DOE PS pp. III–8 to III–24; CS p. II–140). As discussed above, DOE's site screening efforts have concentrated on a diverse set of potentially suitable geologic media and are directed to an examination of large areas of the country on both federally-owned and non-federal lands (USGS PS p. 17).

The technology for site identification is particularly well-advanced (UNWMG–EEI PS p. III–A–b79). The record describes numerous site characterization techniques, both remote sensing and *in-situ*, which are being used to evaluate sites (DOE PS pp. II–84 to II–103). The location and demonstration of acceptability of repository sites are problems which can be solved by the investigative and analytical methods now available (AEG PS p. 1). Site selection criteria are being refined (DOE PS pp. II–80 to II–83; 48 FR 5671, February 7, 1983) and the technology exists for site characterization (DOE PS pp. II–84 to II–103). Areas have been found where most natural geologic and hydrologic processes operate at rates favorable to long-term containment in a mined repository (DOE PS p. II–128; Consolidated Industry Group PHS p. 9).

The Commission recognizes that there are gaps in the current state of knowledge about potential repository sites and geologic media, and about geochemical processes which affect radionuclide migration (e.g., CEC PS pp. 17, 54; NRDC PS pp. 18, 50, 64; NY pp. 38, 80; USGS CS pp. 5, 6). The gaps include a lack of a detailed understanding of such relevant processes as sorption of radionuclide-bearing molecules by the geologic media, leaching of the wastes by groundwater, and radionuclide migration through subsurface formations. Some participants contend that these gaps and uncertainties in knowledge make it difficult to predict on the basis of any effort less than a detailed on-site investigation whether a candidate repository site will be technically suitable (e.g., NRDC PS pp. 18, 50, 53; ECNP PS pp. 3, 4; NECNP PS pp. 20, 21, 22).

The Commission recognizes that detailed site characterization is necessary to confirm that a proposed site is indeed suitable. The Commission does not believe, however, that all uncertainties must be resolved as a pre-condition to repository development. The performance of a repository may be bounded by using conservative values for controlling parameters, such as waste form solubility, ground water travel time and retardation of radionuclides. Furthermore, bounding analyses can be useful to take residual gaps in knowledge and uncertainties into account. If it can be established that a repository can perform its isolation function using established, conservative values for the controlling parameters, then it is not necessary to resolve uncertainties in the range of value these parameters may exhibit (DOE CS pp. II–83, II–84, II–130, III–9, III–12).

The statements of those participants who are pessimistic about timely accomplishment of disposal tend to assign equal importance to all areas of uncertainty. Hence, they contain few attempts to assess the consequences of gaps in knowledge or to project the benefits of expected results from ongoing research and development efforts. It is the Commission's belief that the waste isolation system elements are adequately understood so that major unforeseen surprises in results of research and development are highly unlikely. This view is supported by USGS (USGS CS pp. 1–2).

A further concern of some participants is that, even if DOE were to identify a potentially acceptable repository site, the *in-situ* testing required to determine acceptability would breach the integrity of the candidate site (NY PS pp. 59, 63–65). If, for example, boreholes essential to characterize a potential site result in penetration of aquifers which are not amenable to effective sealing, this might make the site unacceptable (DOE PS pp. II–161 to II–164). However, no persuasive evidence was presented in the record to support the position that *in-situ* tests for site characterization work are likely to compromise the integrity of candidate sites. The Commission believes that *in-situ* tests can be successfully accomplished without adversely affecting site integrity for the following reasons. Many non-destructive remote sensing methods are available for determining site characteristics. Further, boreholes can be located in shafts or pillars of the future repository to minimize the possibility of leakage through them.

As discussed later, borehole sealing methods are expected to be adequate. The number of boreholes necessary to adequately characterize a site can be minimized by careful planning and by use of remote sensing methods in conjunction with the drilling program (DOE PS pp. II–84 to II–103, II–181). Finally, the Commission believes that if a site is found to be sufficiently sensitive to the testing program so that its integrity would be destroyed, then

that site would necessarily be found unacceptable.

In summary, the Commission believes that technically acceptable sites for disposal of radioactive waste and spent fuel exist and can be found. There are a number of suitable host rock type to select from; many areas are underlain with massive, stable formations containing these host rocks; the areas being investigated by DOE contain such rock formations; and the uncertainties in knowledge of the earth and material sciences relevant to the identification of an acceptable repository site are not fundamental uncertainties that would prevent the identification of technically acceptable sites. Further, *in-situ* testing required to characterize a candidate site would not necessarily compromise its integrity.

B. The Development of Effective Waste Packages

1. *Waste Package Considerations.* An important technical aspect of safe waste disposal is to assure that the waste form and the balance of the waste package, including the primary container and ancillary enclosures, are capable of containing the radioactivity for a time sufficient for the hazard from fission-product activity to be significantly reduced (e.g., DOE PS p. II–8). Decay heat, groundwater and nuclear radiation could cause the waste package components to interact with each other or with the host rock materials in such a way as to degrade the ability of the package to contain the radionuclides. These items are discussed below.

To assure long-term containment, DOE's conceptual design of a waste package is based on a defense-in-depth approach and involves a number of components including spent fuel, stabilizer (or filler), waste canister, overpack, and an emplacement hole sleeve. The stabilizer is intended to improve heat transfer from the spent fuel, to provide mechanical resistance to possible canister collapse caused by lithostatic pressure, and to act as a corrosion-resistant barrier between the spent fuel and the canister. Selection of canister overpack and emplacement hole sleeve materials will be based on tests of their chemical and physical integrity at various temperatures and levels of radiation and under various conditions of groundwater chemistry, as well as tests of their compatibility with each other and with the host rock materials under repository conditions. The canister, overpack, and sleeve should constitute relatively impermeable elements of the waste package. A variety of candidate materials is being considered for these elements. The various waste package components are to be combined in a conservative design that will compensate for the overall technical uncertainties in containment capability. The requirement for retrievability during some specified period after emplacement places conditions (e.g., ruggedness) on waste package design which are added factors to be considered in its development (DOE PS p. II–129 to II–152, II–282).

It is apparent from the foregoing that the development of an effective waste package depends on obtaining engineering data on those materials that appear to be promising candidates for package components. DOE is studying over 28 candidate materials for canisters and overpack (DOE PS p. II–143). The DOE evaluation program indicates that many of these materials are promising. For example, iron alloys have demonstrated long term durability (DOE PS p. II–144, Reference 383), and titanium alloys and nickel alloys show high resistance to corrosion (DOE PS p. II–144, Refs. 315, 338, 342). Ceramics are resistant to chemical degradation and have many other desirable properties (DOE PS p. II–145, Refs. 337, 347, 348 and 349). Preliminary analysis indicates that mild steel canisters with an appropriate backfill material would be a feasible waste package for either a salt or hard rock repository. For more demanding requirements, such as brine applications, the alloys of titanium, zirconium or nickel appear to represent alternate choices (DOE PS p. II–150, Refs. 337, 382). The DOE program also includes experimental studies of the release of radioisotopes from spent fuel exposed to simulated repository conditions (e.g., salt brine and fresh water with varying dissolved oxygen content). The studies are being conducted under temperature and pressure conditions that bound and exceed repository conditions (DOE PS pp. II–139 to II–141).

Not all participants were optimistic about waste package development. One participant asserted that in spite of DOE's efforts to develop a package that would remain inert and stable under repository conditions, none had yet been found and the DOE program would not succeed in finding one (NRDC PS p. 46). Other participants pointed to the limits of present knowledge, particularly about the leaching of radioisotopes from spent fuel in a groundwater environment, and concluded that it is not possible to select a waste form which will prevent radioisotopes from migrating to the biosphere (e.g., CEC PS p. 51). They also pointed out that chemical and physical properties of spent fuel varied widely and depended on burnup, location within the reactor core, age, and physical integrity; design of a system of barriers to accommodate this heterogeneity within the context of a given geohydrologic environment would be a major undertaking (NY PS p. 83).

The Commission recognizes the difficulties which must be overcome in developing a suitable waste package. A large body of experimental data must be accumulated and applied to a variety of candidate arrangements of waste package components. Suitably conservative assumptions must be postulated to define the repository conditions. Data from experiments of relatively short duration have to be used to predict behavior for much longer periods. It is common practice in materials research to perform short-duration experiments under physical or chemical conditions much more severe than those expected for the longer duration and, from known fundamental properties of the materials under investigation, to extrapolate the experimental data to predict long-term behavior. Conservatism can usually be assured by making the experimental conditions sufficiently severe.

The complex composition of the mixture of radionuclides in fission products and their basic chemical properties are known and have been the subject of investigation for more than three decades. The large body of published data on fission product chemistry and experience with fission product mixtures should provide considerable support for predicting the behavior of spent fuel and high-level radioactive waste in waste package designs.[1] The Commission, therefore, concludes that the chemical and physical properties of spent nuclear fuel and high-level radioactive waste can be sufficiently understood to permit the design of a suitable waste package.

The Commission also concludes that the DOE program is capable of developing a suitable waste package which can be disposed of in a mined geologic respository. This conclusion is based upon the large number of candidate materials being considered by DOE, the detailed evaluation of these

[1] Published compilations of such data, although not specifically included in the record of this proceeding, are well known to the nuclear science and engineering community. Examples are the three volumes of the National Nuclear Energy Series, "Radiological Studies: The Fission Products," by C. D. Coryell and N. Sugarman, McGraw-Hill, 1951; "Reactor Handbook," Second Edition, Vol. II, Fuel Reprocessing, edited by S.M. Stoller and R.B. Richards, Interscience Publishers, Inc., New York, 1961).

materials to be conducted as part of the DOE program and the results of DOE's preliminary analysis of candidate materials, as described above (see Sec. 2.1(b)(1)). The Commission's conclusion that the development of a suitable waste package is technically feasible is also consistent with other material in the record. For example, a study sponsored by the National Academy of Sciences (NAS) concluded that no insurmountable technical obstacles were foreseen to preclude safe disposal of nuclear wastes in geologic formations (UNWMG–EEI PS Doc. 2 p. II–6). The United States Geological Survey stated that a long-lived canister is within the capability of materials science technology to be achieved in the same time frame as repository site identification, qualification and development (USGS PS p. 11). The National Research Council, after reviewing the Swedish waste disposal work (DOE PS p. II–335 Ref. 380), concluded that the Swedish waste package could contain the radionuclides in spent fuel rods for hundreds of thousands of years (DOE CS p. II–98).

2. *Effect of Reprocessing on Waste Form and Waste Package.* The waste form itself (spent fuel or other high-level waste) serves as the first barrier to radionuclide release and thus supplements the containment capability of the other components of the waste package as well as the repository's natural isolation capability. Throughout this processing it has been assumed that the waste form would be spent fuel discharged from light water reactors, with mechanical disassembly for volume reduction and packaging in a canister as the only potential modifications. The relevant properties of the spent fuel (irradiated uranium dioxide pellets and zircaloy cladding) are known. DOE's program has been directed toward providing data to determine the behavior of spent fuel as a waste package component under repository conditions. In its Position Statement DOE stated that the "representative case" to be considered in this proceeding is the disposal and storage of spent fuel from commercial reactors and that this does not foreclose "other approaches, such as the reprocessing of spent fuel and solidification of resultant nuclear wastes" (DOE PS p. I–2).

On August 27, 1981 the National Resources Defense Council filed a Motion for Judgment requesting a prompt ruling that, on the basis of the present record, there is not reasonable assurance that off-site storage or disposal will be available by the year 2007–09. NRDC stated that, because the present Administration [1] had changed Federal policy towards commercial reprocessing of spent fuel (reprocessing was deferred "indefinitely" in April 1977 by the previous Administration), the disposal of spent fuel would be contrary to the present Administration's policy, and thus spent fuel was no longer a valid "reference waste form" for this proceeding. As a consequence, according to NRDC, DOE schedules and timetables, which were based on spent fuel storage and disposal, were irrelevant. The NRDC view was challenged by DOE as well as by seven participants representing utilities and the nuclear industry. The Commission took note of the NRDC filings and the responsive filings by other participants, considering them part of the record, and in its November 6, 1981 Second Prehearing Memorandum and Order asked the participants to address the significance of commercial reprocessing to the Commission's decision in the waste confidence proceeding. In response, the participants addressed this change in government policy in their prehearing statements filed in December 1981.

In response to those who argued that the change of reprocessing policy invalidated DOE's position, DOE stated that the program for development of the technology is not dependent on the waste form. Moreover, DOE pointed out that the purpose of this proceeding—"to determine whether there is at least one safe method of disposal or storage for high-level radioactive waste" is not changed by this Administration's support of reprocessing of spent fuel (DOE PHS pp. 2–3). Some participants who agreed with DOE commented that spent fuel disposal involves greater difficulty than disposal of solidified reprocessing waste because of its higher radioactivity and less easily handled form; in addition, they asserted that the removal of the uranium and most actinides by reprocessing would ease the requirements for safe long-term storage and simplify the waste disposal problem (UNWMG–EEI PHS p. 16; SE2 PHS p. 4). Others contended that spent fuel is a more difficult waste form because heat dissipation and packaging problems involved in disposal appear to be more severe than in disposal of solidified reprocessing waste (AIF PHS p.6; ANS PHS p. 5).

The Commission recognizes that the proceeding has been primarily concerned with storage and disposal of spent fuel. However, the Commission does not believe that the possibility of future reprocessing, and the potential need to dispose of high-level radioactive waste resulting from reprocessing, significantly alters the technical feasibility or the schedule for developing a mined geologic repository and the design of its multiple barriers.

With regard to technical feasibility, the effect of spent fuel reprocessing on the commercial radioactive waste disposal problem is not a new consideration. The disposal of waste from reprocessing spent fuel has been studied for a longer time than the disposal of spent fuel. Until 1977, the commercial waste management program was directed primarily toward disposal of waste from spent fuel reprocessing, and those efforts have continued. A variety of waste forms has been studied (DOE PS pp. II–153 to II–160). Thus, considerable information is already available on the technical feasibility of developing a suitable waste form for reprocessed high-level radioactive waste. In fact, there is evidence that the disposal of reprocessed high-level waste may pose fewer technical challenges than the disposal of spent fuel (Tr. p. 29). Moreover, commercial reprocessing of spent fuel cannot be undertaken in this country in the absence of a full NRC licensing review. That review will consider, among other things, the waste form to be produced by the reprocessing method and its implications for waste disposal. Unless the Commission determines that commercial reprocessing and management of its products assure adequate protection to the public health and safety and the common defense and security, spent fuel will continue to be the predominant commercial waste form available for disposal in a repository.

With regard to the impact on DOE's repository schedule, the Commission recognizes that DOE's waste package development program will eventually be affected to some extent by the nature of the waste form under development. However, the direction taken in research and evaluation of materials being conducted in the DOE program is expected to produce results which would be relevant to the waste package design, regardless of which waste form is used (DOE PS pp. II–141 to II–152, CS pp. II–96 to II–100). Moreover, the choice of waste form will not significantly affect other elements of the DOE repository program. The storage and disposal of reprocessed waste would involve substantially the same problems as those being addressed for spent fuel.

[1] The NRDC statement was based on DOE testimony before a Congressional committee. The President's Nuclear Policy Statement of October 8, 1981 confirmed the DOE testimony.

and a change in waste form would not alter the site-selection program or the program for development of suitable engineered barriers (DOE PHS p. 3). Thus, DOE's program is proceeding on a basis that would permit the disposal of either high-level waste or spent fuel. This approach is consistent with the recommendations of the Interagency Review Group in its March 1979 report to the President (IRG Final Report, p. 73) and with the direction in the Nuclear Waste Policy Act of 1982 (Sec. 111(a)(2)). Finally, as noted above, any decision to permit the commercial reprocessing of spent fuel will include consideration of the reprocessed waste form and its implications for waste disposal. For these reasons, the Commission concludes that the possibility of commercial reprocessing does not substantially alter the technical feasibility of, or the schedule for, developing a suitable waste package.

The Commission concludes that the basic knowledge of spent fuel and high-level waste and its behavior in a repository environment, together with DOE's ongoing development and testing program, are sufficient to provide assurance that a waste package can be developed that will provide adequate containment until the potential hazard from the fission product activity is sufficiently reduced.

C. The Development of Effective Engineered Barriers for Isolating Wastes From the Biosphere

1. *Backfill Materials.* In DOE's conceptual design, one engineered barrier consists of backfill materials for filling voids between canister, overpack, sleeve and host rock. The materials are chosen to retard radionuclide migration. The task is to design and test barrier materials which will be effective for very long periods of time. Candidate materials include bentonite, zeolites, iron, calcium or magnesium oxide, tachyhydrite, anhydrite, apatite, peat, gypsum, alumina, carbon, calcium chloride, crushed host rock, and others (DOE PS p. II–147). Host rock or other materials would also be used to backfill drifts and shafts within the repository.

The California Department of Conservation (CDC) contends that repository shaft and borehole backfill material performance may be degraded as a result of increased temperature and other factors (CDC PS pp. 19–22). However, the expected temperature rise in the shaft backfill material will be only about 10 Farenheit degrees, and will cause no significant degradation of the shaft backfill material (DOE, PS p. II–347 Ref. 527 NUREG/CR 0495). Other participants believe that there is inadequate information to permit development of long-lived engineered barriers that will effectively contain high-level radioactive wastes (NRDC PS pp. 18, 32; I11 PS pp. 3–4; NECNP PS p. 18). CDC further contends that at this time, no information appears to have been developed that specifies the best type of backfill material to be used in particular geologic media (CDC PS pp. 19–22). However, the choice of backfill must take into account the rock media at the selected site as well as the waste package material. Thus, the backfill cannot be selected until a repository site has been selected. The NWTS program has as its objective, providing information on a practical range of options for backfill materials. Although a considerable amount of work remains to be done, an active research and development program on backfill materials is underway (DOE PS p. II–147). Further, that program is providing information to evaluate the backfill material options, as well as to establish a basis for selection of a suitable material for the geologic media being considered. The Commission believes that this approach provides an adequate basis for concluding that effective backfill materials will be identified in a timely fashion.

In the National Waste Terminal Storage program a wide range of candidate backfill materials have been and are continuing to be evaluated (DOE PS II–129 to II–152). The DOE studies include measurements of the appropriate properties of backfill material including nuclide sorption capacities, capability to prevent or delay ground water flow, thermal conductivity, mechanical strength, swelling, plastic flow and methods of backfill emplacement. Data on available candidate materials show significant radionuclide sorption capabilities and sorptive properties can be maintained at elevated temperature and in the presence of radiation (DOE CS pp. II–98, II–99). Analyses indicate that several of the materials could provide adequate performance characteristics (DOE PS, Part II, Ref. 339, 340, 346, 372, 374, 376). As an example of the development of effective engineered barriers, the results of Swedish studies on radionuclide release in a repository were cited. The studies showed that a bentonite clay backfill, in conjunction with a thick copper canister (with spent fuel inside) could prevent the release of radionuclides to the host rock in the presence of granitic ground water for thousands to hundreds of thousands of years. In the Swedish experiments, the clay barrier provided sorptive properties which were predicted to delay the breakthrough of various radionuclides for thousands of years and also served to chemically condition the ground water, reducing its corrosive effect on the canister (DOE PS pp. II–145, II–148). The use of certain clays to retard the transport of radionuclides released by the waste package is applicable to repository designs here in this country. While DOE has not proposed using thick copper canisters as employed in the Swedish studies, this example of a durable combination of waste package and backfill material which was demonstrated to be effective in isolating radionuclides for very long times, indicates that the basic approach is reasonable. The use of clays, combined with other appropriate materials, could provide an effective means for radionuclide retardation and corrosion control.

In sum, the Commission believes that DOE's ongoing developmental studies reported in this proceeding (DOE PS pp. II–129 to II–152) are technically sound and provide a basis for reasonable assurance that engineered barriers can be developed to isolate or retard radioactive material released by the waste package.

2. *Borehole and Shaft Sealants.* A major factor in repository performance is the effective sealing of boreholes and shafts during repository closure operations. All penetrations provide potential pathways for radionuclides to reach the biosphere or for ground water to enter the repository. The penetrations must be sealed for an extended period of time. Further, the geology and hydrology at a particular site, as well as the expected temperature and pressure conditions during repository lifetime, must be understood in order to make a proper choice of the borehole and shaft sealing materials and to develop effective borehole and shaft seals.

Some participants concluded that current information concerning the technology for the sealing of the boreholes and shafts is inadequate. They also questioned the capability of the DOE program to develop sufficient information to allow effective seal design (CDC PS pp. 19–22; NRDC PS p. 5). The views of several participants who expressed concern about sealing were reflected in the comments of CDC. The Commission's response to each of the points raised by CDC on borehole and shaft sealing issues is discussed below.

CDC indicated that since long-term effects of heat and radiation on seal materials were not a factor in past oil and gas borehole sealing experience,

such experience is not applicable to repository sealing.[3] However, at distances of more than several feet from waste canisters emplaced in a repository, radiation exposures are small and the temperature rise at seals in the shafts and boreholes is insignificant for sealing purposes (DOE CS II–108).

CDC also believes that the tests of cement seals with epoxy resins in bedded salt deposits discussed by DOE are insufficient to provide assurance of seal stability over a period of 10,000 years, especially when the effects of higher temperature and radiation are not included. As noted above, temperature and radiation effects on seals are expected to be negligible.

While these tests may not provide conclusive proof of performance for 10,000 years, they are expected to provide useful information for seal development.

CDC states that the results of field tests described by DOE as continuing over the next few years will not be completed in time to contribute to seal design criteria which are to be completed [4] in 1982. However, the final seal design for the selected site is scheduled for two years after a site is selected (DOE PS p. II–184). Testing up to that date is expected to be useful in designing an effective seal.

CDC questioned whether tests of waste package system component interactions with the surrounding media in bedded salt described by DOE will be completed in time for location of a repository. However, the Commission finds no basis for this assertion in the record. The DOE program appears to be adequately addressing this issue. Studies are in progress to characterize further the interactions between candidate backfill-getter materials and waste container alloys. These studies include investigations of dry rock salt/metal interactions and high intensity radiation/salt/brine/metal interactions. (DOE PS p. II–149, II–150).

CDC asserts that DOE has not discussed designing backfill material and penetration seals to allow for safe reentry if retrieval should become necessary. However, the provision to retrieve high-level waste and spent fuel for a number of years after the repository is filled has been addressed by DOE (DOE PS pp. II–280 to II–283). Although it has not yet been established whether backfilling and sealing will be conducted before repository closure, these operations may be reserved until a final decision for closure is made. In any event, CDC provides no basis for concluding that providing for retrievability will necessarily create any major difficulties for the design of backfill material and penetration seals.

According to one participant, "There is no established way to seal a repository so as to prevent radionuclide release to the biosphere for the necessary period of time. DOE has termed the sealing problem a 'key unknown' but there is no consensus that the technology which is currently anticipated will provide adequate seals for even a few decades" (Consolidated States Group PHS p. 8). Other participants maintained that seals must perform as well as the host rock in preventing radionuclide migration (NRDC PS p. 55). The DOE position is that the seal should provide a barrier with sufficient integrity to ensure acceptable consequences and sealing adequacy should be determined only on a site-specific basis (DOE CS p. II–106). DOE asserted that its program will successfully resolve remaining uncertainties in repository sealing technology (DOE CS pp. II–106 to II–109).

DOE has been studying cement-based borehole plugging and has examined use of grout materials for application to the Waste Isolation Pilot Plant (WIPP) and other potential repository sites. Earth-melting technology for plugging in salt and use of compacted natural earth materials are also being investigated (DOE PS p. II–183, CS p. 106–109). There is a considerable body of experience in sealing subsurface formations in the oil, gas, and other mineral extraction industries. However, related industrial experience and requirements for sealing a repository differ in one important respect: repository sealing must be effective for a very long time while most other sealing applications are for relatively short time periods (DOE PS p. II–182). Future DOE effort will be needed to verify borehole seal performance and durability for each candidate medium. An important aspect of DOE's work is to determine the rate of degradation of seal performance as a function of time. DOE plans to determine seal performance specifications for a particular site on the basis of calculated predictions of radionuclide release and transport to the accessible environment (DOE PS p. II–182). These predictions are expected to indicate that a site whose characteristics for waste isolation are clearly superior may not require sealing performance specifications as stringent as those for a less favorable site.

Based upon the extensive experience with shaft and borehole sealing in other industries and DOE's detailed program for evaluating the long-term performance of seals, the Commission believes that there is a reasonable basis to expect that long-term effective borehole and shaft seals can be developed.

D. Summary of Views on the Technical Feasibility of Safe Waste Disposal

The Commission notes that participants in the Waste Confidence Rulemaking proceeding have generally agreed there are no known fundamental technical problems which would make safe waste disposal impossible. Where they differ is the extent to which the technical problems of disposal technology and siting have already been solved and the capability of DOE to solve them, and particularly to solve them by 2007–09 or by the expiration date of reactor operating licenses (e.g., NY PS p. 3; NECNP PS p. 171; Minn PS pp. 13–20 of Enclosure).

The Commission believes that the record provides a basis for reasonable assurance that the key technical problems can be solved. Technically acceptable sites exist and can be found among the various types of geologic media and locations under investigation by DOE. Currently developed geophysical methods for site evaluation appear capable of adequately characterizing the site, and the residual uncertainties in earth sciences data do not seem to be an insurmountable impediment. Further, the Commission believes that the multi-barrier approach to waste package design is sound and that package development is being adequately addressed by DOE. DOE's development work on backfill materials and sealants provides a reasonable basis to expect that backfill materials and long-term seals can be developed. Reprocessing of spent fuel would only become a licensed commercial activity if disposal of reprocessing waste in a mined repository would be established as technically feasible. While the Commission recognizes that more engineering development and site-specific work on disposal technology will have to be conducted before a waste repository can be constructed and operated, the Commission concludes that it is technically feasible to safely dispose of high-level radioactive waste

[3] The Commission notes that the extensive oil and gas borehole sealing experience has not been concerned with very long-term sealing. Therefore, DOE's sealing research and development must provide a basis to extend that experience for the development of long-term seals for a repository.

[4] DOE has published "Schematic Designs for Penetration Seals For a Reference Repository In Bedded Salt," ONWI–405, November, 1982.

and spent fuel in a mined geologic repository.

2.2 Second Commission Finding

The Commission finds reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the years 2007–09, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

While the record of the proceeding supports a finding that disposal is technically achievable, the Federal government has, in the past, made inadequate progress in developing sound waste management policies and programs. The Commission notes that DOE has stated in its April 1984 draft Mission Plan that the first repository will begin operations in 1998, and that the second will start up in 2004. However, it is recognized that both technical and institutional issues contribute to uncertainties concerning DOE's ability to complete one or more mined geologic repositories for high-level radioactive waste by those dates. The technical issues concern DOE's ability to find technically acceptable sites in a timely fashion and the timely development of waste forms, packages, and engineered barriers. The institutional issues concern primarily Federal-state relations and the management and funding of the Federal program.

The Commission has considered the effect of enactment of the Nuclear Waste Policy Act of 1982 and concludes that the Act helps to reduce these scheduling and institutional concerns. The Act provides support for timely resolution of technical uncertainties by: (1) Establishing specific milestones for all the key tasks; (2) coordinating the activities of all the involved Federal agencies; (3) providing for time schedules and a mission plan for the accomplishment of the tasks; and (4) providing a mechanism for monitoring progress, for identifying failures to meet the schedules and the milestones, and for adjusting the future elements of the program in the event that such failures occur. In order to further enhance the resolution of technical uncertainties regarding rock thermal-geomechanics the Act provides for the establishment of a Test and Evaluation facility to carry out *in-situ* studies of rock at repository depth. The Act also reduces uncertainties in the institutional arrangements for the participation of affected states in the siting and development of repositories and in the long-term management, direction and funding of the repository program. The Commission's assessment of both the technical and institutional factors is discussed below.

A. Technical Uncertainties

The ability to construct and operate a mined geologic repository that will provide for the safe disposal of high-level radioactive waste and spent fuel by the years 2007–09 has been challenged by several participants. In addition to the institutional issues which must be resolved, interrelated technical problems have to be solved in a coordinated and timely fashion. The Department of Energy is confident the technical problems can be solved as scheduled in the National Waste Terminal Storage Program plans (DOE PS p. III–86, CS p. III–13; DOE draft Mission Plan, April 1984). Other participants conclude that because of unresolved technical problems, DOE's schedule cannot be met (e.g., Consolidated Public Interest Group PHS pp. 2–7; Consolidated State Group PHS pp. 1–13). For convenience, we consider the technical controversy in two categories: (a) finding technically accceptable sites in a timely fashion, and (b) the timely development of waste packages and engineered barriers.

1. *Finding Technically Acceptable Sites in a Timely Fashion.* To assure the adequacy of a candidate site requires extensive onsite investigations including drilling or excavating, as well as analyses and technical evaluations. Although DOE has not yet begun subsurface site characterization to enable identification of an acceptable site, the record does indicate that DOE's site screening and selection program is providing information on site characteristics at a sufficiently large number and variety of sites and geologic media to support the expectation that one or more technically acceptable sites will be identified.

DOE is investigating four geologic media at a number of sites: domed salt (Gulf Interior Region); bedded salt (Paradox Basin, Permian Basin, Salina Basin); basalt (DOE's Hanford Site), and volcanic tuff (DOE's Nevada Test Site). Investigations in a fifth media (granite) are planned, but sites have not yet been determined (DOE PS Appendix B). Exploratory shaft excavation at three sites in different geologic media was to begin for basalt in April, 1983, for volcanic tuff in October, 1983, and for salt in December, 1983 (Tr. pp. 241–242). However, the Nuclear Waste Policy Act of 1982 (NWPA) imposed new conditions which made it necessary to revise this schedule. The NWPA specified that DOE had to prepare environmental assessments for each of five nominated sites, from which three sites would be recommended to the President for characterization. DOE's preparation of environmental assessments and recommendation of three sites were to be accomplished in keeping with the provisions of the repository siting guidelines required by the NWPA. The Commission's concurrence in DOE's siting guidelines on July 3, 1984, enables DOE to proceed to nominate and recommend repository sites for characterization. DOE has recently published a revised schedule for site selection milestones in its April, 1984 draft Mission Plan. As described in its Mission Plan, the current status of DOE's site selection schedule calls for the issuance of environmental assessments for five nominated sites and the recommendation of three of those sites for characterization by December, 1984. DOE's schedule for work in the various geologic media is summarized below.

Salt: Resolution of the identified key screening issues in FY 1984 is expected to permit nomination of a candidate salt dome site in December, 1984. DOE is still choosing from among several salt domes in the Gulf Coast interior region (Tr. pp. 243–244; DOE Draft Mission Plan, April, 1984). For bedded salt, primary effort has been focused on the Palo Duro Basin in Texas, the Paradox Basin in Utah, and the Permian Basin, particularly the Delaware basin in the Los Medanos area, the site considered for the proposed WIPP. The Bureau of Land Management issued the report "Environmental Assessment of DOE Proposed Location and Baseline Studies in the Paradox Basin, Utah-Final" UT–060–51–2–11, in July, 1982. Each of the seven potentially acceptable salt sites has been evaluated for environmental conditions, and a site characterization plan is expected to be issued for salt in September, 1985. DOE will start land access and permitting activities for salt after negotiating agreements with affected states and Indian tribes (DOE Draft Mission Plan, April, 1984).

Basalt: The basalt formations at the Hanford reservation in the center of the Pasco basin (Columbia Plateau, central Washington) are prime candidates for repository sites. DOE expects to issue a site characterization plan for basalt in January, 1985 and start drilling for the exploratory shaft in March, 1985 (DOE Draft Mission Plan, April 1984).

Volcanic Tuff: The Nevada Test Site offers several suitable candidates for

waste repository siting. The primary focus is welded tuff on Yucca Mountain, where DOE has begun a program of drilling and geophysical evaluation. DOE expects to issue site characterization plan for tuff in March, 1985 and begin shaft work in September 1985 (DOE Draft Mission Plan, April 1984).

Granite: Granite and other crystalline rock media are being considered for the second repository (DOE Draft Mission Plan, April 1984). DOE has conducted only limited investigations of granite at the Nevada Test Site (DOE PS pp. B–66, B–72), but is developing data on the potential of granite as a repository medium in collaboration with Swedish investigators (DOE PS p. II–258). This project has already produced a large amount of rock thermal-mechanics data at repository depth for use in repository designs in granite media in this county (DOE PS pp. II–258 to II–260).

As indicated in our discussion of technical feasibility, the identification of technically acceptable sites is a key problem and the date of successful solution of this problem is a critical milestone in the repository program. Those participants who believe DOE could not meet its site selection schedule asserted that determination of the acceptability of proposed repository sites requires information that will not be available when needed. They maintained that DOE's knowledge is seriously incomplete with respect to all of the potential sites considered to date. Further, they asserted that because new information could disqualify any of the potential sites, as it did at the Palestine dome, there is, as yet, no basis for reasonable assurance that an acceptable repository site will be available in the time period under consideration (NRDC PS p. 44; NECNP PS p. 24). The Commission recognizes that if the DOE program were further along, e.g., in the middle of exploratory shaft work, there would be much more site-specific information available (including the results of *in-situ* tests) and a firmer basis for assessing whether DOE's revised schedule can be met. However, the Commission can make a reasonable prediction with the information now before it.

Underlying the pessimism of some participants is apparently a belief that DOE's past record in solving technical problems undermines the possibility of finding confidence in DOE's ability to solve the waste disposal problems in a timely way. The Commission acknowledges that in the past the waste programs of DOE and its predecessor organizations have experienced difficulty in making timely progress toward a solution of the nuclear waste problem. However, the Commission need not rely on this past record in making its confidence determination. The DOE program is now adequately addressing the issues yet to be resolved in identifying an acceptable site and DOE's schedule is a reasonable one (see the discussion in Section 2.2 B.4 of this document). The qualifications and professional experience of the many scientists and engineers on the overview committees and peer review groups who advise and consult on the DOE program should provide confidence in DOE's efforts (DOE CS Appendix D). The support of the USGS in the earth sciences field (USGS PS Appendix A) clearly contributes to confidence that the technical problems associated with identifying an acceptable repository site will be solved. As noted before, no fundamental technical breakthroughs are necessary. Rather, completing the program is a matter of step-by-step evaluation and development based on ongoing site studies and research programs.

The Commission believes that the enactment of the Nuclear Waste Policy Act of 1982 provides impetus to that program and helps ensure that it will be completed on a schedule consistent with the Commission's findings. The Nuclear Waste Policy Act establishes a detailed step-by-step plan for developing a waste repository. The Act directs DOE to prepare a comprehensive Mission Plan which will establish programmatic milestones for research, development, technology demonstration and systems integration. The Act also requires the various Federal agencies involved in the program to coordinate their activities. Involved agencies must report their progress, or lack thereof, to Congress, explain any slip in schedule and set a new schedule for activities. Thus, the Act provides a framework and schedule for developing a repository.

The schedule set forth in the Act calls for the identification of adequate sites in time to meet the final decision date on construction authorization by the NRC and well before the time at which such action would be necessary to assure repository operation within the time period discussed in this decision. The time between sinking of an exploratory shaft and the completion of site characterization contemplated by the Act (Sec. 112, 114) is 26 months, with an extension to 38 months under certain conditions; the DOE schedule for these activities is generally compatible with this schedule (see Section 2.2 B.4 below).

The Nuclear Waste Policy Act also puts in place procedures (Sec. 115, 116, 117, 118, 119) which the Commission believes will help to resolve potential institutional problems that might affect the schedule for site selection. These are discussed in detail hereafter. The Commission believes that the provisions of the Act should also provide resources (Sec. 302, 303) to adequately fund the site selection and characterization work.

Given all of these considerations, the Commission concludes that there is reasonable assurance that technical uncertainties—unsolved technical problems and information gaps—will be removed in time for DOE to meet its proposed schedule. DOE's program is adequate and its schedule is reasonable. The Act provides a greater degree of confidence than existed previously that site selection will proceed within the general time frame that DOE has described in its position statement.

2. *Timely Development of Waste Packages and Engineered Barriers.* Some participants have expressed strong reservations concerning DOE's ability to develop waste forms, packages, and engineered barriers in a timely fashion. The DOE technical effort to solve problems was characterized as only just being defined in many significant areas, including the prevention of corrosion of waste canisters (NRDC PS p. 18). Other participants contended that: the design and evaluation studies of penetration seals and backfill material might not be completed soon enough to meet the goal of achieving an operational repository by 1997 to 2006; the long-term effects of heat and radiation on the integrity of the seal materials are not known; tests of cement seals with epoxy resin in bedded salt deposits are insufficient to assure stability of such seals over a period of 10,000 years; and field tests of liquid permeability during a period of three months cannot provide confidence concerning the stability of seals during a period of 10,000 years. Participants also contended that no information had yet been provided which specified the type of backfill material most suitable for specific geological media and capable of withstanding thermal stress (CDC PS pp. 19–22).

Although technical problems associated with the development of waste packages and engineered barriers could delay DOE's schedule, DOE believes that the uncertainties surrounding the waste package would be resolved or bounded as a result of implementation of its program (DOE PS p. II–160, CS p. II–96). The DOE Waste Package Program Plan (ONWI–96)

which was issued in August 1980, updated in June 1981 (NWTS–96) and updated further in DOE's April, 1984 Draft Mission Plan, sets forth details of DOE's program. Waste package performance criteria will be developed in the near future. Final action on the criteria will be contingent upon the final issuance of NRC's technical criteria (10 CFR Part 60, Subpart E), the publication of the relevant regulatory guides on waste packages, and the ONWI–33 series of criteria documents, i.e., the reports DOE/NWTS–33 (1), (2), (3), "NWTS Program Criteria For Mined Geologic Disposal of Nuclear Wastes."

Earlier, DOE had planned to complete the waste package preliminary designs for salt in September 1982, for basalt in June 1985, for tuff in June 1984, for granite in September 1984, and for argillaceous rock in December 1984, and to establish a baseline for waste form specifications by June 1983 (ONWI–96). According to DOE's April, 1984 draft Mission Plan, the current reference canister material for basalt is carbon steel. Alternative materials include an iron-chromium-molybdenum alloy, copper and a copper-nickel alloy. On the basis of preliminary corrosion-test results, carbon steel has also been selected as the reference canister material for salt. The titanium alloy Tricode 12 has been designated as an alternative material. Type 304L stainless steel has been identified as the reference container material for tuff; other austenitic stainless steels, Inconel and copper are alternatives. Waste-package conceptual designs have been developed for basalt, salt and tuff. (The conceptual design for tuff is based on saturated conditions; a conceptual design for the unsaturated zone will be available in late FY 84 [DOE draft Mission Plan, April 1984]).

Tests with spent fuel and borosilicate glass have been initiated under site-specific conditions for basalt, salt and tuff. Preliminary waste acceptance requirements have been developed for basalt and salt. In addition, for salt media, interim waste-acceptance requirements for borosilicate glass and draft waste acceptance requirements for spent fuel were prepared in FY 83. Preliminary requirements for tuff will be prepared in FY 84. DOE intends to submit the baseline waste form specifications developed during the conceptual design studies for acceptance by NRC. The specifications will be subjected to configuration control for application throughout the waste processing and disposal program.

According to the DOE Draft Mission Plan the complete waste package performance model will be verified and validated by September 1989. Further, the program plan calls for completion of the waste package final design that takes into account the selected site environmental conditions, after completion of in-situ testing in FY 89 and FY 90. Packing material is included in the reference waste package only for basalt. The reference packing material for basalt is a mixture of crushed basalt and sodium-bentonite clay. Ongoing physical property testing of reference packing material is expected to be completed in FY 87 and ongoing radionuclide sorption, solubility and diffusion testing are to be completed by September, 1989.

Some participants' statements are pessimistic assessments based on the fact that the DOE program has not yet reached the critical milestones—e.g., establishment of waste form specifications, completion of waste package preliminary designs, verification of a waste package performance model, and qualification of barrier materials. However, the Commission believes that these technical problems will be solved without delaying a repository schedule. DOE has put in place an extensive nuclear waste research program that addreses each of these technical problems. Research results already reported on waste form packaging and barrier materials indicate that these research efforts, although not yet completed, can reasonably be expected to provide solutions to those problems when those solutions are needed to meet the DOE schedule (DOE PS pp. II–129 to II–197, CS pp. II–93 to II–100).

The Commission's positive assessment is strengthened by provisions in the Nuclear Waste Policy Act of 1982. Title II of the Act authorizes DOE to undertake steps leading to the construction, operation and maintenance of a deep geologic test and evaluation facility and to establish a focused and integrated research, development and demonstration program. In the area of waste package design, the Act directs that DOE's Mission Plan identify a process for solidifying high-level radioactive waste or packaging spent fuel with an analysis of the data to support selection of the solidification process or packaging technique. The Act calls for a schedule for implementing such a plan and for an aggressive research and development program to provide a high-integrity disposal package at a reasonable price (Sec. 301(a)(8)). The Commission notes that DOE's published Draft Mission Plan (April, 1984) addresses these issues in detail. Congressional authorization of those programs, together with the assurance of necessary funding, provides the Commission additional confidence that the required research work will be done in a timely manner.

The Commission also notes that the programs to solve the major technical problems relating to the timely development of waste forms, waste packages, and engineered barriers can proceed in parallel. Because the waste repository must be designed as a system, the problems are interrelated; however, the relationships are such that solving one problem need not await the solution of another. DOE could proceed for a number of years on waste package development before making a decision on the form of the waste, without affecting the repository availability schedule.

B. Institutional Uncertainties

The principal institutional issues that affect the schedule for availability of a mined geologic repository include: measures for dealing with Federal-state disputes; an assured funding mechanism that will be sufficient over time to cover the period for developing a repository; an orginizational capability for managing the high-level waste program, whether this be DOE or a successor organization; and a firm schedule and establishment of responsibilities which will lead to repository development in a reasonable period of time. Each of these is discussed in turn.

1. *Measures for Dealing with Federal-State-Local Concerns.* The President and Congress have recognized the need to involve state and local governments in the decision-making process and have taken steps, including enactment of the Nuclear Waste Policy Act of 1982, to establish an institutional framework to accomplish this end. DOE pointed out that Presidents Carter and Reagan have considered state involvement in site selection an important aspect of the high-level radioactive waste disposal program. President Carter, in his message to Congress, directed "the Secretary of Energy to provide financial and technical assistance to States and other jurisdictions to facilitate full participation of State and local government in review and licensing proceedings." He committed the Federal Government to work with state, tribal and local governments in the siting of high level waste repositories. Within a framework of "consultation and concurrence," a host state would have a continuing role in Federal decision-making involving the siting, design and construction of a high-level waste

repository (DOE CS pp. II–11, 13–14). President Reagan's statement of October 8, 1981 similarly instructed DOE to work closely with industry and state governments in developing methods of storing and disposing of commercial high-level waste.

Although industry groups believed that DOE had made substantial progress in cooperating with state and local authorities by encouraging their direct participation in planning and preliminary site selection activities (UNWMG–EEI CS pp. V–27, V–28), states and environmental groups were skeptical that the mechanisms proposed by DOE for incorporating state and local views (e.g., consultation and concurrence) would work satisfactorily. Many states asserted a lack of confidence in DOE's claims that it would be able to gain agreement from states by persuasive measures (e.g. Ohio PS p. 5; NY PS p. 74; Wis PS Kelly p. 5) and noted that information sharing was inadequate to reduce or overcome a state's resistance to a repository (e.g., NY PS p. 74; NRDC PS p. 69). The states also believed that DOE had underestimated potential state and local opposition to the siting of a repository (CEC PS p. 27, Ohio PS p. 12) and that consultation and concurrence must include a mechanism for resolving intergovernmental disputes (Vt PS p. 3). Other participants argued that many states had already imposed bans on waste disposal (NECNP PS p. 32) and that DOE had presented no means for resolving state nonconcurrence (NRDC PS p. 69). Still others claimed that the state's role in the site selection process must be specifically defined (Del PS p. 6); but the DOE had provided no basis for optimism that this could be done (NECNP PS p. 69). Some participants suggested that local opposition to waste repositories could be overcome by providing financial compensation to nearby communities (AIChE PS p. 6) but that DOE had not adequately considered compensation to host communities for socioeconomic impacts (Ohio PS p. 14).

The recently-enacted Nuclear Waste Policy Act of 1982 defines the roles of the states and Indian tribes in repository site selection, and thereby reduces some of the uncertainties in settling disputes between the Federal government and affected states and Indian tribes. By providing for information exchange, for financial and technical assistance, and for processes of consultation, cooperation, negotiation and binding written agreement, the Act should help to minimize the potential for more formal objections and confrontations.

Specifically, the Act requires DOE to identify the states with one or more potentially acceptable sites for a repository and to notify the governing bodies of the affected states or Indian tribes of those sites (Sec. 116(a)). The Act establishes detailed procedures for consultation with the states and Indian tribes regarding repository sites selection (Sec. 117). DOE, NRC and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a state must provide to the state and to any affected Indian tribe, timely and complete information regarding plans made with respect to the site characterization, development, design, licensing, construction, operation, regulation, or decommissioning of such a repository (Sec. 117(a)(1)). If DOE fails to provide such information requested by the state or affected Indian tribe in a timely manner, it must cease operations at the site (Sec. 117(a)(2)). The Act also provides that DOE must consult and cooperate (Sec. 117(b)) with the affected states and Indian tribes and must enter into a binding written agreement (Sec. 117(c)) setting forth the procedures under which information transfer, consultation and cooperation is to be conducted.

Following consultation with affected states and Indian tribes, the Secretary of Energy is to recommend to the President three sites suitable for characterization as candidates for selection as the first and second repositories (by July 1, 1985 and July 1, 1989 respectively) (Sec. 112(b), (B), (C)). The President must then submit to Congress his recommendation of sites qualified for construction authorization for a first and second repository (no later than March 31, 1987 and March 31, 1990 respectively) (Sec. 114(a)(2)(A)). Following submission by the President of a recommended site to Congress, the Governor or legislature of the state, or the Indian tribe in which such site is located may disapprove the site designation and submit (within 60 days) a notice of disapproval to Congress (Sec. 116(b)(2)). The site is disapproved unless Congress passes a joint resolution within 90 days to override the state or Indian tribe disapproval (Sec. 115 (c)). The Commission recognizes that the latter provision may create uncertainty in gaining the needed approvals of repository sites from the affected states or Indian tribes. Nevertheless, the Commission believes that, on balance, this Congressional action to establish a detailed process for state and tribal involvement in the development of repositories will reduce overall uncertainties by encouraging Federal-state cooperation and by limiting the potential for formal state or Indian tribe objections that could lead to disruption of project plans and schedules. This conclusion is consistent with the views expressed by state participants in this proceeding that a mechanism for state participation, including the resolution of state objections and nonconcurrences, is necessary for state cooperation and for progress in repository development (Tr. pp. 117, 119, 120). Further, the Act fixes the point in time at which a state may raise formal objections. Once that time has passed, this should reduce uncertainties at later stages.

The Act stipulates that DOE will reimburse costs incurred by affected states and Indian tribes in participating in the activities identified above. The Act provides that the Secretary of Energy shall make financial grants (Secs. 116, 118) to each state or affected Indian tribe notified by DOE that a potentially acceptable repository site exists within its jurisdiction. These grants are made to enable the state or affected Indian tribe to participate in the review and approval activities required by the Act (Secs. 116, 117), or authorized by written agreement entered into with DOE. Further, DOE is to make financial grants (Secs. 116, 118) to each state or affected Indian tribe where a candidate site for a repository is approved, to enable the state or Indian tribe to conduct the following activities: (a) Review activities taken for purposes of determining impacts of such a repository, (b) develop a request for impact assistance, (c) engage in site monitoring, testing or evaluation, (d) provide information to its residents, and (e) request information. In addition, the Act specifies that financial assistance will be provided to mitigate any economic, social, public health and safety, or environmental impacts of the development of a repository. The Act also provides that state and local government units shall receive payments equal to the amount they would receive from taxing such site charaterization and repository development activities in the same manner that they tax other real property and industrial activities (Sec. 116). By providing a tangible benefit to those localities or Indian reservations where repository sites are being investigated, this provision should address one concern frequently expressed by state and tribal organizations, and may result in a more willing acceptance of a repository site.

In sum, the Commission believes that the provisions of the Nuclear Waste

Policy Act of 1982 reduce uncertainties regarding the role of affected states and Indian tribes in repository site selection and evaluation, and minimize the potential for direct confrontation between the Federal government and the states or tribal organizations with respect to the disposal of commercial high-level waste and spent fuel. By reducing these uncertainties, the Act should help minimize the potential that differences between the Federal government and states or Indian tribes will substantially disrupt or delay the repository program. Further, as discussed previously in this Section, the decision-making process set up by the Act provides a detailed, step-by-step approach which builds in regulatory involvement. This should also provide confidence to states and Indian tribes that the program will proceed on a technically sound and acceptable basis.

2. *Continuity of the Management of the Waste Program.* The Commission recognizes that the waste disposal program involves activities conducted over a period of decades. Thus, there is a need for long-term stability of management and organization. The Commission's Second Prehearing Memorandum and Order of November 6, 1981, sought comments on the implications of the possible dismantling of the DOE and assignment of its functions to other Federal agencies. In response, DOE stated: "The ability of the Federal Government to implement the waste isolation program would not be affected by the President's September 24, 1981 proposal to dismantle DOE. As demonstrated by his Nuclear Policy Statement of October 8, 1981 . . . the President is committed to the swift deployment of means of storing and disposing of commercial high-level nuclear waste. Thus, some governmental unit will continue the program aggressively if DOE is dismantled" (DOE PHS p. 8). The DOE statement was amplified by the Deputy Secretary of Energy in the oral presentations on January 11, 1982: ". . . as far as the reorganization is concerned, the plan is not, I think, to do away with the activities of the Department of Energy. The plan, as it has been announced so far, is to in fact merge the activities, in particular, these activities into the Department of Commerce. And we do not visualize at this time any significant changes in the way in which the program relating to waste management would be altered, either technically or from a management point of view" (Tr. p. 13).

The nuclear industry participants agreed with DOE's view on this question (Consolidated Industry Group PHS p. 18; AIF PHS p. 7; SE2 PHS p. 6; ANS PHS p. 8, UG p. 2). However, state participants and intervenor groups disputed the DOE view. They saw the potential dismantlement of DOE as leading to further delay in resolution of the radioactive waste disposal problem and asserted that DOE's possible abolition made representations regarding the future success of its waste program useless (Consolidated State Group PHS, pp. 2, 9; Minn PHS pp. 6–8).

The Commission does not believe that the Administration's proposal to transfer the activities of the Department of Energy to the Department of Commerce introduces substantial new uncertainties regarding the continuity of Federal management of the nuclear waste program. As the Department of Energy stated, the Administration's proposal, if adopted, would simply transfer the nuclear waste program functions from one Federal agency to another. Moreover, Congressional action is needed to adopt the Administration's proposal. Yet, in the three years since the Administration's proposal to dismantle DOE was made, there has been no discernible action by the Congress to proceed with adoption of the proposal. Because the Congress has not taken action toward adoption of the Administration's proposal, and because the proposal, even if adopted, would consist of only a transfer of the program from one agency to another, the Commission does not believe that the Administration's proposal constitutes a significant source of management uncertainty for the nuclear waste program.

The Commission believes that residual uncertainties regarding the continuity of Federal management of the nuclear waste program have also been reduced by the Nuclear Waste Policy Act of 1982. The Act provides for the establishment of an Office of Civilian Radioactive Waste Management within the Department of Energy. This Office is to be headed by a Director appointed by the President, with Senate confirmation, who will report directly to the Secretary of Energy (Sec. 304). Further, the Act raises the activities of this Office to a high level of visibility and accountability by stipulating that an annual comprehensive report of the activities and expenditures of the Office will be submitted to Congress and that an annual audit of the Office will be conducted by the Comptroller General, who will report the results to Congress. The Act also requires two additional elements that provide added assurance of continuity: a "Mission Plan" and a schedule of activities for DOE. The Mission Plan is a detailed and comprehensive report which is intended to provide "an informational basis sufficient to permit informed decisions to be made in carrying out the repository program and the research, development, and demonstration programs required under this Act." The Secretary of Energy has already submited a draft Mission Plan to the states, the afffected Indian tribes, the Commission and appropriate government agencies for their comments; after revising the plan, DOE must submit it to the appropriate Congressional committees (Sec. 301 (a) and (b)). The schedule of DOE's activities in conducting this program was discussed in Section 2.2 A.1 above. Taken together, the provisions of the Nuclear Waste Policy Act establish a detailed management framework for the conduct of the repository program that should help ensure both sound management and continuity—whether the responsibility for the repository program is retained in DOE or is transferred to another Federal agency.

3. *Continued Funding of the Nuclear Waste Management Program.* There is general agreement among all participants that the program to develop a mined geologic repository for nuclear wastes will require more than a decade of effort at a total cost of several billion dollars. A steady source of funding will be needed to assure the timely success of the program. DOE pointed out that it would request an adequate level of funding for the National Waste Terminal Storage (NWTS) Program as stated in the Department's Position Statement (DOE CS p. II–30). In addition, DOE stated that Congress' commitment to the commercial waste disposal program was demonstrated by the continuous increase in the level of funding since 1976. The funding level was increasd by more than a factor of 10 between 1976 and 1980 (DOE CS p. II–30). Some participants disagreed with DOE's optimism concerning the future availability of funds and pointed out the competing priorities for Federal funds could deprive DOE of the necessary resources (CDC PS p. 7; Lewis PS p. 9; NRDC PS p. 28; Tr. p. 203).

Congress passed a continuing resolution for FY 1983 funding of DOE's nuclear waste program at the level of $259.4 million. This is about $10 million more than DOE's earlier FY 1983 request of $249 million. Additionally, the Nuclear Waste Policy Act authorizes the Secretary of Energy to enter into contracts and collect a fee of 1 mill per kilowatt-hour of electricity generated by nuclear reactors in return for the Federal

government's acceptance of title, subsequent transportation, and disposal of high-level radioactive waste or spent fuel (Sec. 302(a)(2)). In order to be able to use a Federal repository, the Act required the generator or owner of such waste or spent fuel to enter into a contract by June 30, 1983 or the date on which generation is commenced or title is taken, whichever occurs later (Sec. 302(b)(2)). The Commission must require the negotiation of such contracts as a precondition to the issuance or renewal of a license (Sec. 302(b)(1)(B)). The Commission notes that all such contracts have been executed. DOE testified in the January 11, 1982 hearing that it expected the funds collected under such a program would allow support of the DOE waste program at an initial level of $185 million. Under the program subsequently adopted by the Congress, these funds are to be placed into a nuclear waste fund to support DOE's repository program. The general approach prescribed by the Act is to operate DOE's nuclear waste program on a full cost recovery basis. In this regard, the Act provides that DOE must annually review the amount of the fees established to evaluate whether collection of the fees will provide sufficient revenues to offset the costs expected. In the event DOE determines that the revenues being collected are less than the amount needed in order to recover the costs, DOE must propose to Congress an adjustment to the fee to insure full cost recovery. The Act also provides (Sec. 302(e)(5)) that, if at any time, the monies available in the Waste Fund are insufficient to support DOE's nuclear waste program, DOE will have the authority to borrow from the Treasury. The Commission believes that the long-term funding provisions of the Act should provide adequate financial support for DOE's nuclear waste program.

4. *DOE's Schedule for Repository Development.* The DOE reference schedule described in its April, 1984 draft Mission Plan establishes the earliest date of repository availability as 1998 and delineates the logic and the period of activities that are deemed achievable under current program assumptions. While DOE acknowledges that contingency time is required in the schedule to accommodate such factors as institutional uncertainties, public hearings, or possible project reorientation, it believes that an appropriate amount of time has, in fact, been allowed in the reference schedule. Under the reference schedule, DOE expects that disposal facilities will be operational in 1998 (DOE draft Mission Plan, April 1984). DOE's updated repository development schedule specifies the critical milestones prior to commencing construction of the first repository as:

March 1985 (basalt), September 1985 (tuff), ——— (salt).	Commencement of exploratory shaft work* at three sites (three different media: salt, basalt and tuff).**
August 1990	Submission of application for authorization to construct the first repository.
August 1993	Construction authorization for the first repository.

* Including borehole drilling.

** An October, 1982 update of this information indicated that a pilot borehole was started in September 1982 for an exploratory shaft in tuff at the Nevada Test Site. In May 1982, DOE initiated work on surface preparation, construction of drilling pads and support buildings for the drilling operation at the BWIP basalt site. In January 1982, a borehole was begun at a point 300 feet from the BWIP planned exploratory shaft location to provide data for planning the shaft excavation. No exploratory shaft work has begun at the Paradox Basin bedded salt site. As noted in the siting discussion under the Second Commission Finding, the Nuclear Waste Policy Act of 1982 requires DOE to complete certain actions before site characterization. These include issuance of siting guidelines concurred in by NRC, preparation of environmental assessments, notification of state and affected Indian tribes where sites are located, and holding of public hearings in the vicinity of each site.

The Commission concurred in DOE's repository siting guidelines on July 3, 1984, enabling DOE to proceed to complete the other site selection tasks. The Commission notes that DOE's draft Mission Plan (April 1984) anticipated the completion of the siting guidelines by Mid-Summber 1984 and DOE revised its site selection schedule accordingly. Final environmental assessments for five nominated sites (including salt, basalt and tuff media) are to be completed in December 1984, at which time three of the five sites will be recommended for characterization.

NRC's construction authorization (under 10 CFR Part 60) would mark the end of the site selection process.

Some participants believe that DOE cannot have a waste disposal facility available by 2007. These participants concluded that DOE's slow progress in the past suggests that DOE may be unable to solve the many problems that will arise in the future and that DOE's schedule for repository development is unduly optimistic (e.g., Minn. PS p. 6; Ill. PS p. 2; OCTLA PS pp. 8–9; CDC PS p. 7).

One of the primary purposes of the recently enacted Nuclear Waste Policy Act of 1982 is "to establish a schedule for the siting, construction, and operation of repositories that will provide reasonable assurance that the public and the environment will be adequately protected from the hazards posed by high-level radioactive waste and such spent nuclear fuel as may be disposed of in a repository." (Sec. 111(b)(1)). The Commission recognizes that, if fundamental technical breakthroughs were necessary, it would not be possible for Congress to legislate their solution or specify schedules for their accomplishment. However, as discussed previously, such breakthroughs are not necessary. Rather, the remaining uncertainties are reflected in the need for step-by-step evaluation and development based on ongoing site studies and research programs. The Commission believes the Act provides means for resolution of those institutional and technical issues most likely to delay repository development, both because it provides an assured source of funding and other significant institutional arrangements, and because it provides detailed procedures for maintaining progress, coordinating activities and rectifying weaknesses. For these reasons, the Commission believes that the selection and characterization of suitable sites and the construction of repositories will be accomplished within the general time frame established by the Act, or within a few years thereafter.

The provisions of the Nuclear Waste Policy Act of 1982 that establish schedules for repository development are elaborate and allow for various contingencies. A number of steps are involved before NRC considers authorization of construction. DOE is to nominate five sites it believes suitable for site characterization for possible repository development (Sec. 112(b)). DOE is to recommend for site characterization three candidate sites to the President (Sec. 112(b)(1)(B); the President is to recommend one of the characterized sites to the Congress (Sec. 114(a)(2)(A)); the affected state or Indian tribe is given an opportunity to submit a notice of disapproval of the Congress (Secs. 115(b), (116)(b)(2), 118(a)); the Congress may overturn a state or Indian tribe's disapproval of the site by passing a resolution of approval (Sec. 115(c)); and, if Congress approves or no notice of disapproval is submitted by a state or Indian tribe, then DOE is to apply for construction authorization (Sec. 114(b).

DOE's revised reference schedule (DOE draft Mission Plan, April 1984) states that the application for repository construction authorization will be submitted to the Commission in August 1990. Under the terms of the Act the Commission is expected to reach a decision within 3 years of the application date, or by August 1993 (Sec. 114) (under certain conditions, extension by 1 year would be permitted). If the NRC decision is favorable, the repository would be constructed and begin operation, according to DOE's "reference schedule," in January 1998. Earlier dates can be achieved if the Presidential review time is reduced, if DOE promptly files the construction authorization application, if NRC provides a construction authorization in less than 3 years, or if DOE constructs the repository in a shorter period than provided in its estimated schedule. However, it is prudent to assume that

such a contraction of the schedule will not be realized.

The Nuclear Waste Policy Act of 1982 establishes "not later than January 31, 1998" as the date when DOE is to begin disposal of high-level radioactive waste or spent fuel (Sec. 302(a)(5)(B)). This is consistent with the current dates of the DOE schedules discussed above and with the detailed step-by-step milestones established by the Act. The schedule established by the Act would assure the operation of the first repository well before the years 2007–2009, i.e., the period of concern in the present proceeding.

Despite the delays in DOE's earlier milestones, the Commission believes that the program established by the Act is generally consistent with the schedule presented by DOE in this proceeding and that DOE's milestones are generally both realistic and achievable. Achievement of the scheduled first date of repository operation is further assured by other provisions of the Act which specify means for resolution of those institutional and technical issues most likely to delay repository completion. In addition to those provisions discussed previously, the Commission notes that the Act clarifies how the requirements of the National Environmental Policy Act are to be met (e.g., Secs. 113 (c), (d); 114 (a), (f); 119(a); 121(c)). The Act also requires that any Federal agency determining that it cannot comply with the repository decision schedule in the Act must notify both the Secretary of Energy and Congress, explaining the reasons for its inability to meet the deadlines. The agency must also submit recommendations for mitigating the delay (Sec. 114(e)(2)). These provisions of the Act, as well as those that support the technical program—the provisions for research, development, and demonstration efforts regarding waste disposal (Title II of the Act), increase the prospects for having the first repository in operation not later than the first few years of the next century.

The Commission also finds reasonable assurance that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of commercial high-level radioactive waste and spent fuel generated up to that time. The Nuclear Waste Policy Act of 1982 establishes Federal responsibility and a clearly defined Federal policy for the disposal of such waste and spent fuel and creates a Nuclear Waste Fund to implement Federal policy. The Act establishes as a matter of national policy that this responsibility is a continuing one, and provides means for the Secretary of Energy to examine periodically the adequacy of resources to accomplish this end.

The Commission notes that as of September 30, 1982, the generating capacity of all commercial nuclear power plants in the U.S. with operating licenses or construction permits was 131 electrical gigawatts (GWe) and the capacity of those under construction permit review was about 5 GWe (NUREG–0871, Vol 1, No. 4, p. 2, 8). DOE, in its letter of March 27, 1981 to the presiding officer of this proceeding, provided an estimate of 180 GWe for the capacity of operating LWRs in the year 2000. This value is significantly lower than the value (276 GWe) presented in DOE's 1980 position statement (DOE PS p. V–4) and lower than that (202 GWe) presented in the NRC's Generic Environmental Impact Statement on spent fuel handling and storage (NUREG–0575, Vol. 1, p. 2–4). The validity of the latter predictions has been affected by the cancellations of a number of proposed units during the past two years. The DOE 1981 estimate of 180 GWe in the year 2000 appears to be a reasonable estimate of the likely installed capacity at that time. On this basis, during the 40 years of operation of each plant, using as a realistic assumption a 60 percent capacity factor, the electrical energy generation would be about 4300 GWe-years. Assuming 38 metric tons of heavy metal (MTHM) is discharged for each gigawatt-year (IRG Final Report p. D–6; NUREG–0575, Vol. 1 p. 2–4) the total discharged spent fuel from these plants would likely be about 160,000 metric tons. The capacity of each proposed repository will depend on such factors as the thermal loading limit in waste emplacement, space limitations within the host rock, nuclear power generation capacity in the region to be serviced by the repository, and economy of scale considerations (DOE PS pp. III–70 to 79; IRG Final Report p. D–21). In its cross statement DOE's estimate that three to six repositories might be needed was based on the assumption that nuclear power generation capacity grows to 250 GWe by the year 2000 and remains at that level until 2040 (DOE CS p. II–53). The representative characteristics of each repository used by DOE were 2000 acres and a 40 to 100 kW/acre loading, corresponding to a repository capacity of about 70,000 to 170,000 metric tons of uranium, respectively (DOE PS p. III–76). Reflecting the reduction in nuclear power projections, DOE estimated in the January 1982 hearing that the ultimate reactor capacity would be about 200 GWe (Tr. p. 236). DOE then assumed a repository capacity of 100,000 metric tons and concluded that "between two and three" repositories would be needed (Tr. p. 237). To accommodate the 160,000 metric tons we have assumed, two repositories each with 100,000 metric tons capacity would appear to be sufficient.

Repository completion and operation at three-year intervals would result in having adequate capacity about three years after initial operation of the first repository (DOE PS p. III–86). As noted earlier, emplacement of spent fuel in the first repository should begin not later than the first few years of the next century. Thus, if the first repository begins to receive spent fuel in the year 2005, the second may begin operation as early as 2008, in which case all spent fuel would be emplaced by about 2026, assuming DOE's estimated receiving rates (DOE PS p. III–71) and operation of each repository as completed. Because the rate of waste emplacement during the first five years of operation would be about 1800 metric tons per year (DOE PS p. III–71), only 5400 metric tons would be emplaced in the first repository by the time the second began operation. This would satisfy the requirements of Section 114(d) of the Nuclear Waste Policy Act, i.e., the prohibition of emplacement of more than 70,000 metric tons in the first licensed repository before the second repository is in operation. If the DOE estimated emplacement rates (which would increase to 6000 metric tons/year after the first five years) are realized, it will take about 15 years to emplace 70,000 metric tons in the first repository.

For the foregoing reasons, the Commission finds reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the years 2007–09, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of commerical high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

2.3 Third Commission Finding

The Commission finds reasonable assurance that high-level radioactive waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all high-level radioactive waste and spent fuel.

Nuclear power plants whose operating licenses expire after the years

2007–09 will be subject to NRC regulation during the entire period between their initial operation and the availability of a waste repository. The Commission has reasonable assurance that the spent fuel generated by these licensed plants will be managed by the licensees in a safe manner. Compliance with the NRC regulations and any specific license conditions that may be imposed on the licensees will assure adequate protection of the public health and safety. Regulations primarily addressing spent fuel storage include 10 CFR Part 50 for storage at the reactor facility and 10 CFR Part 72 for storage in independent spent fuel storage installations (ISFSI). Safety and environmental issues involving such storage are addressed in licensing reviews under both Parts 50 and 72, and continued storage operations are audited and inspected by NRC. NRC's experience in more than 80 individual evaluations of the safety of spent fuel storage shows that significant releases of radioactivity from spent fuel under licensed storage conditions are extremely remote (see discussion in Section 2.4).

Some nuclear power plant operating licenses expire before the years 2007–09. For technical, economic or other reasons, other plants may choose, or be forced, to terminate operation prior to 2007–09 even though their operating licenses have not expired. For example, the existence of a safety problem for a particular plant could prevent further operation of the plant or could require plant modifications that make continued plant operation uneconomic. The licensee, upon expiration or termination of its license, may be granted (under 10 CFR Part 50 or Part 72) a license to retain custody of the spent fuel for a specified term (until repository capacity is available and the spent fuel can be transferred to DOE under Sec. 123 of the Nuclear Waste Policy Act of 1982) subject to NRC regulations and license conditions needed to assure adequate protection of the public. Alternatively, the owner of the spent fuel, as a last resort, may apply for an interim storage contract with DOE, under Sec. 135(b) of the Act, until not later than 3 years after a repository or monitored retrievable storage facility is available for spent fuel. For the reasons discussed above, the Commission is confident that in every case the spent fuel generated by those plants will be managed safely during the period between license expiration or termination and the availability of a mined waste repository for disposal.

To assure the continuity of safe management of spent fuel, the Commission, in a separate action, is preparing an amendment to 10 CFR Part 50 which would require licensees of operating nuclear power reactors to submit, no later than 5 years before expiration of the reactor operating license, written notification to the Commission, for its review and approval, of the actions which the licensee will take to manage and provide funding for the management of all irradiated fuel at the reactor site following expiration of the reactor operating license, until ultimate disposal of the spent fuel in a repository. The licensee's notification will be required to specify how the licensee will fund the financial costs of extended storage or other disposition of spent fuel. It is possible for the funding of the storage to be provided by an internal reserve fund or special assessment during that 5-year period to cover the costs of storage of the spent fuel after the expiration of the reactor operating license. The storage costs are not large relative to power generation costs. A representative figure is $1-million/year for storage of spent fuel in reactor basins beyond the operating license expiration [Addendum 2 to "Technology, Safety and Costs of Decommissioning a Reference BWR Power Station," NUREG/CR 0130 (July 1983); Addendum 1 to Technology, Safety and Costs of Decommissioning a Reference PWR Power Station," NUREG/CR 0672 (July 1983)].

Additional assurance that the conditions necessary for safe storage will be maintained until disposal facilities are available is provided by the Commission's authority to require continued safe management of the spent fuel past the operating license expiration or termination (10 CFR 50.82). If a utility should have technical problems in continuing its commitment to maintain safe storage of its spent fuel, NRC as the cognizant regulatory agency would intervene and the utility would be required to assure safe storage. If a licensee fails financially, or otherwise must cease its operations, the cognizant state public utility commission would be likely to require an orderly transfer to another entity. The successor would take over the licensee's facilities and, provided the conditions for transfer of licenses prescribed in NRC regulations (10 CFR 50.80) were met by the succeeding entity, operation of the original licensee's facilities would be permitted to continue. Moreover, an orderly transfer to a successor organization would be mandatory to protect the substantial capital investment. Further, the Commission believes that the possibility of a need for Federal action to take over stored spent fuel from a defunct utility or from a utility that lacked technical competence to assure safe storage is remote, but the authority for such action exists (sections 186c and 188 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. 2236, 2238).

Interim storage capacity may be required for plants whose operating licenses expire or are terminated before sufficient repository capacity is available. As discussed in the rationale for the fifth finding, the Nuclear Waste Policy Act of 1982 includes a number of provisions to assure the availability of interim storage capacity for spent fuel during the period before repository operation (Secs. 131 through 137). Provisions are made for Federal government supplied interim storage capacity (up to 1900 metric tons) for civilian power reactors whose owners cannot reasonably provide adequate storage capacity.

In all cases where the interim storage is at a licensee's site, safe management will be assured by compliance with NRC regulations and specific license conditions. Where DOE provides the interim storage capacity, except in the use of existing capacity at Government-owned facilities, DOE is to "comply with any applicable requirements for licensing or authorization" (Sec. 135(a)(4)). If existing federally-owned storage facilities are used, NRC is required to determine "that such use will adequately protect the public health and safety" (Sec. 135(a)(1)). These provisions of the Act would assure that spent fuel will be managed in a safe manner until repository capacity is available. Facilities for reprocessing high-level waste, should any be constructed or become operational before a repository is available, would be licensed under 10 CFR Part 50, and solidification and interim storage of high level waste would be provided for at such facilities. For the foregoing reasons, the Commission finds reasonable assurance that high-level waste and spent fuel will be managed in a safe manner until sufficient repository capacity is available for its safe disposal.

2.4 Fourth Commission Finding

The Commission finds reasonable assurance that, if necessary, spent fuel generated in any reactor can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of that reactor's operating license at that

reactor's spent fuel storage basin, or at either onsite or offsite independent spent fuel storage installations.

Although the Commission has reasonable assurance that at least one mined geologic repository will be available by the years 2007–09, the Commission also realizes that for various reasons, including insufficient capacity to immediately dispose of all existing spent fuel, spent fuel may be stored in existing or new storage facilities for some periods beyond 2007–09. The Commission believes that this extended storage will not be necessary for any period longer than 30 years beyond the term of an operating license. For this reason, the Commission has addressed on a generic basis in this decision the safety and environmental impacts of extended spent fuel storage at reactor spent fuel storage basins or at either onsite or offsite spent fuel storage installations. The Commission finds that spent fuel can be stored safely and without significant environmental impacts for at least 30 years beyond the expiration of reactor operating licenses. To ensure that spent fuel which remains in storage will be managed properly until transferred to DOE for disposal, the Commission is proposing an amendment to its regulations (10 CFR Part 50). The amendment will require the licensee to notify the Commission, five years prior to expiration of its reactor operating license, how the spent fuel will be managed until disposal.

The Commission's finding is based on the record of this proceeding which indicates that significant releases of radioactivity from spent fuel under licensed storage conditions are highly unlikely. It is also supported by the Commission's experience in conducting more than 80 individual safety evaluations of storage facilities.

The safety of prolonged spent fuel storage can be considered in terms of four major issues: (a) The long-term integrity of spent fuel under water pool storage conditions, (b) structure and component safety for extended facility operation, (c) the safety of dry storage, and (d) potential risks of accidents and acts of sabotage at spent fuel storage facilities. Each of these issues is discussed separately below, in light of the information provided by the participants in this proceeding, and NRC experience in regulating storage of spent fuel.

A. Long-Term Integrity of Spent Fuel Under Water Pool Storage Conditions

The Commission finds that the cladding which encases spent fuel is highly resistant to failure under pool storage conditions. As noted by DOE in its Position Statement, there are up to 18 years of continuous storage experience for zircaloy-clad fuel and 12 years continuous storage experience for stainless-clad fuel (DOE PS p. IV–73). Corrosion studies of irradiated fuel at 20 reactor pools in the United States suggest that there is no detectable degradation of zircaloy cladding. Data from corrosion studies of spent fuel stored in Canadian pools also support this finding (A.B. Johnson, Jr., "Behavior of Spent Nuclear Fuel in Water Pool Storage," (UC–70) Battelle Pacific Northwest Laboratories (BNWL–2256, September, 1977) pp. 10–11, 17).

The long-term integrity of spent fuel in storage pools, which has been confirmed by observation and analysis, was cited by industry participants (e.g., Consolidated Industry Group: PHS pp. 3–6; UNWMG–EEI PS Doc. 4, p. 8; UG p. 2). No degradation has been observed in commercial power reactor fuel stored in onsite pools in the United States. Extrapolation of corrosion data suggests that only a few hundredths of a percent of clad thickness would be corroded after 100 years (A.B. Johnson, Jr., "Utility Spent Fuel Storage Experience," PNL–SA–6863, presented at the American Nuclear Society's Executive Conference on Spent Fuel Policy and its Implications, Buford, Georgia (April 2–5, 1978). The American Nuclear Society cited a study (G. Vesterbend and T. Olsson, BNWL–TR–320, May 1978, English Translation of RB78–29), which concluded that degradation mechanisms such as general corrosion, local corrosion, stress corrosion, hydrogen embrittlement, and delayed hydrogen cracking are not expected to produce degradation to any significant extent for 50 years (ANS PS p. 34).

Canadian experience, including occasional examination during 17 years of storage, has indicated no evidence of significant corrosion or other chemical degradation. Even where the uranium oxide pellets were exposed to pool water as a result of prior damage of the fuel assembly, the pellets have been inert to pool water, an observation also confirmed by laboratory studies ("Canadian Experience with Wet and Dry Storage Concepts," presented at the American Nuclear Society's Executive Conference on Spent Fuel Policy and Its Implications, Buford, Georgia (April 2–5, 1978)). Another Canadian study concluded that "50 to 100 years under water should not significantly affect their [spent fuel bundles] integrity" (Walker, J.F., "The Long-Term Storage of Irradiated CANDU Fuel Under Water," AECL–6313 Whiteshell Nuclear Research Establishment, January 1979). This appraisal was based on findings such as no deterioration by corrosion or mechanical damage during 16 years of storage in water, no release of fission products from the uranium dioxide matrix during 11 years of storage in water, and no fission-product induced stress corrosion cracking anticipated during water storage at temperatures below 100°C (Hunt C.E.L., J.C. Wood and A.S. Bain, "Long-Term Storage of Fuel in Water" AECL–6577, Chalk River Nuclear Laboratories, June 1979).

The ability of spent fuel to withstand extended water basin storage is also supported by metallurgical examination of Canadian zircaloy clad fuel after 11 years of pool storage, metallurgical examination of zircaloy clad PWR and BWR high burn-up fuel after five and six years in pool storage, and return of Canadian fuel bundles to a reactor after 10 years of pool storage. Periodic hot cell examination of high burn-up PWR and BWR bundles over 6 years of pool storage at the WAK Fuel Reprocessing Plant in Germany has also confirmed that spent fuel maintains integrity under pool storage conditions. Other countries having favorable experience with pool storage of zircaloy-clad spent fuel include: the United Kingdom, 13 years; Belgium, 12 years; Japan, 11 years; Norway, 11 years; West Germany, 9 years; and Sweden, 7 years (op. cit., A. B. Johnson, Jr., p. 7). Programs of monitoring spent fuel storage are being conducted in Canada, the United Kingdom and the Federal Republic of Germany (DOE PS pp. IV—59 to IV–61; UNWMG–EEI PS Doc. 4, p. 23).

The only fuel failures which have occurred in spent fuel pools involved types of fuel and failure mechanisms not found at U.S. commercial reactor facilities, e.g., degradation of zircaloy-clad metallic uranium fuel from the Hanford N-Reactor as a result of cladding damage in the fuel discharge system. The system differs from the fuel discharge systems of commercial reactors. Moreover, metallic uranium fuel is not used in commercial power reactors. NRDC cited some conclusions drawn by Mr. Justice Parker regarding his lack of confidence in long-term storage of spent fuel, based on the Windscale Inquiry in Great Britain in 1978, which involved stainless-steel-clad gas-cooled reactor fuel (NRDC PS p. 92). This is not pertinent to pool storage of commercial spent fuel since the high temperature conditions in a gas-cooled reactor which can cause sensitization of the cladding are not experienced by fuel in boiling or pressurized water reactors (op. cit., A.B. Johnson, Jr., pp. 17–18).

Some participants did not agree that there is an adequate basis for

confidence in safe extended-term spent fuel storage. Although agreeing with the extent of experience cited by DOE and other participants, the Natural Resources Defense Council, for example, stressed that more experience is needed before one can be confident of safe extended storage. NRDC considered the length of storage experience cited by DOE as insufficient to establish that spent fuel can be stored safely for periods well in excess of 40 years (NRDC PS pp. 88–92). A similar position was taken by the State of Minnesota (Minn PHS pp. 8–9). NRDC referred to the problem of the long-term storage of spent fuel reported in the Windscale Inquiry Report by the Hon. Mr. Justice Parker, Vol. 1, pp. 29–30. However, the conclusion quoted from the report, when taken in context, refers only to irradiated fuel from AGR (advanced gas-cooled) nuclear power plants. As noted earlier, the conditions to which the fuel cladding is exposed in gas-cooled reactors differs from those in U.S. commercial light water reactors. Moreover, the cladding of AGR fuel is identified as stainless steel in the Windscale Inquiry Report. Only two commercial LWR nuclear power plants operating in the U.S. today use stainless steel clad. Most U.S. nuclear fuel is zircaloy clad, and reactor operators have not seen evidence of degradation of LWR spent fuel, either zircaloy or stainless steel clad, in storage pools (*Nuclear Technology*, "Spent Fuel Storage Experience," A.B. Johnson, Jr., p. 171, Vol. 43, Mid-April 1979). Further, as stated earlier, cladding degradation caused by stainless steel sensitization in an AGR high temperature environment is not pertinent to the lower temperature environment of LWR's. Therefore, the problem of long-term storage of spent fuel reported in the Windscale Inquiry is not relevant to U.S. spent fuel.

After expiration of a reactor operating license, the fuel storage pools at the reactor site would be licensed under 10 CFR Part 72. The requirements of 10 CFR Part 72 provide for operation under conditions involving a careful control of pool water chemistry to minimize corrosion. The required monitoring of the pool water would provide an early warning of any problems with defective cladding, so that corrective actions may be taken. Experience indicates that, under licensed storage conditions, significant releases of radioactivity are highly unlikely. The Commission is confident that the regulations now in place will assure adequate protection of the public health and safety and the enviroment during the period when the spent fuel is in storage ("Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," NUREG–0575, August 1979: Vol. 1, pp. ES–12, 4–10 to 4–17).

Although confidence that spent fuel will maintain its integrity during storage for an additional 30 years beyond the facility's license expiration date involves an extrapolation of experience by a factor of two or three in time, the extrapolation is made for conditions in which corrosion mechanisms are well understood. Technical studies cited above support the conclusion that corrosion would have a negligible effect during several decades of extended pool storage. The Commission finds that this extrapolation is reasonable and is consistent with standard engineering practice.

B. Structure and Component Safety for Extended Facility Operation For Storage of Spent Fuel in Water Pools

Questions were raised concerning the adequacy of structural materials and components of spent fuel storage basins to function effectively during periods that are double those assumed in the base design. This concern was expressed in connection with the possible necessity for longer storage times if permanent disposal is not available by the year 2006 (Del PS p. 4). The experience at the General Electric Company Morris Operation in Illinois, where a mechanical failure caused contaiminated water to leak into the environment, was cited as an example of an unforeseen failure that could jeopardize the safety of spent fuel storage (NECNP PS p. 65). A generic problem regarding pipe cracks in borated water systems at PWR plants was also cited as evidence of uncertainty that long-term interim storage would be safely accomplished without modification and fuel shuffling NECNP PS p. 64). The Commission notes that the latter problem was discussed in detail in the Atomic Safety and Licensing Board Notification, "Pipe Cracks in Stagnant Borated Water Systems at PWRs" dated August 14, 1979, in the ASLB consideration of a proposed licensing amendment to permit modification of a spent fuel storage pool [11 NRC 245 (1980)]. The Notification referred to by NECNP indicated that cracks had occurred in safety-related type-304 stainless steel piping systems which contained stagnant borated water. Apparently, the cracking was attributable to stress corrosion caused by the residual welding stresses in heat-affected zones. The NRC staff review found that such cracking was not directly related to spent fuel pool modifications, and that necessary repairs could be readily made. The staff concluded that cracks in low-pressure spent fuel cooling system do not have safety significance.

Extensive experience with storage pool operation has demonstrated the ability of pool components to withstand the operating environment (DOE CS pp. II–145 to II–148). In the relatively few cases of equipment failure, pool operators have been able to repair the equipment or replace detective components promptly (UNWMG–EEI PS Doc. 4, p. 25; UG p. 2). The Commission finds no reason why spent fuel storage basins would not be capable of performing their cooling and storage functions for a number of years past the design-basis period of 40 years if they are properly maintained.

As one participant pointed out," . . . the pool structure as well as the racks are designed to withstand extreme physical conditions set forth in NRC licensing requirements. These include seismic, hydrologic, meteorological and structural requirements" (UNWMG–EEI PS Doc. 4 p. 25; UG p. 2). The design requirements are set forth in 10 CFR Parts 50 and 72. The design-basis siting conditions for storage pools at reactor sites are those of the reactor itself. Siting conditions are reviewed by the NRC staff, the Advisory Committee or Reactor Safeguards and the Atomic Safety and Licensing Board at the construction permit stage and then reviewed again in connection with the issuance of the facility's operating license. In issuing a power reactor operating license, the Commission is, in effect, expressing its confidence that the design-basis siting conditions will not be exceeded during the 40-year license period. If pool storage facilities were used to store spent fuel after expiration of reactor operating licenses, the utilities would be able, as part of their continuing maintenance of storage facilities, to replace defective components in a timely way, if needed, so as to avoid any safety problems. Some participants (e.g., NECNP PS pp. 63–63; Minn PHS pp. 8–9; and Del PS p. 4), do not place the same weight which the Commission does on experience at spent fuel storage facilities and on studies cited by DOE and certain others which support the argument that the structural integrity of these basins can be readily maintained (DOE CS pp. II–145, III–13; UNWMG–EEI PS Doc. 4 p. 19). The disagreements appear to center largely on the extent to which present experience may be relied upon as a basis for predicting the safety of spent

fuel storage over a period two or three times the design period.

The degradation mechanisms involved in spent fuel pool storage are well understood. The resulting changes in fuel cladding and pool systems and components are gradual and thus provide sufficient time for the identification and development of remedial action without subjecting plant personnel or the public to significant risk. The fuel storage racks are designed to maintain their integrity for many decades; if they fail in any way, they may be replaced. There are a number of routine and radiologically safe methods for maintenance at spent fuel storage basins to ensure their continued effective performance. These include replacing racks or other components, or moving spent fuel to another storage facility. The Commission finds that the extensive operating experience with many storage pools adequately supports predictions of long-term integrity of storage basins.

The Commission concludes that the experience with spent fuel storage provides an adequate basis for confidence in the continued safe storage of spent fuel in water pools either at or away from a reactor site for at least 30 years after expiration of the plant's license.

C. Safety of Dry Storage of Spent Fuel

While the record of this proceeding has focussed on water pool storage, the Commission notes that dry storage of spent fuel has also been addressed to a limited extent (e.g., DOE PS pp. IV–12 to IV–22 and IV–63 CS p. II–147, PHS p. 9; UNWMG–PS Doc 4 pp. 16–17 and CS pp. III–6–7; Tr. pp. 69–72). The NRC's regulation 10 CFR Part 72 specifically covers dry storage of spent fuel (Section 72.2(c)), and experience with dry storage was a subject of public comment in the rulemaking ("Analysis of Comments on 10 CFR Part 72," NUREG–0587, pp. II–12 to II–13). NRC reports, the "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575) and "Dry Storage of Spent Nuclear Fuel, A Preliminary Survey of Existing Technology and Experience" (NUREG/CR–1223) which have been referenced in this proceeding, examined potential environmental impacts and experience with interim dry storage of spent fuel. The GEIS (Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel, NUREG–0575, Vol. 1, p. 8–2, August 1979) contained the conclusion that the use of alternative dry passive storage techniques for aged fuel, now being investigated by the Department of Energy, appears to be as feasible and environmentally acceptable as storage of spent fuel in water basins. Prior to the adoption of Part 72, dry storage of irradiated fuel had been licensed under Part 50 at the Hallam sodium graphite reactor. Dry storage is also presently licensed under Part 50 at the Ft. St. Vrain high temperature gas reactor.

Although the number of years of experience with dry storage systems is less than that with water pool storage, the understanding of some of the material degradation processes experienced in water pool storage should be applicable to dry storage. As discussed below, dry storage involves a simpler technology than that represented by water basin storage systems.[5] Water basin storage relies upon active systems such as pumps, renewable filters, and cooling systems to maintain safe storage. Favorable water chemistry must also be maintained to retard corrosion. On the other hand, dry storage reduces reliance upon active systems and does not need water which together with impurities may corrode spent fuel cladding. With convective circulation of an inert atmosphere in a sealed dry system, there is little opportunity for corrosion.[6] For these reasons, the Commission believes that safe dry storage should be achievable without undue difficulty. New dry storage experience with light water reactor (LWR) fuel is becoming available for examination, and the evaluations discussed below suggest that the favorable results of up to almost two decades of dry storage experience with non-LWR spent fuel can also be obtained for LWR spent fuel in adequately designed dry storage installations.

A recent review of dry storage experience by A.B. Johnson, Jr., et al. in "Behavior of Spent Nuclear Fuel and Storage Components in Dry Interim Storage" (PNL–4189, August 1982), provides an update of dry storage activities, particularly with respect to zircaloy-clad spent fuel. In this report, (pp. 18–24) the experimental data base for non-zircaloy-clad spent fuel, including stainless steel clad fuel and the data base for zircaloy-clad fuel are discussed. Tests conducted to verify the integrity of zircaloy cladding have not indicated any degradation in dry storage (p. 27). In summary, the report states (pp. 44–45):

Operating information is available from fueled dry well, silo, vault, and metal cask storage facilities. Maximum operational histories are:

	All fuel	Zircaloy-clad fuel
Dry wells	Up to 18 years	Up to 3 to 4 years.
Vaults	Up to 18 years	Up to 1 year.
Silos	Up to 7 years	Up to 7 years.
Metal casks		<1 year.

All times related to 1982.

Operational history with interim storage in metal casks is minimal; however, there is extensive experience with metal shipping casks. In addition, metal storage casks have been designed and tested, and cask tests with irradiated fuel are currently under way in the Federal Republic of Germany and are planned in Switzerland and the United States. The integrity of zircaloy-clad fuel in a given demonstration test is relevant to predicting fuel behavior in other dry storage concepts under similar conditions.

Information on experience with dry cask storage in other countries is also becoming available. K. Einfeld and J. Fleisch's paper, "Fuel Storage in the Federal Republic of Germany" discussed the results of dry storage research on spent fuel in an inert atmosphere. They note on page 3 of their report:

Several tests have been conducted to verify the integrity of LWR spent fuel cladding in dry storage. To date none of the integrity tests has indicated that the cladding is degrading during long-term storage. Even under conditions more severe than in the casks, the fuel shows no cladding failures. From the tests listed in Table II it can be concluded that dry storage under cask conditions even with starting temperatures to 400° C is not expected to cause cladding failures over the interim storage period.

Einfeld and Fleisch continue, in their report (pp. 3–4) to comment on the successful demonstration of cask storage:

A technical scale demonstration program with a fuel CASTOR cask is underway in the FRG since March 1982. The 16 assemblies which are subject to that program originate from the Wurgassen boiling water reactor. They resided in the core during 4 cycles of operation, burning up to about 27.8 GWD/t U.

The general objectives of the demonstration with a fully instrumented cask and fuel bundles are the verification of cask design parameters, the operational experience in cask handling and the expansion of the data base on fuel performance. Fig. 2 shows a schematic

[5] See, for example, K. Einfeld and J. Fleish, "Fuel Storage in the Federal Republic of Germany; and R.J. Steffen and J.B. Wright, "Westinghouse Advanced Energy Systems Division," Proceedings of the American Nuclear Society's Topical Meeting on Options for Spent Fuel Storage, in Savannah, Georgia, September 26 through 29, 1982; also A.B. Johnson, Jr., E.R. Gilbert, and R.J. Guenther, "Behavior of Spent Nuclear Fuel and Storage System Components in Dry Interim Storage," PNL–4189, August 1982.

[6] K. Einfeld and J. Fleisch, Ibid, p. 3.

drawing of the cask design and the axial thermocouple locations.

The operational experiences and corresponding test data confirm the assumptions made about the cask concept and the cask loading and handling procedure. In addition, the technology data base for operating an interim storage plant could be expanded.

—In-pool loading of a large storage cask and specific cask handling has been successfully demonstrated.
—The passive heat transfer capabilities of the cask and fuel cladding integrity have been verified. The maximum local fuel rod temperatures for fuel with about one year decay time were within the expected range.
—The total radiation shielding characteristics (<10 mrem/h) are verified in practice" (references deleted).

The authors conclude:

The realization of the transport/storage cask concept, which is well under way in the Federal Republic of Germany, will provide sufficient interim spent fuel storage capacity with the facilities planned or under construction. Dry interim storage is a proven technology and thus it constitutes an essential step in closing the backend of the nuclear fuel cycle.

R.J. Steffens and J.B. Wright's paper [7], "Drywell Storage Potential," discussed drywell storage experience with pressurized water reactor spent fuel at the Nevada Test site. On page 6 of the paper, the authors note:

Another drywell performance assessment method being employed during the demonstration storage period is that of periodically monitoring the storage canister atmosphere for fission products, specifically krypton-85 gas. Samples drawn to date have shown no detectable concentrations of this product after approximately 3 years of storage, indicating a maintenance of the fuel cladding integrity.

A third paper presented at the same Topical Meeting, by E.R. Gilbert and A.B. Johnson, Jr., "Assessment of the Light-Water Reactor Fuel Inventory for Dry Storage," focuses on dry spent fuel storage with respect to an acceptable temperature range for storage in air. They conclude on page 8 of their report:

Dry storage demonstrations now in progress suggest that by 1986 a major fraction of the U.S. PWR spent fuel inventory that was placed in water storage before 1981 can be stored in dry storage facilities below 150 to 200 °C.

The LWR fuel inventory offers good prospects that the thermal characteristics of consolidated fuel will be acceptable for dry storage by proper selection of fuel.

Dry storage of LWR fuel with defective cladding may be tolerable in inert cover gases or at temperatures below the threshold for significant oxidation in oxidizing cover gases. The range of acceptable storage temperatures is being investigated.

With respect to dry storage of spent fuel, the Commission notes the summary statement from A.B. Johnson, Jr., et al., "Behavior of Spent Nuclear Fuel and Storage Components in Dry Interim Storage" (PNL–4189), page xvii:

Operational problems in vaults and dry wells have been minor after up to 18 yr. of operation (in 1982); and 7 yr of silo experience suggests that decades of satisfactory operation can be expected. Demonstration tests with irradiated fuel in metal storage casks are just beginning, but metal shipping casks with mild steel chambers have been used since the mid-1940s. Metal storage/shipping casks have successfully survived fire, drop, and crash tests.

Thus, with respect to the storage of spent fuel under dry conditions at storage installations located either at reactor sites or away from reactor sites, the Commission believes that current dry-storage technology is capable of providing safe storage for spent nuclear fuel. The modular character of dry storage installations enhances the ability to perform maintenance or to correct mechanical defects, if any should occur. The Commission is confident that its regulations will assure adequate protection of the public health and safety and the environment during the period when the spent fuel is in storage.

The Commission notes that section 211(2)(B) of the Nuclear Waste Policy Act authorizes the Secretary of Energy to carry out research on, and to develop facilities to demonstrate, dry storage of spent nuclear fuel. Although this provision indicates a judgment on the part of the Congress that additional research and demonstration is needed on the dry storage of spent fuel, the Commission believes the information discussed above is sufficient to reach a conclusion on the safety and environmental effects of extended dry storage. All areas of safety and environmental concern (e.g., maintenance of systems and components, prevention of material degradation, protection against accidents and sabotage) have been addressed and shown to present no more potential for adverse impact on the environment and the public health and safety than storage of spent fuel in water pools.

The technical studies cited above support the conclusion that corrosion would have a negligible effect during several decades of extended dry storage. The Commission's confidence in the safety of dry storage is based on an understanding of the material degradation processes, rather than merely on extrapolation of storage experience—together with the recognition that dry storage systems are simpler and more readily maintained. For these reasons, the Commission is confident that dry storage installations can provide continued safe storage of spent fuel at reactor sites for at least 30 years after expiration of the plant's license.

D. Potential Risks of Accidents and Acts of Sabotage at Spent Fuel Storage Facilities

The Commission finds that the risks of major accidents at spent fuel storage pools resulting in off-site consequences are remote because of the secure and stable character of the spent fuel in the storage pool environment, and the absence of reactive phenomena—"driving forces"—which may result in dispersal of radioactive material. Reactor storage pools and independent spent fuel storage installations have been designed to safely withstand accidents caused either by natural or man-made phenomena. Even remote natural risks such as earthquakes and tornados and the risks of human error such as in handling or storing spent fuel are addressed in the design and operational activities of storage facilities and in NRC's licensing reviews thereof under its regulations. Under 10 CFR Parts 50 and 72, spent fuel is stored in facilities structurally designed to withstand accidents and external hazards, such as those cited above, and to preclude radiation and radioactive material emissions from spent fuel that would significantly endanger the public health and safety. In order to preclude the possibility of criticality under normal or accident conditions, the spent fuel is stored in racks designed to maintain safe geometric configurations under seismic conditions. The spent fuel itself consists of solid ceramic pellets which are encapsulated in metal clad rods held in gridded assemblies and stored underwater in reinforced concrete structures or in sealed dry storage installations such as concrete dry wells, vaults and silos or massive metal casks. The properties of the spent fuel (which in extended storage has decayed to the point where individual fuel assemblies have a heat generation rate of several hundred watts or less) and of the benign storage environment result in spent fuel storage being an activity with very little potential for

[7] Proceedings of the American Nuclear Society's Topical Meeting on Options for Spent Fuel Storage, in Savannah, Georgia, September 26 through 29, 1982.

adversely affecting the environment and the public health and safety. While any system employing high technology is subject to some equipment breakdowns or accidents, water pool storage facilities have operated with few serious problems (DOE PS at IV–56 to IV–57; UNWMG–EEI PS Doc. 4 p. 26). In these cases, the events at spent-fuel pools have been manageable on a timely basis. Similarly, dry storage of spent fuel, as discussed in Section C above, appears to be at least as safe as water pool storage. A discussion of risks related to spent fuel storage is provided below.

Comments from participants on the subject of accidents and their potential consequences at spent-fuel storage facilities included a description of nonspecific references to numerous "accidents" in spent-fuel storage facilities, a discussion of cases of leaks and inadvertent releases of contaminated storage pool water, and a suggestion that waste storage should be physically separated from reactor operation to reduce the risk of damage to the storage facility in the event of a reactor accident, and vice versa (NY PS pp. 102–107; OCTLA PS p. 12). The State of New York, in its discussion of possible accidents at spent-fuel storage pools, cited reports of an accident in the Soviet Union that is believed to have involved reprocessing plant wastes stored in tanks at a waste storage facility (NY PS pp. 107–108). The situation, as reconstructed from limited data, cannot be compared to the storage of ceramic fuel in metal cladding, placed in water storage pools. The issue raised, therefore, is not relevant to this proceeding. The need for continued management of pool storage facilities over an extended time period was considered by some participants as creating a potential hazard because of the increased possibility of human errors or mismanagement (NRDC PS pp. 89–90). The State of New York characterized the Three Mile Island reactor accident as caused by multiple technical and human failures, and postulated that such failures are possible at storage facilities, and would result in serious off-site consequences (NY PS p. 107).

These observations do not appear to take account of the numerous safety analyses that have been made of water pool storage and of alternative long-term storage methods which have demonstrated storage to be both safe and environmentally acceptable. Of course, the possibility of human error cannot be completely eliminated. However, Commission regulations (e.g., 10 CFR Part 55; 10 CFR Part 72, Subpart I) include explicit requirements for operator training, the use of written procedures for all safety-related operations and functions in the plant, and certification or licensing of operators, with the objective of minimizing the opportunity for human error. Unlike the accident at the Three Mile Island reactor, human-error at a spent fuel storage installation does not have the capability to create a major radiological hazard to the public. The absence of high temperature and pressure conditions that would provide a driving force essentially eliminates the likelihood that an operator error would lead to a major release of radioactivity (DOE CS pp. II–156 to 158). In addition, features incorporated in storage facilities are designed to mitigate the consequences of accidents caused by human error or otherwise (DOE PS IV–34).

The possibility of terrorist attacks on nuclear facilities was advanced as an argument against the acceptability of extended interim storage of spent fuel (NRDC PS p. 90). The intentional sabotage of a storage pool facility is possible, and NRC continues to implement actions to further improve security at such facilities. The consequences would be limited by the realities that, except for some gaseous fission products, the radioactive content of spent fuel is in the form of solid ceramic material encapsulated in high-integrity metal cladding and stored underwater in a reinforced concrete structure. Under these conditions, the radioactive content of spent fuel is relatively invulnerable to dispersal to the environment (Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel, NUREG–0575, Vol. 1.). Similarly, dry storage of spent fuel in dry wells, vaults, silos and metal casks is also relatively invulnerable to sabotage and natural disruptive forces, because of the weight and size of the sealed, protective enclosures which may include 100-ton steel casks, large concrete lined near-surface caissons and surface concrete silos (NUREG/CR–1223, p. IV–C–2).

E. Summary

In summary, the Commission finds that spent fuel can be stored safely at independent spent fuel storage installations or at reactor sites for at least 30 years beyond the expiration of reactor operating licenses. This finding is based on extensive experience and on many factors that are not site-specific. These factors include the substantial capability of the fuel cladding to maintain its integrity under storage conditions, a capability verified in extensive technical studies and experience; the extreme thermal and chemical stability of the fuel form, enriched uranium oxide pellets; the long-term capability of spent fuel storage facilities to dissipate spent fuel heat and retain any radioactive material leakage; and the relatively straightforward techniques and procedures for repairing spent fuel storage structures, replacing defective components or equipment, or undertaking other remedial actions to assure containment of radioactivity (A.B. Johnson, Jr., "Behavior of Spent Nuclear Fuel in Water Pool Storage", (UC–70) Battelle Pacific Northwest Laboratories (BNWL–2256, September 1977)). These factors contribute to the assurance that spent fuel can be stored for extended periods without significant impact on the public health and safety and the environment. Moreover, any storage of spent fuel at independent spent fuel storage installations or reactor sites beyond the operating license expiration will be subject to licensing and regulatory control to assure that operation of the storage facilities does not result in significant impacts to the public health and safety.

For the reasons discussed previously (Sections 2.4 A through D above), the Commission also concludes, from the record of this proceeding, that storage of spent fuel either at or away from a reactor site for 30 years beyond the operating license expiration would not result in a significant impact to the environment or an adverse effect on the public health and safety. The Commission's findings are also supported by NRC's experience in more than 80 individual safety evaluations of spent fuel storage facilities conducted in recent years. The record indicates that significant releases of radioactivity from spent fuel under licensed storage conditions are highly unlikely. This is primarily attributable to the resistance of the spent fuel to corrosive mechanisms and the absence of any conditions that would result in offsite dispersal of radioactive material. The Commission concludes that the possibility of a major accident or sabotage with off-site radiological impacts at a spent-fuel storage facility is extremely remote because of the characteristics of spent-fuel storage. These include the inherent properties of the spent fuel itself, the benign nature of the water pool or dry storage environment, and the absence of any conditions that would provide a driving force for dispersal of radioactive material. Moreover, there are no

significant additional non-radiological impacts which could adversely affect the environment if spent fuel is stored beyond the expiration of operating licenses for reactors. The non-radiological environmental impacts associated with site preparation and construction of storage facilities are, and will continue to be, considered by the NRC at the time applications are received to construct these facilities, which are licensed under NRC's regulations in either 10 CFR Part 50 for reactors or 10 CFR Part 72 for independent spent fuel storage facilities. The procedure to be followed in implementing the Commission's generic determination is the subject of rulemaking which the Commission has conducted.

2.5 Fifth Commission Finding

The Commission finds reasonable assurance that safe independent onsite spent fuel storage or offsite spent fuel storage will be made available if such storage capacity is needed.

The technology for independent spent fuel storage installations as discussed under the fourth Commission Finding, is available and demonstrated. The regulations and licensing procedures are in place. Such installations can be constructed and licensed within a five-year time interval. Before passage of the Nuclear Waste Policy Act of 1982 the Commission was concerned about who, if anyone, would take responsibility for providing such installations on a timely basis. While the industry was hoping for a government commitment, the Administration had discontinued efforts to provide those storage facilities (Tr. pp. 157–158). The Nuclear Waste Policy Act of 1982 establishes a national policy for providing storage facilities and thus helps to resolve this issue and assure that storage capacity will be available.

Prior to March 1981, the DOE was pursuing a program to provide temporary storage in off-site, or away-from-reactor (AFR), storage installations. The intent of the program was to provide flexibility in the national waste disposal program and an alternative for those utilities unable to expand their own storage capacities (DOE PS p. I–11; DOE CS p. II–66).

Consequently, the participants in this proceeding assumed that, prior to the availability of a repository, the Federal government would provide for storage of spent fuel in excess of that which could be stored at reactor sites. Thus, it is not surprising that the record of this proceeding prior to the DOE policy change did not indicate any direct commitment by the utilities to provide AFR storage. On March 27, 1981 DOE placed in the record a letter to the Commission stating its decision "to discontinue its efforts to provide Federal government-owned or controlled away-from-reactor storage facilities." The primary reasons for the change in policy were cited as new and lower projections of storage requirements and lack of Congressional authority to fully implement the original policy.

The record of this proceeding indicates a general commitment on the part of industry to do whatever is necessary to avoid shutting down reactors or derating them because of filled spent fuel storage pools. While industry's incentive for keeping a reactor in operation no longer applies after expiration of its operating license, utilities possessing spent fuel are required to be licensed and to maintain the fuel in safe storage until removed from the site. Industry's response to the change in DOE's policy on federally-sponsored away-from-reactor (AFR) storage was basically a commitment to do what is required of it, with a plea for a clear unequivocal Federal policy (Tr. pp. 157–159). The Nuclear Waste Policy Act of 1982 has now provided that policy.

The Nuclear Waste Policy Act defines public and private responsibilities for spent fuel storage and provides for a limited amount of federally-supported interim storage capacity. The Act also includes provisions for monitored retrievable storage facilities and for a research, development and demonstration program for dry storage. The Commission believes that these provisions provide added assurance that safe independent onsite or offsite spent fuel storage will be available if needed.

In Subtitle B of the Act, "Interim Storage Program," Congress found that owners and operators of civilian power reactors "have the primary responsibility for providing interim storage of spent nuclear fuel from such reactors" by maximizing the use of existing storage facilities onsite and by timely additions of new onsite storage capacity. The Federal government is responsible for encouraging and expediting the effective use of existing storage facilities and the addition of new storage capacity as needed. In the event that the operators cannot reasonably provide adequate storage capacity to assure the continued operation of such reactors, the Federal government will assume responsibility for providing interim storage capacity for up to 1900 metric tons of spent fuel (Sec. 131(a)). Such interim storage capacity is to be provided by the use of available capacity at one or more Federal facilities, the acquisition of any modular or mobile storage equipment including spent fuel storage racks, and/or the construction of new storage capacity at any reactor site (Sec. 135(a)(1)).

The Nuclear Waste Policy Act authorizes the Secretary of Energy to enter into contracts with generators or owners of spent fuel to provide for storage capacity in the amount provided in the Act (Sec. 136(a)(1)). However, such contracts may be authorized only if the NRC determines that the reactor owner or operator cannot reasonably provide adequate and timely storage capacity and is pursuing licensed alternatives to the use of Federal storage capacity (Sec. 135(b)).[8] Further, any spent fuel stored in the "interim storage program" is to be removed from the storage site on facility "as soon as practicable" but in no event later than 3 years following the availability of a repository or monitored retrievable storage facility (Sec. 135(e)). The Act establishes an "Interim Storage Fund" for use in activities related to the development of interim storage facilities, including the transportation of spent fuel and impact assistance to state and local governments (Sec. 136(d)).

In addition to providing for interim storage capacity, Congress found that "the long-term storage of high level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel." By June 1, 1985, the Secretary of Energy must complete a detailed study of the need for, and feasibility of, such a facility and submit to Congress a proposal for the construction of one or more such facilities. The Act also directs the Secretary of Energy to establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at reactor sites and provide consultative and technical assistance on a cost-sharing basis to assist utilities lacking interim storage capacity to obtain the construction, authorization and appropriate license from the NRC. Such assistance may include the establishment of a research and development program for the dry storage of no more than 300 metric tons of spent fuel at federally-owned facilities (Sec. 218, (a)(b)(c)).

The Commission's confidence that independent on-site and/or off-site

[8] Accordingly, the Commission has published proposed "Criteria and Procedures for Determining the Adequacy of Available Spent Nuclear Fuel Storage Capacity," 10 CFR Part 53 (48 *FR* 19382, April 29, 1983).

storage capacity for spent fuel will be available as needed is further supported by the strong likelihood that only a portion of the total spent fuel generated will require storage outside of reactor storage basins (DOE PS pp. V–3 to V–13). Estimates of the amount of spent fuel requiring storage away from reactors have declined significantly over the duration of this proceeding (DOE March 27, 1981 letter from O. Brown II, DOE Office of General Counsel, to M. Miller NRC, Presiding Officer in this proceeding).

DOE reported that cummulative spent fuel discharges, previously estimated as 100,000 metric tons of uranium (MTU), dropped to 72,000 MTU through the year 2000. Projected requirements for additional spent fuel storage capacity begin in 1986 (instead of 1981) and increase to 9500 MTU per year by 1997. Earlier projections indicated a need for 16,000 MTU per year for additional storage capacity in 1997.[9] DOE pointed out that additional storage requirements could be satisfied in a number of ways, including: (a) Use of private existing AFR storage facilities; (b) construction of new water basins at reactor facilities or away from reactor facilities by private industry or the utilities; (c) transshipment of spent fuel between reactors operated by different utilities; (d) disassembly of spent fuel and storage of spent fuel rods in canisters; and (e) dry storage at reactor sites.

Subsequently, DOE published new estimates for additional spent fuel storage capacity ("Spent Fuel Storage Requirements", DOE/RL–82–1, June, 1982). These estimates show a maximum required away-from-reactor (AFR) storage capacity of 8610 metric tons uranium of spent fuel in the year 1997. This is a decline from DOE's previously published planning-base case. The information in Table 1 below is excerpted from DOE/RL–83–1 and provides a range of projections of additional storage capacity needs. The first column is a projection of storage capacity needed over and above the currently existing and planned storage capacity. The second column provides projected values of additional storage capacity needed if maximum re-racking is conducted at existing or planned reactor basin storage pools. The storage capacity needs shown in the second column are somewhat smaller than in the first column. A further decrease in additional needed storage capacity is shown in the third column, which takes into account the possibility of transshipment of fuel from one reactor basin to another basin owned by the same utility. The projected values of needed storage capacity in the first and third columns provide a range of upper and lower bound values, respectively. The most likely outcome expected by DOE corresponds to the values in the second column. This was formerly known as the planning base case and is now termed the reference case. All projections shown in the table assume the maintenance of a full core reserve. The magnitude of need for additional spent fuel storage capacity projected by DOE has continued to decline, even though DOE has not assumed the use of newly developed technology, such as fuel rod consolidation.

The cumulative amount of spent fuel to be disposed of in the year 2000 is expected to be 58,000 metric tons of uranium [Spent Fuel Storage Requirements (Update of DOE/RL–82–1) DOE/RL–83–1, published January, 1983]. The additional required storage capacity of 13,000 metric tons of uranium projected in the second column for the year 2000 is less than 25% of the total quantity of spent fuel projected to be in storage. It is expected that additional storage will be provided at the reactor site, with some smaller portion to be moved offsite.

TABLE 1.—ADDITIONAL CUMULATIVE SPENT FUEL STORAGE REQUIREMENTS, OVER AND ABOVE CURRENT AND PLANNED STORAGE AT REACTOR STORAGE BASINS (METRIC TONS OF URANIUM)[1]

	No change in current or planned storage capacity	Use maximum reracking of current and planned storage capacity	Maximum reracking plus transshipment
Year:			
1982	0	0	0
1983	0	0	0
1984	13	13	0
1985	13	13	0
1986	110	110	3
1988	550	490	90
1990	1,500	1,360	310
1995	5,610	5,060	3,000
2000	14,760	13,090	10,370

[1] Spent Fuel Storage Requirements (Update of DOE/RL-82-1) DOE/RL-83-1, published January, 1963.

In response to the Commission's Second Prehearing Memorandum and Order (Nov. 6, 1981) the participants commented on the significance to the proceeding of issues resulting from the DOE policy change on spent fuel storage. The utilities generally limited their written responses to a restatement of the safety of interim storage and an affirmation of the technical and practical feasibility of the alternatives to Federal AFR storage facilities. An implied commitment by industry to implement AFR storage if necessary using one of the several feasible spent fuel storage alternatives is evident from the responses of the utilities, the nuclear industry, and associated groups (i.e., Tr. p. 159).

Based upon the foregoing, the Commission has, then, reasonable assurance that safe independent onsite or offsite spent fuel storage will be available if needed. The technology is demonstrated and the licensing procedures in place. The Nuclear Waste Policy Act establishes a national policy on interim storage of spent fuel and provides for contingency Federal storage capacity to augment that provided by industry. Further, the amount of fuel which may have to be stored in independent spent fuel storage facilities is less than was originally thought.

Reference Notation

The following abbreviations have been used for the reference citations in the Appendix:

PS Position Statement
CS Cross-Statement
PHS Pre-Hearing Statement
Tr. Transaction* of January 11, 1982 public meeting with the Commissioners

Participants have been identified by the following citations:

Citation and Participant

AIChE—American Institute of Chemical Engineers
ANS—American Nuclear Society
AEG—Association of Engineering Geologists
AIF—Atomic Industrial Forum, Inc.
—Bech—Bechtel National, Inc.
CDC—California Department of Conservation
CEC—California Energy Commission
CPC—Consumers Power Company
Del—State of Delaware
DOE—U.S. Department of Energy
ECNP—Environmental Coalition on Nuclear Power
GE—General Electric Company
Ill—State of Illinois (PS includes Roy affidavit)
Lewis—Marvin I. Lewis
Lochstet—Dr. William A. Lochstet
Minn—State of Minnesota
MAD—Mississippians Against Disposal
NECNP—New England Coalition on Nuclear Pollution
NfE—Neighbors for the Environment (PS includes papers by Dornsife, Rae, and Strahl)
NRDC—Natural Resources Defense Council, Inc.
NY—State of New York

[9] DOE's planning-base studies assume maximum basin re-racking at reactors and the maintenance of full-core reserve in reactor basins.

*The Commission considers this transcript to be part of the administrative record in this rulemaking. However, the transcript has not been reviewed for accuracy by the Commission on the participants, and therefore is only an informal record of the matters discussed.

OCTLA—Ocean County and Township of Lower Alloway Creek
Ohio—State of Ohio
SC—State of South Carolina
SE2—Scientists and Engineers for Secure Energy, Connecticut Chapter
SHL—Safe Haven, Ltd.
SMP—Sensible Main Power, Inc.
TVA—Tennessee Valley Authority
UNWMG-EEI—Utility Nuclear Waste Managment Group—Edison Electric Institute
USGS—United States Geological Survey
Vt—State of Vermont
Wis—State of Wisconsin (PS includes comments by Deese, Mudrey, Kelly, and Leverance)
UG—The Utilities Group (Niagara Mohawk Power Corp., Omaha Public Power District, Power Authority of the State of New York, and Public Service Company of Indiana, Inc.)

[FR Doc. 84-23182 Filed 8-30-84; 8:45 am]
BILLING CODE 7590-01-M

10 CFR Parts 50 and 51

Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of Reactor Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to incorporate the following provisions: (1) The Commission has reasonable assurance that no significant environmental impacts will result from the storage of spent fuel for at least 30 years beyond the expiration of nuclear reactor operating licenses. Accordingly, no discussion of any environmental impact of spent fuel storage for the period following expiration of the license or amendment applied for, is required in connection with the issuance or amendment of an operating license for a nuclear reactor or in connection with the issuance of an initial license or an amendment to an initial license for an independent spent fuel storage installation. (2) Operating nuclear power reactor licensees are required no later than 5 years before expiration of the reactor operating license, to submit for NRC review and approval, their plans for managing spent fuel at their site until the spent fuel is transferred to the Department of Energy for disposal.

EFFECTIVE DATE: November 29, 1984.

FOR FURTHER INFORMATION CONTACT: Dennis Rathbun or Clyde Jupiter, Office of Policy Evaluation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (202) 634-3295, or Sheldon Trubatch, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (202) 634-3224.

SUPPLEMENTARY INFORMATION: .

Background

By a Notice of Proposed Rulemaking dated October 25, 1979 (44 FR 61372), the Nuclear Regulatory Commission ("Commission" or "NRC") began a generic rulemaking proceeding "to reassess its degree of confidence that radioactive wastes produced by nuclear facilities will be safely disposed of, to determine when any such disposal will be available, and whether such wastes can be safely stored until they are safely disposed of." This proceeding became known as the "Waste Confidence" rulemaking proceeding, and was conducted partially in response to a remand by the United States Court of Appeals for the D.C. Circuit. *State of Minnesota* v. *NRC*, 602 F.2d 412 (1979). *State of Minnesota* involved a challenge to license amendments to permit the expansion of spent fuel pool storage capacities at two nuclear power plants. It was contended that uncertainty regarding ultimate disposal of commercial nuclear wastes required the Commission to consider the safety and environmental implications of storing spent fuel in the pools for an indefinite period following expiration of the plants' operating licenses. The Commission had excluded consideration of such long-term onsite storage from the license amendment proceedings, relying on its earlier finding (42 FR 34391, July 5, 1977) that safe permanent disposal of reactor wastes would be available when needed.

The Court of Appeals agreed with the Commission that, in accordance with the "rule of reason" implicit in the National Environmental Policy Act (NEPA), impacts of extended on-site storage of spent fuel need not be considered in licensing proceedings unless such storage was reasonably foreseeable and not merely a theoretical possibility. The Court held, however, that the Commission's statement of reasonable confidence in the timely availability of waste disposal solutions was "not the product of a rulemaking record devoted expressly to considering the question" and furthermore did not address the particular problem whether disposal solutions would be available before the expiration of plant operating licenses. *Id.* at 417. Accordingly, the D.C. Circuit remanded to the Commission for determination "whether there is reasonable assurance that an off-site storage solution will be available by the years 2007–2009, the expiration of the plants' operating licenses, and if not, whether there is reasonable assurance that the fuel can be stored safely at the site beyond those dates." *Id.* at 418. The Court noted that "the breadth of the questions involved and the fact that the ultimate determination can never rise above a prediction suggest that the determination may be a kind of legislative judgment for which rulemaking would suffice." *Id.* at 417. The Court agreed that the Commission "may proceed in these matters by generic determinations." *Id.* at 419. *Accord, Potomac Alliance* v. *NRC*, 682 F.2d 1030 (D.C. Cir. 1982).

Amendment to Part 51

Elsewhere in this issue, the Commission announced the conclusions it reached in the Waste Confidence rulemaking proceeding. The Commission found that there is reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by 2007–2009. However, some reactor operating licenses may expire without being renewed or some reactors may be permanently shut down prior to this period. Since independent spent fuel storage installations have not yet been extensive by developed, there is then a probability that some onsite spent fuel storage after license expiration may be necessary or appropriate. In addition, the Commission also realizes that some spent fuel may be stored in existing or new storage installations for some period beyond 2007–2009.

The Commission hereby adopts a rule providing that the environmental impacts of at-reactor storage after the termination of reactor operating licenses need not be considered in Commission proceedings related to issuance or amendment of a reactor operating license. This rule has the effect of continuing the Commission's practice, employed in the proceedings reviewed in *State of Minnesota*, of limiting considerations of environmental impacts of spent fuel storage in licensing proceedings to the period of the license in question and not requiring the NRC staff or the applicant to address the impacts of extended storage past expiration of the license applied for. The rule relies on the Commission's generic determination in the Waste Confidence proceeding that the licensed storage of spent fuel for 30 years beyond the reactor operating license expiration either at or away from the reactor site is feasible, safe, and would not result in a significant impact on the environment. For the reasons discussed in the Waste Confidence decision, the Commission believes there is reasonable assurance

that adequate disposal facilities will become available during this 30-year period. Thus, there is no reasonable probability that storage will be unavoidable past the 30-year period in which the Commission has determined that storage impacts will be insignificant.

The same safety and environmental considerations apply to fuel storage installations licensed under Part 72 as for storage in reactor basins. Accordingly, in licensing actions involving (a) the storage of spent fuel in new or existing facilities, or (b) the expansion of storage capacity at existing facilities, the NRC will continue to require consideration of reasonably foreseeable safety and environmental impacts of spent fuel storage only for the period of the license applied for. The amendment to 10 CFR Part 51 confirms that the environmental impacts of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations for the period following expiration of the reactor or installation storage license or amendment applied for need not be addressed in any environmental report, impact statement, impact assessment, or other analysis prepared in connection with the reactor operating license or amendment to the operating license, or initial license for an independent spent fuel storage installation, or amendment thereto.

The Commission's conclusions with respect to safety and environmental impacts of extended storage beyond expiration of current operating licenses are supported by the record in NRC's Waste Confidence proceeding and by NRC's experience in more than 80 individual safety and environmental evaluations conducted in storage licensing proceedings. The record of the Waste Confidence proceeding indicates that significant release of radioactivity from spent fuel under licensed storage conditions is highly unlikely because of the resistance of the spent fuel cladding to corrosive mechanisms and the absence of any conditions that would provide a driving force for dispersal of radioactive material. The non-radiological environmental impacts associated with site preparation and construction of storage facilities are and will continue to be considered by the NRC at the time applications are received to construct these facilities, which are licensed under NRC's regulations in either 10 CFR Part 50 for reactors or 10 Part 72 for independent spent fuel storage installations. There are so significant additional non-radiological impacts which could adversely affect the environment for storage past the expiration of operating licenses at reactors and independent spent fuel storage installations.

The amendments to Part 51 published here include § 51.23 (a), (b) and (c) as well as conforming amendments in §§ 51.30(b), 51.53 (a) and (b), 51.61, 51.80, 51.95 and 51.97. Paragraph 51.23(a) is a restatement of a final generic Commission determination (elsewhere in this issue) based on the Waste Confidence rulemaking proceeding, while § 51.23 (b) and (c) establish the procedures for implementing that generic determination in individual licensing cases.

Amendment to Part 50

The Commission is also adopting an amendment to 10 CFR Part 50 as set forth here, concerning the management of spent fuel from nuclear power reactors whose operating licenses may expire prior to the availability of a repository. The procedures established by this amendment are intended to confirm that there will be adequate lead time for whatever actions may be needed at individual reactor sites to assure that the management of spent fuel following the expiration of the reactor operating license will be accomplished in a safe and environmentally acceptable manner.

The Commission amends § 50.54 to establish requirements that the licensee for an operating nuclear power plant reactor shall no later than 5 years prior to expiration of the reactor operating license submit plans for NRC review and approval of the actions which the licensee proposes for management of all irradiated fuel at the reactor upon expiration of its operating license. No specific course of action is required of the licensee by the NRC. Licensee actions could include, but are not necessarily limited to, continued storage of spent fuel in the reactor spent fuel storage basin, storage in an independent spent fuel storage installation (refer to 10 CFR 72.3(m)) located at the reactor site or at another site; transshipment to and storage of the fuel at another operating reactor site in that reactor's basin; reprocessing of the fuel if it appears that licensed reprocessing facilities will be available; or disposal of the fuel in a repository. The proposed licensee actions must be consistent with NRC requirements for licensed possession of irradiated or spent fuel (as defined in § 72.3(v)) and must be capable of being authorized by the NRC and implemented by the licensee on a timely basis. The licensee's plans must specify how the financial costs of extended storage or other disposition of spent fuel will be funded. Further, the licensee's plans must describe the proposed disposition of all irradiated fuel from the reactor. The licensee shall notify the NRC of any significant changes to these plans; changes are not precluded provided that the licensee maintains the capability to manage the spent fuel safely.

The Commission notes that extended storage of spent fuel at a reactor beyond the expiration date of the operating license will require an amendment to the Part 50 license to cover possession only of the reactor and spent fuel under the requisite provisions of Parts 30, 50 and 70, or an authorization pursuant to Part 72, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation" (ISFSI). This rulemaking does not alter the requirements and provisions of Parts 51 and 72 with respect to the performance of environmental reviews of the impacts of spent fuel storage in an independent spent fuel storage installation or extended storage in a reactor spent fuel pool. This means that the NRC staff will continue to perform environmental reviews before issuing a license under 10 CFR Part 72 or an amendment for extended storage under 10 CFR Part 50. Notice of the receipt of a license application for storage of spent fuel pursuant to Part 72 will be published in the **Federal Register.**

Related Commission Actions

On March 13, 1978, the NRC published an Advance Notice of Proposed Rulemaking indicating that the NRC was reevaluating its decommissioning policy and considering amending its regualtions to provide more specific guidance on decommissioning of nuclear facilities (43 FR 10370). In January 1981, NRC published a "Draft Generic Environmental Impact Statement on Decommissioning Nuclear Facilities" (NUREG–0586). Proposed amendments to 10 CFR Parts 30, 40, 50, 51, 70, and 72 are being prepared by the NRC staff for Commission consideration. The proposed amendments for decommissioning would allow unrestricted use of a reactor or independent spent fuel storage installation site and would permit termination of the license. However, the storage of irradiated fuel either in a reactor basin or in an independent spent fuel storage installation would require restricted access and management of the storage facility to protect public health and safety. Thus, any continued storage of spent fuel beyond expiration of an operating license would be licensed under either Parts 50 or 72 and could

preclude final decommissioning of the site.

Analysis of Public Comment

1. Introduction

Proposed amendments to 10 CFR Parts 50 and 51, related to the Commission's Waste Confidence decision, were published in the **Federal Register** (48 FR 22730) for public comment on May 20, 1983. Section 50.54(aa) (formerly identified as § 50.54(x)) proposed to require licensees to submit no later than 5 years before expiration of reactor operating licenses a plan for post-operation management of spent fuel which is onsite at the time of license expiration. Section 51.23(a) (formerly identified as § 51.5(e)(1)) proposed a restatement of the Commission's generic determination in the Waste Confidence decision that no significant environmental impacts will result from onsite or offsite storage of spent fuel up to 30 years after reactor operating license expiration, that there is reasonable assurance that a repository will be available by 2007–2009, and that sufficient repository capacity will be available within 30 years beyond license expiration to dispose of reactor waste and spent fuel. Section 51.23(b) (formerly identified as § 51.5(e)(2)) proposed that the environmental impacts of potential extended spent fuel storage (i.e., storage beyond the period of an existing or initial license) need not be addressed in connection with a reactor operating license or the license for an independent spent fuel storage installation.

Comments were received from 21 respondents to the May 20, 1983 request. In addition to substantive comments discussed below, some commenters questioned: (1) The adequacy of the opportunity to comment on the Commission's fourth finding and supporting documentation; (2) the Commission's compliance with NEPA. In response, the Commission reopened the comment period (48 FR 50746, November 3, 1983). These later comments represent expanded discussions of procedural and environmental issues raised in the May 20, 1983 comment period and the Commission's responses to them are set out in the companion Waste Confidence decision published concurrently with this document. For the reasons discussed there, the Commission found no basis to modify its fourth finding or the related supporting documentation. The participants are identified by the abbreviated citations defined in Section 5 below.

2. Proposed Provisions of 10 CFR 50.54(bb)

a. Timely Submission of Spent Fuel Management Plans

(1) *Summary of Comments.* The proposed rule would require each reactor licensee to submit, no later than 5 years before expiration of the operating license, written notification to the Commission describing the licensee's program for post-operational management of all irradiated fuel which is at the reactor at the time of exporation of the operating license, pending ultimate disposal of the irradiated fuel in a repository.

Some respondents agreed with the proposed notification date (Tol. Ed., UNWMG–EEI p. 3; MP&L). Others believed that the submittal of notification only 5 years before expiration of the reactor operating license was too late; rather, they would require utilities with operating reactors to submit spent fuel management plans within six months of issuance of this rule. For new reactors, these latter respondents advocated submission of plans prior to issuance of an operating license (UCS p. 2; NECNP p. 1; Hiatt) or even sooner (CNPP p. 1). Still others agreed that early planning was essential but did not recommend specific timing for submittal of plans (Wis. p. 2; ISAS p. 1; WED, EPI pp. 1, 2).

Among the reasons advanced for recommending an earlier planning requirement were the following: Industry's alleged record of reluctance to accept its responsibilities for spent fuel storage (Hiatt; ISAS p. 1; EPI p. 1); five years before license expiration the utility's primary concerns would be the massive inventory of spent fuel on hand, possible financial constraints as a result of reduction in the rate base, and the need to concentrate on newer and more long-term generating facilities (UCS, p. 2). UCS remarked that the requirement to submit a management plan near the end of the license term implied NRC might be willing to permit development of onsite semi-permanent storage facilities (UCS p. 2). Other respondents pointed out that earlier planning for spent fuel management is needed because the reactor may be shut down prior to the license expiration date; some plants may be shut down prematurely as a result of accidents or inability to meet newer regulatory requirements, and others may be shut down because of premature aging, steam generator or primary system degradation, or unacceptable severe accident risks (ISAS p. 1; EPI pp. 1, 2). One respondent recommended that the NRC require utilities to prepare spent fuel management plans every 5 years (EPI p. 3).

The Utility Decommissioning Group stated that consideration of premature shutdown due to accidents or other conditions was speculative and irrelevant to the Commission's proposed rule (UDG p. 7). An industry representative commented that the requirement to verify submittals for NRC authorizations was inappropriate since some authorizations would not be needed as early as five years before operating license expiration; an alternative schedule for seeking such authorizations was suggested (AIF, p. 7). Finally, one respondent stated that licensee plans should only address spent fuel management up to the time when the material and title are delivered to DOE for disposal (SE2 p. 4).

(2) *NRC Response.* The Commission believes that the choice of five years prior to operating license expiration represents a reasonable timeframe for licensees to submit their spent fuel management plans.

Delaying a request for such plans until the license expiration is imminent would not permit the timely implementation of alternative actions in the event deficiencies in the plans are identified by the Commission. Time is needed to ensure that the proposed plans are consistent with the licensee's long range plans, such as decommissioning, and that the plans meet whatever requirements are involved in the transfer of title to spent fuel to the Secretary of Energy for disposal in a repository.

On the other hand, the Commission believes that a requirement for a licensee to develop spent fuel management plans a decade or two before license expiration would be unnecessarily restrictive and could even be counterproductive. Such premature plans would be likely to undergo several revisions to accommodate to changing circumstances and their usefulness would be questionable.

Premature shutdown or termination of a reactor's license which results in an unanticipated need for interim storage or disposal arrangements is not expected to be a generic problem. The Commission will consider the consequences of premature termination of operation, should such an event occur, on a case-by-case basis. Even if a reactor shuts down prematurely, it will still be required to comply with license requirements.

Premature shutdown of a reactor could not pose a problem for storage of spent fuel, because intermediate or long-term demands on the spent fuel storage

facilities at a shutdown reactor (whether shut down prematurely or because of operating license expiration) will be limited by termination of spent fuel production. Any short-term need for storage would be related to the desirability of maintaining a full core reserve, which is not a safety issue.

AIF's concern that it may be inappropriate for a licensee to apply for all necessary NRC authorizations five years before license expiration has been taken into account by changing the third sentence of the proposed § 50.54(bb) to read "Where implementation of such actions require NRC authorizations, the licensee shall verify in the notification that submittals for such actions have been *or will be* made to NRC and shall identify them." (Emphasis added.)

Under the terms of the Nuclear Waste Policy Act of 1982, the Secretary of Energy will take title to spent fuel at a licensee's facility and transport the spent fuel to a repository for ultimate disposal. Because of this, each licensee's spent fuel management plans need only consider actions to be taken until the time of spent fuel transfer to the Secretary of Energy, rather than until the time of ultimate disposal. The final words of the first sentence of the proposed § 50.54(bb) have been revised to read ". . . until *title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its* ultimate disposal in a repository." (Emphasis added.)

b. Plans for Funding Spent Fuel Management

(1) *Summary of Comments.* The proposed rule would require a licensee's notification to include plans for financing the management of all irradiated fuel upon expiration of the reactor operating license until the ultimate disposal of the fuel in a repository.

Some respondents believed that the funding for spent fuel management should be considered together with funding for decommissioning (e.g., UDG pp. 5–7; UNWMG–EEI, p. 5; Tol Ed; AIF p. 6). They contended that, if funding for spent fuel management were to be addressed separately from decommissioning, the Commission should recognize that utilities generally would be permitted by the rate-making authorities to recover costs associated with extended fuel storage (UDG p. 6; AIF pp. 7, 8). Moreover, since each utility will have to demonstrate to NRC its ability to finance decommissioning—which will involve far greater costs than the maintenance and monitoring of spent fuel storage—the funding required for post-operating license spent fuel management will be assured (UDG pp. 5–7; AIF pp. 7, 8). Others believe that the funding required for post-OL management of spent fuel would be assured because the utilities are financially responsible (UDG pp. 5–7; AIF pp. 7, 8); still others contended that if a utility operates a reactor, it should be required to have adequate funding set aside now to manage the spent fuel (UCS p. 3). On the other hand, some respondents expressed the view that, when the notification of plans is due, a utility might not wish to spend or even retain the funds required for spent fuel management (CNPP p. 1), e.g., Turkey Point, (FUSE p. 2).

(2) *NRC Response.* Following termination of reactor operation, actions to manage irradiated fuel stored on the plant site or to provide for its removal would include activities taken prior to and subsequent to decommissioning. In all cases after operating license termination, continued spent fuel storage at the nuclear power plant site would be subject to licensing under 10 CFR Part 50 or 72.

The suggestion that funding for decommissioning and spent fuel management be considered together would appear to offer no significant advantage. The costs of each are readily separable. Moreover, it is possible that rate-making authorities will treat cost recovery for decommissioning differently from costs of extended spent fuel storage, in which case separation of costs would be necessary. In addition, the scheduling of spent fuel storage and disposal is likely to depend primarily on factors not directly related to decommissioning such as irradiated fuel age, status of disposal facilities and availability of spent fuel transport casks. The Commission also notes that all reactor licensees have contracted with DOE for disposal of their spent fuel; further, any new reactor operating license will require that the licensee have a contract in place with DOE for disposal of all spent fuel generated.

c. Meaning of "Approval" of Plans for Spent Fuel Management

(1) *Summary of Comments.* The proposed 10 CFR 50.54(bb) provides for Commission "review and approval" of the licensee's spent fuel management plans. One respondent noted that there is no indication whether the NRC "approval" would take the form of an order or a license amendment and recommended that the concept of "approval" be eliminated from the rule (AIF pp. 6, 7). Others characterized formal approval as unnecessary (UDG p. 7) and burdensome (UNWMG–EEI, pp. 3–5; Tol. Ed.), or as creating "a new layer of approvals" (SE2 p. 3). It was suggested that the NRC staff review the plans, alert licensees to any deficiencies, and undertake formal approval only when action is taken to implement the plan through license amendments or other regulatory actions (AIF pp. 6,7; UNWMG–EEI p. 4).

(2) *NRC Response.* The Commission's review of each licensee's plans for management and ultimate disposal of all irradiated fuel at the reactor following operating license expiration is intended to assure that each licensee has made adequate advance preparations, including allowance for contingencies, for managing spent fuel in a manner which provides adequate protection of the public health and safety and the environment until it is transferred to the Secretary of Energy for disposal. Because the plans would be developed at least five years prior to operating license expiration, they would be based on the utility's forecast of its future situation. Some utilities may have sufficient uncertainty in their forecasts to preclude an early firm commitment to details of a program for management of spent fuel after operating license expiration. Accordingly, the Commission will consider the notification to be submitted under § 50.54(bb) as a formal expression of intent. The notification is part of an information gathering process which is more specific, but similar in nature to the provisions of § 50.54(f), which states:

> The licensee will at any time before expiration of the license, upon request of the Commission submit written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended or revoked.

The provisions of § 50.54(bb) may be used by the Commission in determining if it needs to take any further action. The Commission's review will focus on the identification of discrepancies or omissions and its "approval" will signify that, based on the information available at the time of filing the notification, the licensee's plans are sound and will provide adequate protection of the public health and safety and the environment. Between the time the Commission indicates its preliminary approval of the plans and the date of expiration of the operating license, the licensee may propose for Commission consideration modifications or supplementation of its plans. In this way, prior to license expiration, the licensee will have developed a course of action which the Commission has approved as satisfying the regulatory requirements for safety and

environmental protection. The plan would then, at license expiration and termination of reactor operation, become part of the conditions of an amended Part 50 license for a shut down reactor facility, or a Part 72 license for storage of spent nuclear fuel following termination of reactor operation.

In order to clarify the Commission's intent that the Commission's approval of the licensee's plans for spent fuel management is not a final approval, the word "preliminary" has been inserted before "approval" in the first sentence of the proposed § 50.54(bb) and the following sentence is inserted after the first sentence: "Final Commission review will be undertaken as part of the proceeding for continued licensing under Part 50 or Part 72."

d. Relationship of Extended Spent Fuel Storage to Decommissioning

(1) *Summary of Comments.* In view of the potential juxtaposition of actions to implement spent fuel management plans addressed in § 50.54(bb) and decommissioning plans, some respondents urged that promulgation of the former be considered in the decommissioning rulemaking (UDG pp. 3–6) or coordinated with the decommissioning requirements (UDG pp. 5–7; UNWMG–EEI p. 5; EPI p. 2; AIF pp. 5, 6; Pilalis p. 2; MSS p. 2). The concerns were that the two rules (§ 50.54(bb) and decommissioning) might be conflicting or duplicative with respect to site access, preferred decommissioning mode, and financing (Pilalis p. 1; AIF pp. 5, 6). The record of the decommissioning rulemaking was cited as providing support for the Commission's determination that the environmental and safety implications of extended storage of spent fuel need not be considered in licensing proceedings (AIF pp. 3, 4; UDG p. 5).

(2) *NRC Response.* Here again, the Commission considers the decommissioning process as a set of actions separate from those discussed in § 50.54(bb). To delay issuance of a rule for extended spent fuel storage in order to combine it with the decommissioning rule which is being developed would serve no useful purpose. The safety and environmental implications of the two processes differ significantly. Specifically, decommissioning involves many more complex considerations than post-OL spent fuel management plans. Although the two activities may overlap in time, they are so different that combining the associated regulatory requirements into a single rulemaking would have no apparent advantage.

Although there is a potential for overlap between the plans submitted in the § 50.54(bb) notification and the decommissioning plans, the overlap is most likely to be limited to scheduling aspects, e.g., situations where the presence of spent fuel in the reactor storage pool must be taken into account when considering decommissioning options. The Commission does not consider the potential for conflict from such overlapping activities to be sufficient to delay the present rulemaking until decommissioning regulations are in place. Clearly the utility must decide which decommissioning option it wishes to choose before operating license expiration. The utility's spent fuel management plans submitted in response to § 50.54(bb) and its choice of decommissioning options, should be consistent. Such consistency may be achieved by modifying either the decommissioning plan, the spent fuel management plan, or both.

3. Miscellaneous Comments

a. Recognition of Yakima Indian Rights

(1) *Summary of Comments.* The Yakimas stated that their sovereign rights cannot be properly protected by generalized rulemaking and that Federal rules must be based upon recognition of their treaty rights (YIN p. 2). They also contended that environmental impact analyses for siting nuclear waste storage and disposal facilities are based on value systems not related to those of affected Indian tribes (YIN, Enclosure 2). The Yakimas believe that environmental impact studies have consistently failed to look beyond the Judaeo-Christian socio-economic heritage and as a result there have been repeated nuisance violations of the sovereign rights guaranteed to the Yakimas by the Treaty of 1855 (YIN p. 2 of Attachment 2).

(2) *NRC Response.* This final rule does not concern repository siting, or the extended storage of spent fuel at any reactor located within the tribal lands. Siting will be considered under procedures laid out by the Nuclear Waste Policy Act (NWPA), DOE siting guidelines, and NRC regulations for high-level waste disposal (10 CFR Part 60). All of these recognize Indian rights in the siting of waste repositories and provide for participation by affected Indian tribes.

b. Extended Length of Time for Storage

(1) *Summary of Comments.* The Environmental Policy Institute states that the Commission may not assume that plants will be able to dispose of fuel in a repository on a schedule reflecting OL termination because the NWPA carries a presumption that significant repository capacity will be taken up by defense waste; moreover, section 135(e) of the NWPA requires that spent fuel in interim Federal storage must be moved within three years of the availability of permanent disposal of storage facilities. Furthermore, EPI notes that DOE proposes in its contracts to give priority to the oldest fuel (EPI pp. 2, 3). Pilalis adds that the contracts give priority to fuel from permanently shutdown reactors.

(2) *NRC Response.* The Commission notes that the various categories (e.g., wastes from commercial or defense activities) of high-level waste and spent fuel are addressed in the NWPA in a manner which assures that they will be dealt with or managed and disposed of with appropriate priorities. The NWPA mandates a Mission Plan from the Secretary of DOE (section 301(a)), which includes:

> . . . an estimate of (A) the total repository capacity required to safely accommodate the disposal of all high-level radioactive waste and spent nuclear fuel expected to be generated through December 31, 2020, in the event that no commercial reprocessing of spent nuclear fuel occurs, as well as the repository capacity that will be required if such reprocessing does occur, (B) the number and type of repositories required to be constructed to provide such disposal capacity; (C) a schedule for the construction of such repositories; and (D) an estimate of the period during which each repository listed in such schedule will be accepting high-level radioactive waste or spent nuclear fuel for disposal; (section 301(a)(9)).

Thus the intention of the NWPA is to provide adequate repository capacity on a timely basis for all high-level radioactive waste and spent fuel and to take into account the various priorities for disposal established by the Act itself. The Commission notes in its Waste Confidence decision (elsewhere in this issue) that:

> . . . sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of commercial high-level radioactive waste and spent fuel generated up to that time. The Nuclear Waste Policy Act of 1982 establishes Federal responsibility and a clearly defined Federal policy for the disposal of such waste and spent fuel and creates a Nuclear Waste Fund to implement Federal policy. The Act establishes as a matter of national policy that this responsibility is a continuing one, and provides means for the Secretary of Energy to examine periodically the adequacy of resources to accomplish this end (Appendix to the Commission's decision [section 2.2B4]).

In any event, the Commission does not assume, as EPI contends, that plants will be able to dispose of spent fuel in a

repository on a schedule corresponding to OL termination. The Commission's second finding states (in part) that sufficient repository capacity will be available within 30 years beyond OL termination. The priority that DOE proposes to follow in its contracts for acceptance of the oldest spent fuel does not affect this situation.

4. Non-Substantive Revisions in the Amendment to 10 CFR Part 51.

Non-substantive revisions were made in the amendment to Part 51 for clarification and to conform to the recently published (49 FR 9352, March 12, 1984, effective June 7, 1984, 49 FR 24512, June 14, 1984) general revision of 10 CFR Part 51 and related conforming amendments implementing CEQ NEPA regulations.

5. Listing of Participants

Respondents to the May 20, 1983 Invitation for Public Comment (48 FR 22730) on the Proposed Amendments to 10 CFR Parts 50 and 51, "Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of the Reactor's Operating License

1. New York Attorney General (NY Atty. Gen.)
2. Floridians United for Safe Energy (FUSE)
3. Toledo Edison Company (Tol. Ed.)
4. Environmental Policy Institute (EPI)
5. Utility Decommissioning Group (UDG)
6. Atomic Industrial Forum, Inc. (AIF)
7. Utility Nuclear Waste Management Group and the Edison Electric Institute (UNWMG—EEI)
8. Wisconsin (Wis.)
9. Middle South Services, Inc. (MSS)
10. Coalition for Nuclear Power Postponement (CNPP)
11. Union of Concerned Scientists (UCS)
12. Indiana Sassafras Audubon Society (ISAS)
13. Yakima Indian Nation (YIN)
14. Wisconsin Environmental Decade (WED)
15. Labros E. Pilalis (Pilalis)
16. New England Coalition on Nuclear Pollution, Inc. (NECNP)
17. Scientists and Engineers for Secure Energy, Inc. (SE2)
18. Susan L. Hiatt (Hiatt)
19. Mississippi Power and Light Co. (MP&L)
20. Department of Energy (DOE)
21. Consolidated Public Interest Representative (CPIR)

Respondents to the Commission's November 3, 1983 Order (48 FR 50746) To Reopen the Period for Limited Comment on the Environmental Aspects of the Commission's Fourth Finding in the Waste Confidence Proceeding

1. Attorney General of the State of New York (N.Y.)
2. Marvin Lewis (Lewis)
3. Sierra Club Radioactive Waste Campaign (Sierra)
4. Scientists and Engineers for Secure Energy, Inc. (SE2)
5. Safe Haven, Ltd. (S.H.)
6. American Institute of Chemical Engineers (AIChE)
7. Atomic Industrial Forum, Inc. (AIF)
8. Utility Nuclear Waste Management Group—Edison Electric Institute (UNWMG–EEI)
9. Natural Resources Defense Council, Inc. (NRDC)
10. Attorney General of the State of Wisconsin (Wis.)
11. U.S. Department of Energy (DOE)
12. American Nuclear Society (ANS)
13. Attorney General of the State of Minnesota (Minn.)

Environmental Impact

This final rule amends 10 CFR Part 51 of the Commission's regulations to incorporate the generic determination made by the Commission at the conclusion of the Waste Confidence rulemaking proceeding that for at least 30 years beyond the expiration of reactor operating licenses no significant environmental impacts will result from the storage of spent fuel in reactor facility storage pools or independent spent fuel storage installations located at reactor or away-from-reactor sites. The detailed environmental analysis on which the generic determination was based can be found in the record at that proceeding published elsewhere in this issue. This rulemaking action formally incorporating the generic determination in the Commission's regulations has no separate independent environmental impact.

The other amendments to Parts 50 and 51 of the Commission's regulations set out in the final rule contain procedures which relate to the submission and review of applications for licenses, license amendments and other forms of permission. The final rule specifies notification procedures applicable to licensee proposals for the management of irradiated fuel following expiration of a reactor operating license and the types of environmental information required to be submitted or addressed in connection with an application for a license or license amendment to store spent fuel at a nuclear power reactor or at an independent spent fuel storage installation after the reactor operating license has expired. Accordingly, these amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(3). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of these amendments.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget (approval numbers 3150–0011 and 3150–0021).

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants are dominant in their service areas and do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Fire prevention, incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and record keeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and record keeping requirements.

For the reasons set out in the Preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 50 and 51.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 96–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.54, a new paragraph (bb) is added to read as follows:

§ 50.54 Conditions of licenses.

Whether stated therein or not, the following shall be deemed conditions in every license issued.

* * * * *

(bb) For operating nuclear power reactors, the licensee shall, no later than 5 years before expiration of the reactor operating license, submit written notification to the Commission for its review and preliminary approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor upon expiration of the reactor operating license until title to the irradiated fuel and possession of the fuel is transferred to the Secretary of Energy for its ultimate disposal in a repository. Final Commission review will be undertaken as part of any proceeding for continued licensing under Part 50 or Part 72. The licensee must demonstrate to NRC that the elected actions will be consistent with NRC requirements for licensed possession of irradiated nuclear fuel and that the actions will be implemented on a timely basis. Where implementation of such actions require NRC authorizations, the licensee shall verify in the notification that submittals for such actions have been or will be made to NRC and shall identify them. A copy of the notification shall be retained by the licensee as a record until expiration of the reactor operating license. The licensee shall notify the NRC of any significant changes in the proposed waste management program as described in the initial notification.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

3. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201), secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041. Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021).

4. A new § 51.23 is added to read as follows:

§ 51.23 Temporary storage of spent fuel after cessation of reactor operation—Generic determination of no significant environmental impact.

(a) The Commission has made a generic determination that for at least 30 years beyond the expiration of reactor operating licenses no significant environmental impacts will result from the storage of spent fuel in reactor facility storage pools or independent spent fuel storage installations located at reactor or away-from-reactor sites. Further, the Commission believes there is reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the year 2007–2009, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

(b) Accordingly, as provided in §§ 51.30(b), 51.53, 51.61, 51.80(b), 51.95 and 51.97(a), and within the scope of the generic determination in paragraph (a) of this section, no discussion of any environmental impact of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations (ISFSI) for the period following the term of the reactor operating license or amendment or initial ISFSI license or amendment for which application is made, is required in any environmental report, environmental impact statement, environmental assessment or other analysis prepared in connection with the issuance or amendment of an operating license for a nuclear reactor or in connection with the issuance of an initial license for storage of spent fuel at an ISFSI, or any amendment thereto.

(c) This section does not alter any requirements to consider the environmental impacts of spent fuel storage during the term of a reactor operating license or a license for an ISFSI in a licensing proceeding.

5. In § 51.30, a new paragraph (b) is added to read as follows:

§ 51.30 Environmental assessment.

* * * * *

(b) Unless otherwise determined by the Commission, an environmental assessment will not include discussion of any aspect of the storage of spent fuel within the scope of the generic determination in § 51.23(a) and in accordance with the provisions of § 51.23(b).

6. Section 51.53 is revised to read as follows:

§ 51.53 Supplement to Environmental Report.

(a) *Operating license stage.* Each applicant for a license or for renewal of a license to operate a production or utilization facility covered by § 51.20 shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled "Supplement to Applicant's Environmental Report—Operating License Stage," which will update "Applicant's Environmental Report—Construction Permit Stage." Unless the applicant requests the renewal of an operating license or unless otherwise required by the Commission, the applicant for an operating license for a nuclear power reactor shall submit this report only in connection with the first licensing action authorizing full power operation. In this report, the applicant shall discuss the same matters described in §§ 51.45, 51.51 and 51.52, but only to the extent that they differ from those discussed or reflect new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the construction permit. Unless otherwise required by the Commission, no discussion of need for power or alternative energy sources or alternative sites for the facility or of any aspect of the storage of spent fuel for the facility within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b) is required in this report. The "Supplement to Applicant's Environment Report—Operating License Stage" may

incorporate by reference any information contained in the "Applicant's Environmental Report—Construction Permit Stage," final environmental impact statement or record of decision previously prepared in connection with the construction permit.

(b) *Post operating license stage.* Each applicant for a license or license amendment to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor shall submit with its application the number of copies, as specified in § 51.55, of a separate document, entitled "Supplement to Applicant's Environmental Report—Post Operating License Stage." Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions in § 51.23(b), the applicant shall only address the environmental impact of spent fuel storage for the term of the license applied for. The "Supplement to Applicant's Environmental Report—Post Operating License Stage" may incorporate by reference any information contained in "Applicant's Environmental Report—Construction Permit Stage," "Supplement to Applicant's Environmental Report—Operating License Stage," final environmental impact statement, supplement to final environmental impact statement or records of decision previously prepared in connection with the construction permit or operating license.

7. Section 51.61 is revised to read as follows:

§ 51.61 Environmental report—Independent spent fuel storage installation (ISFSI) license.

Each applicant for issuance of a license for storage of spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of this chapter shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66 of a separate document, entitled "Applicant's Environmental Report—ISFSI License." The environmental report shall contain the information specified in § 51.45 and shall address the siting evaluation factors contained in Subpart E of Part 72 of this chapter. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), no discussion of the environmental impact of the storage of spent fuel at an ISFSI beyond the term of the license or amendment applied for is required in an environmental report submitted by an applicant for an initial license for storage of spent fuel in an ISFSI, or any amendment thereto.

8. Section 51.80 is revised to read as follows:

§ 51.80 Draft environmental impact statement—Material license.

(a) The NRC staff will either prepare a draft environmental impact statement or as provided in § 51.92, a supplement to a final environmental impact statement for each type of action identified in § 51.20(b) (7)–(12). Except as the context may otherwise require, procedures and measures similar to those described in §§ 51.70, 51.71, 51.72 and 51.73 will be followed.

(b) *Independent spent fuel storage installation (ISFSI).* Unless otherwise determined by the Commission, and in accordance with the generic determination in § 51.23(a) and the provisions of § 51.23(b), a draft environmental impact statement on the issuance of an initial license for storage of spent fuel at an independent spent fuel storage installation (ISFSI) or any amendment thereto, will address environmental impacts of spent fuel storage only for the term of the license or amendment applied for.

9. Section 51.95 is revised to read as follows:

§ 51.95 Supplement to final environmental impact statement.

(a) *Operating license stage.* In connection with the issuance of an operating license for a production or utilization facility, the NRC staff will prepare a supplement to the final environmental impact statement on the construction permit for that facility, which will update the prior environmental review. The supplement may incorporate by reference any information contained in the final environmental impact statement or in the record of decision prepared in connection with the construction permit for that facility. The supplement will include a request for comments as provided in § 51.73. The supplement will only cover matters which differ from, or which reflect significant new information concerning matters discussed in the final environmental impact statement. Unless otherwise determined by the Commission, a supplement on the operation of a nuclear power reactor will not include discussion of need for power or alternative energy sources or alternative sites or of any aspect of the storage of spent fuel for the nuclear power reactor within the scope of the generic determination in § 51.23(a) and in accordance with § 51.23(b), and will only be prepared in connection with the first licensing action authorizing full power operation.

(b) *Post operating license stage.* In connection with the issuance, amendment or renewal of a license to store spent fuel at a nuclear power reactor after expiration of the operating license for the nuclear power reactor, the NRC staff will prepare a supplemental environmental impact statement for the post operating license stage or an environmental assessment, as appropriate, which will update the prior environmental review. The supplement or assessment may incorporate by reference any information contained in the final environmental impact statement, the supplement to the final environmental impact statement—operating license stage, or in the records of decision prepared in connection with the construction permit or the operating license for that facility. The supplement will include a request for comments as provided in § 51.73. Unless otherwise required by the Commission, in accordance with the generic determination in § 51.23(a) and the provisioins of § 51.23(b), a supplemental environmental impact statement for the post operating licence stage or an environmental assessment as appropriate, will address the environmental impacts of spent fuel storage only for the term of the license, license amendment or license renewal applied for.

10. A new § 51.97 is added to read as follows:

§ 51.97 Final environmental impact statement—Materials license.

(a) *Independent spent fuel storage installation (ISFSI).* Unless otherwise determined by the Commission, and in accordance with the generic determination in § 51.23(a) and the

provisions of § 51.23(b), a final environmental impact statement on the issuance of an initial license for the storage of spent fuel at an independent spent fuel storage installation (ISFSI) or any amendment thereto, will address environmental impacts of spent fuel storage only for the term of the license or amendment applied for.

(b) [Reserved]

Dated at Washington, D.C. this 22nd day of August, 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84-23183 Filed 8-30-84; 8:45 am]

BILLING CODE 7590-01-M

federal register

Friday
August 31, 1984

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 1020

Diagnostic X-Ray Systems and Their Major Components; Amendments to Performance Standard; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 76N-0308]

Diagnostic X-Ray Systems and Their Major Components; Amendments to Performance Standard

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the performance standard for diagnostic x-ray systems and their major components by revising and adding requirements concerning computed tomography x-ray (CT) systems. CT systems are new medical diagnostic tools whose use in the United States has grown significantly in recent years. Because CT systems have many performance features that are unlike conventional x-ray systems, the current performance standard for diagnostic x-ray systems is not entirely appropriate for CT systems. The amendments to the standard address the special characteristics of CT systems.

EFFECTIVE DATE: September 3, 1985, except for § 1020.30(a), (b)(36)(iii)–(v), (58)–(62), (h)(3)(vi)–(viii), and (n); §§ 1020.31 and 1020.32 (introductory texts); § 1020.33(a), (b) and (c)(2); and § 1020.33(c)(1) as it affects § 1020.33(c)(2), all of which are effective November 29, 1984. For additional information concerning these effective dates, see paragraphs 76 and 78 in the preamble of this document.

FOR FURTHER INFORMATION CONTACT: Joseph Sheehan, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4874.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 31, 1980 (45 FR 72204), FDA proposed to amend the performance standard for diagnostic x-ray systems and their major components (21 CFR 1020.30, 1020.31, and 1020.32) (diagnostic x-ray equipment standard) by revising the current diagnostic x-ray equipment standard and by adding new requirements in 21 CFR 1020.33 concerning CT systems.

When the diagnostic x-ray equipment standard was originally established, CT systems were only in the developmental stage and were not in routine clinical use in the United States. For this reason, FDA did not include in the standard any special provisions for CT systems. The agency has evaluated the standard as it relates to CT systems, has considered the comments on the October 31, 1980 proposal, and has concluded that, because of the special characteristics of CT systems, there are several areas in which the current diagnostic x-ray equipment standard is inadequate or inappropriate for proper control of CT systems. Therefore, the agency is amending the performance standard to address the radiation safety aspects of CT systems.

Interested persons were given until December 30, 1980, to comment on the proposal. In the **Federal Register** of January 2, 1981 (46 FR 111), the agency extended the comment period to January 29, 1981. FDA received 20 comments from interested persons, including individuals, manufacturers, a medical professional society, an industry association, and a regulatory agency. A summary of the substantive comments and FDA's responses are discussed below.

General Comments

1. One comment commends the agency on setting a standard in a difficult area. The comment states that providing performance information about CT systems will make it possible for purchasers of CT equipment to relate image quality to radiation dose and to make more intelligent decisions regarding use of the equipment. Three comments disagree with the proposal, pointing to the inconsistency of the proposed requirements for CT equipment as compared to the requirements for conventional x-ray equipment. These comments argue that manufacturers of CT systems should not be required to provide imaging performance documentation when fluoroscopic and cineradiographic manufacturers are not required to do so, even though fluoroscopic and cineradiographic equipment can deliver a greater radiation dose to the patient than can CT equipment.

The agency acknowledges that the approach taken in this final rule differs from that taken in the diagnostic x-ray equipment standard for conventional x-ray equipment. However, CT systems are a new type of x-ray system. Thus, new approaches are necessary to develop appropriate controls that will protect the public health without unduly constraining a developing, dynamic technology. The agency believes that the most effective means to assure the safe and effective use of CT systems without limiting technological advances in the field is to require disclosure to users of information regarding performance of the system rather than to use an approach that exclusively relies on performance requirements (which approach currently characterizes the performance standard for conventional x-ray systems).

Fluoroscopic systems are controlled by requirements on x-ray field size and alignment and by limits on exposure rates contained in the performance standard or dictated by the image receptor system used. These limits were established based on experience and apply to systems that are essentially similar in design and operation. However, exposure limits for CT systems do not now exist, and it appears impracticable at this time to establish such limits due to the evolving technology associated with CT systems. In addition, the images produced by CT systems appear to improve with increasing system radiation output. FDA concludes that CT users need to be provided information on the radiation dose delivered by a CT system as a function of operating conditions so that they may make appropriate choices of standard or special operating conditions for each system.

Users of CT systems need dose information to inform them of the radiation doses associated with various scanning techniques. The doses to which patients are exposed from computed tomography procedures are not easily measured, and many purchasers are not equipped to make the measurements necessary to characterize the dose distributions resulting from computed tomography. The information that this rule requires that CT system manufacturers furnish to purchasers and users will most efficiently meet the need created by purchasers' and users' inability to make such measurements.

Also, information on the imaging performance of CT systems is needed to assure that the dose information provided for a standard technique or suggested operating technique is meaningful. To require manufacturers to provide dose information, without requiring them also to provide imaging performance information for the same conditions of operation, could result in the selection of the standard technique for the information required by § 1020.33(c), which would produce the appearance of low dose but would not provide imaging performance satisfactory for clinical procedures.

FDA believes that requiring manufacturers to provide dose and imaging performance information is the least burdensome effective approach to promoting the safe use of CT systems. Many manufacturers currently provide this type of information to interested persons but do so by various means.

This final rule standardizes the form and manner by which this information is presented. Although these amendments establish some performance requirements of the type that characterize conventional x-ray systems, FDA believes that greater reliance on standards of performance could unnecessarily restrict the design of new CT systems or require redesign of current models. Therefore, the agency concludes that the information approach should be emphasized.

2. Two comments urge FDA especially to consider the impact of the proposed amendments on users and the States. However, the comments do not specify the type of special consideration desired.

FDA advises that State radiation control officials were provided early drafts of the proposed amendments and were urged to comment on the proposal. No adverse comments or requests for special consideration were received from State agencies. The labeling and user information requirements established in the final rule are intended to provide users of CT systems with essential information, while equipment features to be included on any CT system are intended to provide radiation protection. FDA recognizes, however, that many of the new requirements are not amenable to verification by State radiation control personnel during routine compliance inspections. Thus, the agency is developing an appropriate compliance testing plan and methodology (see also paragraph 44 in this preamble for a related comment).

3. One comment states that CT systems are among the most dangerous and least effectively used radiological technologies in common medical use. The comment points out that FDA does not have the authority to control equipment use and argues that such control is needed to solve the problem. The comment also suggests that, by amending the diagnostic x-ray equipment standard as proposed, FDA would facilitate the acquisition and misuse of CT systems. The comment contends that, in many procedures the radiation dose delivered by CT systems is of the same order of magnitude as the doubling does for leukemia; thus, FDA's action would help to produce a major epidemic of radiation-induced leukemia, cancers, and other diseases in the next 20 years.

The agency does not agree that these amendments will facilitate the acquisition and misuse of CT systems. An informed user is less likely to misuse a CT system than a user lacking the information that the standard will provide. The amendments should increase user awareness of the does delivered by CT systems. Also, the comment's statement regarding the safety and the effective use of computed tomography is not substantiated by scientific data. On the contrary, organizations such as the American College of Radiology have concluded that the diagnostic effectiveness of computed tomography is no longer in question. The comment's evaluation of computed tomography risk (based on 5 rem as the doubling dose for leukemia) has not been supported by valid scientific evidence. Further, the support cited for the comment's contention is replete with news release items and unpublished reports. The few published reports quoted represent the opinion and analysis of a small minority of scientists.

Risk from the use of computed tomography needs to be evaluated against its considerable and well-established benefits. The provisions that this final rule establish only deal with safety and technical effectiveness of CT systems, which is all that a performance standard can address. The standard is aimed at assuring the CT systems will perform as the manufacturers claim and that patients of, and nonpatients near, such systems are protected by minimizing the possibility of accidental exposure and limiting stray radiation. The required dose information (as measured in phantoms) helps to assure technical effectiveness of such systems. These features indeed address the concerns voiced by the comment.

The agency will continue monitoring scientific data on the risk of ionizing radiation associated with diagnostic radiology as such data become available. FDA also will continue its programs designed to encourage reduction of radiation doses while maintaining or increasing the quality and effectiveness of diagnostic radiology in general, including radiation produced by CT systems. However, the agency concludes that the comment has not presented sufficient grounds to warrant a change in the final rule.

4. One comment argues that the proposed amendments would substantially increase the cost of computed tomography equipment with a yield in benefit that is at least unclear.

FDA does not agree with this comment, which was not supported by any data. The comment did not provide any information as to which requirements would add significant costs, nor did it object to the agency's assessment of the economic impact of the proposed rule, which assessment was included in the administrative file on the proposal and available for public review. Although the benefits of the amendments cannot be quantified precisely, many of the requirements implement basic radiation safety principles. Considering the risks and benefits, the estimated costs of the amendments are small. The threshold assessment supporting these conclusions is on file in FDA's Dockets Management Branch (HFA-305), Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and is available for public review between 9 a.m. and 4 p.m., Monday through Friday. FDA rejects the comment as speculative.

5. One comment indicates that the degree of verification specified completely ignores the customary pattern of CT system scanningin which the radiologist participates in image production and can identify problems and make adjustments as he or she proceeds with an examination.

FDA believes that, rather than ignoring the crucial role of radiologists, the amendments provide radiologists with information to assist them in the optimal use of CT systems rather than placing design constrains on the equipment itself. The agency disagrees with the comment.

6. One comment states that FDA should require manufacturers to supply with CT systems a list of all documentation and software available for hardware/software diagnosis. According to the comment, this information would allow a greater degree of quality assurance on the various systems.

The suggested information does not relate directly to the radiation safety performance of CT systems. Also, all such information and documentation would not be appropriate for every user of a CT system. Further, FDA believes that availability of information regarding software available for hardware/software diagnosis would be more appropriately a matter for negotiation between the vendor and purchaser during the procurement process. FDA also believes that the quality assurance provisions of the amendments are adequate to address the minimum needs of all users and that it would be inappropriate to include the suggested provision in the final rule.

7. One comment states that FDA should require that CT systems have the capability to determine the area of any region of interest (ROI) in a tomogram. The comment argues that this capability is an important feature in a CT system, with many clinical applications, and manufacturers should be required to provide a method to calculate and display ROI areas. According to the

comment, manufacturers should also be required to specify in the operators' manual the accuracy with which ROI areas may be determined.

FDA acknowledges that a display of ROI areas may be a useful feature in many clinical situations, but the agency concludes that such information is not radiation-safety related. Thus, it would not be appropriate for FDA to establish any such requirement in a performance standard issued under the Radiation Control for Health and Safety Act of 1968. The agency declines to add such a requirement to the standard.

General Definitions

8. One comment notes that, throughout the proposed regulations, "scan" (proposed § 1020.30(b)(59)) and "scan sequence" (proposed § 1020.33(b)(14)) appear to refer to different things, but the definitions do not clearly delineate the difference. The comment suggests that FDA restrict the definition of "scan" to a single tomogram and that FDA define "scan" as "the process of collecting the x-ray transmission data which is necessary to produce a single tomogram. However, a multiple tomogram unit collects data for two or more tomograms simultaneously (i.e., in a single scan)."

FDA advises that it intended the term "scan" to refer to the process of obtaining x-ray transmission data to construct an image or tomogram whereas "scan sequence" refers to a series of scans conducted under preselected conditions of operation. To make clear its intent, FDA has revised § 1020.30(b)(59) in the final rule to define "scan" as "the complete process of collecting x-ray transmission data for the production of a tomogram. Data may be collected simultaneously during a single scan for the production of one or more tomograms." (See also paragraph 32 in this preamble for a discussion of the revised definition of "scan sequence.")

9. One comment on the proposed definition of "tomogram" (§ 1020.30(b)(61)) suggests that the word "depiction" be replaced by the word "mapping" to add to the specificity of the term "tomogram."

FDA notes that "mapping" is a mathematical term having a meaning that is not appropriate to describe a tomogram obtained with conventional tomographic equipment. The definition of "tomogram" is intended to be a general definition, not restricted to tomograms obtained from CT systems. Therefore, no change is necessary.

10. One comment disagrees with the agency's rationale for using the term "tomogram" to represent the output of a CT system. The comment argues that the term "slice" has been in common usage within the industry for several years and that use of the term "slice" to represent output of a CT system is preferable.

FDA notes that the term "slice," as commonly used by industry, refers to the portion of the body that is scanned for the production of a computed tomography image. In contrast, the term "tomogram" refers to the depiction of the x-ray attentuation properties of a section through a body. The two representations are not the same. "Tomographic plane," however, as defined in § 1020.33(b)(17) of this final rule, is analogous to the term "slice." Even if the term "slice" may commonly be used to represent output of a CT system, the term "slice" does not lend itself to a precise definition, nor does it form an adequate framework for constructing mandatory requirements (see 45 FR 72206). The definitions recommended by a working group of the International Commission on Radiation Units and Measurements (ICRU) specifically include definitions of the terms "tomographic section" and "tomographic plane." They do not, however, include a definition of the term "slice." The nomenclature proposed by ICRU is consistent with this final rule. Therefore, the agency concludes that no change in the definition of "tomogram" is necessary.

Applicability

11. FDA has determined that proposed § 1020.33(a) did not clearly express the agency's intent with respect to new, remanufactured, or reassembled CT systems. The manufacturing process includes actions or activities, such as refurbishing or remanufacturing, to upgrade an electronic product by providing new features or capabilities that were not part of the original design. The agency believes that strict adherence to this principle may be inappropriate for CT systems and, on its own initiative, has revised § 1020.33(a) in the final rule to make clear that the rule applies to newly manufactured and to "remanufactured" CT systems as defined in new § 1020.33(b)(13). FDA advises that a remanufactured CT system is any system which is modified such that the resulting radiation dose and imaging performance of the system become substantially equivalent to any CT system manufactured by the original manufacturer after the effective date of these amendments. Thus, when any CT system previously certified under § 1020.31 or § 1020.32 is so modified, it is considered to be remanufactured, and the modified system becomes subject to the requirements of § 1020.33. This policy will assure that a user who receives any substantially modified CT system will be provided appropriate information regarding the system and that such system will include the performance features required by § 1020.33.

FDA recognizes that subjecting used CT systems to the same requirements that apply to new ones could add to the cost of used CT systems. However, purchasers of used CT systems have the same need for information concerning dose and imaging performance and for the performance required by § 1020.33 as do purchasers of new CT systems. The user benefits from these required features, such as accurate scan increment and indication of the tomographic plane for a CT system, justify the expected costs of bringing used systems into compliance with § 1020.33. The agency intends to evaluate the need to expand the applicability clause of § 1020.33 to include any CT system manufactured prior to the effective date and sold and subsequently reassembled. At the present time, however, these systems will not require certification of compliance with § 1020.33 unless they meet the definition of a "remanufactured system."

To maintain consistency, the applicability paragraph of § 1020.30 also has been revised and renumbered.

12. Two comments on § 1020.33(a) state that §§ 1020.31 and 1020.32 should be revised to exclude CT systems from the provisions of the diagnostic x-ray standard applicable to radiographic and fluroscopic equipment because many CT systems produce digital radiographic images that are used to locate precisely internal anatomical landmarks to enable patients to be positioned accurately for CT scanning. The comments argue that the amendments, as proposed, do not recognize such radiographic "localization" procedures and that it is not clear whether the provisions of § 1020.31 or § 1020.32 would apply to such an imaging mode.

FDA agrees that CT systems should be excluded from the requirements of §§ 1020.31 and 1020.32, and the introductory paragraphs of these sections of the final rule have been modified accordingly. FDA recognizes that many CT systems can operate in a mode which does not produce a computed tomogram. For example, many systems operate in a mode that has been termed "digital radiography" or "scanned projection radiography," and produce an image analogous to conventional projection radiography. The agency did not intend to address

this feature of CT systems nor are any of the requirements established by this rule directed to such feature. The provisions established by new § 1020.33 apply only to the computed tomography mode of operation.

FDA did not receive any suggestions for controls on the scanned projection radiography mode of operation, and the agency is not aware of specific adverse experiences associated with this mode of operation that would necessitate controls not currently incorporated into such systems. In view of the continuing development of this feature on some CT systems involving special techniques such as dual energy projection scanning, the agency has not proposed requirements at this time.

X-ray systems that are not CT systems but that provide digital imaging capability continue to be subject to § 1020.31 or § 1020.32. The agency is continuing to assess developments in the areas generally referred to as digital radiography or digital fluoroscopy and will address these areas should the need for additional controls be demonstrated.

CT System Definitions

13. One comment on § 1020.33(b)(1), the definition of "computed tomography dose index (CTDI)," suggests that FDA make clear that the CTDI applies to a single scan. Two other comments observe that the definition as written applies to single tomogram systems only. Another comment indicates that, for a multiple tomogram system, it is not clear to which tomographic plane the dose profile should be referenced.

The proposed definition of CTDI would have applied to systems producing a single tomogram in a scan. FDA has modified the definition ofCTDI (final § 1020.33(b)(1)) to allow for multiple tomogram systems. The CTDI concept is applicable to multiple tomogram systems to describe the average dose resulting from a series of scans where the individual tomographic sections imaged during the scan are adjacent and the increment between scans is the product of the number of tomograms produced in a single scan (n) and the nominal tomographic section thickness (T). When the increment between scans is other than nT, the denominator of the expression for the CTDI has to be modified to correspond to the magnitude of the scan increment.

For multiple tomogram systems, the dose profile is obtained simultaneously for all tomographic sections in a scan. Thus, a dose profile is associated with the scan rather than an individual tomogram or tomographic plane. The planes of the individual tomograms are assumed to be perpendicular to the axis about which the x-ray tube revolves. Based on these considerations and those discussed in paragraph 14 of this preamble, FDA has revised § 1020.33(b)(1) to define CTDI as: the integral of the dose profile along a line perpendicular to the tomographic plane divided by the product of the nominal tomographic section thickness and the number of tomograms produced in a single scan; that is:

$$CTDI = \frac{1}{nT} \int_{-7T}^{+7T} D(z)\, dz$$

Where:
z=position along a line perpendicular to the tomographic plane.
D(z)=Dose at position z.
T=Nominal tomographic section thickness.
n=Number of tomograms produced in a single scan.

This definition assumes that the dose profile is centered around z=o) and that, for a multiple tomogram system, the scan increment between adjacent scans is nT.

14. Several comments support the concept of CTDI. However, these comments argue that it may be difficult to compute the integral if the limits are as proposed (i.e., +/− infinity). The comments suggest that extrapolating to "zero" dose, especially for small-slice thicknesses, may result in misleading CTDI's. These coments recommend that integration be performed over a finite length.

FDA advises that the concept of the CTDI was proposed for its usefulness in estimating the average dose from a typical clinical procedure consisting of a series of adjacent scans. This estimate of average dose is most accurate when the dose profile is integrated over a length corresponding to the product of the number of scans in a procedure and the increment between scans. For large slice thicknesses (approximately 10 millimeters (mm)), there is little difference between integrating the dose profile over the length typical of a procedure, e.g., 10 to 15 times the slice thickness, or integrating the dose profile over the ideal limits of +/− infinity as FDA originally proposed. With the advent of CT systems designed to allow the use of narrow slice thicknesses (a few mm), the concerns of the comment regarding the limits of integration are valid.

Based on measurements on systems providing slice thicknesses of 5 mm or less, the use of integration limits of +/− infinity or any single specified length suitable for large slice thicknesses would not be realistic and would result in overestimation of the average dose from a procedure consisting of a limited number (10 to 15) of adjacent narrow slices. Integration limits of +/− infinity would assume that procedures employing narrow slice thicknesses consist of large numbers of adjacent scans, perhaps as many as 50 to 100 scans. It is more appropriate to integrate over a distance related to the slice thickness. Therefore, the limits of integration in the final definition of CTDI have been changed to specify integration over a length equal to 14 times the nominal tomographic section thickness centered about the dose profile.

The choice of 14 section thicknesses as the length over which integration will be done is influenced by several considerations but is ultimately somewhat arbitrary. For large slice thicknesses, the difference between integration over 14 slice thicknesses and integration over a greater length is small. In addition, typical CT clinical procedures involving the head consist of 8 to 10 adjacent scans, whereas there is some evidence that typical procedures involving the body consist of more than 10 adjacent scans. Adopting the length of 14 slice thicknesses is a compromise that allows the approximation of both modes of scanning in one definition of CTDI. There are only anecdotal data to indicate the number of scans in a typical procedure when the procedure consists of a series of very narrow slice thicknesses such as are currently available on some CT systems. Indeed, there may not be a "typical procedure" when using very narrow slices because such techniques usually follow localization scans and should be limited in number due to radiation dose considerations. FDA chose a length consisting of 14 times the slice thickness to provide a good estimate of the average dose from a series of narrow slices as well as from larger slices.

FDA notes that the CTDI can be obtained by integrating the dose profile for a single scan or by directly measuring the average dose in an interval T at the center of a series of 14 scans spaced by the nominal tomographic section thickness.

15. A comment notes that the CTDI has not been assigned a measurement unit (e.g., rad, Gray).

FDA advises that the CTDI may be expressed in the unit used to describe absorbed dose, the Gray in the revised System Internationale (SI). Because the requirement to state the CTDI is informational, FDA is allowing

manufacturers the opportunity to use the older unit, the rad, or both units for describing absorbed dose when communicating dose information to the radiological community where the newer unit is less familiar. No specific requirement on the unit to be used is specified.

16. Several comments on proposed § 1020.33(b)(2) suggest that FDA should clarify the definition of "contrast scale." The comments argue that, in some materials, there is a rapid change in linear attenuation coefficient as a function of effective photon energy and that the effective photon energy can be a function of location in a phantom and of phantom size. Thus, the agency needs to make clear how effective photon energy is established and how the variation of contrast scale versus phantom size or location within a phantom should be specified. According to the comments, pioneer CT systems were operated at high kilovoltage (kVp) because of the limited efficiency of detection of the x-ray beam that limited the signal to the detector. With the advent of larger x-ray beams and more efficient detectors, these system limitations have been reduced, and multiple kVp's that result in large variations in the contrast scale for a CT system are being used.

The agency agrees that the effects of the energy dependence of the contrast scale need to be reflected in the manufacturers' choice of methods for measuring and specifying the contrast scale for each particular system. however, uncertainties or variations in this quantity due to variations in the effective energy of the x-ray beam would be addressed in the description of test methods and statement of maximum deviation required by final § 1020.33(c)(3)(v). Therefore, FDA concludes that a change in the definition of contrast scale is not necessary.

17. Several comments suggest that the term "contrast scale" in final § 1020.33(b)(2) should be changed to "CT contrast scale" to make clear that the term applies only to CT systems.

FDA believes that the addition of the word "computed tomography" or the letters "CT" to the term "contrast scale" would not add any information or clarity to the definition. FDA advises that all definitions in § 1020.33(b) are specific to CT systems. Therefore, no change is necessary.

18. A comment suggests that the definition of "contrast scale" might be generalized as, "the change in linear coefficient per unit change in CT number." Thus, according to the comment, the contrast scale would be a fraction of the CT number and would have a particular value for water but possibly different values for other substances.

The agency notes that to reference the contrast scale and description of system noise to water reflects conventional usage of the term. The comment did not provide any reason or advantage to be gained by deviating from this convention. Therefore, the agency rejects the comment.

19. One comment on proposed § 1020.33(b)(4) suggests that "CT number" should be defined more precisely, e.g., to state how it relates to x-ray attenuation.

FDA does not believe that it would be useful to try to define "CT number" more precisely because there is not any unique relationship between the CT number and x-ray attenuation. The agency rejects the suggestion.

20. Two comments suggest that FDA delete from § 1020.33(b) its proposed definition of "dose." The comments argue that any definition of the term "dose" should be included in § 1020.30(b) and should be the definition recommended by ICRU.

FDA believes that a definition of the term is needed to attach an explicit meaning to "dose" when it is used with respect to CT systems. However, FDA agrees that it should be included in § 1020.30(b) because it also is applicable to other diagnostic x-ray systems. FDA also agrees that ICRU's established definition should be adopted. Therefore, the agency has removed and reserved proposed § 1020.33(b)(5) and has added the revised definition of "dose" in new § 1020.30(b)(62).

21. Two comments on § 1020.33(b)(6) suggest that this definition should be entitled "CT dosimetry phantom," rather than "dosimetry phantom" as proposed.

Although, as discussed in paragraph 17 of this preamble, all definitions in § 1020.33(b) apply to CT systems, the agency agrees with this suggestion because the CT dosimetry phantom defined in final § 1020.33(b)(6) is specifically designed for use with CT systems, whereas dosimetry phantoms are used for determining doses delivered by other x-ray systems. FDA has revised the term accordingly.

22. On its own initiative, FDA has incorporated into final § 1020.33(b)(6) a description of standard CT dosimetry phantoms. At the time FDA issued the proposed amendments, the agency intended to describe the standard CT dosimetry phantoms in a separate FDA publication to be made available to interested persons (see 45 FR 72206). Proposed § 1020.33(b)(6) referred to the separate document for the description and suggested design for phantoms to be used to measure and report dose information. The agency has reconsidered the matter and has concluded that it is appropriate to include the description within the standard, which will obviate the need for interested persons to refer to a separate document for the description. The document "Standard Computed Tomography Dosimetry Phantoms" (Ref. 1 in the proposal) will not be issued at this time.

23. Two comments on § 1020.33(b)(7) suggest that this definition be entitled "CT dose profile," rather than "dose profile" as proposed. The comments also suggest that the word "tomographic" in the proposed definition be changed to read "CT." The comments also ask whether the profile should be measured in air or at a specified location within a phantom.

As discussed in paragraph 17 of this preamble, the definitions in § 1020.33 apply only to CT systems. Therefore, it is unnecessary to specify or explicitly use the term "computed tomography" or "CT" with each definition included in § 1020.33(b). A dose profile may be measured in any material or media and is not restricted to any particular line. To obtain the dose information that § 1020.33(c) requires be provided with a CT system necessitates measurement of the dose in the standard CT dosimetry phantom and that dose profiles be obtained along lines parallel to the axis of rotation of the phantom and perpendicular to the tomographic plane. To make clear its intent, FDA has revised final § 1020.33(b)(7) to read: " 'Dose profile' means the dose as a function of position along a line."

24. One comment on § 1020.33(b)(9) argues that, as proposed, the definition of "multiple tomogram system" may include a system producing several images in a single sequence while performing a function such as dynamic scanning. The comment suggests that the word "simultaneously" should be added after "tomogram" if the agency intended to exclude such a system.

FDA agrees that the suggested change would clarify the definition. Therefore, the agency has revised § 1020.33(b)(9) to read: " 'Multiple tomogram system' means a computed tomography system which obtains x-ray transmission data simultaneously during a single scan to produce more than one tomogram." (See also paragraph 13 of this preamble for a related comment.)

25. One comment on § 1020.33(b)(10), the definition of "noise," states that the concept of noise may be simplified by defining it in terms of only the standard deviation of the CT numbers. The comment argues that the standard

deviation is simpler and is perfectly adequate for noise comparative purposes because the multiplicative contrast scale in the proposed definition is approximately the same (except for minor changes produced by differences in the beam quality of the scanners) for all CT systems. Besides the obvious advantage of eliminating the need to perform the calculations set forth in the proposed definition, use of the standard deviation of the CT numbers would be more directly applicable for assessing limitations due to noise fluctuations in the familiar CT number scale, according to the comment. The comment suggests that, because the images are clinically evaluated in terms of CT numbers and CT number differences, the noise should be expressed in these same units.

FDA does not agree that the multiplicative factor of the contrast scale is "approximately the same" for all CT systems. Because CT systems are not required to and do not use the same contrast scale, the definition of "noise" as proposed is necessary if that term is to be at all useful in describing the performance of different models of CT systems having different contrast scales. Therefore, FDA declines to revise the definition.

26. A comment on § 1020.33(b)(10) suggests that, because the contrast scale and attenuation coefficient may be dependent upon the conditions of operation of a CT system, FDA should include these factors as explicit elements of the definition. This comment notes that the proposed definition of noise would include fixed pattern fluctuations in the CT numbers (analogous to structure mottle in radiographic screens) as well as fluctuations dependent upon the x-ray beam; under such conditions, "noise" would not be a single function of dose, according to the comment.

The agency advises that noise and the other characteristics that describe system performance are functions of the system's conditions of operation. Thus, if the agency specifies any of these characteristics, it also needs to specify the contitions of operation. With regard to the information required by the new standard to be provided for CT systems, noise shall be specified for the same conditions of operation as the dose information. There is no need to specify the conditions of operation in the definition of any of the performance parameters. Therefore, a change in final § 1020.33(b)(10) is not necessary.

27. Several comments on § 1020.33(b)(11), the proposed definition of "nominal slice thickness," point out that FDA elsewhere rejected the terms "slice" and "slice plane" presumably because the terms cannot be precisely defined, yet FDA proposed to define "slice" in § 1020.33(b)(11). These comments suggest that, for consistency's sake, the word "slice" in the heading of § 1020.33(b)(11) should be replaced by "tomogram."

The agency notes that the comments received regarding the proposed definition of "nominal slice thickness" and related definitions illustrate the difficulties in attempting to develop standard nomenclature useful for regulatory purposes where a strong consensus as to the preferred terminology does not exist. Some persons have adopted terminology from conventional radiography, particularly tomography, while others use terms invented or adapted especially for computed tomography. In considering the definitions to be included in the standard, the agency followed common usage where possible. However, some definitions or sets of definitions that have been proposed by various authors, comments, or standards groups are inappropriate because they lack the precision or definitiveness required for regulatory usage. In this instance, terms are needed to describe and differentiate between the image produced by the CT process and the portion or section or an object whose properties are reflected in the image produced. The proposed definitions in § 1020.33 used the term "tomogram" to describe the image produced by computed tomography in the same sense as in conventional tomography. However, FDA did not attempt to designate that portion of an object being imaged by the CT process, although reference is made to the thickness of the region imaged.

Two other concepts underlying the amendments need clarification. These are the terms used to refer to the thickness of the section whose properties contribute to the CT image. The thickness of the imaged volume is reflected in the quantity which has commonly been called the "slice thickness," which usually has been specified by manufacturers of CT systems as a technique of operation selectable by the user. This term generally is used to denote the distance by which the patient is translated between consecutive scans to obtain complete imaging of a region of the body.

The "section thickness" or "slice thickness" also is embodied in the concept of the width of the "sensitivity profile" or "axial response function." The width of the sensitivity profile should bear some relation to the value used for section thickness, although the relationship has not been uniform among manufacturers. Several comments objected to the idea of standardizing this relationship but did not explain any basis for their objections. The agency concludes that a uniform method of relating the width of the sensitivity profile to the value used for the nominal tomographic section thickness is necessary for the nominal tomographic section thickness to be a useful description of system performance. Use of a standard specification could require changes in the designated section or slice thickness of some current models of CT systems. Based on these considerations, the agency concludes that the proposed term "nominal slice thickness" would be inappropriate and in final § 1020.33(b)(11) uses the term "nominal tomographic section thickness." FDA also has added new § 1020.33(b)(18) to define "tomographic section."

28. Another comment on § 1020.33(b)(11) notes that it may be beneficial not to restrict the definition of "nominal slice thickness" (nominal tomographic section thickness) to measurements at the center of the volume. Several comments state that changing the value of the "nominal" slice thickness setting at the operator control console frequently changes the separation of the x-ray beam collimators and the corresponding FWHM (full width half maximum) of the sensitivity profile, which may or may not be equal to the nominal setting. For this reason, the comments suggest that "nominal slice thickness" should be stated as "sensitivity thickness" or "sensitivity FWHM."

FDA disagrees. In specifying that the tomographic section thickness be measured at the center of the tomographic section, FDA has chosen an appropriate compromise location for measuring this parameter. The tomographic section thickness as determined from the sensitivity profile varies as a function of location in the tomographic plane. The term "nominal" is applied to the tomographic section thickness at the center of the tomographc section to indicate the variability of the section thickness.

29. Two comments on proposed § 1020.33(b)(11) argue that FDA should avoid specifying the percent of the sensitivity profile at which the nominal slice thickness is defined. The comments suggest that the definition should extend to the thickness of the tomographic plane (cut thickness) only and the percent of the sensitivity profile at which it is specified should be provided by the manufacturer. These comments also suggest that terms such as "cut

thickness" and "cut level" should be defined.

The agency concludes that restricting the definition in the manner proposed by the comments would result in a nonuniform method of measurement. The agency also believes that it is inappropriate to define all the terms in use in the field; only terms that are used in the regulations need to be defined. Therefore, the agency rejects the comments.

30. One comment on proposed § 1020.33(b)(12) suggests that FDA define more precisely the term "picture element." The comment argues that a tomogram can be regarded (and defined, if desired) as a mapping of certain x-ray attenuation data (CT numbers). Specifically, the comment suggests that a picture element be defined as a square of area alpha centered on a map point, where alpha is the reciprocal of the number of map points per unit area of body cross section. Two other comments argue that the word "PIXEL" should be included in the definition as an acronym for picture element because it has become an accepted and frequently used acronym for the term "picture element."

The agency does not believe that "picture element" needs to be more precisely defined. The word "elemental" means a fundamental unit incapable of being further subdivided and is an adequate description. The acronym "PIXEL" is not required as it is not used in the standard. Furthermore, the definition established by § 1020.33(b)(12) is similar to the definition proposed by a working group of ICRU. Therefore, the agency concludes that it should not modify the definition as suggested. (See also paragraph 72 in this preamble for a related comment.)

31. One comment on proposed § 1020.33(b)(13), the definition of "scan increment," suggests that the phrase "between successive scans" be inserted between "system" and "measured" for clarity. The comment implies that "scan" has the more restricted meaning.

The agency agrees that the suggested change may clarify the definition and has revised final § 1020.33(b)(14) accordingly.

32. One comment on proposed § 1020.33(b)(14), the definition of "scan sequence," notes that one could conceive of a sequence of many scans in which the CT conditions of operation were automatically varied during the sequence. The comment argues that such automatic variations of x-ray parameters are commonly employed in angiography of the legs, and the agency's definition should not be unduly restrictive.

The agency agrees that the conditions of operation of a CT system could vary in a predetermined manner during a preselected series of scans comprising the scan sequence. Therefore, the agency has revised § 1020.33(b)(15) in this final rule to read: " 'Scan sequence' means a preselected set of two or more scans performed consecutively under preselected CT conditions of operation."

33. Two comments on proposed § 1020.33(b)(15), the definition of "sensitivity profile," argue that the proposed definition is incomplete. These comments suggest that the phrase "to a test point" be inserted between "CT system" and "as a function."

FDA previously considered using a phrase similar to that suggested in these comments but concluded that such wording is not necessary to define the parameter. Including the suggested phrase would allow the interpretation that the sensitivity profile of a CT system is to be measured using a small test point positioned across the x-ray field. The test method used to determine the sensitivity profile may be at the discretion of the manufacturer but is required to be documented in the information provided to the user of a CT system. Therefore, the agency concludes that the definition of "sensitivity profile" should be retained as proposed, and final § 1020.33(b)(16) so provides.

Information To Be Provided to Users

34. One comment on § 1020.33(c) suggests that the standard should allow required information to be provided in a separately bound volume that would be referenced in the user's manual.

The agency agrees that it would be appropriate to allow the technical and safety information required by § 1020.33(c) to be included in a separate manual. Therefore, the agency has revised the last sentence of the introductory paragraph of § 1020.33(c) to read: "This information shall be identified and provided in a separate section of the user's instruction manual or in a separate manual devoted only to this information."

35. Another comment on § 1020.33(c) argues that manufacturers should state the allowable variations in the conditions of operation, such as x-ray tube potential, current, etc., or the allowable variations in output performance but that it is not necessary to specify both variables. The comment states that some CT systems have ony a single kVp value that is used for all procedures. Beam quality for such systems can be adjusted to suitable values by selectable filters without changing kVp, according to the comment. Therefore, because the definition of technique factor accuracy is only a means to control dose and image quality, specifying the allowable variations in dose and image quality (CT conditions of operation) precludes the need to use technique factor accuracy as a compliance parameter for CT systems. The comment recommends that the introductory sentence in proposed § 1020.33(c) be revised to read: "Each manufacturer of a CT x-ray system shall provide the following technical and safety information, in lieu of that required under § 1020.30(h)(3)(vi) and (vii) of this chapter, to purchasers * * *."

The agency advises that imaging performance information is required to be provided only for suggested standard conditions of operation, not for the entire range of system operating conditions. The information that § 1020.33(c) requires be provided to users will not address the accuracy of technique factors over the entire range of system operation. Although the need for technique factor accuracy in most CT applications may be less than the need for consistency of output, there are applications such as bone mineral determinations or dual energy scanning for which accuracy of technique factors may be of concern. Until further information is available on this question, the agency is retaining the requirement as proposed. The requirement for technique factors accuracy is currently under review for all x-ray equipment as part of FDA's program for retrospective review of the diagnostic x-ray standard (see 47 FR 51710; November 16, 1982; also see 49 FR 2918; January 24, 1984), and the agency will consider the suggestion as part of this review.

36. Several comments on § 1020.33(c)(2) suggest that the dose information measurements be made by using dosimetry phantoms without patient supports and attenuation material in the beam. The comments argue that the normal patient support and attenuation materials vary from facility to facility depending on the clinical needs of the facility. Thus, according to the comments, measurements taken without the patient support and other attenuators would be more readily reproducible by a facility than would measurements taken under the conditions proposed by FDA. Also, because of the differences in the design of a patient support (to which a patient tends to conform) versus a dosimetry phantom, the dose information obtained with patient supports may be misleading. These comments conclude that, because dose measurements in a

phantom are not directly transferable to human dose distribution or to clinical image quality, the ability to reproduce measurements provided by the CT system manufacturer is more important than measurements simulating clinical scanning.

The requirements in § 1020.33(c)(2) are intended to provide users of CT systems with information on the radiation doses delivered to standard phantoms. FDA recognizes that the doses to a phantom do not correspond directly to doses to a patient. However, the doses measured in the phantoms provide an indication of the magnitude of the doses that would be delivered to patients and of the changes in doses as a function of changes in conditions of operation.

The agency concludes that, because of the variability in patient bolusing and supporting devices, the dose measurements should be made with the phantom placed on the normal patient couch, tabletop, or support device but without any other attenuating materials used. Therefore, the agency has revised the last sentence of § 1020.33(c)(2) to read: "All dose measurements shall be performed with the CT dosimetry phantom placed on the patient couch or support device without additional attenuating materials present."

37. Two comments disagree with FDA's representation in the preamble to the proposal that dose information obtained using standard dosimetry phantoms would be indicative of the magnitude of doses to be expected in patients under the same set of conditions and system operation (see 45 FR 72207). The comments argue that this claim has not been substantiated scientifically and urge FDA to state in the final rule that the phantom dosimetry is not a precise indicator of the dose delivered to any particualr patient.

FDA does not contend that the dose information to be provided by use of standard dosimetry phantoms will be a precise measure of the dose to each patient, nor did it so contend in the proposal. The dosimetry phantoms allow radiation dose to be measured in a standard manner, and the resulting dose information will demonstrate the variation in dose as a function of system conditions of operation. User information provided by manufacturers should fully explain the limitations of the dose information provided and clearly state that the data are from measurements in cylindrical phantoms and will not correspond exactly to patient doses. The required dose information is obtained using standard cylindrical phantoms and is only indicative of the doses delivered to patients under similar conditions. The exact dose delivered to a particular patient will vary depending on conditions of operation and patient variables. FDA concludes that it is not necessary to make any changes in the regulations to disclaim precision of the dose information.

38. One comment on proposed § 1020.33(c)(2) and the draft publication describing standard phantoms (see paragraph 22 of this preamble) suggests that the standard spell out in more detail the dose that is to be specified in user information. The comment also recommends that the standard dosimetry phantoms should be composed of polystyrene rather than polymethylmethacrylate (PMMA) and argues that polystyrene allows for more precise measurement of dose through the use of ionization chambers that can also be made from polystyrene-equivalent materials.

FDA intends that the dose information provided in accordance with § 1020.33(c)(2) would be the absorbed dose in the phantom; i.e., the dose in PMMA. The agency chose PMMA in lieu of polystyrene because of fabrication considerations. The former is less expensive and easier to machine. The differences in attenuation properties between the two materials and muscle tissue are not significant for the purpose of the final rule.

39. One comment notes that the thermoluminescent (TLD) dosimetry phantom may not be necessary because CTDI can be measured using a long pencil-type (integrating along the patient's axis) ionization chamber.

FDA does not agree that the TLD dosimetry phantom is not necessary. Although the CTDI may be measured with a long ionization chamber, a phantom is necessary to obtain the dose measurement. The regulations leave the choice of instrumentation for measuring the dose to the manufacturer but require the dose to be measured using the standard CT dosimetry phantoms specified in these regulations.

40. One comment states that FDA should require manufacturers to provide a computer readout of estimated dose (and estimated deviation) for given factors, serial scans, and patient size.

FDA disagrees. Although it may be feasible for a computer readout of estimated dose to furnish users with information on the dose delivered by a CT system, the comment did not provide any reason why FDA should require this information as part of the standard. It is not clear that users need dose information for every scan performed by a system. Dose information would be important when standard techniques are being established or when significant deviations from standard practice are considered. FDA concludes that the information required by the amendments is sufficient to promote safe use of CT systems.

41. One comment objects to setting upper limits of dose and stressed that physicians should select the dose as necessary to meet individual needs.

The agency advises that the final rule does not establish upper limits on CT system doses. Therefore, a change is not necessary.

42. Another comment notes that, to comply with the regulations, the CTDI would have to be evaluated at least 26 times for a CT system that operates with multiple x-ray tube potentials or current levels and allows multiple scan times, slice thicknesses, and head and body scans. The comment states that a CT system user needs information concerning only the maximum single slice and maximum multiple slice dose for the typical head scan and the typical body scan (4 dose values); any other conditions could be estimated because accuracy of dose information is not very important, and the regulations are intended only to help the user "estimate" the radiation hazard.

FDA agrees that several evaluations of dose are necessary for each model of a CT system to establish the variation in dose as a function of system conditions of operation. However, this needs to be done only once for each model. The resultant information provided to users will permit the estimation of dose versus technique factors that the comment suggests. The agency disagrees with the implication that the number of dose evaluations needed to comply with the provisions of the standard are excessive.

43. Two comments argue that, although the CTDI is an important dose indicator, simple statements of various maximum point doses may be more useful. The comments indicate that the CTDI should be included in user information, but the maximum point dose (and its relative distribution for typical modes of operation) is the relevant measure needed by the physician using a CT system. These comments suggest that other dose descriptors may be more useful than the multiple scan average doses along lines parallel to the axis of rotation of the CT system (the information expressed by the CTDI).

The comments provide no data or other evidence to support their argument. The "maximum point dose" may be highly localized, as in the case of a 360° scanner, which rotates more

than 360°, resulting in some regions of the body being irradiated twice during a scan. The "maximum point dose" does not indicate the dose received by the majority of the volume of tissue imaged or exposed to radiation. A consensus as to what dose information is most useful to users of CT systems does not exist. The agency believes that, once understood by users, the multiple scan average dose for the locations specified will be a useful and relevant description of doses resulting from CT systems. However, the final rule does not prohibit manufacturers from also providing information regarding maximum point doses. FDA concludes that manufacturers should be required to state the CTDI, and the final rule so provides.

44. A comment notes that the proposed requirements would not be readily adapted to field testing for compliance by State inspection programs. The comment argues that the proposed CTDI would be difficult to measure with instruments currently available to State compliance inspectors and urges FDA to develop information to help State inspectors verify CTDI's.

FDA agrees that field testing by State radiation control personnel may not be feasible for many of the requirements established for CT systems. The agency is currently developing an appropriate compliance testing strategy for CT systems; techniques for field testing will be developed where appropriate.

45. One comment concurs with the use of CTDI as a dose description and expands on the agency's description of the "useful features" of the CTDI (see 45 FR 72207). The comment recommends that FDA limit the maximum allowable misalignment of a CT system by requiring that the CTDI be less than or equal to the product of some number N (where N can be chosen to be 2.0, 2.5, or 3.0) and the maximum dose in a phantom.

The comment provided no evidence to show why the suggested criteria should be used to limit CT system performance or what the effect of such limits would be on image quality for various CT system designs. In view of the uncertainties about how existing CT system designs relate to the proposed criteria, FDA concludes that it is appropriate to retain the proposed approach of providing dose information without imposing limits on the dose delivered. Purchasers of CT systems may evaluate the relationship between CTDI and the maximum dose and use this information in their purchase decisions without FDA imposing a requirement of the kind suggested.

46. On its own initiative, FDA has incorporated into the amendments in § 1020.33(c)(2)(i) the measurement locations in the CT dosimetry phantom for determining CTDI. At the time of the proposal, FDA intended to describe the standard CT dosimetry phantom and specify the dose measurement locations in a separate FDA publication to be made available to interested persons (Ref. 1 in the proposal). As stated in paragraph 22 of this preamble, the agency has concluded that it will be more useful to include this information in the regulations rather than in a separate document. Section 1020.33(c)(2)(i) is revised accordingly.

47. One comment questions the provision in proposed § 1020.33(c)(2)(ii) that, as each individual CT condition of operation is changed, "all others shall be maintained at the typical values" required by § 1020.33(c)(2)(i). The comment notes that some equipment is designed so that a change of one CT condition of operation automatically causes a change in one of more other conditions; e.g., decreasing the x-ray tube potential may automatically increase the tube current to maintain sufficient dose for proper imaging. The comment suggests that only the independent conditions of operation need to be held constant and recommends that § 1020.33(c)(2)(ii) be revised to require only that, as each individual condition of operation is changed, other "independent" conditions be maintained.

FDA agrees with the comment. Dependent variables should be clearly identified by the manufacturer and explained to users to allow accurate estimation of changes in dose as a function of changes in system operating conditions. The agency has revised the third sentence of § 1020.33(c)(2)(ii) accordingly.

48. One comment argues that it is unnecessary to express results in terms of a normalized CTDI as proposed. The comment also asserts that proposed § 1020.33(c)(2)(ii) is difficult to understand as written and suggests that it should be revised to read: "the relative CTDI for the central location of the dosimetry phantom for each selectable rate and duration of x-ray exposure. The other conditions of operation are to be kept at the typical values described in paragraph (c)(2)(i) of this section. The CTDI is to be normalized to the value specified in paragraph (c)(2)(i) of this section for the central location. When there are more than two rate and duration selections, only the maximum and minimum CTDI need be given."

FDA disagrees with the suggested revision. Users need information that describes each independent condition of operation that affects the magnitude of the radiation dose delivered with all other independent technique factors held constant. The suggested provision would not convey the intent of the requirement and would not result in the necessary information being provided. The normalized CTDI is needed for convenience in calculating or estimating the resulting multiple scan average radiation dose when conditions of operation other than the standard conditions of § 1020.33(c)(2)(i) are used.

49. One comment on § 1020.33(c)(2)(iii) suggests that providing a direct CTDI value rather than a normalized value would be more meaningful to users of CT systems. Also, the comment states that the third sentence of proposed § 1020.33(c)(2)(iii) is unnecessary because it is redundant to § 1020.33(c)(2). The comment suggests that § 1020.33(c)(2)(iii) be revised to read: "The CTDI, at the location 1 centimeter interior to the phantom having the maximum CTDI in § 1020.33(c)(2)(i), for each selectable value of peak tube potential. When more than three values can be selected, the CTDI shall be given for the minimum, maximum, and a typical value of peak tube potential."

FDA believes that, for convenience in estimating the change in doses when several independent technique factors are varied from the standard values simultaneously, the normalized values of the CTDI will be more useful than would the suggested direct value. The normalized values would have to be calculated as a first step in any dose estimation procedure. Thus, FDA concludes that it should retain the requirement that CTDI be provided as a normalized value. However, to clarify the requirement, FDA has revised the last sentence of proposed § 1020.33(c)(2)(iii) and redesignated it as the second sentence to read: "When more than three selections of peak tube potential are available, the normalized CTDI shall be provided, at least for the minimum, maximum, and a typical value of peak tube potential." The agency agrees that the third sentence of proposed § 1020.33(c)(2)(iii) is redundant and has removed it from the paragraph.

50. Two comments on § 1020.33(c)(2)(iv) suggest that the dose profile should be reported at the location coincident with the maximum CTDI at 1 centimeter (cm) interior to the surface of the dosimetry phantom rather than at the center of the phantom as proposed by FDA. The comments argue

that, because of scatter radiation, the dose profile at the center of the phantom would make a well-collimated system appear to be poorly collimated. The comments assert that the dose profile obtained at the maximum dose location would best reflect the system collimation efficiency in that, as the profile is obtained nearer the center or exit side of the phantom, the increasing scatter radiation contribution to the dose profile distorts the profile.

FDA agrees that the dose profile will be the narrowest on the source side of the phantom. Such a profile would not reflect the thickness of the irradiated volume for a highly divergent beam. The profile measured at the center of the phantom is more reflective of the average thickness of the irradiated volume. Although a comparison of dose profiles and axial sensitivity profiles provides an indication of collimation efficiency, this comparison should be done at the center of the phantom where the volume irradiated by scatter radiation is reflected in the width of the profile. If FDA intended that manufacturers examine the collimation efficiency by only comparing the beam profile with the sensitivity profile, it would have provided that the measurement of intensity be made with an air equivalent phantom to reduce the effects of scatter. However, this is not the case. FDA intends that manufacturers provide information on the width of the irradiated volume from a single scan. Because scatter radiation contributes to this irradiation, the measurement should be made at the center of the dose phantom with scatter radiation contributing to the dose profile as it would under actual use conditions. FDA advises that the final rule allows manufacturers to provide additional information comparing dose and axial sensitivity profiles at locations other than the center of the phantom, but the agency declines to require that such information be provided.

51. One comment on proposed § 1020.33(c)(2)(vi) pointed out that, contrary to the statement in the paragraph, measurement protocols for determination of compliance were not described in the draft publication describing standard phantoms (Ref. 1 in the proposal).

The comment is correct. The agency has removed proposed § 1020.33(c)(2)(vi) from the final rule. As stated in paragraph 22 of this preamble, the document, "Standard Computed Tomography Dosimetry Phantoms," will not be issued at this time.

FDA's policy is to make measurement procedures available to the public by announcement of their availability in the **Federal Register**. The agency is developing a compliance testing program to support the amendments established by this final rule. When developed, FDA will make the procedures available for public review.

52. On its own initiative, the agency has revised the introductory paragraph in § 1020.33(c)(3) to amplify and clarify the meaning of the phrase "and all other aspects of data collection" as it applies to imaging performance information to be provided to users and to provide that such "other aspects" need only be "similar" to those used to provide dose information under § 1020.33(c)(2)(i). FDA intends that the conditions under which imaging performance information is obtained correspond closely to the conditions under which dose information is obtained. Such conditions would include use of a phantom or test device that has x-ray attenuation properties in the imaged tomographic section similar to those of the corresponding dose phantom. For the imaging performance parameters to be meaningful, they need to be obtained with phantoms that reflect realistic x-ray attenuation conditions, and FDA has revised § 1020.33(c)(3) so to provide.

By providing that the x-ray attenuation properties of the material in the tomographic section approximately correspond to those of the CT dosimetry phantom, FDA has left the choice of the design or construction of phantoms for determining the imaging performance to the manufacturer so long as the design and construction provide "similar" x-ray attenuation properties. It is not appropriate to describe precisely the imaging phantoms due to a lack of standardization in this area. However, it is appropriate that imaging phantoms have x-ray attenuating properties which differ from those of the dosimetry phantoms by no more than 20 percent. The agency will deem phantoms which have imaging properties that differ from those of dosimetry phantoms by no more than this to be "similar" as that word is used in § 1020.33(c)(3). Variations in phantom design, shape, dimensions, and materials prevent a more precise requirement at this time.

53. One comment on proposed § 1020.33(c)(3)(i) recommends that the statement of "noise" to be provided as part of the image performance information include the location within the image in which the measurement is made, the number of picture elements used in computing the "noise," the area of each picture element, and disclosure of whether the area used for the measurement of "noise" is circular or square.

The agency advises that the information referred to in the comment is part of the "test protocol or procedure" to be provided in accordance with § 1020.33(c)(3)(v). A change in § 1020.33(c)(3)(i) is not necessary.

54. One comment on proposed § 1020.33(c)(3)(ii) notes that § 1020.33(b)(8) defines the modulation transfer function as a two-dimensional function. Therefore, the direction of the graphical section through the modulation transfer function should be stated. In addition, the location of the point of measurement of the modulation transfer function should be specified, according to the comment.

FDA believes that the information described in this comment is properly part of the test methodology and, thus, would be included in the information provided in accordance with § 1020.33(c)(3)(v). The choice of factors concerning measurement method is left to the manufacturer. A change in § 1020.33(c)(3)(ii) is not necessary.

55. A comment on proposed § 1020.33(c)(3)(ii) argues that, to characterize the imaging performance of a CT system, it is necessary to obtain documentation on both high contrast spatial resolution and low contrast detectability. This comment notes that, under proposed § 1020.33(d)(1), the manufacturer is required to provide information on both high contrast and low contrast detectability as well as on an alternative to the modulation transfer function. The comment suggests that the requirement in § 1020.33(c)(3)(ii) be changed to state: "For the same imaging processing and presentation mode as that used in the statement of noise, a graphical presentation of the modulation transfer function or a picture of a scan of a high contrast resolution pattern, and a picture of a scan of a low contrast detectability pattern. The scan pictures must be accompanied by a description of the number and shape of the objects that constitute the test pattern. The scan pictures must include CT number measurements of the objects detected and their surroundings to have an indication or relative contrast."

FDA could have required that manufacturers provide more specific information, including the noise power spectrum. However, at the present time, the agency believes that to require a complete physical description of imaging performance would be excessive. Section 1020.33(c)(3)(ii) in the final rule requires an indication of imaging performance as given by the noise and modulation transfer function. This makes the dose information

meaningful. The particular parameters suggested in the comment do not offer any advantages for quantifying system performance because they are subjective measures and, therefore, are inappropriate for performance specifications. The agency concludes that it should not modify the standard as recommended by the comment.

Quality Assurance

56. One comment on § 1020.33(d) endorses FDA's proposal to require that manufacturers provide quality assurance (QA) information, emphasizing that such information will be helpful to users of CT systems. Another comment, however, argues that the proposed requirements would be inconsistent with the rest of the diagnostic x-ray standard in that FDA would require QA test tools and instructions to be supplied with computed tomography equipment but not with other diagnostic x-ray system components, e.g., x-ray tubes, intensifying screens, and image intensifiers, for which such tools are equally applicable.

FDA agrees that the standard applicable to CT systems differs somewhat from the standards applicable to other diagnostic x-ray systems. FDA believes that the unique nature of CT systems requires that new approaches be taken to assure the radiation safety and optimum performance of such systems. The difference in approaches is not an argument against their dual implementation. FDA has concluded that for CT systems it is more appropriate to emphasize providing the user with performance information and QA tools rather than to set performance limitations. Whereas the final rule sets some CT system performance limitations, its purpose is to avoid inhibiting the evolving technology of computed tomography, which overly restrictive performance limitations might do.

57. One comment on proposed § 1020.33(d)(1) recommends that FDA require that QA test phantoms provided with any CT system be capable of measuring nominal tomographic section thickness as defined in § 1020.33(b)(11). The comment states that section thickness depends on collimator setting and alignment, which often are adjusted in the field. Unless the section thickness for each individual unit is determined, the information provided under § 1020.33(c)(3)(iv) may be misleading, according to the comment.

The agency agrees that the QA phantoms provided with a CT system should include the capability to measure the tomographic section thickness. Such measurement will allow evaluation of the collimation system, which has a direct impact on patient dose. Many current designs allow operator variation of the tomographic section thickness, and a check of collimator function is a needed QA procedure. FDA has revised § 1020.33(d)(1) in the final rule to add "nominal tomographic section thickness" as a QA test parameter.

58. A comment on proposed § 1020.33(d)(1) notes that the regulation would require manufacturers to provide a phantom capable of indicating "resolution," but FDA did not define "resolution" in the proposed rule. The comment suggests that, if a "bar-type" resolution pattern is to be indicated, FDA should define "resolution."

FDA advises that CT system manufacturers may choose the type of indication of system resolution capability. A manufacturer is required only to specify the acceptable range of performance and provide the user a means of verifying that the specified performance is obtained. Because the standard does not require CT systems to provide a specific level of spatial resolution, it is not necessary to define the term.

59. A comment from a manufacturer of QA phantoms describes a phantom that it manufactures and suggests that this phantom be mentioned in the final rule. The comment stresses the importance of acceptance testing of the CT imaging system with a QA phantom and also suggests that the final rule require or strongly recommend routine quality assurance testing by CT users.

It is not appropriate for FDA to endorse specific products in a performance standard. Such endorsement of a proprietary article is contrary to FDA policy. It also would be inappropriate to require or recommend user practices by means of a performance standard that is directed to equipment and equipment manufacturers.

Information in Advertisements

60. Several comments on proposed § 1020.33(e) assert that FDA does not have the authority to regulate CT system advertisements through provisions in a performance standard issued under the Radiation Control for Health and Safety Act of 1968. Two comments refer to FDA's authority in this area under the Federal Food, Drug, and Cosmetic Act as amended by the Medical Device Amendments of 1976 (Pub. L. 94–295), arguing that under this act FDA has the authority to take regulatory action against a device as misbranded if the labeling is false or misleading, and, in deciding whether a device's labeling is false or misleading, FDA may consider representations made in the device's advertising. The comments further argue that, if a CT system is deemed to be misbranded because of misleading advertising, FDA has the power to initiate a seizure action against the device or injunction action to halt its distrubution, and, therefore, any restrictions in this final rule on CT system advertising would be redundant. Other comments argue that proposed § 1020.33(e) would impose severe recordkeeping burdens on manufacturers, and, unless modified, would constrain the exchange of scientific information about computed tomography. Still other comments question the usefulness of the requirement for users of CT systems on the grounds that advertising is not intended to be all inclusive in describing a product and that the radiation doses delivered by CT systems would be adequately addressed by the requirements to provide information to users.

FDA disagrees that it lacks authority to require certain language to appear in advertising of these products. Also, FDA believes that sufficient authority exists under sections 502 (q) and (r) and 520(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352 (q) and (r) and 360j(e)) to impose the proposed requirements on advertising materials related to CT systems. Such requirements may be established by regulation for restricted devices; thus, the proposed requirement envisioned the regulation of CT systems as restricted devices. Authority under the Radiation Control for Health and Safety Act may also exist. FDA has concluded, however, that, in light of the information required to be provided to users (§ 1020.33(c)), the provisions regarding advertising materials are not necessary at this time and would have imposed excessive burdens on manufacturers. FDA, therefore, has removed proposed § 1020.33(e) from the final rule and designated that paragraph as reserved.

Control and Indication of Conditions of Operation

61. Several comments on § 1020.33(f)(2)(ii) support FDA's proposal to require that an operator initiate each individual scan for the typical or normal situation in which spatial incrementing is the basis for the scan series. However, the comments point out that certain special studies necessitate the initiation of each individual scan in a series on the basis of biological function or preprogrammed

time intervals; in these situations it is impractical if not impossible for the operator to initiate each individual scan. Two comments suggest that it may be inappropriate to require operator initiation of individual scans for high-speed consecutive scan-flow studies. One of the comments indicates that it may be necessary for the operator to interrupt a preprogrammed series because of reasons other than machine function, e.g., patient distress. Another comment states that some CT systems permit interscan delays of as much as 60 seconds; thus, for a study of 10 to 15 consecutive scans, a complete run can take 10 to 15 minutes. In such circumstance, the operator's attention may be distracted.

The agency concludes that advances in technology since FDA initially developed these amendments have negated the need for the operator to initiate each individual scan. Scan times have decreased significantly. FDA believes that the likelihood of a technician leaving the patient unobserved during a scan is now very slight. The use of a constant pressure switch could lead to retakes because a technician accidentally released the switch during a scan. Therefore, the agency has removed proposed § 1020.33(f)(2)(ii) from the final rule. Proposed § 1020.33(f)(2) (iii) and (iv) has been renumbered in the final rule as § 1020.33(f)(2) (ii) and (iii), respectively.

Tomographic Plane Indication and Alignment

62. One comment on proposed § 1020.33(g) states that the light localizer on some CT systems locates the position of the slice on the patient's skin but does not indicate the plane of the scan relative to the patient's longitudinal axis. Therefore, according to the comment, side lasers or light localizers are needed to indicate the plane of the scan accurately relative to the patient's axis.

The agency notes that requirements of final § 1020.33(g)(1) provide for visual indication of a reference plane, which would require indication of at least 3 points to define. Thus, a change in § 1020.33(g)(1) is not needed.

63. Two comments on § 1020.33(g)(3) argue that patient alignment needs to be more precise than FDA proposed to allow. The comments assert that increments of as little as 1.5 millimeters (mm) are used to examine fine structures, e.g., within a patient's head, and that allowing 5 mm total error in the indicated location of the tomographic plane would not assure correct patient positioning. These comments also express concern that a more stringent requirement than that proposed would add significantly to the costs of CT systems; indeed, the conversion from mechanical to electronic controls might pose a whole series of new problems.

FDA believes that the comments have confused the proposed requirement in § 1020.33(g)(3) that total error in indicated tomographic plane may not exceed 5 mm with the requirement in § 1020.33(i) that scan increment accuracy be maintained within ±1 mm. Variations in patient anatomy are such that it is difficult to locate internal structures from external landmarks with greater accuracy than the 5 mm margin of error specified in § 1020.33(g)(3). FDA concludes that the error limits should be retained as proposed. However, FDA has modified the wording of § 1020.33(g)(3) to clarify the requirement.

64. Proposed § 1020.33(g)(5) would have established absolute illumination levels for any light localizer used to provide visual determination of the tomographic or reference plane for a CT system. FDA recognizes that factors other than illumination level may be acceptable if a light source is used to meet the requirements of § 1020.33(g) (1) and (2), i.e., to allow visual determination of the tomographic plane. Further, FDA recognizes that, in many cases, such as when a CT system is located in a room with variable or reduced illumination level, the necessity for the plane to be defined at ambient light conditions of 500 lux might be excessive. Therefore, FDA has concluded that the use of a variable intensity light to define the tomographic or reference plane is appropriate provided the defining light can be set by the operator to be visible in an ambient setting of up to 500 lux. FDA has revised final § 1020.33(g)(5) accordingly.

Beam-on and Shutter Status Indicators

65. Several comments on proposed § 1020.33(h)(1) state that status indicators need not be so numerous or so positioned as to be visible from every point from which access to the x-ray beam is possible. The comments argue that indicators visible from the locations occupied by the operator would provide adequate operator protection. The comments suggest that FDA require only that visual indicators be discernible from "any point external to the patient opening" where insertion of any part of the human body into the primary beam is possible.

FDA agrees with the comments and has revised the last sentence of § 1020.33(h)(1) as suggested. It is not necessary for the indicator to be visible from inside the patient opening of the housing of the scanning mechanism.

66. Two comments on § 1020.33(h)(2) urge that the limits on emitted radiation should extend to any part of the scanner housing rather than being applied only to the tube housing assembly as proposed. The comments also state that the limits should not apply to CT systems where the diagnostic source assembly is energized only during a scan sequence. The comments suggest that FDA revise the introductory sentence of § 1020.33(h)(2) to read: "For systems when the diagnostic source assembly is energized between scan sequences, the radiation emitted through the housing of the scanner mechanism shall not exceed * * *."

FDA intended § 1020.33(h)(2) to apply only to continuously energized CT systems. The agency recognizes that proposed § 1020.33(h)(2) was unclear as to whether systems that energize and deenergize for each scan sequence (as opposed to systems that have the x-ray tube continuously energized) would be subject to the restrictions. However, the agency believes that the comments' suggested introductory phrase also is vague. To make clear its intent, FDA has revised the initial phrase of the introductory sentence in § 1020.33(h)(2) to read: "For systems that allow high voltage to be applied to the x-ray tube continuously and that control the emission of x-rays with a shutter, the radiation emitted may not exceed * * *."

67. A comment contends that proposed § 1020.33(h)(2) would pertain only to systems that allow high voltage to be applied to the x-ray tube continuously and that control the emission of x-rays with a shutter attached to the tube-housing assembly. The comment suggests that FDA did not consider CT systems that do not use a shutter as an "on-off" switch for a continuously operating x-ray tube. Some CT systems employ shutter mechanisms only after the "on" switch is activated and high voltage is to be supplied to the x-ray tube, according to the comment. In these systems, the shutter is closed only for the few seconds required for "ramp-up" to the level of operational voltage, thereby reducing potential radiation exposure compared to machines without this feature. The comment suggests that FDA clarify § 1020.33(h)(2) with respect to machines that do not have continuously operating x-ray generators. FDA advises that revised § 1020.33(h)(2) in this final rule (see paragraph 66 of this preamble) applies to any CT system using a shutter regardless of the purpose of the shutter. The comment did not suggest how the requirement should be applied to the systems described. The

agency concludes that the comment does not justify the proposed change in the provision.

68. A comment objects to the specific reference in proposed § 1020.33(h)(2) that emitted radiation be measured over an "area," arguing that many radiation detectors are three dimensional, and the output corresponds to a weighted integral over the sensitive volume of the detector. The comment suggests that FDA revise the last sentence of § 1020.33(h)(2) to provide that measurements be taken over a "planar" area of 100 square centimeters "having no chord [without any straight line] greater than 20 cm long."

The comment's suggestion would not change the meaning of § 1020.33(h)(2) or improve the clarity of the last sentence of the regulation. Therefore, the agency declines to make the suggested change.

69. One comment urges FDA to require shielding on mobile CT systems.

The agency believes that it would be inappropriate to impose facility shielding requirements through electronic product performance standards. The shielding requirements for mobile systems are not any different from the shielding requirements for fixed systems and have traditionally been within the province of State and local radiation control agencies.

Scan Increment Accuracy

70. Two comments on proposed § 1020.33(i) state that the agency's intent with respect to necessary scan increment accuracy is unclear. The comments suggest that § 1020.33(i) be revised to provide that compliance be measured by determining the deviation of indicated versus actual scan increment based on measurements taken with "anywhere from no-load up to 100-kilogram mass" on the patient support device. These comments also suggest that the regulation be revised to provide that the specified maximum deviation of ±1 mm "not be exceeded" at any point along the patient support device.

As FDA indicated in the preamble to the proposal, the intent of the provisions in § 1020.33(i) is to assure that the difference between the indicated scan increment and the actual distance traveled by the patient on the support device not exceed 1 mm. The final rule requires that this level of accuracy be maintained for weights on the table ranging from zero to 100 kilograms (approximately 220 pounds) for the range of travel or 30 cm, whichever is less. To make clear its intent, FDA has revised the proposed phrase "* * * at most, a 100 kilogram mass * * *" to read in the final rule "* * * a mass 100 kilograms or less."

CT Number Mean and Standard Deviation

71. A comment on proposed § 1020.33(j) urges that FDA limit the number of significant figures that can be included in the display of the mean and standard deviation of CT numbers for an array of picture elements so as not to allow an implied precision for density resolution greater than that of which the CT system is capable. Because the scales for CT numbers are selected to display the smallest density variations that can meaningfully be resolved, the calculated values of mean and standard deviation should be "rounded off" and displayed consistent with the CT number scale for the system. Therefore, the comment suggests that FDA should require that the mean and standard deviation of the CT numbers be displayed "in decimal form with equal precision and with no more than two significant figures to the right of the decimal point."

FDA disagrees. The comment does not provide any radiation protection rationale for the suggested provision. FDA believes that the method of displaying these parameters should be left to manufacturers of CT systems. Users should readily be able to judge the extent of precision that is meaningful for these parameters.

72. One comment on proposed § 1020.33(j) argues that "CT number" needs to be defined. The comment also suggests that the definition of "picture element" in § 1020.33(b)(12) should be expanded to denote an area and that a CT number should be assigned to each map point. Thus, a picture element would have not only a size (area) and location, but another, independent quality expressed as its CT number.

FDA notes that "CT number" is defined in § 1020.33(b)(4). Also, as discussed in paragraph 30 of this preamble, FDA believes that expanding the definition of "picture element" is not necessary to accomplish the purpose of the final rule. FDA concludes that adopting the comment's suggestion would not serve any purpose.

73. On its own initiative, FDA has made nonsubstantive changes in final § 1020.30(b)(36) (iii) and (iv), and in § 1020.33(b)(2), (c)(3) and (c)(3)(ii), (f)(2), and (g)(5). These changes correct misspellings or are intended to clarify the standard. They do not change its intent.

74. Also, on its own initiative, FDA has added a provision in § 1020.33 (c)(2)(v) and (c)(3)(v) to require manufacturers to provide a statement of maximum deviation from the dose and imaging performance information stated under § 1020.33(c)(2) (i), (ii), (iii), and (iv), and (c)(3) (i), (ii), (iii), and (iv), respectively. The addition of these provisions makes clear that manufacturers' actual values for these parameters in production machines may not deviate from the stated limits.

Certification

75. FDA recognizes that manufacturers of CT systems may wish to comply with § 1020.33 in lieu of § 1020.31 prior to the effective date of these amendments. Compliance with § 1020.33 prior to the effective date will be permitted if authorized in writing by the Director, Office of Compliance, Center for Devices and Radiological Health, upon application by the manufacturer. In addition, the following conditions are required to be met: (1) The certification label prescribed in § 1010.2 (21 CFR 1010.2) indicates that the system complies with §§ 1020.30 and 1020.33, and (2) the initial report prescribed in § 1002.10 (21 CFR 1002.10) has been submitted to the Director as specified in § 1002.10, describing the QA program used to assure compliance with § 1020.33.

Effective Dates

76. FDA is aware that users of CT systems are establishing increasing numbers of protocols for high-resolution examinations (e.g., spine, pituitary, pancreas). These examinations can lead to relatively high radiation doses to patients. Although protocols for high-resolution examinations are not necessarily inappropriate, they should be established in the context of a knowledgeable clinical decision. This decision should balance the risks to the patient against the potential benefit to be derived from the examination. Such a decision cannot adequately be made without knowledge of both the potential benefit from and dose associated with the examination. Currently, information on radiation dose associated with the various conditions of use is limited, particularly for nonstandard conditions of operation. Provisions of the final rule require that such dose information be measured and made available to purchasers of CT systems. The agency believes it imperative that dose information as a function of technique be made available to clinical personnel as soon as possible. FDA, therefore, concludes that good cause exists and that the public interest would best be served by making § 1020.30 (a), (b)(36)(iii)–(v), (58)–(62), (h)(3)(vi)–(viii), and (n); § 1020.33 (a), (b), and (c)(2); and

the provision of § 1020.33(c)(1) as it affects § 1020.33(c)(2) effective on November 29, 1984 instead of 1 year as proposed. Remaining provisions of § 1020.33 will become effective on September 3, 1985.

Regulatory Impact

77. In accordance with Executive Order 12291, FDA has determined that this final rule does not warrant designation as a "major rule" under any of the criterial specified under section 1(b) of the Order. The threshold assessment that led to the determination that this is not a major rule has been placed on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued prior to January 1, 1981, and is, therefore, exempt. In any event, FDA certifies that this final rule will not have a significant economic impact on a substantial number of small entities for the reasons stated in the threshold assessment.

Paperwork Reduction Act

78. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the collection of information requirements contained in § 1020.33 (c), (d), (g), and (j) in this final rule will be submitted for approval to the Office of Management and Budget (OMB). These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register** prior to November 29, 1984.

List of Subjects in 21 CFR Part 1020

Electronic products, Ionizing radiation, Medical devices, Radiation protection, Standards, Television receivers, X-rays.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 351, 352, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 1020 is amended as follows:

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

1. In § 1020.30, the introductory text of paragraph (b), paragraph (c), paragraphs (d)(2), (d)(2)(vi), (d)(3)(ii), introductory text of paragraph (e), paragraph (g), paragraphs (h)(1), (h)(1)(ii), (p)(6), and (q)(2), the words "this section and §§ 1020.31 and 1020.32" wherever they appear are changed to read "this section and §§ 1020.31, 1020.32, and 1020.33"; in paragraphs (d), (d)(1)(vii), and (d)(2)(viii),the words "by § 1020.31 or § 1020.32" are changed to read "by § 1020.31, § 1020.32, or § 1020.33"; by revising paragraph (a), by revising the introductory text of paragraph (b)(36), redesignating paragraph (b)(36)(iii) as (b)(36)(v), adding new paragraph (b)(36) (iii) and (iv); by adding new paragraph (b) (58), (59), (60), (61), and (62); by revising paragraph (h)(3) (vi) and (vii) and adding new paragraph (h)(3)(viii); and by revising the first sentence of paragraph (n), to read as follows:

§ 100.30 Diagnostic x-ray systems and their major components.

(a) *Applicability.* (1) The provisions of this section are applicable to:

(i) The following components of diagnostic x-ray systems:

(*a*) Tube housing assemblies, x-ray controls, x-ray high-voltage generators, tables, cradles, film changers, vertical cassette holders mounted in a fixed location and cassette holders with front panels, and beam-limiting devices manufactured after August 1, 1974.

(*b*) Fluoroscopic imaging assemblies manufactured after August 1, 1974 and before April 26, 1977.

(*c*) Spot-film devices and image intensifiers manufactured after April 26, 1977.

(*d*) Cephalometric devices manufactured after February 25, 1978.

(*e*) Image receptor support devices for mammographic x-ray systems manufactured after September 5, 1978.

(ii) Diagnostic x-ray systems, except computed tomography x-ray systems, incorporating one or more of such components; however, such x-ray systems shall be required to comply only with those provisions of this section and §§ 1020.31 and 1020.32 which relate to the components certified in accordance with paragraph (c) of this section and installed into the systems.

(iii) Computed tomography x-rays systems manufactured before November 29, 1984.

(2) The following provisions of this section and § 1020.33 are applicable to computed tomography x-ray systems manufactured or remanufactured on and after November 29, 1984:

(i) Section 1020.30(a);

(ii) Section 1020.30(b)(36) (iii)–(v);

(iii) Section 1020.30(b) (58)–(62);

(iv) Section 1020.30(h)(3) (vi)–(viii);

(v) Section 1020.30(n);

(vi) Section 1020.33 (a) and (b);

(vii) Section 1020.33(c)(1) as it affects § 1020.33(c)(2); and

(viii) Section 1020.33(c)(2).

(3) The provisions of this section and § 1020.33 in its entirety, including those provisions in paragraph (a)(2) of this section, are applicable to computed tomography x-ray systems manufactured or remanufactured on and after September 3, 1985.

(b) * * *

(36) "Technique factors" means the following conditions of operation:

* * * * *

(iii) For CT equipment designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs.

(iv) For CT equipment not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent.

(v) For all other equipment, peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

* * * * *

(58) "Computed tomography (CT)" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(59) "Scan" means the complete process of collecting x-ray transmission data for the production of a tomogram. Data may be collected simultaneously during a single scan for the production of one or more tomograms.

(60) "Scan time" means the period of time between the beginning and end of x-ray transmission data accumulation for a single scan.

(61) "Tomogram" means the depiction of the x-ray attenuation properties of a section through a body.

(62) "Dose" means the absorbed dose as defined by the International Commission on Radiation Units and Measurements. The absorbed dose, D, is the quotient of de by dm where de is the

mean energy imparted by ionizing radiation to matter of mass dm.

* * * * *

(h) * * *

(3) * * *

(vi) A statement of the maximum deviation from the preindication given by labeled technique factor control settings or indicators during any radiographic or CT exposure where the equipment is connected to a power supply as described in accordance with this paragraph. In the case of fixed technique factors, the maximum deviation from the nominal fixed value of each factor shall be stated;

(vii) A statement of the maximum deviation from the continuous indication of x-ray tube potential and current during any fluoroscopic exposure when the equipment is connected to a power supply as described in accordance with this paragraph; and

(viii) A statement describing the measurement criteria for all technique factors used in paragraph (h)(3) (iii), (vi), and (vii) of this section; for example, the beginning and end points of exposure time measured with respect to a certain percentage of the voltage waveform.

* * * * *

(n) *Aluminum equivalent of material between patient and image receptor.* Except when used in a CT x-ray system, the aluminum equivalent of each of the items listed in Table II, which are used between the patient and image receptor may not exceed the indicated limits.

* * *

* * * * *

2. By revising the introductory paragraph of § 1020.31, to read as follows:

§ 1020.31 Radiographic equipment.

The provisions of this section apply to equipment for the recording of images, except equipment involving use of an image intensifier or computed tomography x-ray systems manufactured on or after November 29, 1984.

* * * * *

3. By revising the introductory paragraph of § 1020.32, to read as follows:

§ 1020.32 Fluoroscopic equipment.

The provisions of this section apply to equipment for fluoroscopy and for the recording of images through an image intensifier except computed tomography x-ray systems manufactured on or after November 29, 1984.

* * * * *

4. By adding new § 1020.33, to read as follows:

§ 1020.33 Computed tomography (CT) equipment.

(a) *Applicability.* (1) The provisions of this section, except for paragraphs (b), (c)(1), and (c)(2) are applicable as specified herein to CT x-ray systems manufactured or remanufactured on or after September 3, 1985.

(2) The provisions of paragraphs (b), (c)(1), and (c)(2) are applicable to CT x-ray systems manufactured or remanufactured on or after November 29, 1984.

(b) *Definitions.* As used in this section, the following definitions apply:

(1) "Computed tomography dose index (CTDI)" means the integral of the dose profile along a line perpendicular to the tomographic plane divided by the product of the nominal tomographic section thickness and the number of tomograms produced in a single scan; that is:

Where:
z = position along a line perpendicular to the tomographic plane.
D(z) = Dose at position z.
T = Nominal tomographic section thickness.
n = Number of tomograms produced in a single scan.

This definition assumes that the dose profile is centered around z=0 and that, for a multiple tomogram system, the scan increment between adjacent scans is nT.

(2) "Contrast scale" means the change in linear attenuation coefficient per CT number relative to water; that is:

$$\text{Contrast scale} = \frac{\mu_x - \mu_w}{(CT)_x - (CT)_w}$$

Where:
μ_w = Linear attenuation coefficient of water.
μ_x = Linear attenuation coefficient of material of interest.
$(CT)_w$ = CT number of water.
$(CT)_x$ = CT number of material of interest.

(3) "CT conditions of operation" means all selectable parameters governing the operation of a CT x-ray system including nominal tomographic section thickness, filtration, and the technique factors as defined in § 1020.30(b)(36).

(4) "CT number" means the number used to represent the x-ray attenuation associated with each elemental area of the CT image.

(5) [Reserved]

(6) "CT dosimetry phantom" means the phantom used for determination of the dose delivered by a CT x-ray system. The phantom shall be a right circular cylinder of polymethl-methacrylate of density 1.19±0.01 grams per cubic centimeter. The phantom shall be at least 14 centimeters in length and shall have diameters of 32.0 centimeters for testing any CT system designed to image any section of the body (whole body scanners) and 16.0 centimeters for any system designed to image the head (head scanners) or for any whole body scanner operated in the head scanning mode. The phantom shall provide means for the placement of a dosimeter(s) along its axis of rotation and along a line parallel to the axis of rotation 1.0 centimeter from the outer surface and within the phantom. Means for the placement of a dosimeter(s) or alignment device at other locations may be provided for convenience. The means used for placement of a dosimeter(s) (i.e., hole size) and the type of dosimeter(s) used is at the discretion of the manufacturer. Any effect on the doses measured due to the removal of phantom material to accommodate dosimeters shall be accounted for through appropriate corrections to the reported data or included in the statement of maximum deviation for the values obtained using the phantom.

(7) "Dose profile" means the dose as a function of position along a line.

(8) "Modulation transfer function" means the modulus of the Fourier transform of the impulse response of the system.

(9) "Multiple tomogram system" means a CT x-ray system which obtains x-ray transmission data simultaneously during a single scan to produce more than one tomogram.

(10) "Noise" means the standard deviation of the fluctuations in CT number expressed as a percent of the attenuation coefficient of water. Its estimate (S_n) is calculated using the following expression:

$$S_n = \frac{100 \times CS \times s}{\mu_w}$$

Where:
CS = Contrast scale.
μ_w = Linear attenuation coefficient of water.
s = Estimated standard deviation of the CT numbers of picture elements in a specified area of the CT image.

(11) "Nominal tomographic section thickness" means the full-width at half-maximum of the sensitivity profile taken at the center of the cross-sectional volume over which x-ray transmission data are collected.

(12) "Picture element" means an elemental area of a tomogram.

(13) "Remanufacturing" means modifying a CT system in such a way that the resulting dose and imaging performance become substantially

equivalent to any CT x-ray system manufactured by the original manufacturer on or after November 29, 1984. Any reference in this section to "manufacture", "manufacturer", or "manufacturing" includes remanufacture, remanufacturer, or remanufacturing, respectively.

(14) "Scan increment" means the amount of relative displacement of the patient with respect to the CT x-ray system between successive scans measured along the direction of such displacement.

(15) "Scan sequence" means a preselected set of two or more scans performed consecutively under preselected CT conditions of operations.

(16) "Sensitivity profile" means the relative response of the CT x-ray system as a function of position along a line perpendicular to the tomographic plane.

(17) "Single tomogram system" means a CT x-ray system which obtains x-ray transmission data during a scan to produce a single tomogram.

(18) "Tomographic plane" means that geometric plane which the manufacturer identifies as corresponding to the output tomogram.

(19) "Tomographic section" means the volume of an object whose x-ray attenuation properties are imaged in a tomogram.

(c) *Information to be provided for users.* Each manufacturer of a CT x-ray system shall provide the following technical and safety information, in addition to that required under § 1020.30(h), to purchasers and, upon request, to others at a cost not to exceed the cost of publication and distribution of such information. This information shall be identified and provided in a separate section of the user's instruction manual or in a separate manual devoted only to this information.

(1) *Conditions of operation.* A statement of the CT conditions of operation used to provide the information required by paragraph (c)(2) and (3) of this section.

(2) *Dose information.* The following dose information obtained by using the CT dosimetry phantom. For any CT x-ray system designed to image both the head and body, separate dose information shall be provided for each application. All dose measurements shall be performed with the CT dosimetry phantom placed on the patient couch or support device without additional attenuating materials present.

(i) The CTDI at the following locations in the dosimetry phantom:

(*a*) Along the axis of rotation of the phantom.

(*b*) Along a line parallel to the axis of rotation and 1.0 centimeter interior to the surface of the phantom with the phantom positioned so that CTDI is the maximum obtainable at this depth.

(*c*) Along lines parallel to the axis of rotation and 1.0 centimeter interior to the surface of the phantom at positions 90, 180, and 270 degrees from the position in paragraph (c)(2)(i)(*b*) of this section. The CT conditions of operation shall be the typical values suggested by the manufacturer for CT of the head or body. The location of the position where the CTDI is maximum as specified in paragraph (c)(2)(i)(*b*) of this section shall be given by the manufacturer with respect to the housing of the scanning mechanism or other readily identifiable feature of the CT x-ray system in such a manner as to permit placement of the dosimetry phantom in this orientation.

(ii) The CTDI in the center location of the dosimetry phantom for each selectable CT condition of operation that varies either the rate of duration of x-ray exposure. This CTDI shall be presented as a value that is normalized to the CTDI in the center location of the dosimetry phantom from paragraph (c)(2)(i) of this section, with the CTDI of paragraph (c)(2)(i) of this section having a value of one. As each individual CT condition of operation is changed, all other independent CT conditions of operation shall be maintained at the typical values described in paragraph (c)(2)(i) of this section. These data shall encompass the range of each CT condition of operation stated by the manufacturer as appropriate for CT of the head or body. When more than three selections of a CT condition of operation are available, the normalized CTDI shall be provided, at least, for the minimum, maximum, and mid-range value of the CT condition of operation.

(iii) The CTDI at the location coincident with the maximum CTDI at 1 centimeter interior to the surface of the dosimetry phantom for each selectable peak tube potential. When more than three selections of peak tube potential are available, the normalized CTDI shall be provided, at least, for the minimum, maximum, and a typical value of peak tube potential. The CTDI shall be presented as a value that is normalized to the maximum CTDI located at 1 centimeter interior to the surface of the dosimetry phantom from paragraph (c)(2)(i) of this section, with the CTDI of paragraph (c)(2)(i) of this section having a value of one.

(iv) The dose profile in the center location of the dosimetry phantom for each selectable nominal tomographic section thickness. When more than three selections of nominal tomographic section thicknesses are available, the information shall be provided, at least, for the minimum, maximum, and midrange value of nominal tomographic section thickness. The dose profile shall be presented on the same graph and to the same scale as the corresponding sensitivity profile required by paragraph (c)(3)(iv) of this section.

(v) A statement of the maximum deviation from the values given in the information provided according to paragraph (c)(2) (i), (ii), (iii), and (iv) of this section. Deviation of actual values may not exceed these limits.

(3) *Imaging performance information.* The following performance data shall be provided for the CT conditions of operation used to provide the information required by paragraph (c)(2)(i) of this section. All other aspects of data collection, including the x-ray attenuation properties of the material in the tomographic section, shall be similar to those used to provide the dose information required by paragraph (c)(2)(i) of this section. For any CT x-ray system designed to image both the head and body, separate imaging performance information shall be provided for each application.

(i) A statement of the noise.

(ii) A graphical presentation of the modulation transfer function for the same image processing and display mode as that used in the statement of the noise.

(iii) A statement of the nominal tomographic section thickness(es).

(iv) A graphical presentation of the sensitivity profile, at the location corresponding to the center location of the dosimetry phantom, for each selectable nominal tomographic section thickness for which the dose profile is given according to paragraph (c)(2)(iv) of this section.

(v) A description of the phantom or device and test protocol or procedure used to determine the specifications and a statement of the maximum deviation from the specifications provided in accordance with paragraph (c)(3) (i), (ii), (iii), and (iv) of this section. Deviation of actual values may not exceed these limits.

(Information collection requirements approved by the Office of Management and Budget under number .)

(d) *Quality assurance.* The manufacturer of any CT x-ray system shall provide the following with each system. All information required by this subsection shall be provided in a separate section of the user's instructional manual.

(1) A phantom(s) capable of providing an indication of contrast scale, noise, nominal tomographic section thickness,

the spatial resolution capability of the system for low and high contrast objects, and measuring the mean CT number of water or a reference material.

(2) Instructions on the use of the phantom(s) including a schedule of testing appropriate for the system, allowable variations for the indicated parameters, and a method to store as records, quality assurance data.

(3) Representative images obtained with the phantom(s) using the same processing mode and CT conditions of operation as in paragraph (c)(3) of this section for a properly functioning system of the same model. The representative images shall be of two forms as follows:

(i) Photographic copies of the images obtained from the image display device.

(ii) Images stored in digital form on a storage medium compatible with the CT x-ray system. The CT x-ray system shall be provided with the means to display these images on the image display device.

(Information collection requirements approved by the Office of Management and Budget under number .)

(e) [Reserved]

(f) *Control and indication of conditions of operation*—(1) *Visual indication.* The CT conditions of operation to be used during a scan or a scan sequence shall be indicated prior to initiation of a scan or a scan sequence. On equipment having all or some of these conditions of operation at fixed values, this requirement may be met by permanent markings. Indication of the CT conditions of operation shall be visible from any position from which scan initiation is possible.

(2) *Timers.* (i) Means shall be provided to terminate the x-ray exposure automatically by either deenergizing the x-ray source or shuttering the x-ray beam in the event of equipment failure affecting data collection. Such termination shall occur within an interval that limits the total scan time to no more than 110 percent of its preset value through the use of either a backup timer or devices which monitor equipment function. A visible signal shall indicate when the x-ray exposure has been terminated through these means and manual resetting of the CT conditions of operation shall be required prior to the initiation of another scan.

(ii) Means shall be provided such that the exposure from the system does not exceed the radiation levels specified in § 1020.30(k) except when x-ray transmission data are being collected for use in image production or technique factor selection.

(iii) Means shall be provided so that the operator can terminate the x-ray exposure at any time during a scan, or series of scans under x-ray system control, of greater than one-half second duration. Termination of the x-ray exposure shall necessitate resetting of the CT conditions of operation prior to the initiation of another scan.

(g) *Tomographic plane indication and alignment.* (1) For any single tomogram system, means shall be provided to permit visual determination of the tomographic plane or a reference plane offset from the tomographic plane.

(2) For any multiple tomogram system, means shall be provided to permit visual determination of the location of a reference plane. The relationship of the reference plane to the planes of the tomograms shall be provided to the user in addition to other information provided according to § 1020.30(h). This reference plane can be offset from the location of the tomographic planes.

(3) The distance between the indicated location of the tomographic plane or reference plane and its actual location may not exceed 5 millimeters.

(4) For any offset alignment system, the manufacturer shall provide specific instructions with respect to the use of this system for patient positioning, in addition to other information provided according to § 1020.30(h).

(5) If a mechanism using a light source is used to satisfy the requirements of paragraph (g) (1) and (2) of this section, the light source shall allow visual determination of the location of the tomographic plane or reference plane under ambient light conditions of up to 500 lux.

(Information collection requirements approved by the Office of Management and Budget under number .)

(h) *Beam-on and shutter status indicators.* (1) Means shall be provided on the control and on or near the housing of the scanning mechanism to provide visual indication when and only when x rays are produced and, if applicable, whether the shutter is open or closed. If the x-ray production period is less than one-half second, the indication of x-ray production shall be actuated for one-half second. Indicators at or near the housing of the scanning mechanism shall be discernible from any point external to the patient opening where insertion of any part of the human body into the primary beam is possible.

(2) For systems that allow high voltage to be applied to the x-ray tube continuously and that control the emission of x rays with a shutter, the radiation emitted may not exceed 100 milliroentgens (2.58×10^{-5} coulomb/kilogram) in 1 hour at any point 5 centimeters outside the external surface of the housing of the scanning mechanism when the shutter is closed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimensions greater than 20 centimeters.

(i) *Scan increment accuracy.* The deviation of indicated scan increment from actual scan increment may not exceed 1 millimeter. Compliance shall be measured as follows: The determination of the deviation of indicated versus actual scan increment shall be based on measurements taken with a mass 100 kilograms or less, on the patient support device. The patient support device shall be incremented from a typical starting position to the maximum incrementation distance or 30 centimeters, whichever is less, and then returned to the starting position. Measurement of actual versus indicated scan increment may be taken anywhere along this travel.

(j) *CT number mean and standard deviation.* (a) A method shall be provided to calculate the mean and standard deviation of CT numbers for an array of picture elements about any location in the image. The number of elements in this array shall be under user control.

(2) The manufacturer shall provide specific instructions concerning the use of the method provided for calculation of CT number mean and standard deviation in addition to other information provided according to § 1020.30(h).

(Information collected requirements approved by the Office of Management and Budget under number .)

Effective date. This regulation shall be effective September 3, 1985, except for the following, which shall be effective November 29, 1984: § 1020.30 (a), (b) (36) (iii)–(v), (58)–(62), (h)(3)(vi)–(viii), and (n); §§ 1020.31 and 1030.32 (introductory texts); § 1020.33 (a), (b), and (c)(2); and § 1020.33(c)(1) as it affects § 1020.33(c)(2).

(Sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f); secs. 201, 501, 502, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended, 1055–1056 as amended (21 U.S.C. 321, 351, 352, 371))

Dated: July 13, 1984.

Mark Novitch,

Acting Commissioner of Food and Drugs.

[FR Doc. 84-23154 Filed 8-30-84; 8:45 am]

BILLING CODE 4160-01-M

Friday
August 31, 1984

Part VI

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Patent Maintenance Fees; Final Rulemaking

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 40442-4092]

Final Rules for Patent Maintenance Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of final rulemaking.

SUMMARY: The Patent and Trademark Office is amending the rules of practice in patent cases, Part I of Title 37, Code of Federal Regulations, to provide rules and procedures for the payment of patent maintenance fees. Public Law 96-517, enacted on December 12, 1980 and Pub. L. 97-247, enacted on August 27, 1982, provided for the payment of maintenance fees at intervals of 3½, 7½ and 11½ years from the date of grant of the patent for maintaining in force an original patent, a reissue patent of an invention, and under Pub. L. 96-517, a plant patent and reissues thereof. The changes provide specific rules and procedures which will assist patentees in avoiding the inadvertent expiration of patent for failure to pay the appropriate maintenance fee.

EFFECTIVE DATE: November 1, 1984.

FOR FURTHER INFORMATION CONTACT: R. Franklin Burnett by telephone at (703) 557-3054 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: This rule change is designed primarily to (1) establish a set of rules and procedures for the payment of patent maintenance fees; and (2) effect the provisions of Pub. L. 96-517 and 97-247 with respect to payment of maintenance fees. The proposed rules were published on April 24, 1984, in Volume 49 of the **Federal Register**, pages 17692 through 17698; and on May 8, 1984, at Volume 1042 of the *Official Gazette*, pages 22 through 38. A public hearing was held on the proposed rule changes on June 26, 1984.

A public briefing on the Office's maintenance fee payment plans was announced at 49 FR 2806 on January 23, 1984, and at 1038 *Official Gazette* 293 on January 31, 1984. The public briefing was held on February 22, 1984.

Discussion of Specific Rules

Section 1.1, is amended as proposed to add a new paragraph (d) to provide a "Box M. Fee" in the Patent and Trademark Office to which all maintenance fee correspondence and payments should be directed. Changes in small entity status in patents and changes in the "fee address" under § 1.363, as well as payments of maintenance fees should be directed to "Box M. Fee".

Section 1.9, paragraph (d) is amended as proposed to make a change in citation and title of the rule of the Small Business Administration which relates to the small business size standard for paying reduced patent fees. This change was published in the **Federal Register** as a final rule on February 9, 1984 at 49 FR 5024-5048. The wording of the rule itself was not changed. This change is made to bring the wording of title 37, Code of Federal Regulations into conformance with title 13, Code of Federal Regulations.

Section 1.17, is amended as proposed to establish in paragraph (h) a fee of $120 for review of a decision refusing to accept and record payment of a maintenance fee filed prior to the expiration of a patent. Paragraph (h) of § 1.17 is also amended to establish a fee of $120 for reconsideration of a decision on petition refusing to accept the delayed payment of a maintenance fee in an expired patent.

Section 1.19, is amended as proposed to add new paragraphs (f) and (g). New paragraph (f) provides for a $10.00 fee for a microfiche copy of a patent file wrapper record. Microfiche copies of these patent files have recently become available for patents issued after January 1, 1984. No fee had previously been set by rule for this service. This fee is not directly related to maintenance fees but is set at this time for convenience. New paragraph (g) establishes a $3.00 fee for providing an uncertified statement indicating either the status of payment of maintenance fees due on a patent or the expiration of a patent. This charge does not apply to any receipt normally provided to the fee addressee as a result of the payment of a maintenance fee, but does apply in any other instance when written evidence of the status of payment of maintenance fees on a patent is requested, whether by the patentee or a member of the public.

Section 1.20, is amended as proposed to add new paragraphs (k), (l) and (m). New paragraph (k) provides for a $100.00 surcharge for paying a maintenance fee during the 6-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980 and before August 27, 1982. Since Pub. L. 96-517 did not provide for small entities, the surcharge amount of $100 applies to all such patents. New paragraph (l) provides for a $100 surcharge for patentees other than a small entity and a $50 surcharge for small entity patentees when paying a maintenance fee during the 6-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant based on an application filed on or after August 27, 1982. This surcharge of $100 is subject to a 50% reduction for small entities pursuant to Pub. L. 97-247.

New paragraph (m) provides for a $500 surcharge for accepting payment of a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee. This $500 surcharge applies only under Pub. L. 97-247 where the patent is based on an application filed on or after August 27, 1982 and where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable. The requirement that the delay be "unavoidable" is the same as that for reviving an abandoned application under 35 U.S.C. 133. However, the amount of evidence required will depend upon when the showing that the delay was "unavoidable" is made. This surcharge does not apply to patents based on applications filed prior to August 27, 1982 since acceptance of a maintenance fee after expiration of a patent for non-timely payment is not possible under Pub. L. 96-517. Since this surcharge is provided for under 35 U.S.C. 41(c), it is not subject to a 50% reduction for small entities. The surcharge in paragraph (m) is not in addition to the surcharge in paragraph (1), but is in lieu thereof.

Section 1.33 is amended as proposed to add a new paragraph (d) which allows a "correspondence address" or change thereto to be filed during the enforceable life of the patent. The "correspondence address" will be used in correspondence relating to maintenance fees unless a separate "fee address" has been specified. Paragraph (d) also includes a reference to § 1.363 relating to the "fee address" to be used for maintenance fee purposes.

New § 1.362 is added to provide for times for payment of maintenance fees. New paragraph (a) sets forth the requirement that maintenance fees as set forth in § 1.20(e)-(j) must be paid in order to maintain a patent in force if the application maturing into a patent was filed on or after December 12, 1980 and is subject to the payment of maintenance fees. The maintenance fee amounts set in § 1.20(e)-(g) are subject to adjustment in accordance with the

provisions of Pub. L. 96–517. The maintenance fee amounts set in § 1.20(h)–(j) are subject to adjustment in accordance with the provisions of Pub. L. 97–247 on October 1, 1985, and every third year thereafter, to reflect fluctuations occurring during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor. Other patent fees are also subject to similar adjustments.

New paragraph (b) of § 1.362 stipulates that no maintenance fees are due for plant patents if the plant patent application was filed on or after August 27, 1982 or for any design patents. Maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees. New paragraph (c) defines the pertinent application filing dates for purposes of determining whether maintenance fees are applicable. Paragraph (c)(1) establishes that for national applications not claiming benefit of an earlier application, the actual United States filing date controls. Paragraph (c)(2) establishes that for national applications claiming benefit of an earlier foreign application under 35 U.S.C. 119, the United States filing date controls. Paragraph (c)(3) provides that for continuing national applications claiming benefit of a prior application under 35 U.S.C. 120, the actual United States filing date of the continuing application is the controlling date. Paragraph (c)(4) provides that for a reissue application, the United States filing date of the application which matured into the original patent upon which the reissue application is based will control. Paragraph (c)(5) establishes that for an international application which has entered the United States as a Designated Office under 35 U.S.C. 371, the international filing date granted under Article 11(1) of the Patent Cooperation Treaty controls. This is consistent with 35 U.S.C. 363.

Paragraph (d) of new § 1.362 sets forth the time periods when maintenance fees can be paid without a surcharge. Those periods, referred to generally as the "window period," are the six-month periods preceding each due date, i.e., 3 years through 3 years and six months, 7 years through 7 years and six months, and 11 years through 11 years and six months after grant of the patent. The "due dates" are defined in 35 U.S.C. 41(b). A maintenance fee paid on the last day of a window period can be paid without surcharge. The last day of a window period is the same date (anniversary date) the patent was granted 3 years and six months, 7 years and six months, or 11 years and six months after grant of the patent. Paragraph (d) has been modified from the proposal to add "and" between items (2) and (3) and change the comma at the end of the paragraph to a period.

Paragraph (e) of new § 1.362 sets forth the grace periods during which maintenance fees, under either Pub. L. 96–517 or Pub. L. 97–247, may be paid with the surcharge under § 1.20 (k) or (l). The grace periods are the six-month periods immediately following each due date, i.e., after 3 years and six months and up to 4 years, after 7 years and six months and up to 8 years, and after 11 years and six months and up to 12 years after grant of the patent. A maintenance fee may be paid with the surcharge on the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant to prevent the patent from expiring.

Paragraph (f) of new § 1.362 specifies that where the last day for paying a maintenance fee falls on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee may be paid on the next succeeding day which is not a Saturday, Sunday, or federal holiday. For example, if the "window period" provided by paragraph (d) for paying a maintenance fee without surcharge ended on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee can be paid without surcharge on the next succeeding day which is not a Saturday, Sunday, or federal holiday. Likewise, if the grace period provided by paragraph (e) for paying a maintenance fee with surcharge ended on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee could be paid with surcharge on the next succeeding day which is not a Saturday, Sunday, or federal holiday. In the latter situation, the failure to pay the maintenance fee and surcharge on the next succeeding day which is not a Saturday, Sunday, or federal holiday will result in the patent expiring on a date (4, 8, or 12 years after the date of grant) earlier than the last date on which the maintenance fee and surcharge could be paid. This situation results from the provisions of 35 U.S.C. 21, but those provisions do not extend the expiration date of the patent if the maintenance fee and any requried surcharge are not paid when required. For example, if the grace period ended on Saturday, the maintenance fee and surcharge could be paid on the next succeeding business day, e.g. Monday, but the patent will have expired at midnight on Saturday if the maintenance fee and surcharge were not paid on the following Monday. Paragraph (f) has been modified from the proposal to explicitly refer to "any necessary surcharge" for clarity since the ability to pay on the next succeeding day which is not a Saturday, Sunday, or federal holiday within the District of Columbia applies to the maintenance fee, including any necessary surcharge.

Paragraph (g) of new § 1.362 establishes that if the proper fees are not received within the time period specified in paragraphs (d), (e), or (f) the patent expires at the end of the grace period set forth in paragraph (e). Paragraph (g) also specifies that a patent which expires for the failure to pay the maintenance fee will expire at the end of the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant.

New § 1.363 is added as proposed to provide for a "fee address" for maintenance fee purposes. New paragraph (a) specifies that the correspondence address used during prosecution of the application will be used unless (1) a "fee address" is provided for maintenance fee purposes when submitting the issue fee, (2) a correspondence address change for all purposes is filed after payment of the issue fee, or (3) a "fee address" or a change in the 'fee address" is filed after payment of the issue fee.

Paragraph (b) of new § 1.363 specifies that an assignment does not result in a change of address for maintenance fee purposes. Due to the possible expiration of a patent for failure to timely pay the appropriate maintenance fee, patentees should ensure that the Patent and Trademark Office is properly notified of the proper "fee address" to which all maintenance fee communications are to be directed. Under both Pub. L. 96–517 and Pub. L. 97–247 the burden is on the patentee to timely pay maintenance fees. The Patent and Trademark Office will attempt to assist patentees through appropriate courtesy notices. However, the failure to receive one or more notices will not relieve the patentee of the obligation to timely pay the appropriate maintenance fee to prevent the patent from expiring by operation of law if the maintenance fee is not paid. Section 1.363 does not provide for maintenance fee correspondence to be directed to more than one address.

New § 1.366 is added to establish the guidelines and procedures for submission of maintenance fees, including any necessary surcharges. New paragraph (a) states that the patentee may pay maintenance fees and any necessary surcharges or any person or organization may pay maintenance fees and any necessary surcharges on

behalf of the patentee without filing in the Patent and Trademark Office evidence of authorization by the patentee to pay maintenance fees. This will enable patentees to pay the maintenance fees and any necessary surcharges themselves or authorize some person or organization to pay maintenance fees and any necessary surcharges on their behalf. No verification of the authority to pay maintenance fees and any necessary surcharges in a particular patent will be made by the Patent and Trademark Office. While anyone may pay the maintenance fees and any necessary surcharges on a patent, any Patent and Trademark Office notices relating to maintenance fees will be mailed to the "fee address" set forth in § 1.363. Paragraph (a) has been modified from the proposal to explicitly refer to "any necessary surcharges" for clarity.

Paragraph (b) of new § 1.366 specifies that a maintenance fee and any necessary surcharge for a patent must be submitted in the amount due on the date the maintenance fee and any necessary surcharge are paid, and at the proper time, i.e., within the periods set forth in § 1.362. Paragraph (b) has been modified from the proposal by changing "proper amount" to "amount due on the date the maintenance fee and any necessary surcharge are paid." This change results from adoption of a suggestion that a maintenance fee payment made during the window period should not require adjustment if the maintenance fees are thereafter increased to reflect increases in the Consumer Price Index. Under paragraph (b) as adopted herein, if the amount of the maintenance fee is correct on the date it is paid and credited to the patent, a later change in the maintenance fees to reflect changes in the Consumer Price Index will not require a modification in the amount paid. However, in order for the maintenance fee to be considered paid it must be submitted in accordance with § 1.366. Paragraph (b) has also been modified from the proposal to explicitly refer to § 1.362(f) for purposes of clarity where the last day for paying a maintenance fee with or without a surcharge falls on a Saturday, Sunday, or a federal holiday within the District of Columbia. In such circumstances, the fee with any necessary surcharge may be paid on the next succeeding day which is not a Saturday, Sunday, or federal holiday. The maintenance fee and any necessary surcharge may be paid in the manner set forth in § 1.23, i.e., it should be in United States specie, Treasury notes, national bank notes, post office money orders, or by certified check. As indicated in § 1.23, if the maintenance fee payment is sent in any other form, the Office may delay or cancel the credit until collection is made. For example, a personal or other uncertified check drawn on a United States bank which is not immediately negotiable, e.g., because of lack of signature or insufficient funds, will not constitute payment of a maintenance fee. However, a personal check drawn on a United States bank can be used if it is immediately negotiable. Any remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the maintenance fee required.

Paragraph (b) of new § 1.366 also provides that maintenance fees may be paid by an authorization to charge a deposit account established pursuant to § 1.25. The authorization to charge the deposit account must be submitted within the periods set forth in § 1.362 and must be limited to maintenance fees payable on the date of submission. The authorization to charge the deposit account cannot, under paragraph (b), be submitted prior to the third, seventh, or eleventh year after the grant of the patent. If an authorization to charge a deposit account were submitted to pay the maintenance fee due at three years and six months after grant, a new authorization to charge a deposit account or other form of payment will have to be submitted at the appropriate time for each of the maintenance fees due at 7 years and six months and 11 years and six months. Paragraph (b) also specifies that any payment or authorization filed at any time other than that set forth in § 1.362 (d), (e) or (f) will not serve as a payment of the maintenance fee, except insofar as a delayed payment of the maintenance fee is accepted by the Commissioner pursuant to § 1.378. Paragraph (b) also specifies that a payment of less than the required amount, a payment in a manner other than that set forth in § 1.23, or the filing of an authorization to charge a deposit account having insufficient funds, will not constitute payment of a maintenance fee on a patent. The authorization is required to authorize the immediate charging of the fee to the deposit account. An authorization would be improper if it only authorized the fee to be charged at a later date, e.g., on the last possible day of payment without surcharge. Such an authorization would not serve as payment of the maintenance fee. Any payment which fails to result in the entire proper amount of the maintenance fee being present on the due date will not constitute payment of the maintenance fee. Paragraph (b) also specifies that the certificate of mailing procedures of § 1.8 or the mailing by "Express Mail" provisions of § 1.10 may be utilized in paying maintenance fees. The specific requirements of either § 1.8 or § 1.10 must be fully complied with if either is used.

Paragraph (c) of new § 1.366 establishes the data necessary and desired when submitting maintenance fee payments and any necessary surcharges. New paragraph (c) specifies that maintenance fee payments and any necessary surcharges must include at least the (1) patent number and (2) United States application serial number. Paragraph (c) has been modified from the proposal to explicity refer to "any necessary surcharges" for clarity since the identifying information must also be supplied when submitting surcharges. The wording of § 1.366(c) has also been changed from the proposal to clarify that the required application serial number is that of the application upon which the patent issued. This change from the proposal makes clear that the serial number required to be submitted is not that of a prior parent application but rather, the actual application which matured into the patent for which maintenance fees are to be paid. If the maintenance fee is being paid on a reissue patent, the serial number required is that of the reissue application. Since this required information will be used as a cross-check to ensure that the maintenance fee is properly credited, the application serial number must correspond to the patent which issued therefrom. If less than the required information is submitted, the Office will not credit the payment. Additionally, if notice is required that the proper identifying data has not been submitted, it would result in requiring the payment of a surcharge if the necessary data is submitted after the "window period" closes. If the required information is not submitted until after the end of the grace period, the patent would have expired because of the failure to properly identify the patent to which the maintenance fee payment is to be credited prior to the expiration of the grace period. The patentee in such a circumstance could proceed under § 1.378, if appropriate, or could file a petition under § 1.377 within the period set therein seeking to have the maintenance fee accepted as timely even though all of the proper identifying data was not present prior to the expiration of the grace period.

Paragraph (d) of new § 1.366 specifies that the following information should also be submitted for each patent on

which a maintenance fee or surcharge is paid: (1) Whether it is the 3½, 7½, or 11½ year fee, (2) whether small entity status is being changed or claimed with the payment, (3) the amount of the maintenance fee and any surcharge being submitted, (4) any assigned payor number, (5) patent issue date and (6) United States application filing date. Paragraph (d) has been modified from the proposal to explicitly refer to "any necessary surcharges" for clarity. Paragraph (d) has also been changed from the proposal to emphasize that when the payment is being made on a reissue patent the required patent number and application serial number are those of the reissue patent and reissue application. Where the payment is a maintenance fee and any necessary surcharge on a reissue patent, in addition to the information requested for all payments, paragraph (d) as adopted herein also requests certain identifying data relating to the original patent, i.e., original patent number, original patent issue date, and original United States application filing date. The reason for requesting the original patent number, original patent issue date, and original United States application filing date is that the original filing and issue dates are the dates which control if and when maintenance fees must be paid to prevent the reissue patent from expiring. The reference to a payor number has been added. A payor number will be assigned to each "fee address" in order to facilitate data input and subsequent changes in the location of the "fee address." Details of the "payor number" system will be announced to the public in a future *Official Gazette* notice. Although the submission of the information requested in paragraph (d) is not mandatory, it would expedite the processing of the maintenance fee payments.

The final rule thus requires less mandatory information, i.e., the patent number and U.S. application serial number, than would have been required by the proposed rule. The required information is considered to be the least that is required to make a cross-check and thus assure that the maintenance fee is being credited to the proper patent. The patent issue date and the application filing date, which were included in the proposed rule as mandatory information, are included in the final rule as desirable, but not mandatory, information. The effect of this change is that an error in either the patent issue date or the application filing date, or both, by the person paying the maintenance fee would not result in a refusal to accept the maintenance fee and to credit the payment thereof to the patent, if the patent number and United States application serial number were correct, i.e., in agreement. However, if any error included either the patent number or the United States application serial number such that they were not in agreement the payment would not be accepted and credited until correction was made. The date of the correction would be the date the maintenance fee payment is credited as being made.

Paragraph (e) of new § 1.366 specifies that maintenance fee payments and any surcharges relating thereto must be submitted separate from any other payments for fees or charges, whether submitted in the manner set forth in § 1.23 or by an authorization to charge a deposit account. Maintenance fee payments and surcharge payments relating thereto which are co-mingled with payments for other fees or charges, e.g., application filing fees, issue fees, petition fees, document supply fees, etc., will not be accepted. The maintenance fees require processing by a separate area of the Office and are not processed in the same manner as other fees and charges. Maintenance fees for a number of patents can be submitted together in one submission and one payment. Paragraph (e) specifies that if maintenance fee payments for more than one patent are submitted together, they should be submitted on as few sheets as possible, listing the patent numbers in increasing patent number order. If the payment submitted, which can be made as a single payment, is insufficient to cover the maintenance fees and any surcharges for all the listed patents, the payment will be applied in the order the patents are listed. In such a circumstance where the fees are insufficient, the maintenance fee and any surcharge for one or more of the last listed patents will not be paid.

Paragraph (f) of new § 1.366 serves as a reminder to patentees of the necessity to check for the loss of small entity status prior to paying each maintenance fee on a patent. This is already a requirement of § 1.28(b). Paragraph (f) provides that notification of any change in status resulting in loss of entitlement to small entity status must be filed in a patent prior to paying, or at the time of paying, the earliest maintenance fee due after the date on which status as a small entity is no longer appropriate. If status as a small entity has been previously established by filing a statement and such status is checked and is found to be proper, no notification is required. It is not necessary to file new verified statements claiming small entity status at this point if the status as a small entity has been established and is still proper even if rights have been transferred to a small entity who has not previously filed a verified statement. The requirement is to notify the Patent and Trademark Office of the loss of entitlement and to pay the maintenance fee in the proper amount for other than a small entity where appropriate. The refund provisions of § 1.28(a) for later submitted small entity statements will apply to maintenance fees.

Paragraph (g) of new § 1.366 provides that maintenance fees and surcharges relating thereto will not be refunded except in accordance with §§ 1.26 and 1.28(a). A patentee cannot obtain a refund of a maintenance fee which was due and payable on the patent. Any duplicate payment will be refunded to the fee address.

New § 1.377 is added as proposed to provide a mechanism for review of a decision refusing to accept and record payment of a maintenance fee filed prior to the expiration of a patent. Paragraph (a) of new § 1.377 specifies that a patentee who is dissatisfied with the refusal of the Patent and Trademark Office to accept and record a mantenance fee which was filed prior to the expiration of the patent may petition the Commissioner to accept and record the maintenance fee. This petition may be used, for example, in situations where an error is present in the identifying data required by § 1.366(c) with the maintenance fee payment, i.e., either the patent number or the application serial number are incorrect. A petition under § 1.377 would provide an avenue for seeking relief. A petition under § 1.377 would not be appropriate where there is a complete failure to include at least one correct mandatory identifier as required by § 1.366(c) for the patent since no evidence would be present as to the patent on which the maintenance fee was intended to be paid. If the maintenance fee payment with an incorrect mandatory identifier was made near the end of the grace period, the patent might expire since the Office would not credit the fee to a patent. For patents based on applications filed between December 12, 1980 and August 27, 1982, there is no provision for acceptance of a maintenance fee after the grace period such as in § 1.378 and so the filing of a petition under § 1.377 would not be appropriate where the patentee paid a maintenance fee on one patent when the patentee intended to pay the maintenance fee on a different patent but through error identified the wrong patent by patent number and application serial number. Likewise, a

petition under § 1.377 would not be appropriate where the entire maintenance fee payment, including any necessary surcharge, was not filed prior to expiration of the patent.

Paragraph (b) of new § 1.377 specifies that any petition under new § 1.377 must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of. The petition must be accompanied by the petition fee of $120 provided for in the amendment to § 1.17(h). Paragraph (b) also provides that the petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to have resulted from an error by the Patent and Trademark Office.

Paragraph (c) of new § 1.377 specifies that any petition filed under the section must comply with the requirements of paragraph (b) of § 1.181 and must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. A person or organization whose only responsibility insofar as the patent is concerned is the payment of a maintenance fee is not a party in interest for purposes of paragraph (c) of § 1.377. The petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office. If the petition is signed by a person not registered to practice before the Patent and Trademark Office, the petition must include the authority of the person signing the petition as patentee, assignee, or other party in interest.

New § 1.378 is added as proposed to establish the procedure for acceptance of the delayed payment of a maintenance fee in an expired patent. This procedure is only available under Pub. L. 97–247 where the application on which the patent is based was filed on or after August 27, 1982. If the maintenance fee is due under Pub. L. 96–517, i.e., the application on which the patent is based was filed on or after December 12, 1980, and before August 27, 1982, the delayed payment of the maintenance fee is not provided for by statute and cannot be accepted after expiration of the patent, and the patent cannot be reinstated.

Paragraph (a) of new § 1.378 provides that the Commissioner may accept the payment of any maintenance fee due on a patent based on an application filed on or after August 27, 1982, after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable. The surcharge set forth in § 1.20(m) must be paid as a condition of accepting payment of the maintenance fee. No separate petition fee is required for this petition. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the intervening rights provisions of 35 U.S.C. 41(c)(2).

Paragraph (b) of new § 1.378 specifies the requirements of a petition for acceptance of the delayed payment of a maintenance fee filed within six months of the expiration of the patent. Under paragraph (b), the petition must include the required maintenance fee set forth in § 1.20 (h)–(j); the surcharge set forth in § 1.20(m); and a showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee. In view of the requirement to enumerate the steps taken to ensure timely payment of the maintenance fee, an argument that the patentee was ignorant of the requirement to pay maintenance fees will not constitute a showing of unavoidable delay. Evidence that despite reasonable care on behalf of the patentee and/or the patentee's agents, and reasonable steps to ensure timely payment, the maintenance fee was unavoidably not paid, could be submitted in support of an argument that the delay in payment was unavoidable. For example, an error in a docketing system could possibly result in a finding that a delay in payment was unavoidable if it were shown that reasonable care was exercised in designing and operating the system and if it were shown that the patentee took reasonable steps to ensure that the patent was entered into the system to ensure timely payment of the maintenance fees.

Paragraph (c) of new § 1.378 specifies the requirements of a petition for acceptance of the delayed payment of a maintenance fee filed more than six months after the expiration of a patent. These requirements are much more stringent in view of the heavy burden of proof that the delay was unavoidable. The legislative history of Pub. L. 97–247, House Report No. 97–542 (Committee on the Judiciary), indicates that "[a]fter the expiration of a reasonable period of time, the patentee would bear a heavy burden of proof that the delay was unavoidable." The six-month period provided for petition under paragraph (b) is considered to be a reasonable period of time within which to seek reinstatement of a patent which expired for failure to pay the maintenance fee. Any petition filed more than six months after expiration must meet the more stringent requirements of paragraph (c). Under paragraph (c), the petition must include the same elements as in paragraph (b) and, in addition, must demonstrate that the failure to pay the maintenance fee was unavoidable due to circumstances outside of the control of the patentee and those acting on behalf of the patentee in paying the maintenance fee. The showing in a petition under paragraph (c) must be sufficient in scope and content to meet the heavy burden of proof required to show that a delay in payment of the maintenance fee of more than six months after expiration of the patent was unavoidable. In contrast to a petition under paragraph (b), a showing in a petition under paragraph (c) of an error in a docketing system will not be sufficient to find that the delay was unavoidable. Instead, a petition filed under paragraph (c) must demonstrate that the circumstances resulting in the delay were entirely outside the control of the patentee and those acting on behalf of the patentee in paying the maintenance fee, e.g., serious efforts without success to raise the funds required to pay the maintenance fee.

Paragraph (d) of new § 1.378 requires that a petition filed under § 1.378 be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. A person or organization whose only responsibility insofar as the patent is concerned is the payment of a maintenance fee is not a party in interest for purposes of paragraph (d) of § 1.378. Under paragraph (d), the petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office. If the petition is signed by a person not registered to practice before the Patent and Trademark Office, the petition must include the authority of the person signing the petition as patentee, assignee, or other party in interest.

Paragraph (e) of new § 1.378 provides a mechanism for obtaining reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a). This mechanism is a petition for reconsideration which may be filed within two months of, or such other time as set in the decision refusing to accept the delayed payment of the maintenance fee. In contrast to petitions filed under paragraph (a), the petition for reconsideration filed under paragraph

(e) of new § 1.378 will require the separate petition fee set forth in the amendment to § 1.17(h). Paragraph (e) also provides that after the decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Paragraph (e) also provides for refund of the maintenance fee and the surcharge set forth in § 1.20(m) if the delayed payment of the maintenance fee is not accepted. The refund will be made following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. Paragraph (e) specifies that the fee for filing the petition for reconsideration will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

Response to Comments on the Rules

Specific comments were received on a number of the proposed rule changes. Eight letters submitting written comments were received. Oral testimony was presented by two persons (one person testified on behalf of the American Intellectual Property Law Association) at the public hearing conducted on June 26, 1984. All of the written and oral comments were considered in adopting the changes set forth herein. The comments submitted appear below along with responses thereto.

Comment

One comment suggested that the surcharge set at 37 CFR 1.20(m) for accepting a maintenance fee after expiration of the patent should be reduced from $500.00 to $50.00 and that this amount should be reduced by 50 percent for small entities.

Reply

The suggestion has not been adopted. The surcharge set at 37 CFR 1.20(m) is considered to be appropriate in view of the importance of the relief being obtained. Before a surcharge under 37 CFR 1.20(m) is due the patent will have already expired due to the failure to pay a maintenance fee within a one-year period provided for the payment. Setting a lower amount as the surcharge would tend to denigrate the importance of the relief obtained by the acceptance of a maintenance fee after expiration of a patent. Further, a lower surcharge is not justified in view of the ample opportunity for payment of the maintenance fee which is presented by the one-year period in which payment can be made and the fact that the public is now on notice that maintenance fees are due and payable. Further, the Patent and Trademark Office will provide courtesy notices regarding the need to pay maintenance fees at a plurality of points in time before the patent expires. Such a notice now appears on the patent grant and presently plans are to print such a courtesy notice on the Notice of Allowance and the Issue Fee Receipt. Notices will be printed in the *Official Gazette* listing the patent number ranges of patents on which maintenance fees can be paid and a notice will be mailed to the patentee during the grace period if the maintenance fee is not paid. Therefore, relatively few patentees should fail to pay the maintenance fee before expiration of the patent due to unavoidable circumstances. The surcharge set at 37 CFR 1.20(m) is established pursuant to 35 U.S.C. 41(c) and therefore the small entity provisions of Pub. L. 97–247 do not apply to this fee. Also, Pub. L. 97–247 provides that the surcharge set at 37 CFR 1.20(m) could be in addition to any surcharge established for payment of the maintenance fee during the grace period as set at 37 CFR 1.20(l). The Patent and Trademark Office has established a separate surcharge set at 37 CFR 1.20(m) not in addition to the surcharge set at 37 CFR 1.20(l), but in lieu thereof. The amount set at 37 CFR 1.20(m) is not seen to be excessive.

Comment

Two comments suggested that the small entity reduced fee provisions of Pub. L. 97–247 should have been applied to maintenance fees required under Pub. L. 96–517.

Reply

The maintenance fee amounts under Pub. L. 96–517 set at 37 CFR 1.20(e)–(g) were previously set and are not part of the present rulemaking. It should be noted, however, that Pub. L. 96–517 did not provide for reduction of fees for small entities. Reductions of fees for small entities were established in Pub. L. 97–247 only for fees under 35 U.S.C. 41 (a) and (b) thereof. The maintenance fee levels in 37 CFR 1.20(e)–(g), however, were established under 35 U.S.C. 41 (c) of Pub. L. 96–517 rather than 35 U.S.C. 41(a) or (b) of Pub. L. 97–247. Therefore, the fee amounts previously set at 37 CFR 1.20(e)–(g) are not seen to be subject to reduction for small entities.

Comment

One comment suggested that the Office permit any of the maintenance fees to be paid in advance, either at the time of paying the issue fee or during any of the window periods. Another comment suggested that the Office should accept a fee payment earlier than the window period if the fee has no possibility of being changed due to changes in the Consumer Price Index.

Reply

These suggestions have not been adopted. The second comment listed above points out the problem with regard to the suggestion in the first comment. Public Law 97–247 provided for adjustments of the maintenance fees every third year to reflect any fluctuations occurring during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor. Allowing maintenance fees to be paid in advance would preclude such adjustments to these maintenance fees unless very burdensome administrative steps were implemented to require adjustments in the fee amount previously paid when the maintenance fees are adjusted at a later time. Requiring maintenance fees to be paid in a consistently time-ordered basis as in § 1.362 will also be helpful administratively and for budgeting purposes. As to the second comment above, it is not seen that there would be substantial benefit to the public since the period would be short during which a maintenance fee could not change due to changes in the Consumer Price Index. Thus, the patentee would only be able to make the maintenance fee payment a short time before the period during which payment may be made pursuant to § 1.362.

Comment

Two comments suggested that a maintenance fee made during the window period should not require adjustment if the maintenance fees are thereafter increased to reflect increases in the Consumer Price Index.

Reply

These comments have been adopted by an appropriate change in paragraph (b) of § 1.366. Maintenance fees which are paid during the window period in the amount required on the date of payment will be accepted as proper and full payment. If the maintenance fees change after such a proper payment, no adjustment in the amount will be required or permitted. Thus, if the maintenance fee increases before the close of the window period, the patentee will not be required to make up any deficiency between the amount properly paid during the window period and the new increased fee. Likewise, if the maintenance fee decreases before the close of the window period, no refund will be permitted of part of the

maintenance fee properly paid in the amount due when the payment was made. Payments must be made in the amount proper on the date of payment. For example, if payment is made during the grace period, the payment must be made in the amount then required irrespective of the amount of the maintenance fee which would have been due if payment had been made during the window period.

Comment

Three comments were directed to the proposed requirements in § 1.366(c) for data identifying the patent upon which maintenance fee payments are being made. One comment indicated that many computer annuity systems now existing have a data base designed to accept only two identifying numbers. This comment and one other comment suggested that the patent number and issue date be required to be submitted with the maintenance fee to identify the patent number. Another comment suggested that the required identifying data be the patent number, issue date, name of the inventor and title of the invention.

Reply

The suggested changes to the proposed rule have been adopted in part. The requirement for identifying data to uniquely identify the patent for which maintenance fees are being paid is an important one. The Patent and Trademark Office and the public must be able to determine with certainty which patents are in force and which patents have expired because the maintenance fees were not paid. The comments seem to recognize that at least two identifiers are necessary so that a cross-check can be made to avoid errors. The suggested use of the issue date with the patent number would not provide a reliable cross-check. In excess of one thousand patents usually issue on each issue date. Therefore a mistake in the last four digits in the patent number supplied with the maintenance fee payment would often not be detected by use of the issue date as a cross-check. The Patent and Trademark Office has determined that the two best identifying data units for use as a cross-check are the patent number and the application serial number. These identifiers are unique since each is specific to one patent or application and are thus required to be provided with a maintenance fee payment by the final rule. The application serial number and the patent number are both listed on the issue patent and in the *Official Gazette* and therefore should be readily available to patentees.

Comment

One comment suggested that no petition fee should be charged for filing a petition under 37 CFR 1.377 seeking review of a decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent. The comment further suggested that, if a fee is charged, the filing of a petition thereunder should be presumed to be a request for a return of the petition fee if it is determined that the refusal to accept and record a maintenance fee payment was due to Patent and Trademark Office error.

Reply

The suggestion that no petition fee be charged has not been adopted. The petition fee, although required in advance, will be retained by the Patent and Trademark Office only in those instances where the refusal to accept and record the fee resulted from an error on the part of someone other than the Patent and Trademark Office. In those instances where the refusal to accept and record the fee resulted from a Patent and Trademark Office error the Office intends to refund the petition fee, either based upon the request included in the petition or upon the initiative of the Office. The reason for including a request for a refund, where appropriate, in the petition is to ensure that such request is not inadvertently overlooked. In view of the expense involved, it would be inappropriate to process a petition without a petition fee where the error necessitating the petition was made by the petitioner or someone acting on behalf of the patentee.

Comment

One comment suggested that the term "unavoidable" should be more specifically defined in 37 CFR 1.378 (b)(3) and (c)(3), if possible.

Reply

As stated in this rulemaking, the requirement that the delay in payment of the maintenance fee be "unavoidable" is the same as that for reviving an abandoned application under 35 U.S.C. 133. This standard has been in effect for many years and should be well understood by the public. The rule is seen to be adequate as written, especially in view of the discussion in this rulemaking which includes several specific examples based on when the petition to accept the delayed payment of a maintenance fee is filed.

Comment

One comment suggested that Pub. L. 97–247 should be "liberally interpreted" to permit acceptance of delayed payments of maintenance fees required under Pub. L. 96–517. Proposed 37 CFR 1.378 was limited to patents issuing on applications filed on or after August 27, 1982, the effective date of Pub. L. 97–247.

Reply

The final rule has not been changed from the proposal. The remedy suggested by the comment cannot be provided in view of the language of 35 U.S.C. 41(c)(1) which applies only to maintenance fees required by 35 U.S.C. 41(b) of Pub. L. 97–247. Section 17(a) of Pub. L. 97–247 clearly states "the maintenance fees provided for in section 3(b) of this Act shall not apply to patents applied for prior to the date of enactment of this Act."

Comment

Several of the comments received were directed to proposed statutory changes which were said to be desirable in the area of maintenance fees.

Reply

These comments were not suggesting that the proposed rules were not in compliance with the present statutes, but rather that the statutes themselves should be changed. These comments are beyond the scope and purpose of this rule change.

Implementation of Maintenance Fee Payment Procedures

The Patent and Trademark Office is presently developing its internal working procedures for processing maintenance fee payments and for notifying the public as to the status of maintenance fee payments on particular patents. The first maintenance fees become due early in 1985. In order to be as helpful as possible in informing the public as to the Patent and Trademark Office's current plans it is useful to outline the basic procedures the Patent and Trademark Office intends to adopt to process maintenance fees so that the interrelationship with the rules is understood. These basic procedures are subject to change as experience and circumstances dictate.

Notices by the Patent and Trademark Office

Under the statutes, the Patent and Trademark Office has no duty to notify patentees when their maintenance fees are due. It is the responsibility of the patentee to assure that the maintenance fees are paid to prevent expiration of the

patent. The Patent and Trademark Office will, however, provide some notices as reminders that maintenance fees are due, but the notices, errors in the notices, or the lack of notices, will in no way relieve a patentee from the responsibility to make timely payment of each maintenance fee to prevent the patent from expiring by operation of law. The notices provided by the Patent and Trademark Office will be merely courtesy in nature and intended to aid patentees. These notices, errors in these notices, or the lack of notices, will in no way shift the burden of monitoring the time for paying maintenance fees on patents from the patentee to the Patent and Trademark Office.

Preprinted Standard Notice Wording

The patent grant currently includes a reminder that maintenance fees may be due. The Notice of Allowance and Issue Fee Receipt are presently planned to be revised to contain reminder notice wording that maintenance fees may be due.

Official Gazette Notice

A notice will appear in each issue of the *Official Gazette* which will indicate which patents have been granted 3, 7 and 11 years earlier, that the window period has opened and that maintenance fee payments will now be accepted for these patents.

Another *Official Gazette* notice published after expiration of the grace period will indicate any patent which has expired due to non-payment of maintenance fees and any patents which have been revived under 35 U.S.C. 41(c). An annual compilation of such expirations and revivals will also be published.

Courtesy Reminder Notice

Since patentees are expected to maintain their own record systems and since most patentees are expected to pay their maintenance fees during the "window period" to prevent payment of a surcharge, the Office will not send any reminder notices to patentees at the fee address until after the grace period has begun. This will reduce and simplify the mailing of notices but still give patentees an opportunity to pay their maintenance fees with surcharge during the grace period before expiration of their patents. Such notices will be mailed to the fee address as set forth in § 1.363.

Action Notices

The Office will issue a receipt for payment of maintenance fees after entry of the maintenance fee payment. Such a receipt will provide an opportunity for the patentee to check if the Office has properly credited the payment. The original document submitted by the patentee when paying the maintenance fee will also be appropriately marked and returned to the fee address. If actual experience indicates that they are not needed, the receipt notices and/or the return of the original document may be discontinued.

The patentee will also be notified by mail at the fee address as set forth in § 1.363 of any expiration or revival of the patent.

Fee Address

The patentee may provide the Patent and Trademark Office with a fee address under § 1.363, which address may be different from the correspondence address under § 1.33, when submitting the issue fee or in a separate later-filed paper. The fee address will be used by the Office for all correspondence directed to the patentee concerning maintenance fees. If no separate fee address is provided by the patentee under § 1.363, the correspondence address under § 1.33 will also be used for maintenance fee purposes.

Payment of Maintenance Fees

Transmittals of maintenance fees may be limited to a single patent or may involve several patents. If a transmittal involves several patents they should be listed in increasing numerical order. The following format is suggested for use when paying maintenance fees and any necessary surcharges. Although only the mandatory identification elements consisting of the patent number and United States application serial number, set forth in § 1.366(c) are required, the items referred to in § 1.366(d) should also be included to expedite processing of maintenance fees and any necessary surcharges. In addition, the indication of the fee code used by the Patent and Trademark Office would assist in proper financial crediting within the Office. It is also suggested that the telephone number of the person submitting the payment be supplied.

February 22, 1984.

Commissioner of Patents and Trademarks,
Box M. Fee, Washington, D.C. 20231

Dear Sir: Enclosed is a check drawn for the amount of $1,500 for the payment of the maintenance fees on the following patents.

Patent No.	Serial No.	Patent date	Application filing date	Payment year	Small entity	Amount paid		Surcharge	Fee code
P.P. 5,188	380,062	Feb. 7, 1984	May 20, 1981	4		$200			170
Re. 31,522	481,494	Feb. 14, 1984	Apr. 1, 1983	4		200		$100	170/176
*(4,374,741)		(Feb. 22, 1983)	(July 21, 1981)						
4,429,419	339,620	Feb. 7, 1984	Jan. 15, 1982	4		200			170
4,429,433	412,101	Feb. 7, 1984	Aug. 27, 1982	4	No	400			173
4,429,439	458,474	Feb. 7, 1984	Jan. 17, 1983	4	Yes	200			273
**4,432,000	360,681	Feb. 14, 1984	Aug. 26, 1981	4		200			170
		Subtotal				1,400		100	
		Total amount paid					1,500		

*NOTE.—Information from original patent is included in parenthesis for the reissue patent for which payment is being made.
**NOTE.—Application Filing Date is the PCT International Filing Date.

The Commissioner is hereby authorized to charge any deficiency in the required fee or to credit any overpayment to Account No. 12-3456.

Respectfully submitted,
John Doe
(703) 557-3054

Environmental, energy, and other considerations: The rule change will not have a significant impact on the quality of the human environment or conservation of energy resources.

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Order 12291, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce certified to the Small Business Administration that the rule change will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96-354). Public Law 97-247 has taken into consideration the impact it may have on small entities.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state, or local government

agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The maintenance fee payment information collection requirement contained in the final rules has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Comments relating to this requirement should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Commerce, Patent and Trademark Office.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations (government agencies), Conflict of interests, Courts, Inventions and patents, Lawyers.

Notice is hereby given that pursuant to the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, Pub. L. 96–517 and Pub. L. 97–247, the Patent and Trademark Office is amending Title 37 of the Code of Federal Regulations as set forth below.

PART 1—[AMENDED]

37 CFR Part 1, is amended as follows:

1. Section 1.1 is amended by adding a new paragraph (d) to read as follows:

§ 1.1 All communications to be addressed to Commissioner of Patents and Trademarks.

* * * * *

(d) Payments of maintenance fees in patents and other communications relating thereto should be additionally marked "Box M. Fee."

§ 1.9 [Amended]

2. Paragraph (d) of § 1.9 is amended by changing the citation "13 CFR 121.3–18, published on September 30, 1982 at 47 FR 43273." to "13 CFR 121.12." and by changing the words "§ 121.3–18 Definition of small business for paying reduced patent fees under Title 35, U.S. Code" to "§ 121.12 Small business for paying reduced patent fees."

3. Section 1.17 is amended by adding to the end of paragraph (h) the following:

§ 1.17 Patent application processing fees.

* * * * *

(h) * * *

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in expired patent

* * * * *

4. Section 1.19 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(f) Microfiche copy of patent file record.....$10.00

(g) Uncertified statement as to status of the payment of maintenance fees due on a patent or expiration of a patent.....$3.00

5. Section 1.20 is amended by adding new paragraphs (k), (l) and (m) to read as follows:

§ 1.20 Post-issuance fees.

(k) Surcharge for paying a maintenance fee during the 6-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980 and before August 27, 1982.....$100.00

(l) Surcharge for paying a maintenance fee during the 6-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after August 27, 1982:

By a small entity (§ 1.9(f)).....$50.00

By other than a small entity.....$100.00

(m) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee on a patent based on an application filed on or after August 27, 1982, where the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable.....$500.00

6. Section 1.33 is amended by adding a new paragraph (d) to read as follows:

§ 1.33 Correspondence respecting patent applications, reexamination proceedings, and other proceedings.

* * * * *

(d) A "correspondence address" or change thereto may be filed with the Patent and Trademark Office during the enforceable life of the patent. The "correspondence address" will be used in any correspondence relating to maintenance fees unless a separate "fee address" has been specified. See § 1.363 for "fee address" used solely for maintenance fee purposes.

7. A new center heading and § 1.362 is added to Subpart B to read as follows:

Maintenance Fees

§ 1.362 Time for payment of maintenance fees.

(a) Maintenance fees as set forth in § 1.20 (e)–(j) are required to be paid in all patents based on applications filed on or after December 12, 1980, except as noted in paragraph (b) of this section, to maintain a patent in force beyond 4, 8 and 12 years after the date of grant.

(b) Maintenance fees are not required for plant patents based on applications filed on or after August 27, 1982 or for any design patents. Maintenance fees are not required for a reissue patent if the patent being reissued did not require maintenance fees.

(c) The application filing dates for purposes of payment of maintenance fees are as follows:

(1) For an application not claiming benefit of an earlier application, the actual United States filing date of the application.

(2) For an application claiming benefit of an earlier foreign application under 35 U.S.C. 119, the United States filing date of the application.

(3) For a continuing (continuation, division, continuation-in-part) application claiming the benefit of a prior patent application under 35 U.S.C. 120, the actual United States filing date of the continuing application.

(4) For a reissue application, the United States filing date of the original non-reissue application on which the patent reissued is based.

(5) For an international application which has entered the United States as a Designated Office under 35 U.S.C. 371, the international filing date granted under Article 11(1) of the Patent Cooperation Treaty which is considered to be the United States filing date under 35 U.S.C. 363.

(d) Maintenance fees may be paid in patents without surcharge during the periods extending respectively from:

(1) 3 years through 3 years and 6 months after grant for the first maintenance fee,

(2) 7 years through 7 years and 6 months after grant for the second maintenance fee, and

(3) 11 years through 11 years and 6 months after grant for the third maintenance fee.

(e) Maintenance fees may be paid with the surcharge set forth in § 1.20 (k) or (l) during the respective grace periods after:

(1) 3 years and 6 months and through the day of the 4th anniversary of the grant for the first maintenance fee,

(2) 7 years and 6 months and through the day of the 8th anniversary of the

grant for the second maintenance fee, and

(3) 11 years and 6 months and through the day of the 12th anniversary of the grant for the third maintenance fee.

(f) If the last day for paying a maintenance fee without surcharge set forth in paragraph (d) of this section, or the last day for paying a maintenance fee with surcharge set forth in paragraph (e) of this section, falls on a Saturday, Sunday, or a federal holiday within the District of Columbia, the maintenance fee and any necessary surcharge may be paid under paragraph (d) or paragraph (e) respectively on the next succeeding day which is not a Saturday, Sunday, or federal holiday.

(g) Unless the maintenance fee and any applicable surcharge is paid within the time periods set forth in paragraphs (d), (e) or (f) of this section, the patent will expire as of the end of the grace period set forth in paragraph (e) of this section. A patent which expires for the failure to pay the maintenance fee will expire at the end of the same date (anniversary date) the patent was granted in the 4th, 8th, or 12th year after grant.

8. A new § 1.363 is added to Subpart B to read as follows:

§ 1.363 Fee address for maintenance fee purposes.

(a) All notices, receipts, refunds, and other communications relating to payment or refund of maintenance fees will be directed to the correspondence address used during prosecution of the application as indicated in § 1.33(a) unless:

(1) A "fee address" for purposes of payment of maintenance fees is set forth when submitting the issue fee, or

(2) A change in the correspondence address for all purposes is filed after payment of the issue fee, or

(3) A "fee address" or a change in the "fee address" is filed for purposes of receiving notices, receipts and other correspondence relating to the payment of maintenance fees after the payment of the issue fee, in which instance, the latest such address will be used.

(b) An assignment of a patent application or patent does not result in a change of the "correspondence address" or "fee address" for maintenance fee purposes.

9. A new § 1.366 is added to Subpart B to read as follows:

§ 1.366 Submission of maintenance fees.

(a) The patentee may pay maintenance fees and any necessary surcharges, or any person or organization may pay maintenance fees and any necessary surcharges on behalf of a patentee. Authorization by the patentee need not be filed in the Patent and Trademark Office to pay maintenance fees and any necessary surcharges on behalf of the patentee.

(b) A maintenance fee and any necessary surcharge submitted for a patent must be submitted in the amount due on the date the maintenance fee and any necessary surcharge are paid and may be paid in the manner set forth in § 1.23 or by an authorization to charge a deposit account established pursuant to § 1.25. Payment of a maintenance fee and any necessary surcharge or the authorization to charge a deposit account must be submitted within the periods set forth in § 1.362 (d), (e) or (f). Any payment or authorization of maintenance fees and surcharges filed at any other time will not be accepted and will not serve as a payment of the maintenance fee except insofar as a delayed payment of the maintenance fee is accepted by the Commissioner in an expired patent pursuant to a petition filed under § 1.378. Any authorization to charge a deposit account must authorize the immediate charging of the maintenance fee and any necessary surcharge to the deposit account. Payment of less than the required amount, payment in a manner other than that set forth in § 1.23, or the filing of an authorization to charge a deposit account having insufficient funds will not constitute payment of a maintenance fee or surcharge on a patent. The certificate of mailing procedures of either § 1.8 or § 1.10 may be utilized in paying maintenance fees and any necessary surcharges.

(c) In submitting maintenance fees and any necessary surcharges, identification of the patents for which maintenance fees are being paid must include the following:

(1) The patent number, and

(2) The serial number of the United States application for the patent on which the maintenance fee is being paid.

(d) Payments of maintenance fees and any surcharges should identify the fee being paid for each patent as to whether it is the 3½, 7½ or 11½ year fee, whether small entity status is being changed or claimed, the amount of the maintenance fee and any surcharge being paid, any assigned payor number, the patent issue date and the United States application filing date. If the maintenance fee and any necessary surcharge is being paid on a reissue patent, the payment must identify the reissue patent by reissue patent number and reissue application serial number as required by paragraph (c) of this section and should also include the original patent number, the original patent issue date and the original United States application filing date.

(e) Maintenance fee payments and surcharge payments relating thereto must be submitted separate from any other payments for fees or charges, whether submitted in the manner set forth in § 1.23 or by an authorization to charge a deposit account. If maintenance fee and surcharge payments for more than one patent are submitted together, they should be submitted on as few sheets as possible with the patent numbers listed in increasing patent number order. If the payment submitted is insufficient to cover the maintenance fees and surcharges for all the listed patents, the payment will be applied in the order the patents are listed, beginning at the top of the listing.

(f) Notification of any change in status resulting in loss of entitlement to small entity status must be filed in a patent prior to paying, or at the time of paying, the earliest maintenance fee due after the date on which status as a small entity is no longer appropriate. See § 1.28(b).

(g) Maintenance fees and surcharges relating thereto will not be refunded except in accordance with §§ 1.26 and 1.28(a).

10. A new § 1.377 is added to Subpart B to read as follows:

§ 1.377 Review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent.

(a) Any patentee who is dissatisfied with the refusal of the Patent and Trademark Office to accept and record a maintenance fee which was filed prior to the expiration of the patent may petition the Commissioner to accept and record the maintenance fee.

(b) Any petition under this section must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of, and must be accompanied by the fee set forth in § 1.17(h). The petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

(c) Any petition filed under this section must comply with the requirements of paragraph (b) of § 1.181 and must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. Such petition must be in the form of a verified statement if made by a

person not registered to practice before the Patent and Trademark Office.

11. A new § 1.378 is added to Subpart B to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent based on application filed on or after August 27, 1982.

(a) The Commissioner may accept the payment of any maintenance fee due on a patent based on an application filed on or after August 27, 1982, after expiration of the patent if, upon petition, the dalay in payment of the maintenance fee is shown to the satisfaction of the Commissioner to have been unavoidable and if the surcharge required by § 1.20(m) is paid as a condition of accepting payment of the maintenance fee. If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

(b) Any petition to accept the delayed payment of a maintenance fee filed under paragraph (a) of this section within six months of the expiration of the patent must include:

(1) The required maintenance fee set forth in § 1.20(h)-(j);

(2) The surcharge set forth in § 1.20(m); and

(3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee.

(c) Any petition to accept the delayed payment of a maintenance fee filed under paragraph (a) of this section more than six months after the expiration of the patent must include:

(1) The required maintenance fee set forth in § 1.20(h)-(j);

(2) The surcharge set forth in § 1.20(m); and

(3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and the failure to timely pay the maintenance fee was due entirely to circumstances outside of the control of the patentee. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee and the circumstances which were outside of the control of the patentee and those acting on behalf of the patentee in paying the maintenance fee. The showing must be sufficient in scope and content to meet the heavy burden of proof required to show that a delay in payment of the maintenance fee of more than six months after expiration of the patent was unavoidable.

(d) Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest. Such petition must be in the form of a verified statement if made by a person not registered to practice before the Patent and Trademark Office.

(e) Reconsideration of a decision refusing to accept a maintenance fee upon petition filed pursuant to paragraph (a) of this section may be obtained by filing a petition for reconsideration within two months of, or such other time as set in, the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(h). After decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. If the delayed payment of the maintenance fee is not accepted, the maintenance fee and the surcharge set forth in § 1.20(m) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. The fee set forth in § 1.17(h) for filing the petition for reconsideration will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

Dated: July 30, 1984.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 84-23181 Filed 8-30-84; 8:45 am]

BILLING CODE 3510-16-M

federal register

Friday
August 31, 1984

Part VII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 405
Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1985 Rates; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-279-F]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System; and Fiscal Year 1985 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final Rule.

SUMMARY: This final rule amends the Medicare regulations published as an interim final rule on September 1, 1983 (48 FR 39752) and a final rule on January 3, 1984 (49 FR 234). Those regulations implement section 1886 of the Social Security Act, which changes the method of payment for inpatient hospital services from a cost-based, retrospective reimbursement system to a prospective payment system based on diagnosis-related groups.

In addition, in the addendum to this final rule, we are making changes in the methods, amounts, and factors necessary to determine prospective payment rates for Medicare inpatient hospital services applicable to discharges occurring on or after October 1, 1984, in the case of the Federal portion of the payment, and effective with hospital cost reporting periods beginning on or after October 1, 1984, in the case of the hospital-specific portion. These changes are applicable in the second year of the three-year transition period for the prospective payment system.

We are also implementing in this final rule certain changes in the inpatient hospital prospective payment system resulting from the enactment of Pub. L. 98-369 on July 18, 1984.

EFFECTIVE DATES: With certain exceptions, these regulations are effective with discharges occurring on or after October 1, 1984, or with hospital cost reporting periods beginning on or after October 1, 1984. We refer the reader to section VII.A. of this preamble for a detailed discussion of effective dates.

FOR FURTHER INFORMATION, CONTACT:

Paul Elstein, (301) 597-1755—Transfers; Referral Centers; Indirect Medical Education Costs; CRNAs

Paul Olenick (301) 594-9349—Urban/Rural Areas; Prospective Payment Rates

Sheridan Gladhill (301) 594-9440—Rehabilitation Units

Thomas Hoyer (301) 594-9446—Physician Attestation

George Cray (301) 597-3674—Base Year Appeals

SUPPLEMENTARY INFORMATION:

I. Background

A. Summary of the Final Rules Implementing Inpatient Hospital Prospective Payment System

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98-21) on April 20, 1983, a prospective payment system for Medicare payment of inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment for inpatient hospital services is made at a predetermined, specific rate for each discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). This list contains 470 specific categories.

Section 1886(d)(1)(A) of the Act provides for a three-year transition period during which a declining portion of the total prospective payment rate is based on a hospital's historical cost in a given base year, and a gradually increasing portion is based on a regional Federal rate per discharge in the first year and a blend of a regional and national Federal rate per discharge in the second and third years. Beginning with the fourth year, and continuing thereafter (that is, for hospital cost reporting periods beginning on or after October 1, 1986), Medicare payment for inpatient hospital services will be made entirely under national DRG payment rates.

We published an interim final rule in the **Federal Register** (48 FR 39752) on September 1, 1983 to implement the prospective payment system effective with hospital cost reporting periods beginning on or after October 1, 1983. In that rule we established criteria for determining—

- Which hospitals are included in and excluded from the prospective payment system;
- The basis of payment under the prospective payment system;
- The prospective payment rate methodology;
- Additional payment amounts;
- Special treatment of certain hospitals; and
- Other conforming changes.

In particular, we identified the prospective payment rates to be used for the first year of the transition period. We issued a final rule (49 FR 234) on January 3, 1984 to make changes resulting from our consideration of public comments that were received in response to the interim final rule.

B. Summary of July 1984 Proposed Rule

On July 3, 1984 we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (49 FR 27422) to amend 42 CFR Part 405 in order to make further changes in the prospective payment regulations. We proposed to—

- Pay cost outlier payments to a transferring hospital for extraordinarily high-cost cases;
- Revise the definition of full-time direction for an excluded rehabilitation unit;
- Make less restrictive the criteria for expansion of an excluded rehabilitation unit;
- Clarify the scope of the physician's certification statement and the accompanying penalty statement;
- Provide a special adjustment for hospitals redesignated by the Executive Office of Management and Budget (EOMB) to be no longer a part of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA);
- Clarify which census division a hospital belongs to if an MSA or NECMA crosses a census division boundary;
- Authorize additional administrative actions as a basis upon which a prospective recalculation of a hospital's base year cost may be made; and
- Expand the definition of a referral center to encompass more rural hospitals.

In addition, in the addendum to the NPRM (49 FR 29438), we proposed changes in the methods, amounts, and factors necessary to implement the second year of the transition payment period, applicable to discharges occurring on or after October 1, 1984, in the case of the Federal portion of the payment and effective with hospital cost reporting periods beginning on or after October 1, 1984, in the case of the hospital-specific portion.

In section II. of this preamble and section II. of the addendum to this document, we describe changes we are making to those proposals in response to public comments that we received timely.

C. Summary of Recent Legislation (Title III of Pub. L. 98-369)

On July 18, 1984, the President signed into law Pub. L. 98-369, the Deficit Reduction Act of 1984. Title III of Division B of this Act, the Medicare and Medicaid Budget Reconciliation Amendments of 1984, contains several changes relating to the hospital

prospective payment system. Section 2311 of Pub. L. 98–369, which is related to specific proposals we had set forth in the NPRM, is discussed in section II. of this preamble. Section III. of this preamble contains a discussion of the following changes to the prospective payment system mandated by sections 2307(b) and 2312 of Pub. L. 98–369:

- In determining the indirect medical education adjustment, the interns and residents in approved programs are to be counted regardless of whether they are employed by the hospital in which they are working (section 2307(b)).
- Hospitals will be paid on a reasonable cost basis for anesthesia services provided by qualified nonphysician anesthetists (certified registered nurse anesthetists and anesthesiology assistants) (section 2312 requires such payment for CRNAs).

In addition, the provisions in section 2310 (rate of increase limitation) of Pub. L. 98–369 that affect the FY 1985 prospective payment rates are discussed in the addendum to this final rule.

D. Number and Types of Public Comments

A total of 3,951 letters were received containing comments on the proposed regulations by the comment-period deadline of August 2, 1984. Among the many issues raised, the following subjects prompted the majority of comments:

- Criteria for classification as a referral center;
- Physician attestation requirement as part of the discharge summary;
- Reduction of the weighting factors by 2.4 percent;
- Wage index (especially rural);
- Outlier policies especially with regard to transfer cases;
- Budget neutrality adjustments and availability of data;
- Dialysis services especially when admitted for unrelated treatment;
- Criteria for classification as a rehabilitation hospital or unit; and
- General concerns about the net increase in rates.

In addition to comments received as a result of the NPRM, we also received a small number of comments on issues not discussed in the NPRM.

II. Changes to Current Regulations Resulting From the NPRM or Resulting From Pub. L. 98–369

A. Payment of Cost Outliers to Hospitals That Transfer Patients (§ 405.470)

Under § 405.470(c)(4), a hospital that transfers a patient receives a per diem payment determined by dividing the full payment rate for the discharge by the average length of stay for the applicable DRG assigned to the case. Payment to a transferring hospital may not exceed the full DRG rate regardless of the length of stay or exceptionally costly care provided.

Based on our experience during the first year under the prospective payment system, we now believe that cost-outlier payments (additional payments) should be available to transferring hospitals for exceptionally costly cases. We are modifying § 405.470(c)(4) as proposed in the NPRM, to permit a transferring hospital to receive cost-outlier payments, for patients transferred on or after October 1, 1984, if the cost-outlier criteria in § 405.475(d) are met.

We received comments from hospitals and hospital associations regarding this provision. The issues raised by the commenters are as follows:

Comment—All the comments we received regarding the change in the transfer payment policy were in favor of our extending cost outlier payments to transferring hospitals. However, several commenter questioned our rationale for not providing day outlier payments to transferring hospitals. They stated that medical review should be adequate to identify appropriate day outlier cases in transferring hospitals. In the absence of the addition of day outlier payments, the commenters suggested that we amend § 405.475(a)(2) to allow the transferring hospital to receive cost outlier payments even if the discharge qualified for day outlier payment.

One commenter suggested that in the NPRM (49 FR 27422) we implied that those patients who are kept in the transferring hospital long enough to qualify for day outlier payments are usually receiving inappropriate care. The commenter stated that it is not unusual for critically ill patients, such as severely burned patients, who would meet day outlier criteria to be transferred to an acute rehabilitation unit.

Response—We do not agree that extending day outlier payments to transferring hospitals is appropriate. We regret that our rationale in the NPRM concerning day outlier payments to transferring hospitals was perceived to be objectionable. However, for FY 1985 a discharge will be considered an outlier if the number of days in the stay exceeds the mean length of stay for discharges within the DRG by the lesser of 22 days or 1.94 standard deviations. We believe that it is reasonable to state that any severely ill patient who needs to be transferred for more specialized care would in all likelihood be transferred before this threshold is met. One commenter mentioned severely burned patients as an exception to this situation. Discharges for neonates and burn patients (DRGs 385 and 456 respectively) represent situations in which patients are transferred to another facility for specialized care. We revised § 405.470(c) in the January 3, 1984 final rule (49 FR 314) to state that these discharges are not subject to the transfer payment policy. Rather, the weighting factors for these two DRGs are based on the assumption that the patient will be transferred. The transferring hospital in these instances is paid the full DRG rate plus any applicable outlier payments in the same manner as the rules that apply to nontransferring hospitals.

We recognize that an individual hospital may experience a case in which a patient is kept for a sufficient number of days, and would meet the day outlier threshold, before it is determined that the patient should be transferred. However, we continue to believe that the vast majority of transfer cases would not qualify as day outliers.

We do not wish to discourage needed transfers from occurring more promptly by offering the possibility of day outlier payments. At the same time, we believe that the average day outlier threshold is sufficiently high that we do not expect that the preclusion of day outlier payments will be an incentive for hospitals under the prospective payment system to move unusually demanding cases into other hospitals.

However, at the same time, we do not wish to encourage inappropriate transfers in cases where cost outlier patients are about to stay past the day outlier threshold. We agree with the commenter who suggested that we pay the cost outlier payment in these cases.

Because we believe that day outliers are inapplicable to transferring hospitals, day outlier criteria (and thresholds) should not apply. Likewise, the preclusion of cost outlier status for hospitals that meet day outlier criteria under sections 1886(d)(5)(A) (i) and (ii) of the Act does not apply to transferring hospitals. Therefore, we are granting cost outlier payments to transferring hospitals where cost outlier patients stay past the day outlier threshold.

(Payments to transferring hospitals are exceptions to ordinary payment amounts, as authorized under section 1886(d)(5)(C)(iii) of the Act, and the terms under which outlier payments are granted to transferring hospitals are therefore also subject to the Secretary's discretion under section 1886(d)(5)(C)(iii).)

After October 1, 1984, we will be receiving bills for cost outlier payments for transferring hospitals. As we have stated in previous documents, we will continue to make such adjustments to the interim transfer policy as warranted by our review of these payments.

Comment—One commenter stated that the present cost outlier thresholds make it literally impossible for a hospital to qualify for cost outlier payments based on costs incurred for transferred patients. The commenter recommended that the cost outlier thresholds for transferred patients be redefined as the greater of 1.5 times the DRG payment rate multiplied by the ratio of actual days prior to transfer divided by the average length-of-stay per DRG, or $12,000 multiplied by that ratio (actual days divided by the average length-of-stay). The commenter believes that this change would recognize the specific needs of small rural facilities that are often the areas of first resource utilization in stabilizing patients for transfer to another facility.

Response—We do not agree with the commenter's estimation that no transfer situations will qualify for the cost outlier thresholds. It was the realization that such cases actually have occurred that led to this change in the transfer payment policy. In one example brought to our attention, a small hospital treated a very ill patient for a number of complications over a period of 10 days incurring charges of $25,378. The patient developed renal failure and was transferred to another hospital where dialysis could be provided. The second hospital, which discharged the patient, was paid the DRG rate for dialysis treatment. The first hospital was paid per diem payments limited to the DRG rate of the patient's principal diagnosis in that hospital which was $6,789. Had the first hospital qualified for cost outlier payments, the payment would have been about $10,000.

In another example, a patient was transferred back to the first hospital after being transferred to receive specialized care. Thus, the first hospital not only qualified for per diem payments as a transferring hospital, but received DRG and outlier payments as the discharging hospital as well. The second hospital provided specialized care incurring costs that reached the cost outlier threshold but was entitled only to per diem payments as the transferring hospital. Thus, it is quite possible for a transferring hospital to incur costs reaching the outlier thresholds.

However, this commenter illustrates our point that a hospital that admits a patient, evaluates his condition as requiring transfer, and stabilizes the patient would not incur the same high front-end costs as a hospital that evaluates a patient on admission and contemplates providing all the services that the patient will need. In this latter situation, the hospital may have to transfer the patient for specialized acute care even though it initially intended to provide all services. This hospital is likely to incur costs qualifying for the cost outlier thresholds.

Comment—Some commenters stated that the beginning of a patient's course of treatment is the most resource intensive, and, therefore, the transferring hospital should receive the full payment rate or should be paid in some other manner such as a sliding scale, which reflects this resource intensive phase of treatment.

Response—There are little data in support of the position that in typical transfer cases the beginning of a patient's course of treatment is the most resource intensive. Furthermore, as we pointed out in the January 3, 1984 final rule (49 FR 245), there is no generally acceptable method of measuring this resource intensity. Therefore, using this approach would not be feasible.

Comment—Many commenters were opposed to our goal of making one payment to the final discharging hospital instead of making per diem payments to transferring hospitals. They believe it would impose a great administrative burden on hospitals to tend to discourage hospitals from undertaking appropriate transfers.

One commenter stated that under the prospective payment system more hospitals are expected to specialize in the services that are delivered most efficiently and minimize activity in areas of inefficiency. The commenter believes that the move toward one payment would inhibit transfers and undermine this tendency toward greater efficiency. Several commenters suggested that we develop a methodology that would provide incentives for appropriate transfers, such as full DRG payment or cost reimbursement to the transferring hospital. Another commenter maintained that a single payment would force hospitals to formalize financial agreements for referral arrangements with many hospitals in order to anticipate all possible transfer situations.

Response—We do not agree with the commenter's proposal that we change our goal of providing one payment to the final discharging hospital, and continue to pay per diem payments to transferring hospitals. The prospective payment system is intended to provide full payment less applicable deductibles and coinsurances for all inpatient services associated with a particular episode of hospitalization. Our transfer policy is an interim policy to be used until we restructure the payment methodology for making one payment to the final discharging hospital for the full treatment. In these situations, the final discharging hospital would arrange to provide compensation to the transferring hospital for a portion of the inpatient services. Therefore, hospital managers should anticipate our final discharge payment policy and incorporate this eventual change into their financial and management planning and enter into cooperative agreements.

We agree with the commenter's belief that the final move to one payment in transfer cases should encourage hospitals to formalize agreements for referrals of specific types of cases to the hospitals that have become more efficient in the delivery of that type of care. We do not think that it is unreasonable to expect a hospital to anticipate referral needs for situations it may encounter and eventually enter into transfer and reimbursement agreements with other hospitals.

Comment—Several commenters requested that we amend § 405.470(c) to state that a patient transferred from a hospital's acute-care bed to a swing-bed is considered discharged.

Response—Prior to the prospective payment system, a patient receiving a skilled nursing facility (SNF) level of care in a hospital with swing-bed approval was considered to have been discharged from the hospital and readmitted to the SNF, even though the patient did not physically leave the facility. The distinction in this situation for a hospital subject to the prospective payment system is that the acute-care stay is paid on a prospective payment basis rather than a cost reimbursement basis. Under § 405.120, a hospital with swing-bed approval continues to be considered an SNF when it is delivering an SNF level of care. Thus, patients receiving an SNF level of care in these hospitals are considered to be discharged as already provided for under § 405.470(c) because they are transferred to another hospital or unit that is excluded from the prospective payment system.

B. Direction of Rehabilitation Units (§ 405.471)

Section 1886(d)(1)(B) of the Act excludes rehabilitation hospitals and rehabilitation units that are distinct parts of hospitals from the prospective payment system. The regulations implementing this exclusion are set forth

in §§ 405.471(c)(2), (c)(4)(i), and (c)(4)(iii).

Specifically, the regulations at §§ 405.471(c)(2)(v) and (c)(4)(iii)(F) provide that rehabilitation hospitals and units that wish to be excluded from the prospective payment system must have a director of rehabilitation who—

- Provides services to the hospital or unit or its inpatients on a full-time basis;
- Is a doctor of medicine or osteopathy;
- Is licensed under State law to practice medicine or surgery; and
- Has had, after completing a one-year hospital internship, at least two years of training or experience in the medical management of inpatients requiring rehabilitation services.

Many hospitals and some national organizations have expressed dissatisfaction with our application of the full-time director requirement, especially with respect to "small" rehabilitation units, because they believe that in many cases this requirement is unnecessary and burdensome.

After reconsideration of our position, we decided that we should relax our full-time director requirement to some degree, and we proposed to amend § 405.471(c)(4)(iii)(F)(1) to remove the requirement for full-time service by directors of excluded rehabilitation units. We proposed to replace that requirement with a provision that specified that the director of a unit must provide services to the unit and its inpatients for at least 20 hours per week.

We also proposed a clarifying change to §§ 405.471(c)(2)(v)(A) and (c)(4)(iii)(F)(1) to specify that time spent by the director of a rehabilitation hospital or unit in providing services to the rehabilitation hospital or unit and to its inpatients is to be counted in meeting the direction requirement.

We received comments on these provisions from hospitals, hospital associations, and individuals. The specific comments and our responses are as follows:

Comment—One commenter suggested that we not change our current requirement for full-time direction of excluded rehabilitation units. This commenter is concerned that the proliferation of rehabilitation units resulting from the relaxation of requirements may undermine the prospective payment system.

Response—We share the commenter's concern about the need to avoid changing our exclusion criteria in a way that would lead to an unintended proliferation of excluded rehabilitation units. However, for the reasons stated above, and as outlined in the NPRM (49 FR 27423), we believe that some relaxation of the current requirement is warranted. Therefore, we did not adopt this comment.

Comment—One commenter stated that if we revise the current regulations to eliminate the requirement for full-time service by unit directors, we should include other provisions in the regulations to ensure that directors actually perform services for a unit and its patients, and do not serve as "directors" in name only.

Response—First, we wish to point out that the medical direction provision is not the only requirement a unit must meet to be excluded. Among the many other requirements a unit must meet are those relating to the medical condition of patients, the types of therapies available, and the preadmission screening of potential patients. We believe that it is very unlikely that a unit that is sufficiently involved in rehabilitation to meet all these requirements could function with a director who provided only nominal services. Most physicians expect to be compensated for service as unit directors, and it is also unlikely that a hospital would pay a director for services that were not actually performed.

We are continuing to monitor the implementation of the prospective payment system, and we will consider imposing other requirements if it appears that the exclusion provisions are being abused by hospitals with unit directors who provide only nominal services. However, based on our experience to date, we do not believe that further requirements concerning a unit director's duties are needed.

Comment—Several commenters noted that the Conference Committee Report on Pub. L. 98-369 included language that reflects their views on the full-time director requirement for rehabilitation units. The report states, "The conferees do not believe this regulatory requirement to be necessary. Alternatively, the conferees expect that professionally established standards will be relied upon—for example, those of the Joint Commission on Accreditation of Hospitals (JCAH) or of the Commission on Accreditation of Rehabilitation Facilities (CARF), and these do not contain a full-time medical director requirement." (H.R. Rep. No. 98-861, 98th Congress, 2d session 1356 (1984).) Another commenter cited similar statements that appeared in the Congressional Record.

The commenters who referred to these statements of congressional views on this issue made different recommendations. Some commenters suggested that we not apply the medical direction requirement to any facility accredited by JCAH or CARF. Others suggested that we eliminate any minimum time requirement for unit directors.

Response—In developing the basic exclusion criteria for rehabilitation hospitals and units that were published on September 1, 1983, we reviewed the JCAH and CARF accreditation criteria. Based on this review, we concluded that facilities accredited by either JCAH or CARF could be deemed to have met certain criteria. However, the JCAH and CARF accreditation requirements relate primarily to the management of individuals' rehabilitation programs rather than to the direction of rehabilitation hospitals or units. Moreover, neither the JCAH nor the CARF requirements specify the minimum time a physician must spend in unit direction. Because of these factors, we did not adopt the comment suggesting that we permit rehabilitation units to substitute JCAH or CARF accreditation for unit direction in qualifying for exclusion.

Moreover, we share the concern of one commenter that it is important to avoid criteria that could result in only nominal direction of rehabilitation units. To help prevent this from occurring, we believe it is necessary to maintain a minimum time requirement for unit directors. Therefore, we did not adopt the recommendation that we delete that requirement.

Comment—Some commenters suggested that any relaxation of the current full-time direction requirement for units should be made retroactive to the beginning of the prospective payment system, that is, effective for all cost reporting periods beginning on or after October 1, 1983. Retroactive applicability of this provision would allow units that previously did not meet the exclusion requirements to benefit from our change in policy. The commenters believe that a retroactive effective date would be appropriate in this case because the limited time available for preparation and distribution of the exclusion criteria did not allow many hospitals the opportunity to recruit full-time directors for their rehabilitation units.

Response—We are sympathetic to the concerns of those who believe the statutorily imposed schedule for implementing the prospective payment system made it difficult for hospitals to meet the exclusion criteria. However, for the reasons detailed below, we did not adopt the comment regarding retroactive exclusions.

First, there would be numerous administrative problems created by such a retroactive change. All payments made thus far under the prospective payment system to units that would qualify for retroactive exclusion would be invalid, and the amounts to be paid would have to be recalculated on the basis of cost reimbursement. This would be administratively cumbersome and burdensome to the hospitals, their intermediaries, and our staff.

More significant than administrative problems, however, are our concerns about fairness. Hospitals subject to the prospective payment system that transferred patients to units that were not excluded at the time may have collected less than full payment for those patients. This occurs because of the payment rules applicable to "transfers" from one prospective payment system hospital to another. Had the units been excluded at the time, the different payment rules applicable to "discharge" from the transferring hospital and "admission" to the excluded unit would have resulted in more favorable payment to the discharging hospital. If we were to retroactively adjust those payments, another layer of administrative difficulty is added. If we did not, fairness to the discharging hospital would become an issue.

Some beneficiaries would be subject to unexpected retroactive liability for previous services. This would be caused by the way we handle inpatient days after benefits are exhausted under the prospective payment system. For those beneficiaries who exhaust their regular benefit days during a stay in a hospital subject to the prospective payment system, all subsequent nonoutlier days are "free"; that is, the beneficiary cannot be charged for them and they are not counted as lifetime reserve days. Similarly, for those beneficiaries who exhaust their lifetime reserve days during such a stay, all subsequent nonoutlier days are "free". In excluded units, the handling of those days is quite different. After exhausting regular benefit days, the beneficiary is liable for all subsequent days unless he or she elects to use lifetime reserve and be liable for sizable coinsurance amounts on each lifetime reserve day. If all lifetime reserve days are exhausted, the beneficiary is liable for all subsequent days.

In summary, to make this change retroactive would benefit only a very small number of units and only for a period of one year. By contrast, the cost would be—

- Increased administrative burden on those units, their intermediaries, and HCFA;
- Inequitable treatment of other hospitals; and
- Unfair retroactive imposition of liability on some beneficiaries.

On balance, we do not believe the costs of such a policy are justified by the limited benefits.

Comment—One commenter stated that it is arbitrary to apply the same minimum time requirement for the directors' services to all rehabilitation units' regardless of the units size. This commenter recommended that the minimum time requirement for each unit be related to the size and services of the unit.

Response—We agree that the amount of time a physician must spend to direct a unit can vary greatly depending on the unit's size, its scope of services, and other factors. Moreover, the time required may also vary because of differences in the types of medical conditions for which patients are treated, or the severity of patients' conditions. However, we have no objective data that would permit us to classify units by size and types of services furnished and establish a separate minimum time requirement for each. In the absence of these data, it would be impractical to use variable requirements. We believe it is both simpler and more equitable to prescribe a minimum time requirement for all units. Therefore, we did not adopt this comment.

Comment—One commenter stated that both our current and proposed unit direction requirements have the unintended effect of requiring physicians who serve as unit directors to perform administrative duties that are generally performed by nonphysicians. The commenter stated that this is inconsistent with current medical practice and is not cost effective.

Response—We do not agree that either requirement would have this effect. On the contrary, under our requirements, the physician who directs a rehabilitation unit would be free to delegate certain administrative duties to nonphysician hospital employees, if this would result in a more effective use of his or her time.

Comment—One commenter suggested that, in determining which services performed by the director may be considered services to a unit and its patients, we take into account the variety of services that physicians specializing in rehabilitation medicine currently perform in hospitals. This commenter stated that the services that count toward meeting the unit direction requirement should include the following:

- Preadmission screening of patients not yet admitted to the unit, and postdischarge review of patients' conditions for purposes of assessing the unit's quality of care.
- Educational activities concerning rehabilitation that are conducted for the benefit of health professionals who work in other areas of the hospital.
- Direction of rehabilitation-related activities in other hospital departments such as the physical therapy department.

To assure that these activities are counted toward the unit director's service, this commenter recommended that services be considered services to a unit and its patients if—

- The services have a direct benefit to the unit and its patients; and
- The services are consistent with existing standards of practice for rehabilitation units that have been adopted by the field of rehabilitation and its national standard-setting associations.

Response—We agree with this commenter's view that not all activities performed by a physician who is a director of a rehabilitation unit will necessarily involve current patients of the unit, or be carried on within the physical area designated as the rehabilitation unit. However, we are concerned that the definition of "services to a unit and its patients" proposed by the commenter is so broad that it could cover some services (for example, general educational activities on rehabilitation techniques) that only very indirectly provide benefits to the unit and its patients. Therefore, we did not revise the proposed regulations based on this comment.

We are continuing to monitor the implementation of the prospective payment system with regard to excluded units and will issue further instructions on this issue as they are needed.

C. Expansion of Excluded Rehabilitation Units and Exclusion of New Rehabilitation Hospitals and Units (§ 405.471)

Section 405.471(c)(4)(iii)(A) states that in order to be excluded, a rehabilitation unit must have treated, during its most recent 12-month cost reporting period, an inpatient population of which at least 75 percent required intensive rehabilitative services for the treatment of one or more of the ten medical conditions listed in that paragraph.

We proposed a change concerning the application of the 75 percent rule to

those already excluded rehabilitation units that intend to expand. We proposed to permit units with an occupancy level of at least 90 percent to increase their number of beds or square footage by up to ten percent at the start of a cost reporting period without applying the 75 percent rule to the added beds or space.

We also specified in the NPRM that if a unit increased in size beyond the level that would be specifically permitted under the amendment discussed in the previous paragraph, the additional beds or rooms would not be eligible for exclusion until they had been used to provide inpatient care for a full 12-month cost reporting period, and all space the hospital wishes to exclude must qualify for exclusion under the 75 percent rule.

We also proposed to codify in the regulations our policy that changes in the square footage or number of beds of any excluded unit would be recognized only at the start of a cost reporting period.

Comments on these issues were received from hospitals, hospital associations, and individuals and follows:

Comment—One commenter suggested that we not make any changes in policy that would allow hospitals to expand or add excluded rehabilitation units. The commenter's opinion is that these changes could permit hospitals to avoid the cost-restraining effects of the prospective payment system and that this would be contrary to its purpose.

Response—We share this commenter's concern about the importance of avoiding any changes that would create an incentive for the proliferation of rehabilitation beds or units. However, we believe that it is possible to permit expansions without creating such an incentive. Therefore, we did not adopt this comment.

Comment—Most of those who commented on this section of the NPRM approved of the concept of adopting a more flexible policy on the expansion of excluded rehabilitation units. Some commenters also supported the specific proposals that were set forth in the NPRM. However, many other commenters stated that our proposed revisions would not give hospitals the flexibility they need to respond to changes in the need for rehabilitation services. These commenters also criticized our proposal to require additions that exceed the 10 percent limit described in the NPRM to be in operation for a 12-month cost reporting period before they can be eligible for exclusion. The commenters believe that this policy would be cumbersome to administer and financially disadvantageous to hospitals, and that it could restrict a patient's access to rehabilitation services.

In this context, we also received a number of comments expressing opposition to our policy stated in the preamble to the final regulations published on January 3, 1984 (49 FR 241) that new rehabilitation hospitals and units must be in operation for a full 12-month cost reporting period before they can be eligible for exclusion. The commenters stated that this provision created serious financial problems for new hospitals and units and is particularly unfair to those hospitals and units that were in planning or under construction before the prospective payment system was implemented.

Commenters suggested various approaches that they believe would avoid the perceived inequities of our current policy while providing adequate protection against unnecessary proliferation of rehabilitation facilities. Some recommended that new rehabilitation hospitals and units should be excluded on a provisional basis for their first cost reporting period of operation, with a restrospective payment adjustment for those that did not meet the 75 percent requirement. Other commenters suggested that both new and expanded hospitals and units should be excluded during their first cost reporting period of operation or expansion based on certifications by the hospital or unit that they will comply with the 75 percent requirement. Operating data for the first 12-month cost reporting period of the new or newly expanded facility would be used in determining whether the facility would continue to be excluded for the next cost reporting period.

Response—The requirement that rehabilitation hospitals and units have a full 12-month cost reporting period history of furnishing intensive rehabilitation before they can initially be excluded from the prospective payment system was intended to avoid unintentional incentives to convert acute-care beds to rehabilitation beds merely to avoid inclusion into the prospective payment system. The 12-month waiting period to qualify for exclusion was intended to ensure that the hospital was actually furnishing intensive rehabilitation care. However, the rule has proven to be unnecessarily harsh when applied to new hopitals and units seeking exclusion for the first time. Consequently, we have added provisions in §§ 405.471 (d) and (e) to permit a new hospital or unit to certify that it will meet the 75 percent rule for its initial excluded cost reporting period.

A new hospital is one that seeks exclusion as a rehabilitation hospital for the first full 12-month cost reporting period of its participation in Medicare as a hospital. A new unit is one that has been added to an existing hospital. Any hospital that previously sought exclusion (successfully or not) for a rehabilitation unit will not be recognized as creating a "new" unit. Nor will mere conversion of existing hospital beds and facilities be recognized as creation of a "new" unit. New beds are defined as ones for which the hospital has obtained approval by increasing its bed capacity under both State licensure and Medicaid certification. Note that there is no net increase if the hospital "adds" 20 "new" beds and deletes 20 previously licensed and certified beds, even if the beds and their location are different. We view this as another form of conversion. The hospital may identify legitimate new beds as a new rehabilitation unit only or the *first* full 12-month cost reporting period that the beds are used to furnish inpatient care. We recognize that hospitals may occasionally need to combine some new beds with some existing beds to create a rehabilitation unit, and it is not always feasible to artificially keep the two types of beds separate. Consequently we will recognize a unit as "new" if more than half of its beds are new.

By applying these principles to the expansion of existing units, we will permit a hospital to expand an already-excluded unit by adding new beds for the first full 12-month cost reporting period that the new beds are used to furnish inpatient care. The definition of "new beds" is the same as for new units, explained in the preceding paragraph. The population actually treated in the unit during its most recent 12-month cost reporting period must conform to the 75 percent rule for the unit's exclusion to be renewed, but the hospital may certify that the population to be treated in the new beds will meet the 75 percent rule for their initial excluded cost reporting period.

These changes in the rules for exclusion of new hospitals, new units, and new beds are applicable only once—when the facilities first gain excluded status. We will verify that hospitals and units remain eligible for continued exclusion in future years by examining the prior 12-month cost reporting period records. In any case where the 75 percent rule is not complied with during an excluded cost reporting period, exclusion for the next cost reporting period will be denied.

Comment—A commenter objected to our policy of recognizing a change in the

size of an excluded unit only at the start of a cost reporting period. The commenter believes that most hospitals have the accounting capability to determine the costs attributable to changes in the unit's bed size that take place during a cost reporting period. The suggestion is that since hospitals can manage the data, we should recognize these changes for purposes of exclusion from the prospective payment system as soon as possible. However, another commenter supported our policy and stated that considering an expansion as part of an excluded unit only at the beginning of a cost reporting period is essential to ensure proper payment.

Response—We recognize that some hospitals have accounting systems that are sophisticated enough to find and apportion the costs that result from changes in unit size that occur during a cost reporting period. However, in the interest of administrative simplicity and accurate payment, we continue to believe that we should recognize changes in unit size only at the start of a cost reporting period. We have adopted this policy because we are concerned that serious billing, cost reporting, and other payment problems could arise if a hospital or unit is paid under different systems (prospective payment and reasonable cost) for different parts of the same cost reporting period. Also, this policy would result in uncontrolled fluctuation as hospitals add or subtract beds in their excluded units. This unwarranted instability would undermine the prospective payment system. Therefore, we did not make any change in the final regulations based on the first comment.

Comment—One commenter stated that recognition of changes in unit size only at the start of a cost reporting period is not consistent with the Provider Reimbursement Manual instructions on separate cost entities, which permit separate cost entities to be recognized for quarters of cost reporting periods. The commenters also stated that our proposed policy is too inflexible to permit hospitals to respond quickly to changes in patient need for rehabilitation services. This commenter recommended that we recognize changes in unit size effective with the beginning of the calendar month after the month in which the changes occur.

Response—The provisions of the Provider Reimbursement Manual cited by the commenter relate to the establishment of separate cost entities in hospitals that are reimbursed on a reasonable cost basis. The implications of these changes are less complex than those of the exclusion of a unit, since the latter situation requires the operation of two different payment systems within the same hospital and use of different payment systems for certain beds during different parts of the same cost reporting period. In view of this, we do not believe it is inconsistent to apply a different rule to each situation.

We share the commenter's view that some flexibility is needed to permit hospitals to adapt to shifts in the demand for various types of services. However, we are also aware of the danger that uncontrolled fluctuation in unit size could prevent accurate payment and lead to other problems outlined above. Therefore, we are making no changes based on this commenter's recommendation.

D. Physician Attestation (§ 405.472)

Section § 405.472(d)(2)(i) requires that, as a part of DRG validation, the attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest in writing to the principal diagnosis, secondary diagnoses, and names of procedures performed. These regulations require that the following statement immediately precede the physician's signature:

> I certify that the identification of the principal and secondary diagnoses and the procedures performed is accurate and complete to the best of my knowledge. (Notice: Intentional misrepresentation, concealment, or falsification of this information may, in the case of a Medicare beneficiary, be punishable by imprisonment, fine, or civil penalty.)

Since publication of this requirement, many physicians and hospitals have questioned the need for such a requirement and other physicians have found its language to be offensive. In addition, some physicians have complained about the manner in which hospitals have been implementing the physician attestation requirement and have been under the wrong impression that hospitals are required under the regulations to use particular methods for its implementation.

Many of the concerns expressed by physicians reflected misunderstandings about the certification and penalty requirement and a need for clarification of the requirement. Therefore, we proposed the following modifications to both the language and the positioning of the statements to clarify the scope of the statements and to provide additional guidance to the hospitals in their implementation of the attestation requirement:

- In order to clarify that the physician is attesting only to the diagnoses and procedures performed, we proposed to replace the word "identification" with the phrase "narrative descriptions."
- We also proposed to add the word "major" before the phrase "procedures performed" to clarify that the physician is not attesting to minor procedures that were performed of which he or she is unaware.
- We proposed that the certification statement appear on the discharge summary sheet, rather than on another type of hospital form.
- We proposed to separate the certification statement from the penalty statement. The certification would appear on each patient's discharge summary sheet, but the penalty statement would be provided only annually to the physician in a notice for which the physician would acknowledge receipt in writing. As proposed, the annual notice would state the following:

> **Notice To Physicians**
>
> Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature on the discharge summary sheet. Anyone who misrepresents, falsifies, or conceals this information may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

Acknowledgment of receipt of this notice would be kept on file at the hospital and made available to us upon request. In submitting each claim, the hospital would certify that it had on file an acknowledgment from the attending physician involved.

- We further noted in the preamble to the NPRM that, for a reasonable time, hospitals would be permitted to continue to use the language and positioning of the certification and penalty statements prescribed in the January 3, 1984 final rule.

The comments we received on this proposal were from physicians and hospitals and the organizations that represent them and medical records personnel.

Comment—Many commenters, primarily physicians and organizations that represent them, commented that the entire physician attestation requirement, including both the certification and the notice to physicians, should be eliminated. In support of their comment, they noted that these requirements do not impose a new liability upon physicians but, rather, simply underline existing statutory requirements. They also asserted that rules governing medical records already accomplish the objectives of this requirement and that our requirements are not necessary to

achieve our purpose. They further commented that retaining the requirement would create an unnecessary recordkeeping burden for them and for hospitals and constituted an affront to the dignity of the medical profession. They recommended that any attestation should be obtained from the entity seeking payment; that is, the hospital.

Response—As we noted in the NPRM (49 FR 27425), the use of certification and penalty statements is standard in Federal programs that involve the obligation of Federal funds. These statements have always appeared on cost reports and claim forms used by physicians and other providers as part of the Medicare and Medicaid programs. As we noted at the time, the penalty language is not intended to impugn the integrity of the medical profession; rather, it is a standard cautionary measure routinely used to single out isolated wrongdoers. In fact, the necessity of these statements for successful prosecution of wrongdoers was also noted in the NPRM in a quote from a communication from the U.S. Department of Justice. We believe that the physician is the key person in the diagnosis and treatment of a patient and that it is upon the physician that we should rely for information about his or her diagnosis and the procedures performed.

We recognize that many physicians object in principle to the use of a certification and of a cautionary statement. We believe, however, that the provisions we proposed, as they are modified in this final rule, go as far as possible in dealing with these concerns given our overall responsibility for effective management of the Medicare program.

Comment—Most commenters approved of our proposal to make physician acknowledgment of the penalty statement an annual requirement with the hospital responsible for obtaining it and keeping it on file. However, many physicians and some hospital administrators commented that this requirement still imposes a burden on providers and will continue to present an affront to physicians.

Response—Our proposal does not eliminate the requirement, but we believe that it does significantly lessen the problems about which physicians complained. The penalty statement is not a prominent part of the medical record and is not routinely encountered by physicians when they complete the certification. At the same time, our proposal still creates the explicit acknowledgment of the effects of misrepresentation we believe is essential to the prosecution of the few wrongdoers who may be identified. We believe the requirements we proposed go as far as possible towards meeting the concerns of physicians and we have retained them in the final regulations.

Comment—The proposed regulations indicated that the hospital, in submitting each claim, would certify that it had on file an acknowledgment from the physician as required by § 405.472(d). Some commenters noted that certification on a claim-by-claim basis would be unnecessarily burdensome and that the current Medicare bill does not contain a space for such certification. It was suggested that claim-by-claim certification not be required.

Response—We agree. The final regulations simply establish as a requirement for the prospective payment system that the hospital obtain the signed acknowledgments before claims are submitted and that it keep them on file. We will monitor compliance through the DRG validation process. Certifications will not be required on hospital bills.

Comment—Several commenters raised questions as to the acceptability of rubber stamps and electronic signatures in completing the physician attestation. There were also questions as to whether the term "in writing" precluded the use of typed narrative descriptions or computer-generated narrative descriptions.

Response—The requirement for the physician's signature is meant to elicit an actual signature by the attending physician. Rubber stamps and facsimile signatures of other types are not acceptable. We believe such methods of affixing a signature are primarily used by persons other than the person whose signature is being affixed. Since we plan to rely very heavily on the information and because the accuracy of the information is the personal responsibility of the physician and he or she is liable for any inaccurate information attested to, we believe it is essential to assure that the physician personally sign the certification. We also know, however, that some hospitals have systems under which the narrative description of the diagnoses and procedures are generated in the medical records department, sometimes mechanically, and presented to the attending physician for his or her approval. We believe this is appropriate and do not intend the regulation to preclude it so long as the attending physician agrees to it and signs his or her name to the certification.

Comment—Some commenters, especially medical records professionals, objected to the use of the term "major" in connection with procedures performed. The term was used in both the certification and notice statements contained in the proposed regulations. The commenters noted that the term "major" could cause confusion. It was also noted that procedures that could be termed "major" and "minor" could be significant for DRG classification. It was suggested that the term be deleted.

Response—The term "major" was inserted into the certification and penalty statements in response to physician comments that the word "procedures," unmodified, appeared to make them responsible for listing all procedures, whether major or minor and whether or not they had personally performed them or had knowledge of them. They noted that there are occasions upon which procedures are performed without the direct knowledge of the attending physician. As we noted in the proposed regulation, we did not intend to require that the attending physician attest to all the procedures performed but only to those procedures of which he or she was aware. We agree with the commenters that the word "major" could cause confusion if it were taken to have a precise technical meaning; however, we have used the word in a more general sense for the purposes discussed above and do not intent to further define it or to require that it be used as a technical test to determine which procedures should be listed and which ones should be omitted. Accordingly, we are retaining the word "major" in both the certification and penalty statements with the understanding that it be construed as discussed above.

Comment—Several commenters suggested that the identification of the principal and secondary diagnoses is primarily a payment convention and should be left to hospitals rather than required of physicians.

Response—We do not agree. It is our intention to use the physician attestation process to identify (after study) the reason why an attending physician admitted a patient to the hospital for treatment. While payment is determined on the basis of this information, we do not believe it is merely a payment convention which may be left to the hospital. We believe that the physician is the key figure in the diagnosis and treatment of patients and that it is most appropriate to rely upon his or her decisions in this matter.

Comment—In the revised language of the acknowledgment statement proposed in the July 3 document, we omitted the word "intentional" in connection with language about misrepresentation, falsification, and concealment of information. Some commenters suggested that this omission represented a decision to expand the liability of physicians to include unintentional errors.

Response—As we have noted previously, the statement that we are seeking physicians to read and acknowledge does not add or diminish legal liability for misconduct. It simply provides a reminder that there are currently laws that impose penalties for misrepresentation, falsification, and concealment of information. We omitted the word "intentional" because it does not accurately describe the applicable criminal and civil liabilities and therefore does not provide fair warning to physicians of the consequences of misconduct. Again, however, we note that the language of the notice will not affect the legal liability of physicians under applicable laws.

Comment—The largest number of commenters, primarily medical records professionals and hospital administrators, commented that a requirement that the certification appear on a specific document is unnecessarily restrictive and that the requirement that it be placed on the hospital discharge summary presents real problems in terms of medical records completion and hospital administration. A major problem is that the discharge summary is required by the Joint Commission on the Accreditation of Hospital (JCAH) standards to be completed in a "reasonable" time. In practice, this has been taken to be from 15 to 30 days. Some delay is encountered as physicians wait for final laboratory results that may not be available at discharge. Often there is also some delay in transcribing dictated statements. Standards of the JCAH do not require a dictated discharge summary for all cases. For example, a final progress note may be substituted for a discharge summary in the case of patients who have problems of a minor nature and require less than 48 hours of hospital care. In some instances, these summaries are prepared by physicians other than the attending physician.

Two basic concerns about the use of discharge summaries arise from these comments. One is that pressure from hospitals for early completion of discharge summaries in order to assure adequate cash flow may well lead to a deterioration in the quality and quantity of information reported. Another concern is that delays in completing the summaries could add two weeks or more to the length of time it takes a hospital to submit a claim for payment.

Response—We agree with these comments. We had specified the use of the discharge summary in the proposed regulation as a means of assuring that the physicians understood that they were attesting to the diagnoses and procedures performed rather than the medical codes applied to them; however, we did not intend to cause any of the unfortunate results pointed out in these comments. Accordingly, we have dropped the requirement that the certification be placed on the discharge summary. The location of the certification in the medical record may be determined by the hospital. We note again, however, that we do not intend the physician to be responsible for more than his or her own narrative statement of the diagnoses and procedures. A physician is not responsible for hospital coding accuracy.

F. Hospitals in Areas Redesignated as Rural (§§ 405.473 and 405.476)

Section 1886(d)(2)(D) of the Act requires that average standardized amounts per discharge be determined for hospitals located in urban areas and rural areas of the nine census divisions and the nation. Under the prospective payment system, a hospital's payment rate is dependent, to some degree, on whether the county in which a hospital is located is designated as an urban area or as a rural area. The term "urban area" is defined as provided in section 1886(d)(2)(D) of the Act, in accordance with the Executive Office of Management and Budget's (EOMB's) designations, as a Metropolitan Statistical Area (MSA), a New England County Metropolitan Area (NECMA), or certain New England counties deemed to be urban areas under section 601(g) of Pub. L. 98–21 (42 U.S.C. 1395ww (note)). The term "rural area" means any area outside an urban area.

Periodically, EOMB revises the list of MSA or NECMA designations based on a continuing analysis of factors such as changes in population and commuting patterns. Depending on those changes, a hospital may be reclassified as urban and thus receive the higher urban payment rate, or it may lose its urban area status and receive the lower, rural Federal rate. We recognize these reclassifications, for the purpose of determining payment, beginning with the start of the next Federal fiscal year following EOMB's announcement of the change.

For a hospital that loses its urban area status, the resulting reduction in its Federal payment rate may cause a serious financial burden for the hospital if it suddenly must operate at the lower rate without time for adaptation.

Section 1886(d)(8) of the Act, as added by section 2311(c) of Pub. L. 98–369, provides for an adjustment to the payment amounts for hospitals reclassified from urban to rural after April 20, 1983. Therefore, we are revising §§ 405.473(b) and (c) and adding a new paragraph § 405.476(i) to provide that, effective with hospital cost reporting periods beginning on or after October 1, 1983, a hospital that loses its urban status, as a result of an EOMB redesignation occurring after April 20, 1983, may qualify for special consideration by having its rural Federal rate phased in over a two year period. The hospital will receive, in addition to its rural Federal rate, in the first cost reporting period, two-thirds of the difference between its present rural Federal rate and the urban Federal rate that would have been paid had it retained its urban status, and, in the second reporting period, one-third of the difference. The adjustment will be applied for two successive cost reporting periods beginning with the cost reporting period in which we recognize the reclassification.

Of course, if the hospital is subsequently reclassified during this special transition period as urban, the special adjustments would cease to apply.

In the NPRM (49 FR 27426), we proposed that a hospital meet a qualifying test in order to receive the special two-year adjustment. For a hospital to be eligible for the additional payments, the hospital-specific portion had to exceed the hospital's Federal rural rate after the Federal rate was adjusted by the hospital's rural area wage level index and by the doubled indirect teaching adjustment factor. Because section 2311(c) of Pub. L. 98–369 does not require this test or a similar qualifying test, we are eliminating the qualifying test in this final rule.

We also proposed to make the special adjustment effective for two Federal fiscal years because the Federal rates are updated according to the Federal fiscal year.

However, the law specifically makes the special adjustment effective according to cost reporting periods, beginning on or after October 1, 1983. Therefore, we are modifying the final regulations to conform to the requirement of Pub. L. 98–369.

As a result of EOMB's June 30, 1983 revision of the MSA or NECMA designations, 49 counties that were previously classified as urban lost their urban status. This resulted in the reclassification of 51 hospitals from urban to rural status and the subsequent payment to the hospitals of the lower rural rates for the census divisions in which they are located. Under the new section 1886(d)(8) of the Act, each of these hospitals will also be eligible to receive the two year adjustment effective with their cost reporting periods that began in Federal fiscal year (FY) 1984.

Comment—One commenter noted that section 2311(c) of Pub. L. 98–369 provides that additional payments be made to hospitals reclassified as rural hospitals on or after April 20, 1983. The additional payments are effective with cost reporting periods beginning on or after October 1, 1983. The commenter recommended that we revise § 405.476(i) to conform the effective date of this provision with the date contained in the legislation.

Response—We agree with the commenter and have revised § 405.476(i) to provide that the effective date of the reclassified rural hospitals' provision is with a hospital's cost reporting period beginning on or after October 1, 1983. We note that, based on section 2311(b) of Pub. L. 98–369, we are also revising the effective date in § 405.473(b)(6)(ii) for a hospital located in an MSA or NECMA that crosses over two or more census divisions. The effective date of these provisions is also with a hospital's cost reporting period beginning on or after October 1, 1983.

Comment—Several commenters agreed with our proposal to permit hospitals located in counties that lost their urban designation after April 20, 1983 to receive an additional payment. However, one commenter proposed that additional criteria be provided under which a hospital located in a rural county could be considered urban and paid an urban rate.

Response—The rationale for providing additional payment under § 405.476(i) is to prevent serious financial hardship to a hospital that could not have anticipated a redesignation of the county as rural. In order to permit a smooth transition to the rural rate, additional payments are made for two cost reporting years. This should allow hospitals adequate time to budget and plan expenses in terms of a rural rate. We do not believe that the full urban rate should be paid since the hospital is now designated rural, and this payment is only a supplement to the rural rate.

As we have explained previously, the designation of a county as urban or rural is based on whether or not it is located within an MSA or NECMA as designated by EOMB. The standards for determining whether or not a particular location qualifies as an MSA or NECMA are not within the technical control of the Department of Health and Human Services. EOMB determines the MSAs and their effective dates based on standards prepared by the Federal committee on MSAs which advised EOMB on metropolitan area definitions. As stated previously, we are not aware of any criteria that are as objective as the MSA criteria for use in determining whether a hospital is urban or rural. We do not believe it would be appropriate to establish criteria in the regulations that have been derived solely to allow a targeted hospital or groups of hospitals to be classified as urban. Rather, any such criteria should have broad applicability and serve to delineate common characteristics that objectively define urban and rural areas.

In addition at the end of the two cost reporting periods, the hospital will be receiving a national rate. As part of the development of a national rate, Congress has requested a study due at the end of FY 1985 on the feasibility and impact of eliminating or phasing out separate urban and rural DRG prospective payment rates. Based on that study and other studies mandated by Congress, we will be evaluating the continuing necessity of establishing separate urban national rates and rural national rates.

Comment—A number of commenters stated that the NPRM did not adequately address what they believe are fundamental inequities in the urban/rural classification system that is based on EOMB's definition of urban areas. A few commenters believe that the urban rates were too high in comparison to the rural rates that are applied to rural hospitals.

Response—It appears that a number of commenters share the erroneous impression that we are arbitrarily using EOMB's MSA/NECMA definitions in determining urban versus rural areas under the prospective payment system. We have employed EOMB's definitions of Standard Metropolitan Statistical Areas (SMSAs) as the bases of an urban/rural classification system since the implementation, in 1974, of the hospital routine cost limits under section 223 of Pub. L. 92–603, and subsequently for the total inpatient hospital cost limits in 1982 under Pub. L. 97–248. Moreover, section 601(e) of Pub. L. 98–21 specifies that hospitals must be grouped by urban or rural location within the United States and each census region (established by the Bureau of the Census) when calculating the standardized payment rates. The law (section 1886(d)(2)(D) of the Act) requires that separate average standardized amounts be computed for hospitals located in rural as opposed to urban areas. The law further defines an urban area as an area within an SMSA as designated by EOMB or within such similar area as the Secretary has recognized under the regulations establishing limits on total inpatient operating costs under Pub. L. 97–248. Hospitals located outside these areas are considered to be located in rural areas.

On June 30, 1983, EOMB began using MSAs in lieu of SMSAs. MSAs are designated and defined following a set of new standards prepared by the Federal committee on MSAs which advised EOMB on metropolitan area definitions. We believe that the MSA system is the only one currently available that meets the requirements for use as a classification system in a national payment program. The MSA classification is a widely accepted statistical standard developed for use by Federal agencies in the production, analysis and publication of data on metropolitan areas. The standards have been developed with the aim of producing definitions that will be as consistent as possible for all MSAs nationwide. The objective standards used to establish MSAs are based on 1980 census data and include not only population criteria, but also standards for determining the degree of economic and social integration among potentially qualifying counties.

We believe that section 1886(d) of the Act prescribes the precise method to be employed for computing the standardized Federal urban and rural rates. This method takes into account the actual costs of hospitals located in urban and rural areas. We refer the reader to more detailed discussions in the September 1, 1983 interim final rule (48 FR 39763) and the January 3, 1984 final rule (49 FR 251).

Comment—One commenter recommended that we adopt the definition of urbanized areas used by the Census Bureau in lieu of EOMB's definitions of MSAs/NECMAs. Yet, another commenter recommended against using Census Bureau data.

Response—Our employment of some other classification method of urban/rural categories would not resolve many of the problems raised by the commenters. We believe that any classification system will produce

situations in which hospitals believe that they are not fairly represented by the classification system. It is questionable whether adopting the Census Bureau's definition of urbanized areas in lieu of EOMB's definitions would improve the circumstances of those hospitals which are currently classified as rural under the prospective payment system. Although applying the Census Bureau's definition would result in more areas being defined as urban, it would not necessarily increase the number of hospitals classified as urban. The Census Bureau's definition is based on the population of cities and villages, whereas EOMB's definition is county specific, thereby generally encompassing a larger geographic area than the Census Bureau definition for the same metropolitan area. Therefore, some hospitals that are classified as urban under EOMB's definition may be classified as rural under the Census Bureau's definition.

In addition, because the Census Bureau's definitions are city or village specific rather than county specific, we would be unable to correlate these geographic areas with the wage and employment data provided to us by the Bureau of Labor Statistics (BLS) for the construction of the hospital wage index. However, even if the BLS data were available on a city or village specific basis, we believe the sharper urban/rural distinctions would further exacerbate differences in the urban and rural payment rates.

Comment—One commenter argued that the proposed remedy for reclassified rural hospitals fails to rectify the problems caused by variations in rural wage rates. These are the problems that the current hospital wage index also fails to address. The commenter also believes that the NPRM does not address the problem of hospitals that experience high average costs per discharge due to the greater intensity of services furnished in the hospital.

Response—We agree with the commenter that the regulations (§ 405.473(c)(2)(i)(D)) do not address variations in rural wage rates or the inability of the current hospital wage index to measure and control for variations in wage rates that occur in rural areas throughout each state. These regulations, as proposed in the NPRM and as amended by section 2311(c) of Pub. L. 98–369, are not intended to address problems with the wage index. Rather, the provisions serve to alleviate a major inequity resulting from a hospital being reclassified from urban to rural status, and the abrupt disruption to its cash flow that may accompany such a change. The problems with the wage index have been discussed in the August 30, 1983 final rule implementing provisions of Pub. L. 97–248 (48 FR 39433) and in the January 3, 1984 final rule (49 FR 257). We have maintained that the inability of the current wage index to measure and control for difficulties arising from the variation in rural wage levels is a result of the lack of suitable alternative data for determining appropriate labor markets for rural hospitals. Simply extending the definition of urban areas to include hospitals in adjacent rural counties and applying the urban wage index to these hospitals, as some previous commenters have suggested, is not a solution we can accept without clear evidence indicating that these hospitals are in the same labor market as hospitals within the urban boundaries. While we are mindful of the need to improve the sensitivity of the wage index to variations in wage rates paid throughout rural areas, thus far no one has come forth with a better method than the current one for identifying appropriate rural labor market areas.

It should be noted that hospitals, reclassified as rural, whose intensity of services and costs more closely resemble that of urban hospitals, may meet the criteria for rural referral centers contained in § 405.476(g)(1) of the regulations. A hospital that meets these requirements may receive the urban Federal standardized payment rate applicable to the census division in which the hospital is located rather than the rural rate.

F. Census Division Boundaries (§ 405.473)

Section 1886(d)(2)(D) of the Act requires that separate average standardized amounts per discharge be determined for hospitals located in urban areas and rural areas in each of the nine census divisions and the nation. This yields 18 basic regional rates and two national rates. The definition of urban area is generally based on the MSA and NECMA designations issued by EOMB.

Despite the application of a single urban wage index to determine the payment rate for all hospitals within a given MSA or NECMA, different standardized rates apply to hospitals located in certain MSAs or NECMAs that cross over census division boundaries. Currently, there are 14 MSAs that overlap census division boundaries resulting in two or more basic Federal payment rates applying to the same urban area.

Section 1886(d)(2)(D) of the Act, as amended by section 2311(b) of Pub. L. 98–369, authorizes the Secretary to deem a hospital to be located in the region in which the largest number of hospitals in the same MSA are located or the largest number of discharges occur. We elected to assign hospitals to an MSA or NECMA based on the census division with the largest number of hospitals rather than the largest number of discharges in order to maintain consistency with the present method of computing the Federal standardized amounts.

We are, therefore, amending §§ 405.473(b) and (c), by revising the method for determining the census area in which an MSA or NECMA is located for the purpose of computing the Federal standardized payment rates.

Henceforth, a hospital in an MSA or NECMA that crosses two or more census divisions will be deemed to belong to the census division in which most of the MSA's or NECMA's hospitals are located. This revised definition is effective with cost reporting periods beginning on or after October 1, 1983.

As an exception to this definition, section 2311(d)(2) of Pub. L. 98–369 requires that the new payment rates, for those hospitals that are placed in a less advantageous position because the majority of hospitals in their respective MSAs or NECMAs are in a census division with a lower Federal standardized rate, are not to be effective for cost reporting periods occurring in FY 1984. The deeming provisions apply to these hospitals effective with their cost reporting periods beginning on or after October 1, 1984.

In addition to revising the effective date (to cost reporting periods beginning in Federal FY 1984) that was proposed in the NPRM, because of the legislation affecting those hospitals which will be assigned a census division with a lower federal rate, we deleted the transitional one-year only payment (for FY 1985) to those hospitals. We eliminated the payment provision because the legislation provides these hospitals with a transitional grace period in FY 1984 to the extent that the lower rate will not apply to them for their cost reporting periods that begin during this year.

Because we decided to deem a hospital located in an MSA or NECMA that crosses census divisions to belong to the census division in which the largest number of hospitals within the MSA or NECMA are located, we needed to resolve the situation in which an equal number of hospitals are located in each part of an MSA or NECMA that

overlaps two or more census divisions. Section 2311 of Pub. L. 98–369 refers only to the assignment of hospitals on the basis of hospitals or discharges. This section, however, does not specifically preclude assignment on other bases. Neither does it give any instructions for dealing with the exceptional condition of an equal number of either hospitals or discharges. Hence, in the case in which an equal number of hospitals are located in each part of an MSA or NECMA that crosses census division boundaries, we believe assigning hospitals to the census division with the higher Federal rate, as proposed in the NPRM (49 FR 27436), is consistent with Congressional intent to remedy the problem of multiple Federal rates being established for hospitals within the same urban area. Furthermore, because this provision does not adversely affect hospitals, and is relatively easy to administer, we are retaining it in the final rule.

Comment—One commenter noted that under section 2311(b) of Pub. L. 98–369 the Secretary is authorized to deem the location of hospitals within an MSA or NECMA that crosses census divisions to one of the census divisions. The basis for deciding to which census division a hospital is to be assigned would be either the census division in which the largest number of hospitals in the MSA or NECMA is located or in which the greatest number of discharges occurs. The commenter recommended that we base the assignment of hospitals on the greatest number of discharges rather than on the largest number of hospitals as we had proposed in the NPRM.

Response—We considered deeming the location of hospitals on the basis of discharges, along with other alternative bases, but elected the largest number of hospitals provision as the most appropriate basis for several reasons. First, the number of hospitals located within and MSA or NECMA is much more likely to remain stable from year to year than the number of discharges. The number of discharges may fluctuate significantly for a number of reasons including the opening or closing of patient services, deliberate manipulation by hospitals, or unexpected events such as a fire. Fluctuation in discharges could result in shifting the deemed location of the MSA or NECMA from one census division to another in the two succeeding years. This, we believe, would enormously complicate the rate setting process and create uncertainty for hospitals as to which Federal rate they could expect to receive for the final year of the prospective payment system transition period.

Second, the calculation of the standardized rates is determined based on an average cost per case across all hospitals in a region without regard to weighting based on the number of discharges in each hospital. Thus, assignment of hospitals based on the greatest number of hospitals maintains consistency with the method of calculating the standardized rates. Furthermore, to assure that assignment of hospitals to one census division or another was based on a complete count of discharges, we would have to use data that was at least one year old because of the delay in receiving bills, especially from large hospitals that tend to have a greater proportion of outlier cases than small hospitals. In contrast, the largest number of hospitals provision can be determined immediately. Thus, for administrative simplicity, and assurance of accuracy in deeming the location of an MSA or NECMA, we have elected to utilize the number of hospitals as the basis for deeming.

Finally, were we to deem the location of hospitals on the basis of discharges rather than on the largest number of hospitals, it is likely that, based on the latest data available, more hospitals would experience reduction in their Federal payment rates than would occur using the methodology we have elected.

Comment—One commenter inquired how hospitals would be assigned when an MSA or NECMA crosses over three census divisions. The commenter suggested that the situation may arise in which the census division with the lowest of the three Federal standardized rates may have the largest number of hospitals, although the number of hospitals combined in the other two census divisions exceeds the first. The commenter believes that it is inequitable to assign all hospitals within the MSA to the lowest paying census division because the combined number of hospitals in the other two census divisions exceeds the first.

Response—There are hospitals located in MSAs that cross over three census divisions, but none in which the combined number of hospitals in two of the census divisions exceeds the number in the third census division having the largest number. However, even if such a case were to occur in FY 1986 (the last year that rates will be set for each census division), we believe that § 405.473(c)(2)(ii)(A), which describes the largest number of hospitals provision, is sufficiently broad to cover this situation. Our use of the term "most" in referring to the location of the largest number of hospitals, rather than the term "majority," is specifically intended to resolve these situations. Furthermore, section 2311(b) of Pub. L. 98–369 clearly supports the largest number of hospitals provision. There is no authority under the law to base a hospital's rate, in a situation involving an MSA or NECMA that crosses over three census divisions, on the rate paid to the majority of hospitals when that majority spans two or three census regions. We also note that § 405.473(c)(2)(ii)(B), which provides for hospitals to receive the higher Federal payment rate when an equal number of hospitals in the MSA or NECMA are located in each of the intersected census divisions, is applicable only in those situations in which the location of the MSA or NECMA cannot be determined based on the largest number of hospitals provision.

G. Base Year Appeals (§ 405.474)

Section 405.474(b) states that the intermediary's estimate of a hospital's base-year cost and subsequent modifications, made for purposes of determining the hospital-specific rate under the prospective payment system, are final and may not be changed except as prescribed in the regulations. Under the exception set forth at § 405.474(b)(3), in making a change to the estimate, the intermediary is allowed to take into account a successful appeal of the hospital's base period notice of amount of program reimbursement, as described in §§ 405.1801 through 405.1883.

In the NPRM, we proposed to revise § 405.474(b)(3) to include the results of a reopening and revision of a cost report determination under §§ 405.1885 through 405.1889, a prehearing order or finding under §§ 405.1821 or 405.1853, or a final administrative or judicial review decision under §§ 405.1831, 405.1871, or 405.1877, as a basis upon which a recalculation of a hospital's base year costs may be made on a prospective basis (49 FR 27437).

In this final rule, we are including the results of an Administrator's review under § 405.1875, as well as the administrative actions specified in the NPRM, as a basis upon which a recalculation of a hospital's base year may be made on a prospective basis. This change provides an additional basis upon which the recalculation may be made. In addition, we are clarifying that the term "final administrative or judicial review decision" in § 405.474(b)(3)(i)(C)(*1*)(*iii*) (redesignated as § 405.474(b)(3)(i)(C)(*1*)(*iv*) in this final rule) means a decision that is no longer subject to review under applicable law or regulations by a higher reviewing

authority. This change does not affect the current provision in § 405.474(b)(3)(i)(C)(*2*), and therefore, the intermediary will recalculate a hospital's base year costs effective with the first day of the hospital's first cost reporting period beginning on or after the date of the decision. The date that the decision is no longer subject to review will not be used for this purpose.

Our responses to the comments that we received from hospital associations and related organizations are as follows:

Comment—Several commenters supported our proposal in § 405.474(b) to include other administrative actions as a basis of recalculating base year costs, but took the position that the adjustments to base year costs should be applied retroactively to a hospital's entry into the prospective payment system. Another commenter urged that we revise the proposed changes to require retroactive adjustments that would suggest alternative methods for payment of the retroactive amounts due. One other commenter recommended that the adjustments to base year costs be effective 30 days after final resolution, and that a lump sum payment be made for all discharges occurring between the hospital's entry into the prospective payment system and the effective date. Finally, another commenter stated that base year costs should be permitted to be recalculated retroactively with no limits placed on the basis for making such recalculations.

Response—The matters of retroactive application versus prospective effect and the limited basis for recalculating base year costs are not related to our proposed changes as stated in the NPRM. We do not believe that there is a valid reason to change the views we expressed on these matters in the January 3, 1984 final rule (49 FR 259–260). In taking into account additional costs recognized as allowable costs for a hospital's base year, we believe that only a prospective revision for subsequent years based on information developed independent of the prospective payment system is appropriate. We believe that this policy and the regulatory changes in this final rule are consistent with congressional recognition that, during the transition period, establishment of the prospective payment rates would have to be done rapidly based on the best data available (Joint Explanatory Statement of the Committee of Conference, Item 3.B, Congressional Record—House, p. H1773, March 24, 1983).

Comment—One commenter believes that the proposed changes would allow intermediaries to reopen base year cost report determinations to "retroactively" affect payment rates. For this reason, the commenter suggested that reopenings should be limited to adjustments of those specific costs that are appealed by the provider.

Response—We believe that the proposed changes that are incorporated in this final rule do address the concern of this commenter. Under those regulations at §§ 405.474(b)(3)(i)(C)(1) and (2), the intermediary's estimate of base year costs and modifications thereto may be changed only to take into account additional costs recognized as allowable costs. These allowable costs that result from a reopening and revision are effective with the hospital's first cost reporting period beginning on or after the date of the revision. The revised base year costs will not be used to recalculate the hospital-specific portion for fiscal years beginning before the date of the revision.

H. Referral Centers (§ 405.476)

Section 1886(d)(5)(C)(i) of the Act directs the Secretary to provide exceptions or adjustments to the prospective payment system that consider the special needs of regional and national referral centers (specifically including those hospitals of 500 or more beds located in rural areas).

Section § 405.476(g)(1) provides that a referral center is an acute care hospital with a Medicare provider agreement that—

- Is located in a rural area and has 500 or more beds; or
- Has an inpatient population such that at least 50 percent of its Medicare patients are referred from other hospitals or from physicians not on the staff of the hospital. In addition, at least 60 percent of the hospital's Medicare patients must live more than 25 miles from the hospital, and at least 60 percent of all the services that the hospital furnishes to Medicare beneficiaries must be furnished to beneficiaries who live more than 25 miles from the hospital.

The payment adjustment provisions are in § 405.476(g)(2) and state that rural referral centers which have 500 or more beds are paid prospective payment rates based on the urban rather than the rural, adjusted standardized amounts as adjusted by the applicable DRG weighting factor and the hospital's area wage index. There are no payment adjustments for rural referral centers with less than 500 beds.

While we believe that the criteria for referral center status are reasonable, upon further analysis of the special circumstances applicable to rural referral centers of less than 500 beds and based on information we received from the industry since publication of the interim final rule in September 1983, we proposed in the NPRM a separate set of criteria that would meet these unique circumstances. We proposed to add the following alternative set of criteria (two mandatory and a choice of one out of three other criteria) that could be used to determine whether any hospital located outside of an MSA or NECMA is a referral center:

- The hospital would have to have a 1981 case-mix index of at least 1.03 as published in the September 1, 1983 **Federal Register** (48 FR 39847).

We proposed to allow hospitals that do not meet the 1.03 case-mix index benchmark an alternative criterion. A hospital whose published case-mix index is below 1.03 could meet this requirement if its case-mix index for the first cost reporting period subject to prospective payment (that is, the first reporting period beginning on or after October 1, 1983) is at least 1.0903. We obtained the 1.0903 figure by multiplying the 1.03 case-mix figure by a factor of 1.0585. This factor represented the estimated increase in a hospital's case-mix index reflecting the increased accuracy and completeness of billing information that would result from making payments to hospitals based on this information as occurs under the prospective payment system. Since the hospital case-mix indexes published in the September 1, 1983 **Federal Register** rely on data from a period in which hospital payments were not dependent on complete and accurate billing data, it was estimated that the indexes were, on average, understated by 5.85 percent. (See section II.C. of the addendum for a more detailed discussion of the estimated increase in a hospital's case-mix index.)

- The hospital's number of discharges (excluding discharges from subprovider units (as that term is defined in section 2336 of the Provider Reimbursement Manual, HCFA Pub. 15–1)) must have been at least 6,000 for the most recent cost reporting period completed by the hospital before it applies for referral center status.

In addition to meeting the two criteria mentioned above (case mix and number of discharges), a hospital would have to meet one of the following three criteria:

- More than 50 percent of the hospital's medical staff are specialists; that is, they have completed minimal training requirements as recognized by the American Board for Osteopathic Specialists.
- The hospital's inpatient population is such that 60 percent of all its discharges are for inpatients who reside more than 25 miles from the hospital.

• At least 40 percent of all inpatients treated at the hospital have been referred to the hospital either from physicians not on the hospital's staff or from other hospitals.

We proposed that these criteria be used in determining whether a hospital qualifies for an adjustment as a referral center that would be effective for discharges occurring on or after October 1, 1984. We proposed that these referral centers would be paid prospective payment rates on the basis of the urban, rather than the rural, adjusted standardized amounts as adjusted by the applicable DRG weighting factor and the hospital's area wage index. Therefore, these hospitals would be paid on the same basis as those hospitals that meet the criteria in § 405.476(g)(1)(i) (that is, rural hospitals with 500 or more beds). In addition, we proposed that rural hospitals that meet the criteria in § 405.476(g)(1)(ii) (related to percentage of Medicare patients referred and proximity of Medicare patients' residences to the hospital) would also be paid, for discharges occurring on or after October 1, 1984, prospective payment rates on the basis of the urban, rather than the rural, adjusted standardized amounts.

We did not include in the NPRM any payment adjustment for urban hospitals that meet the referral center criteria in § 405.476(g)(1)(ii) because of a lack of data on these hospitals.

The NPRM also stated that we are considering instituting a periodic review of the status of hospitals that have qualified for a payment adjustment as referral centers. This review would allow us to determine if these hospitals continue to meet the criteria for referral center status.

Section 2311(a) of Pub. L. 98–369 amended section 1886(d)(5)(C)(i) of the Act by providing that, effective October 1, 1984, rural hospitals can appeal to the Secretary to be classified as rural referral centers based on criteria established by the Secretary. These criteria would allow a hospital to demonstrate that it should be classified as a referral center because certain of its operating characteristics are similar to those of a typical urban hospital located in the same census region.

Because we have regional data available on case-mix indexes and the number of discharges, for the period represented in the data base used to establish the standard amounts (1981 cost and billing data), we developed regional measures for these two criteria which we think represent operating characteristics that are similar to those of a typical urban hospital in the same census region. For each region we compared the median case-mix index values and the median number of discharges of urban hospitals to the criteria we proposed in the NPRM. We used the median rather than the mean to avoid discrepancies that may arise with hospital case-mix index values or number of discharges that, because they are extremely high or low, would distort the average for urban hospitals.

The median case-mix index values for urban hospitals on a regional basis using the 1981 MEDPAR data were as follows:

Region	Median urban case mix
1	1.055
2	1.071
3	1.035
4	1.046
5	1.010
6	1.022
7	0.972
8	1.056
9	1.073

The comparing the regional case-mix index values with the 1.03 case-mix benchmark for 1981 as proposed in § 405.476(g)(1)(iii)(A) of the NPRM, all but three regions have an average case-mix index for urban hospitals above the 1.03 criterion proposed to establish eligibility for referral center status. We considered replacing the 1.03 case-mix index value with the regional case-mix index values but decided not to do so because a number of hospitals in the six regions with higher case-mix index values would no longer meet this criterion. Instead, we are revising § 405.476(g)(1)(iii)(A) to permit hospitals to meet the case-mix criterion by having a published case-mix index value that is equal to or greater than—

• 1.03 in 1981 based on the index values published in the September 1, 1983 interim final rule (48 FR 39847); or

• The median urban case-mix index value for the region in which the hospital is located for 1981 as contained in the table above.

In addition, we are allowing hospitals the alternative of meeting the case-mix index criterion if the hospital's case-mix index is at least 1.1053 for the hospital's first cost reporting period subject to the prospective payment system.

We are also allowing hospitals the alternative of meeting the case-mix index criterion if the hospital's case mix index for the hospital's first cost reporting period subject to the prospective payment system is equal to or greater than the following regional benchmarks:

Region	Adjusted median urban case mix
1	1.132
2	1.149
3	1.111
4	1.122
5	1.084
6	1.097
7	1.043
8	1.133
9	1.151

These values represent an adjustment (7.31 percent) to the median urban case mix index values determined from the 1981 MEDPAR data. The adjusted regional medians are the regional benchmarks equivalent to the 1.1053 general overall standard.

Because the law now requires hospitals to request referral center status in the quarter before the first quarter of the hospital's cost reporting period for which the change is requested in most cases the request will need to be made before the end of the first year subject to the prospective payment system. Therefore, the determination under the alternative standard must of necessity be made on less than a full year's worth of claims. However, every attempt will be made to include as many months as is possible.

Our data show that the number of hospital discharges also varies considerably among regions. The median number of discharges for 1981 for urban hospitals on a regional basis determined from the data used to establish the standard amounts is as follows:

Region	Urban discharges
1	7,467
2	8,601
3	7,785
4	9,309
5	8,330
6	8,515
7	5,888
8	9,928
9	5,564

In comparing the regional number of discharges with the 6,000 discharges requirement as proposed in § 405.476(g)(1)(iii)(B) of the NPRM, all but two of the regions have an average number of discharges that exceeds the 6,000 discharges criterion used to establish eligibility for referral center status. We considered replacing the 6,000 discharges requirement with the regional numbers of discharges but decided not to do so because a number of hospitals in the seven regions with a greater number of discharges than the

6,000 discharges would no longer meet this criterion. Instead, we are revising § 405.476(g)(1)(iii)(B) to permit hospitals to meet the number-of-discharges requirement by providing that the hospital's number of discharges (excluding discharges from subprovider units) is at least—

- 6,000 for the hospital's cost reporting period that ended in 1981;
- 6,000 for the hospital's most recently completed cost reporting period; or
- The median number of discharges of urban hospitals for the region in calendar year 1981 in which the hospital is located for either the cost reporting period that ended in 1981 or its most recently completed cost reporting period.

The statute also requires that these appeals must be submitted during the quarter before the first quarter of a hospital's cost reporting period. (Hospitals whose cost reporting periods begin in October 1984 would be allowed to submit their appeals during the first quarter of that period.) A final determination on the appeal must be made within 60 days after the date the appeal was submitted. Any payment adjustments required due to a hospital's new classification as a referral center will be made effective as of the beginning of the cost reporting period.

In addition, section 2311(a) of Pub. L. 98-369 states that the characteristics that the Secretary establishes for determining rural referral centers may include wages, scope of services, service area, and the mix of medical specialties. We are retaining the criteria we proposed in the NPRM because we believe they adequately conform to the operating characteristics suggested in the legislation at section 2311(a) for the reasons discussed below.

- *Scope of services.*—Although we did not propose to set a numeric qualifier on the scope (that is, number) of services offered by a rural referral center, one of the three optional criteria (§ 405.476(g)(1)(iii)(C)) would specify that "more than 50 percent of the hospital's medical staff are specialists." In addition, we proposed a qualifier based on case-mix index values of at least 1.03. We believe that these two criteria are the best criteria we have at this time to describe scope of services.
- *Service area*—We believe that the optional criterion we proposed in § 405.476(g)(1)(iii)(D) adequately addresses this aspect of the legislation. This provision requires that a hospital would have to have at least 60 percent of its discharges made for inpatients who reside more than 25 miles from the hospital.
- *Mix of medical specialties*—This characteristic appears to be closely related to the scope of services characteristic. As mentioned above, one of the optional criteria would require that more than 50 percent of a hospital's medical staff are specialists. We believe that this criterion is adequate to meet congressional intent.
- *Wages*—None of our proposed criteria addresses the issue of the comparability of a rural hospital's wages to those of a "typical urban hospital in the same region." We believe that this criterion presents a serious problem. We must define the range within which the rural facility's wages resemble those of the typical urban hospital.

Since the Bureau of Labor Statistics (BLS) will not release wage data on individual hospitals, we currently do not have adequate data that can be used both to compute a typical (average) urban wage rate by region and to determine a hospital specific wage level. In fact, BLS will not reveal even comparative measures, which would allow indirect identification of individual hospitals. However, the wage survey currently being conducted by HCFA will provide the needed information. With data from the wage survey, it will be relatively easy to compute an average urban wage level by region, in addition to an average wage for individual hospitals. While individual hospital wage information could be obtained from a hospital's cost report, the survey data incorporate elements of consistency and uniformity of definition.

We believe that we should not adopt a wage criterion at this time for the following reasons:

- Wages are the operating characteristic least directly representative of a hospital's performance as a referral center.
- It is questionable whether rural referral centers compete directly with their urban counterparts for nonprofessional staff.
- Wages can be driven by a variety of forces unrelated to the services available in the hospital; for example, union contracts, local labor shortages, and management choice.
- A wage criterion presents irreconcilable boundary disputes inherent in the entire urban/rural classification problem.
- Because wage rates are directly controllable by the hospitals and due to the present payment adjustment (that is, the urban standardized payment), there would be some incentive to bid up wage rates.

We received comments on the proposed provisions for referral centers from hospitals, hospital associations, and individuals. Our responses to those comments are as follows:

Comment—Several commenters questioned the definition of "specialists" that we proposed in one of the rural referral center criteria (§ 405.476(g)(1)(iii)(C). They pointed out that the American Board of Medical Specialties does not recognize specific training requirements. Rather, it recognizes specialty boards, and these boards establish the training requirements necessary for admission to the certification process. Therefore, they believe that the definition of "specialists" should be clarified. Some commenters asked whether family practitioners, radiologists, pathologists, or anesthesiologists could be counted as specialists.

Response—We have clarified the definition of specialists in § 405.476(g)(1)(iii)(C). The new definition provides that a specialist either must be certified as a specialist by one of the Member Boards of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists; have completed the current training requirements for admission to the certification examination of one of the Member Boards of the American Board of Medical Specialities or the Advisory Board of Osteopathic Specialists; or have successfully completed a residency program in a medical specialty accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association. All specialists that meet this definition can count toward meeting this criterion.

Comment—Some commenters asked whether the term "medical staff" as used in § 405.476(g)(1)(iii)(C) refers to only active medical staff.

Response—We believe that the definition of medical staff should be limited to active medical staff and are revising § 405.476(g)(1)(iii)(C) accordingly. Some hospitals have staff members in the categories of courtesy staff, consulting staff, or honorary staff. It is highly unlikely that physicians will refer patients to a hospital solely because of the presence of these types of staff. Therefore, they will not be counted in the percentage of specialists that a hospital may need to meet to qualify for referral center status.

Comment—Several commenters were unclear about where a hospital should submit the material to justify its rural referral center status and the process that is followed in making the determination.

Response—In the September 1, 1983 interim final rule (48 FR 39783), we stated that a hospital seeking referral center status should submit documentation to its fiscal intermediary. The intermediary would review the material, make a recommendation, and forward the material to the appropriate HCFA regional office. The regional office would review the documentation, also make a recommendation for or against approval, and submit the material to HCFA central office where a final decision would be made. Because of the volume of hospitals that we expect will qualify for referral center status under the revised regulations, we have determined that it will be more efficient, and hospitals will receive determinations more promptly, if the regional office handles all stages of the review. Thus, we are altering the current procedure to eliminate both the intermediary and central office review. A hospital should submit its request and documentation directly to its appropriate regional office. The regional office will review the data to determine if additional information is needed. If additional data are necessary the regional office will notify the intermediary in a timely manner and the intermediary will supply the documentation to the regional office also in a timely fashion. The regional office will then make a final determination within 60 days after receipt of the hospital's request and notify the hospital of its decision.

Comment—Several commenters inquired whether hospitals meeting the proposed criteria would receive retroactive adjustment to October 1, 1984.

Response—In the NPRM, we stated that the criteria published in § 405.476(g)(1) (i) and (ii) and the criteria proposed in § 405.476(g)(1)(iii) would be effective for discharges occurring on or after October 1, 1984. However, after the NPRM was published, Pub. L. 98–369 was enacted. Section 2311(a) of Pub. L. 98–369 states that a hospital must submit its request for rural referral center status during the quarter preceding the start of its fiscal year (except that hospitals with a fiscal year starting on October 1, 1984 have until January 1, 1985 to submit their requests). Based on the law, we are altering our proposed effective date to conform with the statutory requirement. If we determine that a hospital meets the criteria for rural referral center status, payments will be effective with the start of the provider's cost reporting period.

Comment—A number of commenters pointed out a problem with the alternative criterion for hospitals that do not meet the 1.03 case-mix index criterion for 1981. We proposed that a hospital may meet this criterion if its case-mix index for the first cost reporting period under the prospective payment system is at least 1.0903. The commenters stated that the reduction in the DRG relative weights of 2.4 percent effective October 1, 1984 makes it more difficult for hospitals, whose accounting year began after October 1, 1983, to reach that index because their case mix is lowered by the reduced weights.

Response—We agree with the commenters' statement and did not intend to penalize those hospitals attempting to meet the 1.0903 case-mix criterion. Therefore, we are revising the regulations at § 405.476(g)(1)(iii)(A) to incorporate the following change. If a hospital does not have a case-mix index of at least 1.03 for 1981, it may still meet this criterion if it has a case-mix index of at least 1.1053 for its first cost reporting period under the prospective payment system, that is, cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984. For this purpose only, the DRG relative weights in effect during Federal fiscal year 1984 would apply in calculating the case-mix index values. Based on approximately 2.5 million admissions processed in HCFA, representing about half the admissions in FY 1984, we have found an increase in average case mix of 7.31 percent over the 1981 levels. Since average case mix has increased in this fashion, the case-mix index criteria applicable for determining referral center status should be similarly increased to reflect the change. This is necessary to assure that designation as a referral center under the alternative standards reflects the present complexity of cases so that the expectation for qualification based on experience in the first year under the prospective payment system is on a par with that observed in the 1981 data. We note that each additional update of Medicare claims data shows that the average case mix is increasing. It should be noted that the question of whether the increase in case mix is "real" or merely the result of more accurate coding, which is relevant to the issue of budget neutrality described below, is not relevant to setting appropriate criteria for rural referral centers. As discussed above, based on section 2311(a) of Pub. L. 98–369, a hospital may also meet the case-mix index criterion if its case mix for 1981 is at least the median urban case-mix index for the region in which the hospital is located for either the cost reporting period that ended in 1981 or its most recently completed cost reporting period.

Also, as stated previously, hospitals are required to submit their requests for rural referral center status during the quarter preceding the start of their fiscal year (except that hospitals with a fiscal year starting October 1, 1984 have until January 1, 1985). If approved, the adjustment will be effective with the start of the hospital's second cost reporting period subject to the prospective payment system (that is, cost of reporting periods beginning on or after October 1, 1984).

Comment—Several commenters believe that if a hospital's 1981 case-mix index value was not at least 1.03 and, therefore, it does not meet the mandatory criteria set forth in § 405.476(g)(1)(iii)(A), then the hospital should be allowed to use other criteria. The following are the commenters' suggestions:

- Hospitals should be given the option of requesting a recalculation of their 1981 case-mix index value based on data from 100 percent of its cases.
- Hospitals should be allowed to substitute data from the Commission on Professional Hospital Activities (CPHA) to demonstrate the complexity of their cases.
- Hospitals should be permitted to average their 1980 and 1981 index values to meet the 1.03 standard.

Another commenter believes that the 1.03 standard is too low and that it should be raised to 1.05 to more accurately identify true referral centers and minimize the impact on budget neutrality.

Response—We do not believe that hospitals should be allowed to substitute other criteria for the one we published in the NPRM. We selected the 1981 case-mix index for this criterion because it represents the most current published data available. Specifically, we are not accepting any of the suggestions for the reasons set forth below.

The basic tenet of the prospective payment system is that the rates paid to hospitals are determined prospectively and are based on the best data available at the time. Thus, a hospital knows in advance what its payment amounts will be. In addition, revisions to case-mix index values, whether upward or downward, would upset the budget neutrality adjustment. Therefore, we have denied any hospital the right to request review of its 1981 case-mix index value based on 100 percent of its cases. This policy holds whether the request for review is for purposes of meeting the referral center criteria or for

determining the hospital-specific portion of a hospital's payment rate.

We cannot allow substitution of the CPHA data in lieu of our published 1981 case-mix index because these data are developed and published by a source totally independent of HCFA. We have no way to verify either the raw data submitted by the hospital to CPHA or CPHA's processing of the data except by performing a 100 percent review ourselves. We do not believe a review by HCFA is appropriate.

Also, we do not agree that we should allow a hospital to average its 1980 and 1981 index values in order to meet the 1.03 case-mix criterion. Averaging of index values is inconsistent with our policy of using the most currently published data available. In addition, if we made the averaging mandatory, some hospitals that have a 1981 index value of at least 1.03 might be disqualified if forced to average their 1980 and 1981 values.

Finally, we believe that the 1.03 case-mix index value is an adequate measure of the complexity of a hospital's cases and we do not believe that increasing the value to 1.05 would be appropriate.

Comment—We received comments that disagreed with our setting the discharges level specified in the criterion set forth in § 405.476(g)(1)(iii)(B) at 6,000. Some of these commenters pointed out that, because of the greater emphasis that is currently being placed on alternatives to hospitalization, many hospitals will be experiencing a decline in admission rates. Therefore, the discharge level should be lowered. In contrast, one commenter suggested that the required number of discharges should be increased to lower the number of hospitals that will meet the referral center criteria and, thus, lessen the impact on budget neutrality.

Response—We believe that the 6,000 discharges requirement helps to ensure that only above average size hospitals qualify for referral center status. At the same time, we do not believe that this number needs to be increased to guarantee that only a limited number of hospitals meet the criteria.

However, in response to those commenters concerned about decreasing admission rates, we are revising the regulations at § 405.476(b)(1)(iii)(B) to allow a hospital to meet the 6,000 discharge figure either for its cost reporting period ending in 1981 or for its most recent cost reporting period completed before it applies for referral center status.

Comment—Several commenters questioned whether the 6,000 discharge criterion should be based on a hospital's total discharges or its Medicare discharges. Other commenters urged that the criterion be based on hospitals' total discharges because the nationwide distribution of Medicare beneficiaries is not uniform.

Response—Although we did not specify in the NPRM whether the criterion is based on a hospital's total discharges or its Medicare discharges, the criterion is to be based on 6,000 total discharges. We agree with commenters that requiring 6,000 Medicare discharges would place an unfair hardship on some facilities.

Comment—Some of the commenters stated that hospitals that fail to meet the mandatory criteria in §§ 405.476(b)(1)(iii) (A) and (B) by only a small margin, and therefore fail to qualify as referral centers, end up with a payment rate that is significantly different from those hospitals that meet the criteria by only a small margin. Examples cited by commenters were cases where one hospital has a 1981 case-mix index value of 1.03 and another hospital has a 1981 case-mix index value of 1.02, or one hospital has just over 6,000 discharges in one of the required cost reporting periods and another has slightly less than 6,000. In both cases, the first hospital receives payment based on the urban standardized amounts and the second hospital receives significantly less because its payment rate is based on rural standardized amounts.

Response—Whenever numeric standards are established, there will be those entities that narrowly miss meeting them as well as those that narrowly succeed in meeting them. Regardless of the standards selected, this will be true. If we did allow exceptions to these criteria, they would have to be limited to certain tolerances that, again, some hospitals would fail to meet by a small margin.

Both of the mandatory criteria specified in § 405.476(g)(1)(iii) are measures of a hospital's referral center status. The case-mix index criterion measures the complexity of a facility's cases and differentiates a true referral center from other hospitals. With regard to the 6,000 discharge criterion, as noted in the NPRM (49 FR 27429), we believe that Congress intended that referral center status be granted only to those facilities of above average size and utilization. As also noted in the NPRM (49 FR 27433), we project that approximately 113 facilities will meet these two criteria; thus, we continue to believe that our criteria meet congressional intent and are not unduly stringent.

Finally, it should be noted that hospitals that do not meet the referral center criteria as provided in § 405.476(g)(1)(iii) can still qualify for referral center status if they meet the criteria in § 405.476(g)(1)(ii). Also, hospitals that do not meet the 1981 case-mix index criterion have the opportunity to qualify if they meet the alternative case-mix index value of 1.1053 during their first cost reporting period subject to the prospective payment system or if they meet the median case-mix index for the region in which they are located.

Comment—One commenter stated that the establishment of the two mandatory criteria of case-mix index and patient discharge is inconsistent with Congressional intent. However, the majority of commenters who responded to our NPRM agreed that the mandatory criteria should be met by a hospital in order to qualify as a referral center.

Response—We believe that the two mandatory criteria set forth in §§ 405.476(g)(1)(iii) (A) and (B) are the principal characteristics that distinguish a hospital as a referral center. A hospital that meets one of the three case-mix index criteria demonstrates a level of complexity that we believe is consistent with the intent of Congress when it included the referral center provision in the prospective payment legislation.

The criterion relating to hospital discharges was chosen as one of the mandatory criteria because we believe Congress intended that the referral center provision apply to hospitals of above average size and utilization (Congressional Record, Vol. 129, No. 34, March 17, 1983, S3224). We believe that a reliable measure of a hospital's operation is the number of patients discharged.

Comment—A commenter was concerned that the proposed revisions to the referral center criteria do not conform to the statutory changes enacted in Pub. L. 98–369. However, another commenter stated that we should not include any of those statutory changes in this final rule because they should first be published as an NPRM so the public will have an opportunity to comment.

Response—Section 2311(a) of Pub. L. 98–369 amended section 1886(d)(5)(c)(i) of the Act to provide that rural hospitals may appeal to the Secretary to be classified as a rural referral center on the basis of criteria to be established by the Secretary. We believe that the regulatory changes stated in § 405.476(g) of this final rule regarding regional referral center criteria conform with the Congressional interest and statutory

provisions in section 2311(a) of Pub. L. 98-369.

Therefore, we are not publishing a notice of proposed rulemaking for these provisions (see section VI.C. of the preamble), although we will monitor the impact of these provisions on referral centers.

Comment—Several commenters recommended a different approach for determining referral center status. They suggested that we should define "referral" based on specialty rather than on the criteria set forth in the proposed regulations. Under this proposal, a hospital that treats more expensive cases than the average for particular DRGs would receive adjustment only for those DRGs.

Response—Although we are not certain whether the data would indicate large enough cost differences within individual DRGs to justify referral status for hospitals treating patients within those DRGs, we will continue to review and consider this suggestion.

Comment—We received several comments that expressed concern about the optional criteria that require 60 percent of all discharges to be made for inpatients who reside more than 25 miles from the hospital and require that at least 40 percent of all inpatients have been referred to the hospital (§§ 405.476(g)(1)(iii) (D) and (E)).

Response—As we indicated in the NPRM (49 FR 27429), the alternative set of criteria we proposed were designed to meet the unique circumstances of rural referral centers with less than 500 beds. We believe that, in order to meet the intent of Congress, a rural referral center should satisfy criteria that ensure that the hospital draws its patients from a wide geographic area. The proposed criteria were structured using the best information available to us. Since there are limited specific data on referral patterns available, we specifically solicited comments on these criteria.

As a result of the comments received, we believe that the criteria set forth in the NPRM are fairly stated. We received only two comments on the 60 percent residence and 40 percent referral optional criteria, and neither commenter suggested criteria that would better express the intent of the legislation.

One of the main reasons we established special treatment regulations for rural referral centers was to allow hospitals that serve a substantial number of patients outside a local area a more favorable rate of payment. We believe that the criterion related to patient residency conforms with congressional intent (that is, the 60-percent qualification best establishes what is meant by "a substantial number of patients live outside the local area") and, therefore, will allow those hospitals that are truly referral centers to qualify.

In light of comments received, we believe that there is no reason to change the criterion that states that at least 40 percent of all inpatients treated at the hospital are referred to the hospital either from physicians not on the hospital's staff or from other hospitals. This criterion gives weight to the actual referral, which we believe was one of the basic objectives of the provision. It is reasonable to expect that a considerable number of a referral center's patients would come from actual referrals. In addition, it is our opinion that the source of the patient population of a referral center should differ from that of a typical rural hospital. By meeting this 40-percent criterion, a hospital would demonstrate this difference.

Comment—One commenter suggested that a referral center should be evaluated based on the extent to which it meets the total health care needs of the community; that is, whether the majority of the Medicare beneficiaries that reside in a referral center's service area receive care at the center. The commenter also said that a referral center should be evaluated based on whether the center provides services without having to transfer patients to other hospitals.

Response—Without a precise definition of a referral center's "service area", such a criterion is difficult to develop and evaluate. We believe that one of our optional criteria, that at least 60 percent of a referral center's total discharges be for inpatients who live more than 25 miles from the hospital, addresses this issue from a different approach.

Also, we believe that one of our optional criteria for referral centers, while providing a different approach, responds to the commenter's latter suggestion. Rather than monitoring the number of patients that a hospital transfers, we are monitoring the percentage of patients referred to the referral center.

Comment—One commenter urged that a rural referral center wage index be determined based on the wage index of the nearest urban area or on an average of the wage index of the nearest urban area and the rural wage index for the State in which the hospital is located.

Response—We believe that using the wage index of the nearest urban area would be unrealistic because of difficulties in determining which urban area is closest to the rural hospital, especially in rural areas that are bounded by two or more urban areas. In addition, we do not believe that the wages paid by all rural referral centers would necessarily equal those of nearby urban facilities. For example, it is questionable whether rural referral centers compete directly with urban hospitals for nonprofessional staff. Therefore, it remains our opinion that the rural wage index is appropriate for rural referral centers, and, therefore, we have not adopted this commenter's suggestion.

Comment—One commenter believes that the criterion set forth at § 405.476(g)(1)(iii)(E) is incomplete. That criterion provides that at least 40 percent of all inpatients treated at a hospital must have been referred to the hospital either from physicians not on the hospital's staff or from other hospitals. The commenter contends that patients are likely to consult a physician on the choice of a hospital and then later have themselves admitted to that hospital; thus, they would be self-referred patients. However, the criterion does not allow self-referred patients to be applied to the 40 percent requirement.

Response—This criterion is designed to give weight to the actual fact of referral, which is an essential feature of a rural referral center. We agree that the scenario described by the commenter will occur occasionally; however, we believe that in most cases these patients will be seeking admission to small rural hospitals. In these cases, if the patient requires further specialized attention, he or she will be referred to a larger facility that can furnish those services. It is these facilities that we believe should be receiving rural referral center status.

Comment—In the NPRM (49 FR 27429), we specifically requested comments on one aspect of the criteria set forth in §§ 405.476(g)(1)(iii) (D) and (E). The former criterion measures the percentage of a hospital's inpatients who reside more than 25 miles from the hospital and the latter measures the percentage of a hospital's inpatients who are referred. In both cases, we are basing the criteria on all inpatients; however, we requested input from the public on whether or not we should base the criteria on only Medicare inpatients. We received numerous comments most of which were in favor of our basing these criteria on the entire inpatient population.

Response—We agree with the majority of the commenters that in computing these percentages we should take all of the hospital's inpatients into account. We believe this is appropriate because the type of services furnished, the intensity of care, and the population

radius served by the hospital would be based on total inpatient population. Referral centers have higher costs because of the services they provide to all inpatients, not only those who are Medicare beneficiaries.

Comment—Some hospitals suggested that the mix of mandatory and optional criteria that are set forth in § 405.476(g)(1)(iii) should be revised. For example, a few commenters recommended that the mandatory 6,000 discharge criterion should become one of the optional criteria, and hospitals should have to meet three of the four optional criteria. Another suggestion was that none of the criteria should be mandatory and a hospital should have a wider range of optional criteria to meet. This commenter suggested that we should add criteria related to wages and scope of services (for example, 24-hour emergency care, intensive care unit, nuclear medicine) and then allow a hospital to meet four out of seven of these criteria.

Response—As we stated in the NPRM (49 FR 27429), we believe that the two mandatory criteria (that is case-mix index and number of discharges) are the key factors that allow us to satisfy what we understand congressional intent to be in enacting this provision. The level of complexity and the high technology of the care furnished are, in our opinion, among the principal characteristics that distinguish hospitals that are referral centers from typical rural hospitals. We also believe that Congress intended a referral center to be above average size. It is our contention that case-mix and number of discharges are the suitable measures for these characteristics. Therefore, we are retaining these two mandatory criteria in order to adequately classify hospitals as referral centers.

Concerning the additional optional criteria mentioned by the commenters, as stated earlier in the preamble, we currently have no means of comparing wages and, even when we are able to gather data, we are not certain that wages are directly representative of a hospital's performance as a referral center for patients from a wide area. With regard to scope of services, those specialized services suggested by the commenters are typically furnished in many rural hospitals, not just those that should qualify as referral centers; therefore, we do not believe specialized services to be a unique characteristic of referral centers.

Comment—Several commenters requested that we give prompt attention to developing referral center criteria for urban hospitals.

Response—In the NPRM (49 FR 27429), we stated that it will not be possible to make payment adjustments for urban hospitals until we have the opportunity to examine and analyze in detail information pertaining to these hospitals. Since we have received only two applications from urban hospitals applying for referral center status, we have not yet gathered enough information to compare urban referral centers to other urban hospitals.

Comment—In response to our request for comments on the possibility of our conducting periodic reviews of referral centers to determine if they continue to meet the criteria, we received a limited number of suggestions. Most commenters suggested that if the reviews are conducted, then they should be done at 12 to 24-month intervals and that a hospital should not lose its referral center status unless it has failed to meet the criteria for at least two consecutive years. Two commenters proposed that if a referral center fails to meet the criteria for two consecutive years, there should be a transition period to prevent the hospital from suffering hardship due to its return to a lower payment rate.

Response—We have determined that periodic reviews of rural referral centers should take place every three years. We feel that this would avoid penalizing a hospital that falls slightly below the criteria in a given year.

A hospital that fails to continue to meet the criteria needed to qualify for rural referral status in its first two years of participation as such, will automatically be disqualified after the third year. The facility will have the right to reapply and requalify in the future.

In other situations we will look to the hospital's performance during the third year in conjuction with experience in the first two years to determine if referral center status should be continued. Following the end of the first quarter of the hospital's third year as a referral center (or the third year following renewal in future years) the hospital will be required to submit sufficient data (records of Medicare claims, discharge projections, information supporting the optional criteria) to permit evaluation of the hospital's expected performance during the period. If the hospital meets the criteria in the third year and has met them in either of the two preceding years, referral center status will be continued. If the hospital fails to meet the criteria in the third year and has failed in either or both of the preceding years, referral center status will be terminated. If the provider fails to meet the criteria in the third year but has met the criteria in both of the preceding years referral center status will be presumed to continue but that hospital will be reviewed again in the immediately following year. If the hospital fails to meet the criteria in the immediately following year as well, referral center status will be terminated. The review will be completed by the end of the third quarter of the reporting period in which it is conducted so that the provider may be notified of the result in advance of the ensuing year. A hospital that is found to qualify upon review will receive an additional three years of referral center status, except for those hospitals for which referral center status was presumed subject to second review. But, if the hospital is determined not to meet the criteria for referral center status upon completion of the third year review, it will no longer be classified as a rural referral center.

We would have to perform reviews of the two mandatory criteria of case-mix index and number of discharges in different ways. Since we are requiring, for our third year review, a less than complete year of data (as of the end of the third quarter of the hospital's accounting year), the third year case-mix index criterion will be based on a nine-month period at the most.

The second mandatory criterion of having at least 6000 discharges is based on the hospital's most recent cost reporting period before it applies for rural referral center status. Therefore, we will be able to review three complete cost reporting periods to determine if the provider continues to meet the discharge criterion.

A facility that is determined ineligible to continue as a rural referral center will lose its status after the third cost reporting period. A hospital that has qualified as a referral center beginning January 1, 1985, and which upon our review no longer meets the qualifications to continue being paid as a referral center, would revert back to payment as a rural facility as of the beginning of its cost reporting period, January 1, 1988.

We believe that no transitional or phase-in period is necessary to accompany this change in status. Those hospitals that are disqualified as rural referral centers have already benefitted from at least three years of payment at the urban rate. Therefore, after appropriate notification, we believe that a decrease in the facility's payment is inappropriate.

I. Inpatient Renal Dialysis

In the January 3, 1984 final rule (49 FR 247), we agreed to review the issue of payment for inpatient dialysis. Based on our assessment of the impact of providing inpatient dialysis, we proposed not to provide special treatment for inpatient dialysis.

Comment—Several commenters expressed concern that, because end-stage renal disease (ESRD) beneficiaries require inpatient dialysis whenever they are admitted to a hospital are concentrated in certain hospitals, these hospitals are bearing the brunt of the added expense of furnishing inpatient dialysis. Consequently, if additional payment is not provided for the extra expense, the commenters believe that hospitals will no longer provide this service resulting in a hardship to patients.

Response—Based on the comments received, we are providing an additional payment for hospitals that have a significant number of ESRD beneficiary discharges. While the overall impact of providing inpatient dialysis is not great, we recognize that where these beneficiaries are concentrated in a few facilities, a disincentive to treat ESRD beneficiaries might result. We are providing an additional payment to hospitals in which ten percent or more of the Medicare dischages are ESRD beneficiary discharges in a cost reporting period. To determine the number of ESRD discharges, discharges classified in DRG No. 302 (Kidney Transplant), DRG No. 316 (Renal Failure) and DRG No. 317 (Admit for Renal Dialysis) are excluded. In these DRGs, dialysis is not ordinarily limited to ESRD beneficiaries and the relative weights adequately reflect dialysis because it occurs relatively frequently.

In most hospitals, the likely incidence of inpatient dialysis is small in relationship to the patient population and can be considered to be represented in the Federal standardized amounts. However, we think those few hospitals most extremely impacted by the ESRD beneficiary population should be afforded some protection against the chance of encountering inpatient dialysis expenses which could not be offset by revenue from cases in which the DRG payment was greater than the hospital's cost. Therefore, a special payment is being provided. Consistent with the objectives of the prospective payment system, the special payment is not intended to recognize the actual cost an individual hospital might incur in delivering inpatient dialysis service or to provide full reimbursement of all costs in every case. Rather, it is intended to ameliorate those circumstances in which the concentration of beneficiaries receiving dialysis may be such that the hospital would not be able to absorb the entire expense with revenue from other less costly cases.

The additional payment provided will be based on the average length of stay for ESRD beneficiaries in that facility times a factor based on the average direct cost of furnishing dialysis during a usual beneficiary stay. The average direct cost of dialysis was determined from the data obtained in connection with establishing the composite rate reimbursement for outpatient maintenance dialysis. The data used was from hospital-based facilities. An average of those cost directly representative of the dialysis service was determined. The average number of dialysis sessions per week was obtained from the same data base. This was done to avoid any incentive for increasing the frequency of dialysis sessions which could exist if payment were related to the number of dialysis sessions in the current period.

In order to estimate the additional cost above the DRG rate that a hospital would incur to furnish dialysis, we selected only those costs representing the direct cost of furnishing this service and excluded all overhead cost. Overhead cost of the inpatient service would be reflected in the DRG rate. Using salary, employee health and welfare, drugs, supplies, and laboratory costs, we determine a cost of $111.67 per session. These costs were broken down as follows:

Salary	$52.67
EH & W	11.59
Drugs	3.09
Supply	39.69
Lab	4.63
Total	111.67

This amount will be paid only on the Federal portion of the payment rate. The cost of furnishing dialysis is already appropriately reflected in the hospital-specific portion. A hospital qualifying for the payment in a reporting period will receive an amount equal to the estimated weekly cost of dialysis times the hospital's average ESRD length of stay expressed as a ratio to one week multiplied by the number of ESRD beneficiary discharges, excluding discharges classified in DRG Nos. 302, 316 and 317.

III. Changes to Regulations Based on Pub. L. 98–369

As previously noted, Pub. L. 98–369 was enacted on July 18, 1984. This section contains a discussion of two provisions in that law relating to the hospital prospective payment system.

A. Payment for Indirect Medical Education (§ 405.477)

Section 2307(b) of Pub. L. 98–369 amends section 1886(d)(5)(B) of the Act to require that we not distinguish between interns and residents employed by the hospital and those providing services in the hospital but employed by others, in determining the additional payment amount for indirect medical education due hospitals under the prospective payment system.

For hospitals in the first year under the prospective payment system, we counted only interns and residents who were employed by the hospital. In the final rule, published January 3, 1984 (49 FR 234), on the prospective payment system, we revised our policy to include in the count of interns and residents those employed by other organizations with a longstanding historical relationship for medical education with the hospital. In each case, the organizations were required to be sole employers of substantially all of the interns and residents furnishing services at the hospital.

The change mandated by section 2307(b) of Pub. L. 98–369 is to be effective for cost reporting periods beginning on or after October 1, 1984. (See revised § 405.477(d)(2) of these regulations for changes regarding calculation of indirect medical education costs.)

Because the law requires that we do not distinguish, in counting interns and residents, on the basis of who employs the individual, we are required to establish a system of counting on the basis of where services are provided and to calculate full-time employees on that basis. No intern or resident will be counted as more than one full-time employee in any reporting period, regardless of the number of hospitals in which he or she works. Therefore, when working at more than one hospital, each intern's or resident's time will be apportioned to each facility. To avoid the potential for counting interns and residents more than once, we are requiring that hospitals submit quarterly reports to their intermediaries that contain the following information:

- Monthly listing of all interns and residents providing services during the month;

• Each intern's and resident's social security number; and

• The actual hours worked at the hospital during each month.

Where the hospital is unable to supply documentation of the times worked by interns and residents, their services will not be counted as part of the overall calculation of the payment amount.

The final lump-sum payment for indirect medical education costs will not be made until the fiscal intermediary completes audits of the first year's cost reports.

To conform § 405.477(d)(2) to the revised policy, we are also deleting the requirements regarding employment and other relationships.

We invite public comments on this issue and if, after consideration of all comments received, we determine that the policy should be revised, we will publish the changes in the **Federal Register** and address all comments received on this issue.

B. Payment for Non-Physician Anesthetists (§ 405.477)

Section 2312 of Pub. L. 98–369 amends sections 1886(a)(4) and 1886(d)(5) of the Act to require that we pay an additional amount to hospitals paid under the prospective payment system, for "reasonable costs incurred" for anesthesia services provided by certified registered nurse anesthetists. See the new § 405.477(c)(3) in these regulations regarding determination of this payment amount.

Section 2312(a) provides for reimbursement to hospitals on a reasonable cost basis as a pass-through for the costs that hospitals under prospective payment incur in connection with the services of certified registered nurse anesthetists (CRNAs). (See the discussion below in this section of our use of the term "nonphysician anesthetist" in lieu of CRNA.) It further provides that this shall be the only payment made to the hospital for such services. Section 2312(b) excludes anesthesia services furnished by a CRNA from the definition of the term "operating costs of inpatient hospital services." Section 2312(c) provides that the amendment is effective for hospital cost reporting periods beginning on or after October 1, 1984, and before October 1, 1987.

The statute establishing the prospective payment system did not directly address the services of nonphysician anesthetists. As such, they would have been treated under provisions of section 602(e) of Pub. L. 98–21 (section 1862(a)(14) of the Act) which excluded from Medicare coverage all items, supplies and services furnished to hospital inpatients other than physicians' services that are not directly furnished by the hospital or by others under arrangements with the hospital. That is, the costs attributable to nonphysician anesthetists' services (including those billed "incident to" physicians' services under Part B) would have been included in a hospital's base period costs and hospital-specific portion of the total payment amount.

However, during the process of developing the interim final rule implementing the prospective payment system, it was decided that there should be an exception to the section 1862(a)(14) exclusion (under the authority in section 602(k) of Pub. L. 98–21) to recognize the unique relationship between the physician-employer and anesthetist-employee. The exception permitting the continuation of part B billing by physicians for the services of their anesthetist employees applied to such arrangements that existed on the last day of the hospital's prospective payment base period for the duration of the transition period (cost reporting periods beginning prior to October 1, 1986.) Thus, for the first year under the prospective payment system, payment was made for the services of nurse anesthetists either through prospective payment to the hospital or through billings by eligible physicians.

The conference report that accompanied section 2312 does not discuss the rationale for the amendment. However, there is a clear indication that it was the intent of Congress that Medicare payment methods not discourage the use of CRNAs by hospitals. In addition, the conference report indicates that the conferees expect the exception permitting "incident to" billing by physicians who employ CRNAs to be modified to sanction such billings resulting from employment relationships that began after the base period under the prospective payment system ended.

The conference agreement limited the provision to "anesthesia services furnished by certified registered nurse anesthetists." The conferees then define such services as, "those related to the preparation for, administration of, and recovery from anesthesia."

It is questionable whether the benefits associated with a strict interpretation of the term "anesthesia services" would be worth the burden that extensive time studies of the activities of each hospital-employed nonphysician anesthetist would impose. In the absence of evidence to the contrary, it can be argued that, generally, everything a nonphysician anesthetist does in a hospital is related to the provision of anesthesia services. However, we should not pass through the costs of a nonphysician anesthetist who is functioning in a position outside the field. For example, we would not want to create an incentive for hospitals to hire a CRNA and receive the pass-through payment amount even though the individual is serving in another nursing capacity. In the case of independently contracting nonphysician anesthetists whose services a hospital obtains under arrangements, all such services could be presumed to be related to the provision of anesthesia. For the purpose of implementing the amendment, nonphysician anesthetists will be defined to exclude any such anesthetists not actively engaged in functioning as an anesthetist without further differentiation according to specific services or time allocations.

The original exception in the interim final rule applies to situations where a physician employed "anesthetists" as of the last day of the hospital's base period. As presented in the preamble and regulations text of the interim final rule, we did not limit its application only to services of CRNAs. The exception also applied to services of physician-employed Anesthesiology Assistants (AAs) assuming all other related requirements were satisfied. The amendment and the conference report use the terms "certified registered nurse anesthetist" and "CRNA" throughout. However, despite the precise wording of the amendment and conference report, we believe that it was congressional intent to apply this pass-through payment amount to the services of all qualified hospital-employed nonphysician anesthetists (that is, CRNAs and AAs consistent with applicable State law) for the following reasons:

• It is consistent with the current exception (§ 405.553(b)(4)).

• It is consistent with the goal of discouraging the substitution of interns and residents for the services of any qualified anesthetist, not just CRNAs (§ 405.421(d)(6)).

• It is consistent with the current standard for hospital departments of anesthesia (§ 405.1031(b)(2)(iv)) that the hospital staff designates those persons qualified to administer anesthesia.

• It would help to assure that prospective payments to hospitals reflect the same services whether the anesthetist is employed by a physician or by a hospital.

The current exception under § 405.553(b)(4) applies to the services of all physician-employed anesthetists where certain criteria are met. It is

stated in the conference report that it is the understanding of the conferees that those physicians meeting the current exception could, ". . . continue to bill for CRNA services. . . ." Further, the report goes on to indicate that physicians not meeting the current exception could begin to bill for all the services of CRNAs they "subsequently employed" for the duration of the time-limited exception. These "understandings" are not reflected in the statutory language.

The exception is modified (see § 405.553(b)(4)) to require only a valid employment relationship to sanction "incident to" billing of anesthesia services and to eliminate the provision tying the exception to the prospective payment base period. An employment relationship for this purpose is not established where the anesthesiologist and the anesthetist are both compensated by a hospital, medical school, or another entity, other than an incorporated group practice of physicians, for services furnished in a hospital. Additionally, we would like to stress that the exception requires close coordination between the intermediary and the carrier. The intermediary should notify the appropriate carriers of the dates of cost reporting periods of hospitals in its service area when changes in employment relationships between physicians and anesthetists occur so that the appropriate time units may be used in the computation of reasonable charges. The exception will apply to existing and new employment relationships between physicians and anesthetists beginning with hospital cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987.

Under section 2312 of Pub. L. 98-369, costs of anesthesia services furnished by certified registered nurse anesthetists are removed from the definition of "operating costs" of inpatient hospital services. Therefore, in all hospitals paid under the prospective payment system the costs of such services and those of anesthesiology assistants included in calculation of base period costs will be removed for purposes of determining the hospital-specific portion of the total payment amount. These recalculations of base period costs will be performed by intermediaries.

With regard to the Federal rates, the costs attributable to the services of nonphysician anesthetists have been estimated based on the best information available to us, and we have removed these costs from the Federal rates. This is necessary to avoid paying for these services twice. Accordingly, the standardized amounts have been revised to reflect this change. As a result, as discussed in the impact analysis, we expect that in FY 1985, about $160 million will be passed through and paid on a cost basis.

We invite public comments on this issue and if, after consideration of all comments received, we determine that the policy should be revised, we will publish the changes in the **Federal Register** and address all comments received on this issue.

IV. Other Changes to Regulations

In the September 1, 1983 interim final rule, we erroneously deleted § 405.452(c)(5) regarding the cost apportionment method of allocating costs for home health agencies (HHAs). To remedy this mistake, we are amending § 405.452 in this document by adding a new paragraph (a)(3) that restores the deleted material.

V. Summary of Changes

For the convenience of the reader, we are summarizing the changes we are making to the regulations. The reader is referred to the detailed discussions above for an explanation of the rationale for these changes.

A. Payment of Cost Outliers to Transferring Hospitals

We are amending §§ 405.470(c)(4) and 405.475(a) to permit a transferring hospital to be paid an additional payment for extraordinarily high cost cases that meet the cost outlier critera in § 405.475(d).

B. Direction of Rehabilitation Units

We are revising § 405.471(c)(4)(iii)(F) to provide that the director of an excluded rehabilitation unit must serve the unit and its inpatients for at least 20 hours per week, rather than on a full-time basis.

C. Exclusion of New Rehabilitation Hospitals and Units and Expansion of Already Excluded Rehabilitation Units

We are adding new §§ 405.471 (d), (e), and (f) to provide the following:

- Changes in the capacity (that is, number of beds or square footage) of excluded units will be recognized only at the start of a cost reporting period.
- New rehabilitation hospitals and units that seek first-time exclusion and an already excluded unit that seeks to add new beds may certify that they intend to serve a population that meets the requirements of the 75-percent rule instead of actually demonstrating that they have met these requirements for the previous 12-month cost reporting period.

D. Physician Attestation

We are revising § 405.472(d)(2)(i) to clarify the scope of the physician's certification statement and the accompanying penalty statement and to change the method for implementation of the attestation requirements.

E. Hospitals in Areas Redesignated as Rural

We are adding new §§ 405.473(c)(2) and 405.476(i) to provide a special adjustment of the rural average standardized amounts to hospitals that are located in counties in MSAs or NECMAs that are redesignated by EOMB to be no longer a part of an MSA or NECMA.

- In § 405.473(c)(2), we define the phrase "hospital reclassified as rural" as a hospital located in a county that is in an MSA or NECMA that is redesignated by EOMB after April 20, 1983 to no longer be in an MSA or NECMA.
- In § 405.476(i), we state that we will provide for a two year phase-in of the rural Federl payment amounts to a hospital, located in an area redesignated as rural. For the first cost reporting period, the additional amount is an amount equal to two-thirds of the difference between the urban and rural area standardized amounts adjusted for area wage differences for the appropriate region in which the hospital is located. For the second cost reporting period, the additional amount is an amount equal to one-third of the difference between the urban and rural area standardized amounts adjusted for area wage differences for the appropriate region in which the hospital is located.

F. Census Division Boundaries

Also, in the new § 405.473(c)(2), we are clarifying to which census division a hospital belongs when an MSA or NECMA crosses a census division boundary.

- In § 405.473(c)(2), for the purpose of MSAs or NECMAs that overlap census divisions, we deem hospitals in the entire MSA or NECMA as belonging to the census division in which most of the hospitals in that MSA or NECMA are located. We are not applying this change in FY 1984 to hospitals that are adversely affected by such a change; that is, as a result of a redesignation in which a hospital ends up in a census division with a lower Federal rate. In addition, if there are an equal number of hospitals located in each part of an MSA or NECMA that crosses one or more census divisions, we deem all the hospitals to belong to the census division with the highest Federal rate.

G. Base Year Appeals

We are revising § 405.474(b)(3)(i)(C) to include, as a basis upon which a prospective recalculation of hospital's base year cost may be made, administrative actions such as a reopening of a cost report and a revision of a cost report determination, or a prehearing order of finding, in addition to a final administrative or judicial review decision.

H. Referral Centers

We are adding an alternative set of criteria to § 405.476(g)(1) that expand the definition of referral centers to encompass more rural hospitals. We are paying hospitals that meet these criteria the urban (rather than the rural) adjusted standardized amounts. We are also revising § 405.476(g)(2) so that rural hospitals that meet the criteria set forth in § 405.476(g)(1)(ii) are also paid the urban (rather than the rural) adjusted standardized amounts for cost reporting periods on or after October 1, 1984. In addition, we are adding a new § 405.476(g)(3) to provide for a triennial review of referral centers to determine if they continue to meet the criteria of § 405.476(g)(1).

I. Inpatient Renal Dialysis

We are adding criteria in § 405.476(j)(1) that would provide additional payments to a hospital for inpatient dialysis provided to ESRO beneficiaries if the hospital has established that ten percent or more of its total Medicare discharges are ESRO patient discharges, excluding discharges classified into DRG Nos. 302, 316 or 317. The additional payment to the hospital will be equal to the average length of stay of ESRO patients, expressed as a ratio to one week, times the estimated weekly cost of dialysis multiplied by the number of ESRO patient discharges.

J. Payment for Indirect Medical Education

In determining indirect medical education costs of hospitals, we are revising § 405.477(d)(2) to allow interns and residents to be counted on the basis of where their services are provided and to calculate FTEs on that basis. Hospitals will be required to submit quarterly reports to their intermediaries documenting the time worked by interns and residents. The final lump-sum payment for indirect medical education costs will not be made until the fiscal intermediary completes audits of the first year's cost reports.

K. Payment for Nonphysician Anesthetists

We are adding a new § 405.477(c)(3) to pay hospitals for the reasonable costs incurred for anesthesia services provided by qualified nonphysician anesthetists. We are also revising §§ 405.470 and 405.474 reflecting the change that estimated costs of anesthetists' services are removed in determining the Federal and hospital-specific rates. These provisions are effective with hospital cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987.

L. Home Health Agency Cost Apportionment Method

As discussed in section IV. above, we are adding a new § 405.452(a)(3) to replace the provision that was erroneously deleted by providing that the cost per visit by type-of-service method applies to the allocation of HHA service costs.

VI. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 (E.O. 12291) requires that a regulatory impact analysis be performed and made available on any major rule. A "major rule" is defined as one that would result in an annual effect on the national economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity or innovation.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires that a regulatory flexibility analysis be performed and made available for each rule unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities.

Under the RFA, small entities include small businesses, nonprofit organizations, and governmental jurisdictions of less than 50,000 population. We treat all hospitals as small entities. Thus, a regulatory flexibility analysis is required if a substantial number of hospitals would be significantly affected by a regulatory document.

If we considered the net effects only, we would not expect the policy changes implemented by this rule to meet the criteria of a major rule. Due to the distributive effects of the prospective payment rate methodology, such as adjustments for budget neutrality, a change that results in substantially increased payments for one group of hospitals under the prospective payment system is offset by compensating decreases in payment rates for all other hospitals under the system. (Note that the *aggregate* effect of an increase is offset by a corresponding *aggregate* decrease. Thus, a large increase for a small group is balanced by a small decrease for a large group.) Further, many of the changes that increase payments for some hospitals, such as the provision affecting the hospitals located in areas redesignated rural by EOMB in June 1983, do not have a substantial effect on total payments, and have negligible effects on the budget neutrality adjustment factors.

However, some of the provisions of this rule will result in increases in payments to certain groups of hospitals large enough so that the budget neutrality mechanism results in a redistribution of aggregate payments, due to the offsetting decrease of payments to other hospitals, amounting to over $100 million. Even though the *net* effect on aggregate payments to all hospitals might not be significant, due to increases and decreases offsetting each other, we believe that a redistribution of this magnitude constitutes an economic impact meeting the threshold criteria of a major rule.

Further, it is clear that these changes will affect a substantial number of hospitals, and that the effects for certain groups of those hospitals, such as those reclassified as rural by the MSA system, or hospitals that may meet the new referral center criteria, will certainly be significant. Therefore, a regulatory flexibility analysis is required.

In the discussion below, we discuss the expected impacts of these changes and then summarize our expectations of their net effect. This discussion, in combination with the rest of this preamble, constitutes a combined regulatory impact analysis and regulatory flexibility analysis meeting the requirements of E.O. 12291 and the RFA.

B. Objectives

These changes do not represent any change in the objectives or basic incentives of the prospective payment system. Rather, we are merely resolving the first and most pressing problems of implementation, in order to ensure that those objectives are achieved and that the incentives created push toward the intended effects. As noted in the final rule published January 3, 1984, we fully expected the prospective payment system to:

- Restructure hospitals' economic incentives, establishing market-like forces;

• Link payment to diagnosis, basing payment on a system that more accurately identifies the product being purchased on behalf of Medicare beneficiaries;

• Establish the Federal Government as a prudent buyer of services, adopting an active role in determining payments for inpatient services on behalf of Medicare beneficiaries; and

• Restrain the rate of hospital cost increases, and, therefore, moderate the outflow from the Medicare trust funds.

We expect these changes to further those objectives while avoiding or minimizing unintended adverse consequences and ensuring that outcomes in general are reasonable and equitable. Thus, the intent of these changes is essentially to fine tune the prospective payment system without undercutting our original objectives. This means giving more to some hospitals, where appropriate, and therefore, if necessary, taking a little from others, to maintain balance.

C. Transfers

Paying cost outlier payments to transferring hospitals will benefit those hospitals incurring such costs and will be more equitable than our current payment policy. Although it may appear that this change will result in larger aggregate payments for outlier services, we do not expect the aggregate amount of such payments to be substantial. Generally, transfers occur in less than 1.5 percent of cases. Of this number, a small portion result in high costs to the transferring hospital. Since this is a small portion of a group of cases already known to be relatively small, we believe the increased payments for these cases will be negligible compared to total payments for inpatient hospital services. We do not believe it is necessary or desirable to reflect this change either our budget neutrality methodology or in the determination of cost outlier trim points. As a result, we do not expect any hospitals will be disadvantaged by this change.

D. Rehabilitation Hospitals and Units

We are making two changes in the regulations governing rehabilitation hospitals and units excluded from the propsective payment system—

• We will no longer require the director of a unit to be full-time; and

• We are eliminating the 12-month waiting period before exclusion from the prospective payment system for new or expanding rehabilitation hospitals or units.

These revisions will result in the accelerated approval of rehabilitation hospitals, units, and beds for exclusion from the prospective payment system, which in turn will affect the total amount of inpatient hospital costs subject to the prospective payment system. The greater the cost-based payments made to hospitals and units excluded from the prospective payment system, the smaller the total of payments under that system becomes.

Before October 1, 1983, rehabilitation hospitals and units were not given special recognition by Medicare payment methods, and we did not collect data on them. Since they were excluded by statute from the prospective payment system, we have established criteria and procedures to identify and pay them, and have begun to develop data on them.

As noted in the proposed rule, we expected to have excluded around 80 hospitals and around 440 units under the current regulations, by October 1, 1984. (Since we do not have historical program data, these are only rough estimates, but they are not inconsistent with the applications for exclusion to date.) As of July 31, 1984, we have recognized 43 rehabilitation hospitals and 284 rehabilitation units for purposes of excluding them from the prospective payment system.

Of the 85 hospitals that had been denied exclusion of a potential rehabilitation unit as of July 31, 1984, 31 applicants were denied because they lacked a director who could be considered "full-time" under the current regulations. We expect that some, but not all, of these will be approved under the new requirements. Any unit so approved will be excluded from the prospective payment system beginning with its next cost reporting period.

Further, with regard to the revisions affecting 12 months of prior operations for new hospitals and units, we expect a number of facilities to elect exclusion effective with their first cost reporting period beginning on or after October 1, 1984. However, this entails some risk for a facility, since it must commit itself to meeting all the requirements for that period in order to retain excluded status for its subsequent cost reporting period. Therefore, we do not expect all the potential new hospitals and units to elect exclusion on this basis. As of July 1984, we had denied exclusion requests from several hospitals that wanted to begin operation of a unit, but that had not yet operated the unit for 12 months. However, we have no way of knowing how many hospitals did not file such requests due to their knowledge about the requirement of a full year's operation.

We expect these changes to permit an increased rate of growth of the total number of rehabilitation beds (and associated costs) excluded from the prospective payment system. Unfortunately, presently we have only fragmentary data on the numbers of beds in approved units, and no historical experience in the occupancy rates of units. As a result, we cannot estimate accurately the future effect of these changes.

It has been suggested that permitting expansion or opening of new hospitals or units without requiring 12-months of prior operation might create opportunities for hospitals to "game" the prospective payment system by avoiding its cost constraining incentives. We agree that this type of provider behavior, if it did result, would be undesirable. However, for several reasons, we do not believe this will be a significant problem. First, under the rate of increase limits required by section 1886(b) of the Act and implemented by regulations at § 405.463, excluded units already have strong incentives to minimize per case costs. We do not believe these incentives will be altered significantly by this change. Second, and more important, since the undesirable behaviors mentioned are very familiar to us, there are already mechanisms in place that restrain them. For example, both pre-admission screening and later medical reviews create counter-incentives in the form of potential denial of payment.

E. Physician Attestation

The change in physician attestation practice is merely a revision of language and method of implementation of the attestation requirements that is intended to address criticisms aimed at phrasing and potential misunderstandings. We still require a signed certification statement for each discharge; however, the penalty statement will be provided to the physician for his acknowledgement on only an annual basis. We do not expect this change to have any effect on payments.

We did receive a number of comments that argued that requiring the attestation to be on the discharge summary would be a burden to hospitals and could adversely affect their cash flow. As discussed elsewhere in this preamble, this was not intended, and we have revised the requirement to avoid these consequences. There is still some paperwork burden associated with the attestation requirement, and particularly with the maintenance of a separate file for signed penalty statements, but we do not believe this burden to be excessive, in view of the advantages achieved in

terms of prevention and control of fraud, abuse, and waste.

F. MSA Redesignations

As discussed above, we will make additional payments to hospitals located in counties that lost their urban status as a result of an EOMB MSA/NECMA redesignation after April 20, 1983, effective with cost reporting periods beginning on or after October 1, 1983.

In the NPRM, we had proposed to make additional payments only to those hospitals that had hospital-specific rates greater than their rural Federal rates. We projected that the 32 hospitals that would receive two-thirds of the difference between the urban rate they would otherwise have received and their rural rate would be paid an estimated $4 million for FY 1985. However, we are now implementing the two-year phase-in beginning with FY 1984 cost reporting periods. Note that the impact is affected by the size of the Federal portion of the transition payment rates. Thus, for cost reporting periods beginning in FY 1984, we will calculate two-thirds of the difference between urban and rural rates for only the 25 percent Federal portion, and for cost reporting periods beginning in FY 1985, we will calculate one-third of the difference between urban and rural rates for the 50 percent Federal portion.

We estimate that this provision will initially affect 51 hospitals affected by the June 1983 EOMB redesignation, located for the most part in the East North Central and West South Central regions. There may be future redesignations, but we have no way to predict them or estimate their impact. Considering the payment to each hospital of two-thirds of the difference the first year and of one-third the second year, this will cost an estimated $4 million in additional payments for cost reporting periods beginning in FY 1984, and $4 million for cost reporting periods beginning in FY 1985.

For fiscal years 1984 and 1985, significantly increasing payments for a group of hospitals results in reduced payment to other hospitals through the budget neutrality mechanism. These additional payments affect few hospitals and are too small in the aggregate to have a large effect on the budget neutrality adjustment factors. As we stated in the proposed rule, increasing FY 1985 payments by $4 million would result in a decrease in the average payment to other hospitals of less than 50 cents.

G. Census Division Boundaries

As explained above, a hospital that is located in an MSA or NECMA that crosses census division boundaries will be deemed to belong to the census division in which most of the hospitals within the MSA or NECMA are located. Assuming that all of the hospitals in the effected MSAs continue to participate in the Medicare program, and that no new hospitals emerge in those areas, we estimate that this change will have a significant affect on only 23 of the 146 hospitals in the 14 MSAs affected:

- 11 hospitals will be paid at a higher Federal regional rate; and
- 12 hospitals will be paid at a lower adjusted Federal regional rate. (By statute, these hospitals will be held harmless for cost reporting periods beginning in FY 1984.)

Of the 146 hospitals in affected MSAs, 120 will not be reclassified. The remaining three hospitals are located in States that have waivers and are thus excluded from the prospective payment system.

We project that the 11 hospitals reclassified into regions that have higher regional rates will receive about $135 more per case than they could receive if we did not implement this change. The 12 hospitals adversely affected will receive about $90 less per case.

Nearly all of the affected hospitals are located in only three regions: South Atlantic, East North Central, and East South Central. The larger proportion of the decrease in payments will be experienced by hospitals in the East North Central region. Hospitals located in the East South Central region will benefit the most.

We estimate that the total payment increase for benefited hospitals will amount to about $3 million in the aggregate for cost reporting periods beginning in FY 1984, and $5 million for cost reporting periods beginning in FY 1985. The corresponding decrease to adversely affected hospitals will amount to about $3 million for cost reporting periods beginning in FY 1985. We also estimate that our decision not to impose these reductions for cost reporting periods beginning FY 1984 will result in program costs of about $2 million. The FY 1985 net increase of about $2 million, considering payments to all 23 directly affected hospitals ($5 million−$3 million = $2 million) will result in a negligible effect on other hospitals through the budget neutrality mechanism, reducing the average FY 1985 per case payment by less than 50 cents.

H. Base Year Appeals

We do not expect a significant economic impact to result from the clarification of the provision governing the appeal of base year costs on which transition period prospective payment rates are partially based. We do not view this clarification as a change of policy, since we had not intended to implement the regulation, as published on January 3, 1984, as rigidly as some parties seem to believe. Further, the impact of the base year costs involved diminishes throughout the transition period. Once full national DRG-related payment rates are implemented, revisions or new findings concerning base-year costs will have no effect on prospective payment rates.

We do not have adequate data to estimate how many hospitals will have their base period costs recalculated under this provision. However, we believe the aggregate amounts of additional payments resulting from recalculations will not be substantial enough to affect our overall expectations of program expenditures. This change has no effect on the budget neutraliy adjustment calculations.

I. Referral Centers

The additional criteria permitting rural hospitals to qualify as referral centers and be paid at urban rates will result in a significant number of new referral centers being recognized. As explained in the NPRM we do not have adequate data to project how many hospitals could meet each of the criteria proposed. However, we can determine how many hospitals had enough discharges and met the case-mix criteria based on the 1981 MEDPAR data. Based on just this data, in the NPRM we projected that as many as 113 hospitals might qualify as referral centers under the proposed criteria. We expect that incorporating regional criteria for rural referral centers, as discussed above, will permit about another 25 hospitals to meet the case-mix and discharge criteria, resulting in a total of around 139 hospitals that we can identify as potential rural referral centers.

We expect that nearly all of the hospitals that are able to meet both the discharge and case-mix criteria, will also meet one or more of the other criteria. In addition, some rural hospitals with less than 500 beds may qualify as referral centers under the existing criteria at § 405.476(g)(1)(ii). We will pay those hospitals at the urban rate, too. We cannot be sure how many hospitals may qualify under § 405.476(g)(1)(ii), how many of the hospitals that meet the discharge and case-mix criteria may be denied referral center status under the other criteria, or how many of the hospitals not represented by our data base may qualify for rural referral center payment. However, these uncertainties tend to balance out.

Therefore, considering all the limitations of currently available data, we do not believe the total number of potential rural referral centers with less than 500 beds is likely to differ significantly from the projected total population of 139 potential new rural referral centers identified solely on the basis of 1981 discharge and case mix.

We have identified some potential new rural referral centers in every region, but there are significant regional differences in their distribution. As noted in the NPRM, more than half of the potential referral centers identified are in only three regions: East North Central, East South Central, and South Atlantic. The New England and Middle Atlantic regions each have less than seven potential referral centers. The regions benefiting most from the new regional criteria are the East South Central, West North Central, West South Central, and Pacific regions.

Considering the difference between urban and rural rates, the increased aggregate payments to these hospitals will be substantial. We project that in FY 1985 these hospitals could be paid, in the aggregate, about $100 million more than they would be paid based on their rural rates. Due to the budget neutrality mechanism, the estimated increased payments to new referral centers will result in reduced payments to all other hosptials. We estimate that the average FY 1985 per case payment to other hospitals will be reduced by about $12 as a result of this change.

J. Payment for Inpatient Renal Dialysis

As discussed above in response to comments we have decided to make additional payments for maintenance dialysis treatments to those hospitals that have ESRD patients representing 10 percent or more of their total Medicare discharges, excluding discharges in DRG 302, 316, and 317.

Based on the data available to us, we expect approximately 8 to 12 hospitals will qualify for these extra payments annually. Each of these hospitals will be paid $335 for each week-equivalent of ESRD beneficiary inpatient stays. We estimate that affected hospitals would be paid approximately an additional $1.4 million for ESRD beneficiary discharges occurring in FY 1985.

K. Payment for Services of Anesthetists

As required by section 2312 of Pub. L. 98-369, we will pay for the costs of anesthetists' services on a pass-through basis. Ideally, we would be able to implement this in a manner that had no net effect on program expenditures, in that we would adjust the prospective payment rates (both Federal and hospital-specific portions) to take into account an aggregate amount that was exactly equal to the aggregate cost-based payments that we would make instead. However, it must be realized that a prospective estimate of such precision is impossible; all that can be done is to make the best estimate possible and adopt administrative measures that ensure that potential over or under payments are as small as possible. We believe the process described in section III.B of this preamble will accomplish this. As a result, we expect any effect on program costs to be negligible.

Nonetheless, this provision will result in substantial redistribution of payments, since we estimate the costs of anesthetists' services related to inpatient services furnished to Medicare beneficiaries will be about $160 million for hospital accounting years beginning in FY 1985. Through the Federal rate calculation methodology, these costs have been averaged in and paid to all hospitals. However, hospitals do not all incur comparable costs for such services: in some hospitals anesthesia is induced only by physicians, and in others by anesthetists employed by physicians. As a result of averaging, it could be argued that Federal rates result in overpayment to those hospitals that do not incur such costs, and underpayment to those hospitals that incur high costs for anesthetists' services. By paying these costs as a pass-through, and reducing prospective payments accordingly, hospitals that do not incur these costs will experience a reduction in revenues, and hospitals that do will experience an increase.

L. Indirect Medical Education Costs

The new rules governing the counting of interns and residents will probably result in greater numbers of them being considered in computing payment for indirect medical education costs for a substantial number of hospitals. This will result in increased payments to those hospitals.

At this time, we have no way of estimating how much this count and the related payments might increase. We expect that our increased audit activity will avoid overcounting, and may even result in reduced payments to some hospitals. We do not expect that such potential reductions would be large enough to offset all the increased payments.

Based on the audit data we accumulate, we will reexamine the teaching-adjustment factor. A substantial increase in the number of interns and residents recognized would suggest that a smaller effect on indirect costs would be attributable to each one. This in turn would suggest that a lower percentage adjustment factor would be more accurate. However, we do not have data at this time that would suggest such a reduction. Therefore, we are continuing to use the current factor of 11.59 percent.

M. Adjustments for Area Wage Levels

As discussed in the Addendum to this rule, we have attempted to develop a new area wage index based on our own survey of hospital wages, instead of the current wage index based on data collected by the Bureau of Labor Statistics (BLS) of the Department of Labor. Under the Medicare prospective payment system, the area wage index has two principal functions:

- To adjust the per case costs of each hospital in the data base used to compute urban and rural regional and national adjusted average standardized amounts (Federal rates) in order to remove the effects of differing area wages; and
- In computing the actual payment for an inpatient hospital case, to adjust the labor portion of the Federal rate.

Using a different area wage index would not affect aggregate payments under the prospective payment system. However, it would result in a different distribution of payments among hospitals. This redistribution would be the result not only of increases and decreases of the index values for particular urban or rural areas, but, during the transition period, of the necessary restandardization of Federal regional rates for all regions.

Many commenters, particularly those from rural areas, hoped that a new area wage index would correct perceived inequities resulting from the current wage index. We grant that our analysis to date suggests that use of the new wage data would affect the wage index values for a number of areas. However, as must be expected in any revision of an index such as this, not all the changes would benefit the affected hospitals—it appears likely that the new data would result in reductions for several areas, which would correspondingly reduce payments to hospitals in those areas. We expect that, if we were to implement a new wage index based on the wage survey data we accumulated this year, a significant redistribution of payments might result. Before imposing such a redistribution, we must take steps to ensure that any revised wage index values are based on survey data that are reasonably complete and that have been verified for accuracy.

Our decision not to change the index at this time should not be considered to have an impact equivalent to changing the index, since section 2316 of Pub. L. 98–369 requires that we make a new index effective for cost reporting periods beginning on or after October 1, 1983. Thus, the impact would result from the delay in the redistribution, and, though not inconsequential, we do not expect the adverse consequences of this delay to exceed the problems likely to result from premature implementation of an inaccurate index. See the Addendum for a further discussion of these issues.

N. Updated Payment Rates

One of the primary functions of this document is to publish updated prospective payment rates in accordance with statutory and regulatory requirements (section 1886(d) of the Act and § 405.470(e) of the regulations). Accordingly, the Addendum to this document, which is printed after the text of the regulations, sets forth tables of new Federal national and regional rates, new DRG relative weights and outlier thresholds, and new factors for calculating hospital-specific rates. In accordance with section 1886(d)(1)(D) of the Act, the Federal rate for FY 1985 will be a blend set at 75 percent of the Federal regional rate plus 25 percent of the Federal national rate. This blend will take effect for all Federal rates for all discharges occurring on or after October 1, 1984. Further, as each hospital begins its second year under prospective payment, with its cost reporting period beginning on or after October 1, 1984, the relative proportions of hospital-specific and Federal portions will change from 75 and 25 percent, respectively, to 50 percent hosptial-specific and 50 percent Federal.

For FY 1985, section 1886(e)(1) of the Act requires that Federal and hospital-specific payment rates continue to be adjusted for budget neutrality. (See the technical explanation of the budget neutrality adjustment methodology in section V. of the Addendum.) As a result, aggregate FY 1985 prospective payments for inpatient hospital services are projected to be the same as they would have been for those services in FY 1985 had the Medicare payment system in effect at the time of enactment of the prospective payment legislation continued in effect. It should be emphasized that we have no discretion in this matter—the FY 1985 payment rates *must* be made budget neutral to what would have been paid under prior law.

In the absence of the budget neutrality requirement, the FY 1985 payment rates would increase over the FY 1984 rates in accordance with sections 1886(b)(3)(B) (as amended by section 2310 of Pub. L. 98–369) and 1886(d)(3)(A) of the Act, by the percentage increase in the hospital market basket index (an input price index) plus 0.25 percentage point. For FY 1985, we estimate that increase would be about 6.62 percent. However, as a result of the budget neutrality and other adjustments, the proposed Federal payment rates as published will increase by 5.2 percent. The hospital-specific payment rates will increase from 6.62 to 7.14 percent, before application of the budget neutrality adjustment factor, depending on the starting date of the hospital's cost reporting period. The budget neutrality adjusted rates will increase from 5.88 percent to 6.40 percent.

The main factors that contribute to the reduction of the rate of increase below 6.62 percent are:

• Incorporation into the estimate of payments under prior law, on which the budget neutrality adjustment is based, of:

—The statutory reduction of the case-mix adjusted limits (from 115 percent to 110 percent of the mean per care costs for each group of hospitals) that would have applied under section 1886(a) of the Act; and

—The ending of payment for 25 percent of costs in excess of a hospital's rate of increase limit (target amount) under section 1886(b) of the Act;

• The disparity resulting from the difference between the months when lower and higher cost hospitals tend to enter the prospective payment system during FY 1984. More of the hospitals that have higher costs, due to higher wage index values and higher indirect teaching adjustments, have cost reporting periods beginning late in the Federal fiscal year. As a result, these hospitals had little effect on the estimated FY 1984 average payment levels used in the budget neutrality adjustment methodology. However, all of these hospitals will be paid based on the new Federal rates for all months of FY 1985. Reflection of this situation in the budget neutrality calculations for FY 1985, which eliminates the disparity, results in some reduction of the published FY 1985 rates; and

• Finally, increases in payments to certain hospitals as discussed elsewhere in this analysis, which must be offset by decreases in the Federal and hospital-specific payment rates due to the statutory requirement of budget neutrality

However, in addition, to the factors that would decrease the rates, we expect other factors to result in rate increases. Specifically, the change in outlier policy and the adjustment to reflect the most recent data on the level of transfer payments under the prospective payment system both produce increases in the adjusted Federal rates. (See the Addendum for discussion of both of these subjects.)

The following example serves to illustrate in dollar terms the impact of these factors on the increase in the Federal rates published in the Addendum to this rule. The New England region's urban rate is $2967 in FY 1984 (adding labor and non-labor components). This rate, increased by 6.62 percent, would be $3163 for FY 1985, before adjustment for budget neutrality. However, the FY 1985 urban Federal regional rate for New England is $3122, or $41 less than the rate would have been if we had simply increased the FY 1984 rate by 6.62 percent. The example below indicates how the requirement for budget neutrality accounts for the 41 dollar difference. (See Section V of the Addendum, Technical Explanation of Budget Neutrality Adjustment Methodology, for more details.)

EXAMPLE

FY 1984 Rate: New England urban	$2,967
Increase by 6.62 percent	+196
Additional year of rate of increase limits and elimination of 25% allowance for costs in excess of limits	−30
Reduce case-mix limits from 115% to 110% of mean	−13
Phase-in disparity	−12
Effect of regulatory changes	−31
Adjust for transfers under prospective payment	+15
Adjust for change in outlier policy	+30
FY 1985 Rate: New England urban	3,122

We expect that the actual average *payment* per case during FY 1985 will increase by more than the published Federal payment *rates* as a result of the following.

• Hospitals with higher wage index values entered the prospective payment system later, on average, than hospitals with lower wage index values. Thus, average payments to hospitals in FY 1985 will be higher than in FY 1984 because a higher proportion of admissions in FY 1985 will be associated with hospitals with a higher wage index.

• Hospitals with higher payments for the indirect costs of medical education entered the prospective payment system later, an average, than hospitals with lower payments for those costs. Therefore, average payments to hospitals in FY 1985 will be higher than in FY 1984 because a higher proportion

of admissions in FY 1985 will be associated with hospitals with higher payments related to indirect medical education cost.

• Hospitals with reporting periods starting later in FY 1984 are expected to have higher base year costs and hospital-specific rates because of the continuing increases in costs. This will further increase FY 1985 average prospective payments over FY 1984 average prospective payments.

• Several provisions allow for increased payments to some hospitals for FY 1985. These provisions include new criteria for rural referral centers, extra payments to certain hospitals that are in counties redesignated from urban to rural by EOMB, and relief for hospitals in MSAs that overlap more than one region.

In sum, considering all the factors affecting the level of payments, we expect Medicare payments to hospitals to increase by more than nine percent in FY 1985.

Comment—We received numerous comments concerning the inadequacy of prospective rate increases. Commenters stated that the 5.6 percent increase in the rates, when offset by the across the board reduction in the DRG weights and the 0.75 percent reduction in the technology adjustment (to market basket plus one-quarter of a percentage point, as mandated by section 2310 of Pub. L. 98–369), results in only a nominal overall rate increase that violates the Department's commitment to increase the payment rates to reflect market basket increases. Virtually all commenters strongly objected to the 2.4 percent reduction in the DRG weights. Some stated that this is an arbitrary adjustment which violates Congressional intent as indicated in the Conference Committee Report accompanying Pub. L. 98–369. In this report, the conferees stressed that the appropriateness of the new payment levels would be vital to the success of the program.

Many commenters also stated that the nature of the adjustment to the weights was inappropriate since it reflects changes in case-mix indexes for any and all reasons. These commenters believe that hospitals should not be penalized for responding appropriately to incentives created by the prospective payment system. Most commenters urged that the reduction in the DRG weights be eliminated and that the 5.6 percent increase in the rates be maintained.

Response—We stress that the FY 1985 reduction of the rate of inflation permitted under the prospective payment system, as well as of the target rate percentages for those hospitals excluded from the prospective payment system and subject to the rate-of-increase limits as specified in § 405.463, is mandated by section 2310 of the (Pub. L. 98–369). Under the law, the percentage change in the rates cannot exceed the market basket plus one-quarter of one percentage point (rather than, as under prior law, market basket plus one percentage point). However, it is important to note that the ultimate level of the prospective payment rates for FY 1985 is dictated by the budget neutrality requirement of section 1886(e)(1) of the Act which is not altered by Pub. L. 98–369.

By the same token, making no reduction in the DRG weights would require a decrease in the budget neutrality factor. In establishing the payment levels for FY 1985 we are required by law to maintain total prospective payments at the same level that would have been paid under the law in effect prior to the enactment of the prospective payment system. The TEFRA legislation (Pub. L. 97–248) enacted a new section 1886(a) of the Act, which established a system of limits on inpatient operating costs per case and target percentage increases designed to restrain increases in overall payments for inpatient hospital services in FY 1983 through FY 1985. Allowable costs per case were limited to no more than 120 percent of the average for similar hospitals in FY 1983, lowered to 115 percent in FY 1984 and 110 percent in FY 1985. That legislation also enacted a new section 1886(b) of the Act, which established separate rate-of-increase limits, expressed as hospital-specific target amounts, with bonuses for hospitals with costs less than their target amounts and penalties for hospitals whose costs exceeded their target amounts. For FY 1984, hospitals with costs in excess of their target amounts were reimbursed 25 percent of the excess. This 25 percent payment was eliminated for FY 1985. This change, when combined with the reduction in allowable total costs per case, substantially restrained increases in projected total expenditures under the TEFRA rules in FY 1985. It was therefore necessary to reduce the rates in order to remain within the TEFRA limits and achieve budget neutrality.

Budget neutrality considerations also mandate that all factors which will affect the level of total DRG payments be considered in establishing the prospective payment rates. Therefore, it was necessary to consider increases in case-mix indexes because of their direct impact on the amounts paid for each case. During the early stages of the prospective payment system, changes in hospital behavior are a natural outgrowth of adaptation to the new system. While we anticipated these behavior changes at the time the DRG system was developed, we were unable to accurately assess their impact until we had actual experience under the program. Based on billing experience thus far under the prospective payment system, we determined that the aggregate increase in hospital case-mix has exceeded our initial estimate of 3.38 percent. This additional increase in case-mix indexes will result in actual payments under the prospective payment system that are higher than predicted from the 1981 MEDPAR data and our initial study of PSRO data, which only reflected changes occurring from improvement in the overall reporting of patient data. Therefore, in order to ensure budget neutrality, we must consider changes in case-mix indexes resulting not only from improved medical recordkeeping, but also from other changes in hospital behavior, since more cases are falling within the higher weighted DRGs.

As explained in the proposed notice, we elected to adjust for the additional increase in case-mix indexes through an overall reduction in the DRG relative weights. We believe this approach is more desirable than applying the adjustment through the budget neutrality factor, which would result in an actual decrease in the hospital-specific rates from the prior year. By reducing the DRG weights and the resulting payment amounts at the beginning of the Federal fiscal year, rather than with each hospital cost reporting year, hospitals with cost reporting periods beginning earlier in the Federal fiscal year would not have to subsidize those hospitals with cost reporting periods beginning later in the Federal fiscal year. We believe adjusting the DRG weights in the manner we have is more equitable and will benefit hospitals by maintaining a more even cash flow.

Since we are bound by the requirement in the law to maintain budget neutrality, we are not in a position to eliminate the overall reduction in the DRG weights without reducing the budget neutrality adjustment factor. Within the constraints of the budget neutrality requirements and methodology, we stress again that if the adjustments for increased case-mix indexes is not achieved through reduction of the weights, then it must be accomplished through the budget neutrality adjustment factor. While an adjustment for changes in case mix may be one which would be

made in any event, the legal requirement for budget neutrality makes the adjustment imperative for FY 1985. Not to make the adjustment is not an option available to us under current law. The only choice given to us was to make the adjustment to the weights or the rates. Given the consequences of adjusting the rates, particularly the hospital-specific portion, we opted for a reduction in the DRG weights as a more equitable way to achieve the same result.

Comment—A commenter suggested that hospitals that enter the prospective payment system later will not be paid more than hospitals that entered it earlier.

Response—We analyzed the distribution of hospitals as they enter the prospective payment system, and found that hospitals that are concentrated in areas with higher wage index values, and in the regions with higher Federal regional rates, enter the system later. Further, these same hospitals have higher average indirect teaching payments. Therefore, hospitals that enter the prospective payment system later will have higher average reimbursement.

O. Excluded Hospitals and Units

Section II.A.3. of the Addendum to this final rule sets forth the estimated values of the market basket plus 0.25 percentage point for calendar years 1984 through 1986. In addition to being used for updating the average standardized amounts on which Federal payment rates under the prospective payment system are based, these values will be used to determine the target amounts for those hospitals that are excluded from the prospective payment system but subject to the rate-of-increase limits required by section 1886(b) of the Act.

Section 2310 of Pub. L. 98–369 amended section 1886(b)(3)(B) of the Act to specify that the annual target amount for each hospital and unit subject to the rate of increase limit be updated annually using a target rate percentage equal to the market plus one-quarter of one percentage point, rather than the market basket plus one percentage point. This will apply to cost reporting periods beginning on or after October 1, 1984. For the affected cost reporting periods, a hospital or unit that has per case costs in excess of its target amount (a hospital-specific ceiling on reimbursable inpatient operating costs per case) will not be paid any of the costs in excess of its target amount. However, a hospital or unit that has per case costs less than its target amount will be paid its allowable inpatient operating cost per case plus the lower of 50 percent of the difference between the hospital's or unit's per case costs and the target amount or 5 percent of the target amount. As a result, this change in setting the target amount will affect each hospital or unit in one of three ways.

- If a hospital's costs would have exceeded its target amount using a market-basket-plus-one percentage-point target rate percentage, it will exceed its new target amount by an even greater amount, and will have its Medicare reimbursement reduced accordingly.
- If a hospital's costs are lower than its target amount as calculated using the new target rate pecentage, it will receive additional payments, as described above, but these payments will be lower than could have been paid had the target rate percentage been set at market basket plus one percentage point. This difference represents a cost to hospitals and units affected this way.
- Finally, some hospital's and units will have per case costs greater than its target amount as calculated using the market-basket-plus-one-quarter target rate percentage, but less than the target amount that would have resulted using the old target rate percentage formula. The total cost of this change to these hospitals and units equal the costs disallowed using the new target amount plus the amount of additional payments that would have been received under the old target amount.

P. Summary

E.O. 12291 requires us to assess the benefits, costs, and net benefits of all rules, major or otherwise, and to discuss those costs and benefits in impact analyses for major rules to show that the potential benefits outweigh the cost to society.

In the aggregate, the net effect these changes would have on the overall level of total payments could be considered negligible. To the extent that any aggregate change results at all, it will be the result of our inability to reflect all these changes explicitly and accurately in the budget neutrality adjustment methodology. Five of the major provisions of this rule (outlier payments to transferring hospitals, director of rehabilitation units expansion of rehabilitation units, physician attestation, and base year appeals) are not reflected in that methodology. However, as discussed above in relation to each provision, although we expect the economic impacts of these provisions to be negligible in the aggregate, each of them has significant benefits.

For the most part, the costs and disadvantages that could result from these changes will take the form of reductions of payment rates through budget neutrality adjustment. However, as discussed above, the decrease in the budget neutrality factors largely results from considerations outside the scope of these provisions and, under budget neutrality, quantifiable benefits in the form of payment increases for some must be offset by payment decreases for others.

The primary benefit resulting from these regulations is the maintenance and effective management of the prospective payment system itself. The incentives of this system are expected to produce substantial benefits in the form of economy and efficiency of operation of participating hospitals, and as improvements in trends of the health care marketplace as a whole. As noted earlier, the objective of these provisions is to fine tune the prospective payment system. Compared to the magnitude and impact of the system as a whole, the effects of these changes will be relatively small.

We believe that, from this perspective, the higher payment rates afforded to those hospitals directly and quantifiably advantaged by these rule changes, as well as the nonquantifiable benefits afforded to rehabilitation units and hospitals with affected transfer outlier cases and base year appeals, more than offset the costs resulting from those provisions. For the above reasons, we believe that this document meets the objectives of E.O. 12291 and the Regulatory Flexibility Act.

VII. Other Required Information

A. Effective Dates

Generally, the changes to the regulations implemented by this final rule are effective with cost reporting periods beginning on or after October 1, 1984. However, certain other effective dates are involved.

The change in § 405.452 (HHA cost apportionment method), which corrects an erroneous deletion from the September 1, 1983 interim final rule, is effective October 1, 1983.

As a result of the enactment of Pub. L. 98–369, two regulatory changes, § 405.473 (Census division boundaries) and § 405.476 (Hospitals in areas redesignated as rural), are effective with cost reporting periods beginning on or after October 1, 1983. However, those hospitals that would receive a lower Federal rate as a result of the changes in § 405.473 will not receive that rate until their cost reporting periods that begin on or after October 1, 1984.

The following regulatory amendments are effective with cost reporting periods beginning on or after October 1, 1984:

§ 405.471 Rehabilitation facility direction and expansion.
§ 405.476 Rural referral center criteria.
§ 405.477 Indirect medical education and CRNA services.

The changes in § 405.472 that relate to physician attestation requirements are effective October 1, 1984. Despite this effective date, for a reasonable time hospitals may continue to use the language and positioning of the certification and penalty statements prescribed in the January 3, 1984 final rule. However, we fully expect that hospitals will expeditiously implement the new requirements.

The changes to § 405.474 (Base year appeals) are effective on October 1, 1984. In addition, the changes in the payment of cost outliers to transferring hospitals (§ 405.470), and the provisions for additional payments to a hospital that has ten percent or more ESRD patient discharges (§ 405.476), are effective with discharges occurring on or after October 1, 1984.

B. Waiver of 30-day Delay of Certain Effective Dates

Generally, we provide a 30-day delay in the effective date of a substantive rule. As stated above, most of the changes to the regulations in this final rule have effective dates that apply to hospital cost reporting periods beginning on or after October 1, 1984. However, certain changes have other effective dates for which we are waiving the customary delay.

There are two provisions that are effective with cost reporting periods beginning on or after October 1, 1983. The effective date for these regulations changes (that is, the MSA/NECMA redesignation in § 405.473 and census boundary divisions in § 405.476) are mandated by section 2311 of Pub. L. 98–369, which was enacted on July 18, 1984. To comply with this statutory mandate, and to inform the public generally and affected hospitals in particular about these changes, we have included these provisions in this final rule. We also note that the NPRM contained proposed changes concerning these matters, and we have responded to those comments in this final rule. Therefore, we believe that a delay in the effective date is unnecessary and contrary to the public interest, and we find good cause to waive the requirement.

As discussed above, we are also restoring material unchanged to § 405.452 (concerning HHAs), which was erroneously deleted in the September 1, 1983 interim final rule. The effective date is October 1, 1983. Because this is a technical amendment to correct an error, we find that a delay in the effective date is unnecessary. Therefore, we find good cause to waive a delay in the effective date here also.

C. Waiver of Proposed Rulemaking

The APA (5 U.S.C. 553) requires us to publish a notice of proposed rulemaking in the **Federal Register** for substantive rules and to afford a period for public comment. The notice generally is to include a description of the subjects and issues involved. However, this requirement does not apply if an agency finds good cause that such a notice-and-comment procedure is impractical, unnecessary or contrary to the public interest. In this case, the agency must incorporate an explanation of its finding in the rule to be issued.

We issued an NPRM on July 3, 1984 (49 FR 27422) and provided a period for public comment on most of the regulatory amendments contained in this final rule. Only the changes concerning regional criteria for referral centers (§ 405.476(g)), payments for anesthesia services (§ 405.477(c)), and payments for indirect medical education costs were not described in the NPRM. These regulatory amendments implement sections 2307(b), 2311(a) and 2312 of Pub. L. 98–369 respectively. The statute which was enacted on July 18, 1984, provided that these provisions are effective with cost reporting periods beginning on or after October 1, 1984. It is clear, therefore, that undergoing a proposed rulemaking process with respect to these provisions was impractical and, in terms of notifying affected parties of the implementing regulations before the statutory effective date was not in the public interest. In addition, beneficiaries are not adversely affected by the three provisions, and, since each of these provisions will result in additional payments to certain hospitals, we believe the hospital industry, on balance, will experience greater benefit than disadvantage. Therefore, we find good cause to waive proposed rulemaking for these regulatory provisions.

D. Paperwork Reduction Act

Section 405.477(d)(2)(v)(B) requires hospitals to report on the hours worked by interns and residents. This reporting requirement is subject to EOMB approval under section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 and following). We are seeking approval of this information collection requirement, and we will publish the EOMB control number in the **Federal Register** when the requirements are approved.

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Cost-based reimbursement, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMOs), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reasonable charges, Reporting requirements, Rural areas, Prospective Payment System, X-rays.

42 CFR Part 405 is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—Principles of Reimbursement for Providers, Outpatient Maintenance Dialysis, and Services by Hospital-Based Physicians

A. Subpart D is amended to read as follows:

1. The authority citation for Subpart D reads as follows:

AUTHORITY: Secs. 1102, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1886, and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395ww, and 1395xx).

2. The table of contents for Subpart D is amended by revising the title of § 405.476 to read as follows:

Sec.
* * * * *
§ 405.476 Special treatment for certain facilities under the prospective payment system.
* * * * *

3. Section 405.452 is amended by revising the section title and adding a new paragraph (a)(3) to read as follows:

§ 405.452 Determination of cost of services to beneficiaries.

(a) Principle. * * *

(3) *Cost per visit by type-of-service method—Home health agencies.* For cost reporting periods beginning on or after October 1, 1980, all home health agencies must use the cost per visit by type-of-service method of apportioning costs between Medicare and non-Medicare beneficiaries. Under this method, the total allowable cost of all visits for each type of service is divided by the total number of visits for that type of service. Next, for each type of

service, the number of Medicare covered visits is multiplied by the average cost per visit just computed. This represents the cost Medicare will recognize as the cost for that service, subject to cost limits published by HCFA (see § 405.460).

* * * * *

4. In § 405.470, paragraphs (a)(1) and (b)(4) are revised; the introductory language of paragraph (b)(5) is reprinted unchanged; paragraph (b)(5)(iv) is revised; a new paragraph (b)(5)(v) is added; paragraph (c)(4) is redesignated as paragraph (c)(4)(i); and a new paragraph (c)(4)(ii) is added to read as follows:

§ 405.470 Prospective payment general provisions.

(a) *Scope*—(1) *Purpose.* Sections 405.470 through 405.477 of this subpart implement section 1886(d) of the Act by establishing a prospective payment system for inpatient hospital services furnished to beneficiaries in cost reporting periods beginning on or after October 1, 1983. Under the prospective payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (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 (capital-related costs, kidney acquisition costs incurred by hospitals with approved renal transplantation centers, direct costs of medical education, and, for cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, the costs of qualified nonphysician anesthetists' services) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, and indirect medical education costs. Under the prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating costs incurred in furnishing inpatient services, and is at risk for operating costs that exceed its payment rate.

* * * * *

(b) *Basis of Payment.* * * *

(4) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and paid for on a reasonable cost basis:

(i) Capital-related costs, as described in § 405.414 and an allowance for return on equity, as described in § 405.429.

(ii) Direct medical education costs, for those approved education programs described in § 405.421.

(iii) Costs for direct medical and surgical services of physicians in teaching hospitals exercising the election in § 405.521.

(iv) Kidney acquisition costs incurred by a certified renal transplantation centers.

(v) For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, costs of qualified nonphysician anesthetists' services.

(5) *Additional payments to hospitals.* In addition to payments based on the prospective payment rates, hospitals will receive payments for:

* * * * *

(iv) Bad debts of Medicare beneficiaries (see §§ 405.420 and 405.477(d)(1)); and

(v) ESRD beneficiary discharges if such discharges are 10 percent or more of the hospital's total Medicare discharges (see § 405.476(j)).

(c) Discharges and transfers.

* * * * *

(4) Payment to a hospital transferring an inpatient to another hospital.

* * * * *

(ii) Effective with discharges occurring on or after October 1, 1984, a transferring hospital may qualify for an additional payment for extraordinarily high-cost cases that meet the criteria for cost outliners as described in §§ 405.475(a)(2) and (d).

* * * * *

5. In § 405.471, the introductory language of paragraphs (c)(2) and (c)(2)(v) is reprinted unchanged; paragraphs (c)(2)(ii) and (c)(2)(v)(A) are revised; the introductory language of paragraphs (c)(4)(iii) and (c)(4)(iii)(F) is reprinted unchanged; paragraphs and (c)(4)(iii)(A) and (c)(4)(iii)(F)(1) are revised; and new paragraphs (d), (e), and (f) are added to read as follows:

§ 405.471 Hospitals and hospital services subject to and excluded from the prospective payment system.

* * * * *

(c) Excluded hospitals and hospital units: classifications. * * *

(2) Rehabilitation hospitals. A rehabilitation hospital must—

(ii) Except as provided in paragraph (d) of this section, have treated, during its most recent 12-month cost reporting period, an inpatient population of whom at least 75 percent required intensive rehabilitative services for the treatment of one or more of the following conditions:

(A) Stroke.

(B) Spinal cord injury.

(C) Congenital deformity.

(D) Amputation.

(E) Major multiple trauma.

(F) Fracture of femur (hip fracture).

(G) Brain injury.

(H) Polyarthritis, including rheumetoid arthritis.

(I) Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.

(J) Burns.

* * * * *

(v) Have a director of rehabilitation who—

(A) Provides services to the hosptial and its inpatients on a full-time basis;

* * * * *

(4) *Psychiatric, rehabilitation, and alcohol/drug units (distinct parts).*

* * * * *

(iii) A rehabilitation unit (distinct part) must—

(A) Except as provided in paragraph (e) of this section, have treated, during its most recent 12-month cost reporting period, an inpatient population of whom at least 75 percent required intensive rehabilitative services for the treatment of one or more of the following conditions:

(*1*) Stroke.

(*2*) Spinal cord injury.

(*3*) Congenital deformity.

(*4*) Amputation.

(*5*) Major multiple trauma.

(*6*) Fracture of femur (hip fracture).

(*7*) Brain injury.

(*8*) Polyarthritis, including rheumatoid arthritis.

(*9*) Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.

(*10*) Burns.

* * * * *

(F) Have a director of rehabilitation who—

(1) Provides services to the unit and to its inpatients for at least 20 hours per week;

* * * * *

(d) *First-time exclusion of new rehabilitation hospitals.* A hospital that seeks exclusion 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 (c)(2)(ii) of this section instead of showing that it has treated such a population during its most recent 12-month cost reporting period.

(e) *Exclusion of new rehabilitation units and expansion of excluded rehabilitation units—(1) New units.* If a hospital has not previously sought exclusion for any rehabilitation unit,

and has obtained approval for added bed capacity under State licensure and under its Medicare certification, it may identify the new beds as a new rehabilitation unit for the first full 12-month cost reporting period during which the beds are used to furnish inpatient care. A unit that is comprised of some beds that were previously licensed and certified, and some new beds, will be recognized as a new rehabilitation unit only if the majority of beds are new. For the first cost reporting period in which a hospital seeks exclusion of a new rehabilitation unit, the hospital may provide a written certification that the inpatient population it intends the unit to serve meets the requirements of paragraph (c)(4)(iii)(A) of this section instead of showing that it has treated such a population during its most recent 12-month cost reporting period.

(2) *Expansion of excluded units.* If a hospital that has an excluded rehabilitation unit has obtained approval for added bed capacity, under State licensure and under its Medicare certification, and seeks to add the new beds to its existing excluded unit for the first full 12-month cost reporting period during which the new beds are used to furnish inpatient care, the hospital may provide a written certification that the inpatient population that the new beds are intended to serve meets the requirements of paragraph (c)(4)(iii)(A) of this section instead of showing that those beds were used to treat such a population during the unit's most recent 12 month cost reporting period.

(f) *Changes in the size of excluded units.* For purposes of exclusion from the prospective payment system under this section, the number of beds and square footage of each excluded unit will remain the same throughout each cost reporting period, and any change in the number of beds or square footage considered to be part of an excluded unit may be made only at the start of a cost reporting period.

6. In § 405.472, paragraph (d)(2)(i) is revised to read as follows:

§ 405.472 Conditions for payment under the prospective payment system.

* * * * *

(d) Medical review activities for hospitals paid under the prospective payment system.

* * * * *

(2) *DRG validation.* (i) The attending physician must, shortly before, at, or shortly after discharge (but before a claim is submitted), attest to the principal diagnosis, secondary diagnoses, and names of major procedures performed. The information must be in writing in the medical record. Below the diagnostic and procedural information, and on the same page, the following statement must immediately precede the physician's signature:

I certify that the narrative descriptions of the principal and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge.

In addition, when the claim is submitted, the hospital must have on file a current signed acknowledgement from the attending physician that the physician has received the following notice:

"**Notice to Physicians:** Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws."

The acknowledgement must have been completed within the year prior to the submission of the claim.

* * * * *

7. Section 405.473 is amended by revising paragraphs (b)(6) and (c)(1), revising and redesignating paragraphs (c)(2) through (c)(6) as (c)(3) through (c)(7) respectively, and adding a new paragraph (c)(2) to read as follows:

§ 405.473 Basic methodology for determining Federal prospective payment rates.

* * * * *

(b) Federal rates for fiscal year 1984. * * *

(6) *Geographic classifications.* (i) For purposes of paragraph (b)(5) of this section, the following definitions apply:

(A) The term "region" means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes.

(B) The term "urban area" means:

(*1*) A Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Executive Office of Management and Budget; or

(*2*) The following New England counties, which are deemed to be urban areas under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98-21, 42 U.S.C. 1395ww (note)): Litchfield County, Connecticut; York County, Maine; Sagadahoc County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island.

(C) The term "rural area" means any area outside an urban area.

(D) The phrase "hospital reclassified as rural" means a hospital located in a county that was part of an MSA or NECMA, as defined by the Executive Office of Management and Budget, but is not part of an MSA or NECMA as a result of an Executive Office of Management and Budget redesignation occurring after April 20, 1983.

(ii) For hospitals within an MSA or NECMA that crosses census division boundaries, the following provisions apply:

(A) The MSA or NECMA is deemed to belong to the census division in which most of the hospitals within the MSA or NECMA are located.

(B) If a hospital would receive a lower Federal rate because most of the hospitals are located in a census division with a lower Federal rate than the rate applicable to the census division in which the hospital is located, the payment rate will not be reduced for any cost reporting period beginning before October 1, 1984.

(C) If an equal number of hospitals within the MSA or NECMA are located in each census division, such hospitals are deemed to be in the census division with the higher Federal rate.

* * * * *

(c) *Federal rates for fiscal years after Federal fiscal year 1984*—(1) *General rule.* HCFA will determine a national adjusted prospective payment rate, for each inpatient hospital discharge in a Federal fiscal year after fiscal year 1984 involving inpatient hospital services of a hospital in the United States subject to the prospective payment system under § 405.471, and will determine a regional adjusted prospective payment rate for such discharges in each region, for which payment may be made under Medicare Part A. Each such rate will be determined for hospitals located in urban or rural areas within the United States and within each such region respectively, as described in paragraphs (c)(2) through (c)(7) of this section.

(2) *Geographic classifications.* (i) For purposes of this paragraph, the following definitions apply:

(A) The term "region" means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes.

(B) The term "urban area" means—

(1) A Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA), as defined by the Executive Office of Management and Budget; or

(2) The following New England counties, which are deemed to be urban areas under section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98-21, 42 U.S.C. 1395ww (note)): Litchfield County, Connecticut; York County, Maine; Sagadahoc County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island.

(C) The term "rural area" means any area outside an urban area.

(D) The phrase "hospital reclassified as rural" means a hospital located in a county that was part of an MSA or NECMA, as defined by the Executive Office of Management and Budget, but is not part of an MSA or NECMA as a result of an Executive Office of Management and Budget redesignation occurring after April 20, 1983.

(ii) For hospitals within an MSA or NECMA that crosses census division boundaries, the following provisions apply:

(A) The MSA or NECMA is deemed to belong to the census division in which most of the hospitals within the MSA or NECMA are located.

(B) A hospital that receives a higher Federal rate for its cost reporting period that began before October 1, 1984, because it meets the conditions described in paragraph (b)(6)(ii)(B) of this section will receive the lower Federal rate applicable to all hospitals in the MSA or NECMA in which it is located effective with the hospital's cost reporting period that begins on or after October 1, 1984.

(C) The higher Federal rate is payable to all hospitals in the MSA or NECMA if an equal number of hospitals within the MSA or NECMA are located in each census division.

(3) *Updating previous standardized amounts*—(i) *For fiscal year 1985.* HCFA will compute an average standardized amount for each group of hospitals described in paragraph (b)(5) of this section (urban areas and rural areas within the United States, and urban areas and rural areas within each region), equal to the respective adjusted average standardized amount computed for fiscal year 1984 under paragraph (b)(7) of this section—

(A) Increased for fiscal year 1985 by the applicable percentage increase under § 405.463(c);

(B) Adjusted by the estimated amount of medicare payment for nonphysician services furnished to hospital inpatients that would have been paid under Part B were it not for the fact that such services must be furnished either directly by hospitals or under arrangements;

(C) Reduced by a proportion equal to the proportion (estimated by HCFA) of the total amount of prospective payments which are additional payment amounts attributable to outlier cases under § 405.475; and

(D) Adjusted for budget neutrality under paragraph (c)(5) of this section.

(ii) For fiscal year 1986 and thereafter, HCFA will compute an average standardized amount for each group of hospitals described in paragraph (b)(5) of this section, equal to the respective adjusted average standardized amounts computed for the previous fiscal year—

(A) Increased by the applicable percentage increase determined under paragraph (c)(4) of this section; and

(B) Adjusted by the estimated amount of Medicare payment for nonphysician services furnished to hospital inpatients that would have been paid under Part B were it not for the fact that such services must be furnished either directly by hospitals or under arrangements;

(C) Reduced by a proportion equal to the proportion (estimated by HCFA) of the amount of payments based on the total amount of prospective payments which are additional payment amounts attributable to outlier cases under § 405.475.

(4) *Determining applicable percentage changes for fiscal year 1986 and following.* The Secretary will determine for each fiscal year (beginning with fiscal year 1986) the applicable percentage change which will apply for purposes of paragraph (c)(3)(ii) of this section as the applicable percentage increase for discharges in that fiscal year, and which will take into account amounts the Secretary believes necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. In making this determination, the Secretary will consider the recommendations of the Prospective Payment Assessment Commission.

(5) *Maintaining budget neutrality for fiscal year 1985.* For fiscal year 1985, HCFA will adjust each of the reduced standardized amounts determined under paragraph (c)(3) of this section as required for fiscal year 1985 to ensure that the estimated amount of aggregate payments made, excluding the hospital-specific portion (that is, the total of the Federal portion of transition payments, plus any adjustments and special treatment of certain classes of hospitals for fiscal year 1985) is not greater or less than 50 percent of the payment amounts that would have been payable for the inpatient operating costs for those same hospitals for fiscal year 1985 under the law as in effect on April 19, 1983. The aggregate payments considered under this paragraph exclude payments for per case review by a utilization and quality control peer review organization, as allowed under section 1866(a)(1)(F) of the Act.

(6) *Computing Federal rates for urban and rural hospitals.* For each discharge classified within a Diagnosis-Related Group, HCFA will establish for the fiscal year a national prospective payment rate and will establish a regional prospective payment rate, for each region, each of which is equal—

(i) For hospitals located in an urban area in the United States or that region respectively, to the product of—

(A) The adjusted average standardized amount (computed under paragraph (c)(3) of this section) for the fiscal year for hospitals located in an urban area in the United States or that region; and

(B) The weighting factor (determined under paragraph (a)(2) of this section) for that diagnosis-related group; and

(ii) For hospitals located in a rural area in the United States or that region (respectively), to the product of—

(A) The adjusted average standardized amount (computed under paragraph (c)(3) of this section) for the fiscal year for hospitals located in a rural area in the United States or that region; and

(B) The weighting factor (determined under paragraph (a)(2) of this section) for that diagnosis-related group.

(7) *Adjusting for different area wage levels.* HCFA will adjust the proportion (as estimated by HCFA from time to time) of Federal rates computed under paragraph (c)(6) of this section which are attributable to wages and labor-related costs, for area differences in hospital wage levels by a factor (established by HCFA) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

8. In § 405.474, paragraph (b)(2)(i) is revised, the introductory language of paragraph (b)(3)(i) is reprinted unchanged, and paragraph (b)(3)(i)(C) is revised to read as follows:

§ 405.474 Determination of transition period payment rates.

* * * * *

(b) *Determining the hospital-specific rate.*

* * * * *

(2) *Modifications to base year costs.* (i) Prior to determining the hospital-specific rate, the intermediary will adjust the hospital's estimated base year inpatient operating costs, as necessary,

to eliminate nursing differential costs (as described in § 405.430), direct medical education costs (as described in § 405.421), capital-related costs (as described in § 405.414), kidney acquisition costs incurred by hospitals approved as renal transplantation centers (as described in § 405.476(h)), and, for cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, the costs of qualified nonphysician anesthetists' services (see § 405.477(c)(3)). Kidney acquisition costs in the base year will be determined by multiplying the hospital's average kidney acquisition cost per kidney times the number of kidney transplants covered by Medicare Part A during the base period. Malpractice insurance costs will be included in the inpatient operating costs, as described in § 405.452. Also, higher costs that were incurred for purposes of increasing base year costs, or either one-time nonrecurring higher costs or revenue offsets that have the effect of distorting base year costs as an appropriate basis for computing the hospital-specific rate or higher costs that result from changes in hospital accounting principles initiated in the base year, will be excluded from base year costs for purposes of this section.

* * * * *

(3) *Limitations on modifying calculations.* (i) The intermediary will use the best data available at the time in estimating each hospital's base year costs and the modifications to those costs authorized by paragraph (b)(2) of this section. The intermediary's estimate of base year costs and modifications thereto is final and may not be changed after the first day of the first cost reporting period beginning on or after October 1, 1983, except as follows: * * *

(C)(*1*) To take into account additional costs recognized as allowable costs for the hospital's base year as the result of—

(*i*) A reopening and revision of the hospital's base year notice of amount of program reimbursement under §§ 405.1885 through 405.1889;

(*ii*) A prehearing order or finding issued during the provider payment appeals process by the appropriate reviewing authority under §§ 405.1821 or 405.1853 that resolved a matter at issue in the hospital's base year notice of amount of program reimbursement;

(*iii*) An affirmation, modification, or reversal of a Provider Reimbursement Review Board decision by the Administrator of HCFA under § 405.1875 that resolved a matter at issue in the hospital's base year notice of amount of program reimbursement; or

(*iv*) An administrative or judicial review decision under §§ 405.1831, 405.1871, or 405.1877 that is final and no longer subject to review under applicable law or regulations by a higher reviewing authority, and that resolved a matter at issue in the hospital's base year notice of amount of program reimbursement.

(*2*) The intermediary will recalculate the hospital's base year costs, incorporating the additional costs recognized as allowable for the hospital's base year. Adjustments to base year costs to take into account these additional costs will be effective with the first day of the hospital's first cost reporting period beginning on or after the date of the revision, order or finding, or review decision. The hospital's revised base year costs will not be used to recalculate the hospital-specific portion as determined for fiscal years beginning before the date of the revision, order or finding, or review decision.

* * * * *

9. Section 405.475 is amended by revising and redesignating paragraph (a) as (a)(1), adding a new paragraph (a)(2) to read as follows, and revising paragraph (d)(1) to read as follows:

§ 405.475 Payment for outlier cases.

(a) *General rule.* (1) Except as provided in paragraph (a)(2) of this section concerning transferring hospitals, HCFA will provide for additional payment, approximating a hospital's marginal cost of care beyond thresholds specified by HCFA, to a hospital for covered inpatient hospital services furnished to a Medicare beneficiary if—

(i) The beneficiary's length of stay (including days at the SNF level of care if a SNF bed is not available in the area) exceeds the mean length of stay for the applicable DRG by the lesser of—

(A) A fixed number of days, as specified by HCFA; or

(B) A fixed number of standard deviations, as specified by HCFA;

(ii) The beneficiary's length of stay does not exceed criteria established under paragraph (a)(1) of this section, but the hospital's charges for covered services furnished to the beneficiary, adjusted to cost by applying a national cost/charge ratio, exceed the greater of—

(A) A fixed dollar amount (adjusted for area wage levels) as specified by HCFA; or

(B) A fixed multiple of the Federal prospective payment rate. During the transition period, the Federal rate is a combination of the national rate and regional rate as follows:

Federal fiscal year	Regional rate percentage	National rate percentage
October 1, 1983	100	
October 1, 1984	75	25
October 1, 1985	50	50
October 1, 1986		100

(2) *Outlier cases in transferring hospitals.* HCFA will provide cost outlier payments to a transferring hospital that does not receive payment under § 405.470(b)(2) for covered inpatient hospital services furnished to a Medicare beneficiary if the hospital's charges for covered services furnished to the beneficiary, adjusted to cost by applying a national cost/charge ratio, exceed the greater of the criteria specified in paragraphs (a)(1)(ii)(A) or (B) of this section.

* * * * *

(d) *Payment for extraordinarily high-cost cases (cost outliers).* (1) A hospital may request its intermediary to make an additional payment for inpatient hospital services that meet the criteria established in accordance with paragraph (a)(1)(ii) of this section.

* * * * *

10. Section 405.476 is amended by revising the section title; amending paragraph (a) by adding new paragraphs (a)(6) and (7); revising paragraph (g); and adding new paragraphs (i) and (j) to read as follows:

§ 405.476 Special treatment of certain facilities under the prospective payment system.

(a) *General rules.*

* * * * *

(6) *Hospitals that are located in urban areas and that are reclassified as rural.* HCFA will adjust the rural Federal payment amounts for hospitals reclassified as rural, as defined in §§ 405.473(b)(6)(i)(D) or 405.473(c)(2)(i)(D). The criteria for this adjustment are set forth in paragraph (i) of this section.

(7) *Hospitals that have a high percentage of ESRD beneficiary discharges.* HCFA will make an additional payment to a hospital if ten percent or more of its total Medicare discharges in a cost reporting period beginning on or after October 1, 1984 are ESRD beneficiary discharges. In determining ESRD discharges, discharges in DRG Nos. 302, 316, and 317 are excluded. The criteria for this additional payment are set forth in paragraph (j) of this section.

* * * * *

(g) Referral centers.—(1) *Criteria.* HCFA will consider a hospital's request for a referral center adjustment to the hospital's prospective payment rates

only if the hospital is an acute care hospital that has a provider agreement under Part 489 of this chapter to participate in Medicare as a hospital: and the hospital meets the criteria specified in either paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this section.

(i) The hospital is located in a rural area (as defined in § 405.473(c)(2)(i)) and has 500 or more beds available for use.

(ii) The hospital has an inpatient population such that at least 50 percent of its Medicare patients are referred from other hospitals or from physicians not on the staff of the hospital. In addition, at least 60 percent of the hospital's Medicare patients must live more than 25 miles from the hospital, and at least 60 percent of all the services that the hospital furnishes to Medicare beneficiaries are furnished to beneficiaries who live more than 25 miles from the hospital.

(iii) For cost reporting periods beginning on or after October 1, 1984, the hospital is located in a rural area (as defined in § 405.473(c)(2)(i)) and the hospital meets the criteria specified in paragraphs (g)(1)(iii)(A) and (g)(1)(iii)(B) of this section and at least one of the three criteria specified in paragraphs (g)(1)(iii)(C) through (g)(1)(iii)(E) of this section.

(A) The hospital's case-mix index is at least—

(*1*) 1.03 in 1981;

(*2*) 1.1053 for the hospital's first year under the prospective payment system (for this purpose only, the DRG relative weights in effect during Federal fiscal year 1984 would apply in calculating the case-mix index values);

(*3*) For the cost reporting period that ended in 1981 the median urban case-mix index values in calendar year 1981 calculated by HCFA for the region in which the hospital is located; or

(*4*) For the first cost reporting period under the prospective payment system, the adjusted median urban case-mix index values calculated by HCFA for initial cost reporting periods under the prospective payment system for the region in which the hospital is located.

(B) The hospital's number of discharges (excluding discharges from subprovider units) is at least—

(*1*) 6,000 for the hospital's cost reporting period that ended in 1981;

(*2*) 6,000 for the hospital's cost recently completed cost reporting period; or

(*3*) For either the cost reporting period that ended in 1981 or its most recently completed cost reporting period, the median number of discharges of urban hospitals for cost reporting periods ending in 1981 for the region in which the hospital is located.

(C) More than 50 percent of the hospital's active medical staff are specialists who—

(*1*) Are certified as specialists by one of the Member Boards of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists;

(*2*) Have completed the current training requirements for admission to the certification examination of one of the Member Boards of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists; or

(*3*) Have successfully completed a residency program in a medical specialty accredited by the Accreditation Council of Graduate Medical Education or the American Osteopathic Association.

(D) The hospital's inpatient population is such that at least 60 percent of all its discharges are for inpatients who reside more than 25 miles from the hospital.

(E) At least 40 percent of all inpatients treated at the hospital are referred from other hospitals or from physicians not on the hospital's staff.

(2) *Payment to referral centers*—(i) *Payment to rural referral centers with 500 or more beds.* A hospital that meets the criteria of paragraph (g)(1)(i) of this section will be paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 405.473 (b)(10) or (c)(6), as adjusted by the hospital's area wage index.

(ii) *Payment to all other rural referral centers.* Beginning with cost reporting periods beginning on or after October 1, 1984, a hospital that is located in a rural area (as defined in § 405.473(c)(2)(i)) and meets the criteria of paragraph (g)(1)(ii) or (g)(1)(iii) of this section will be paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 405.473 (b)(10) or (c)(6), as adjusted by the hospital's area wage index.

(3) *HCFA review of referral center status.* The status of each hospital that is receiving a referral center adjustment will be reviewed by the HCFA regional office every three years to determine if the hospital still meets the criteria set forth in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this section. If the determination is to the effect that the hospital no longer qualifies for a referral center adjustment, the adjustment will be discontinued beginning on the first day of the hospital's next cost reporting period.

* * * * *

(i) *Hospitals reclassified as rural.* Effective with cost reporting periods beginning on or after October 1, 1983, a hospital reclassified as rural, as defined in §§ 405.473(b)(6)(i)(D) or 405.473(c)(2)(i)(D), may receive an adjustment to its rural Federal payment amount for two successive cost reporting periods.

(1) *First year adjustment.* The hospital will have its rural average standardized amounts adjusted based on an amount, in addition to its rural average standardized amount, that equals two-thirds of the difference between the urban and rural standardized amounts reflecting the appropriate regional/national blend otherwise applicable to the cost reporting period for which an adjustment is made.

(2) *Second year adjustment.* A hospital that continues to be reclassified as rural will have its rural average standardized amounts adjusted based on an amount, in addition to its rural average standardized amount, that equals one-third of the difference between the urban and rural amounts reflecting the appropriate regional/national blend otherwise applicable to the cost reporting period for which an adjustment is made.

(j) *Hospitals that have a high percentage of ESRD beneficiary discharges.*—(1) *Criteria for classification.* Effective for discharges occuring on or after October 1, 1984, HCFA will provide an additional payment to a hospital, as described in paragraph (j)(2) of this section, for inpatient dialysis provided to ESRD beneficiaries if the hospital has established that ten percent or more of its total Medicare discharges are ESRD beneficiary discharges, excluding discharges classified into DRG No. 302 (Kidney Transplant), DRG No. 316 (Renal Failure) or DRG No. 317 (Admit for Renal Dialysis), in a cost reporting period beginning on or after October 1, 1984.

(2) Additional payment. A hospital that meets the criteria of paragraph (j)(1) of this section will be paid an additional payment for each ESRD beneficiary discharge except for those excluded under paragraph (j)(1) of this section. The payment is based on the estimated weekly cost of dialysis and the average length of stay of ESRD beneficiaries for the hospital. The estimated weekly cost of dialysis is the average number of dialysis sessions furnished per week during the 12-month period that ended June 30, 1983 multiplied by the average cost of dialysis for the same period. The average cost of dialysis includes only those costs determined to be directly related to the dialysis service. (These costs include salary, employee health

and welfare, drugs, supplies, and laboratory services.) The average cost of dialysis will be reviewed and adjusted, if appropriate, at the time the composite rate reimbursement for outpatient dialysis is reviewed. The payment to a hospital will be equal to the average length of stay of ESRD beneficiaries in the hospital, expressed as a ratio to one week, times the estimated weekly cost of dialysis multiplied by the number of ESRD beneficiary discharges except for those excluded under paragraph (j)(1) of this section. This payment is made only on the Federal portion of the payment rate.

11. Section 405.477 is amended by adding a new paragraph (c)(3), and revising paragraphs (d)(2)(v) and (d)(2)(vi) to read as follows:

§ 405.477 Payments to hospitals under the prospective payment system.

* * * * *

(c) *Payments determined on a reasonable cost basis*—* * *

(3) *Anesthesia services of hospital employed nonphysician anesthetists.* For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, payment will be determined on a reasonable cost basis for anesthesia services provided in the hospital by qualified nonphysician anesthetists (certified registered nurse anesthetists and anesthesiology assistants) employed by the hospital.

(d) *Additional payments.* * * *

(2) Indirect medical education costs. * * *

(v) In order to have interns and residents included in the count under paragraph (d)(2)(ii)(A) of this section, the following requirements must be met:

(A) The interns and residents must be enrolled in a teaching program approved under §405.421 (excluding those employed by the hospital, but furnishing services at another site).

(B) The hospital must submit quarterly reports to its fiscal intermediary. The reports must include the following information:

(*1*) Monthly listing of all interns and residents providing services during the month;

(*2*) The social security number of each intern and resident; and

(*3*) The actual hours worked at the hospital during each month.

(C) No intern or resident will be counted as more than one full-time employee in any reporting period, regardless of the number of hospitals in which he or she is providing services. When working at more than one hospital, each intern's or resident's time will be apportioned proportionately to each facility.

(D) Fiscal intermediaries must complete audits of cost reports verifying the correct count of interns and residents.

(vi) Except as provided in paragraph (d)(2)(vi)(C) of this section, the number of full-time equivalent interns and residents under paragraph (d)(2)(ii)(A) of this section must equal the sum of—

(A) Interns and residents providing services for 35 hours or more per week; and

(B) One half of the total number of interns and residents providing services less than 35 hours per week (regardless of the number of hours worked).

(C) The number of interns and residents that provide services in more than one hospital will be apportioned proportionately to each facility.

* * * * *

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement of Services of Hospital Interns, Residents, and Supervisory Physicians

B. Subpart E is amended to read as follows:

1. The authority citation for Subpart E reads as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842(b) and (h), 1861(b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886 and 1887 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395K, 1395l(a), 1395u(b) and (h), 1395x(b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww and 1395xx).

2. Section 405.553 is amended by revising paragraph (b)(4) to read as follows:

§ 405.553 Reasonable charges for anesthesiology services.

* * * * *

(b) *Services furnished by an anesthesiologist or by an anesthetist employed by the anesthesiologist.* * * *

(4) The provisions of paragraph (b)(1)(ii) of this section do not apply to inpatient hospital services furnished by an anesthetist employed by a physician if the services are furnished during a cost reporting period beginning on or after October 1, 1984 and before October 1, 1987.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare-Supplementary Medical Insurance)

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 27, 1984.

Margaret M. Heckler,

Secretary.

[**Editorial Note:** The following addendum will not appear in the Code of Federal Regulations.]

Addendum—*Schedule of Standardized Amounts Effective With Discharges on or After October 1, 1984, and Update Factors Effective With Cost Reporting Periods Beginning on or After October 1, 1984*

I. Summary and Background

In this addendum, in accordance with §405.470(e)(2)(ii), we are making changes in the methods, amounts, and factors for determining prospective payment rates for Medicare inpatient hospital services during the second year of the transition period. For hospital cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, each hospital's payment per discharge will be comprised of 50 percent of the Federal rate and 50 percent of the hospital-specific rate (section 1886(d)(1)(C) of the Act). We note that, while the changes to the hospital-specific portion of the prospective payment rate are determined on the basis of cost reporting periods, the changes to the Federal portion are determined on the basis of the Federal fiscal year (FY).

During Federal FY 1985, the Federal rates will, for the first time, be comprised of a blend of the national rate (25 percent) and the regional rate (75 percent) as required by section 1886(d)(1)(D) of the Act. During the first year of the transition period (that is, Federal FY 1984), the Federal rates are comprised solely of the regional rate.

As discussed in further detail in section II, below, we are making changes (proposed on July 3, 1984, 49 FR 27422) in the determination of the prospective payment rates that were published in the interim final rule on September 1, 1983 (48 FR 39752) and modified in the final rule published on January 3, 1984 (49 FR 234). The changes, to be made prospectively, affect the calculation of adjusted standardized amounts and the transition period prospective payment rates. As part of these changes, we are incorporating adjustments for the new market basket index and budget neutrality. We also included in the discussion below a summary of the comments we received on the addendum of the July 3, 1984

notice of proposed rulemaking (NPRM) and our responses to the comments.

We are also implementing changes to the prospective payment rates for FY 1985 resulting from the enactment of Pub. L. 98–369. Section 2307(b) of Pub. L. 98–369 requires that, in determining the indirect medical education adjustment, interns and residents in approved programs are to be counted regardless of who employs them. Section 2310 of Pub. L. 98–369 requires that, effective October 1, 1984, the annual inflation rate to be applied to hospitals will be equal to the annual rate of increase in the hospital market basket plus .25 percent. Section 2312 requires that anesthesia services provided by certified registered nurse anesthetists be paid for on a reasonable cost basis. We are expanding this payment method to also cover such services of anesthesiology assistants. Section 2316 of Pub. L. 98–369 requires that a wage index be developed that incorporates hospital wage differences between full-time and part-time workers. We discuss below the changes we are making to implement these provisions.

II. Changes to Prospective Payment Rates and DRG Weighting Factors for FY 1985

Section 1886(d)(3)(A) of the Act specifies that the FY 1984 Federal prospective payment rates be updated for FY 1985. In accordance with section 1886(b)(3) of the Act, the FY 1984 urban and rural average standardized amounts are to be increased by the applicable market basket index plus one percent. In FY 1985, these amounts are to be increased by the applicable market basket index plus .25 percent.

The basic methodology for determining a hospital's prospective payment rates is set forth in §§ 405.473 and 405.474 of the regulations. For a more detailed discussion of that methodology, we refer the reader to the interim final and final rule, referred to above.

Below, we discuss the manner in which we are changing some of the factors or methodology used for determining the prospective payment rates. These changes are effective with discharges occurring on or after October 1, 1984, or with hospital cost reporting periods beginning on or after October 1, 1984.

Comment—Several commenters maintained that one of the purposes of the prospective payment system, the establishment of fixed reliable reimbursement rates for Medicare inpatient cases, was being undermined by what were perceived to be continual regulatory changes in the payment methodology.

It was pointed out that many features of the prospective payment system, including provisions for certain retroactive adjustments, are so complicated as to cause confusion and uncertainty. This lack of stability was seen as reminiscent of the previous retrospective cost based reimbursement system.

Response—We sympathize with those who may find it difficult to understand or keep up with the changes in the prospective payment system. Several of its more technical features, such as the case-mix index, adjustment for indirect medical education costs, and computation of the budget neutrality reductions, are admittedly complex. However, we point out that most of these features were created in response to specific provisions of the law. Others, such as the provision to make additional payments to hospitals located in counties or county equivalents that have lost their urban status, were initially proposed to address perceived inequities in the system in response to comments received. The most recent revisions incorporated in this final rule, for example, the reduction in the annual inflation rate used to develop the FY 1985 rates from a rate equal to the market basket plus one percent to the market basket plus one quarter of one percent, reflect specific provisions of Pub. L. 98–369, which was enacted July 18, 1984.

A. Calculation of Adjusted Standardized Amounts.

1. *Development of a New Hospital Wage Index.* Section 1886(d)(2)(C)(ii) of the Act requires that, in computing Federal prospective payment rates for the first year of the prospective payment system (FY 1984), we standardize the average cost per case of each hospital used in the data base for differences in area wage levels. Section 1886(d)(2)(H) of the Act requires that the standardized urban and rural amounts for the nine census regions and national rates (Table 1 of this addendum) be adjusted for a hospital's area wage level as part of the methodology for determining the prospective payment to a hospital. To fulfill both requirements, we constructed a wage index to measure variations in the average cost per case.

We used hospital wage and employment data obtained from the Bureau of Labor Statistics' (BLS') ES 202 reporting system to construct the wage index, applied under both of the above provisions of the Act, for computing prospective payments to hospitals during FY 1984. The BLS ES 202 system compiles information on employment and total wages for workers covered by unemployment insurance.

In the addendum to our proposed rule (49 FR 27438), we explained the basis for our decision not to use the data from HCFA's initial hospital wage survey to develop an improved wage index, one which particularly resolves the part time employment problem. Although we had hoped the quality of the records submitted in response to the survey initiated March 16, 1984 would have permitted the construction of a more refined index, our initial analysis of the reported data revealed a significant number of inaccurate or otherwise questionable entries. Although attempts were made to obtain corrected data for all hospitals for which obvious errors were detected in the survey reports, we concluded that the quality of the survey results, even after including corrected records, was suspect in enough areas so that a reliable wage index would not be constructed in time for the publication of the FY 1985 prospective payment rates. We stated, however, that we would continue to correct errors in the survey reports so that a data base of sufficient quality could be obtained to permit development of a revised wage index.

In order to ensure that any revised wage index would be developed from the best national records currently available, we decided to afford each hospital subject to the prospective payment system the opportunity to examine and verify the accuracy of the survey data reported for that hospital. On July 2, 1984, we sent a letter to each hospital through the Medicare fiscal intermediaries requesting each hospital to validate, and if necessary, to correct the survey information initially reported for that facility. We pointed out what we believed to be the sources of some of the more common errors in the survey reports previously submitted and asked hospitals to review and ensure the accuracy of certain key data items.

Each hospital was also requested to complete a signed certification attesting to the accuracy of the reported data and to submit the validated records directly to our central office. As of August 9, 1984, we had received certified survey forms from 4,367 hospitals.

Section 2316(a) of Pub. L. 98–369 requires the Secretary to conduct a study to develop an appropriate wage index, one which explicitly considers hospital wage differences between full-time and part-time workers. Provided that the certified survey data are determined to be accurate and reasonably complete, we plan to use these records for purposes of this study

and to construct a revised wage index that complies with this statutory requirement. Section 2316(b) of Pub. L. 98–369 also provides that any changes made in the hospital wage index under section 2316(a) shall be retroactive to October 1, 1983. We remain hopeful that the validated survey records that hospitals are certifying as being correct will permit the development of an improved measure of relative hospital wage levels in accordance with the requirements of Pub. L. 98–369.

Comment: Several commenters expressed concern that the proposed regulations did not correct the apparent disparities between the urban and rural wage indexes. One commenter suspected that in view of the volume of information collected on the Medicare cost report, our decision not to use the preliminary survey results to construct a revised wage index had more to do with the "unpopularity" of our findings rather than their inaccuracy.

Response: The basis for these comments is the belief that application of a single rural wage index to all rural counties within a State does not recognize the widely varying labor market conditions that may prevail throughout the State. Several rural hospitals located in countries adjacent to urban areas maintain that they are particularly disadvantaged by this policy because they incur labor costs comparable to urban hospitals. Although the present urban/rural distinction based on criteria established by EOMB is expressly mentioned in the statute, the implication of these comments is that an alternative means for aggregating rural counties to obtain wage indexes more reflective of economically integrated rural areas needs to be investigated. We are mindful of the need for further research in this area and have, in fact, acknowledged this in the final rule published August 30, 1983, which implemented the Medicare provisions of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982 (see 48 FR 39433). This view was reiterated in the final rule for the first year of the prospective payment system published January 3, 1984 (49 FR 257). However, to date, the empirical basis for a superior alternative rural definition that recognizes more local hospital labor markets has not been presented.

Comments that suggest that the Medicare hospital cost report already provides sufficient information to develop an improved wage index, to overcome the major deficiencies of the BLS data, are simply not correct. Constructing a wage index based on currently available cost reports would not solve the part-time employment problem since the cost report does not use a standard definition of full-time equivalent (FTE) employee or provide total hours worked for all hospital personnel. In addition, the compliance rate among hospitals in completing those purely statistical items on the cost report, which could be used to derive an improved wage index, varies widely and would result in our inability to develop an index at all for many locales.

With respect to the suggestion that our decision not to use the initial survey results to implement a revised wage index was for reasons other than those presented in the NPRM, we deny this categorically. We pointed out in the addendum to the NPRM that we were attempting to obtain corrected survey reports from all hospitals for which questionable survey data had been submitted. On July 2, 1984, we sent a formal request to each hospital subject to the prospective payment system through the Medicare fiscal intermediaries to obtain validated survey data certified to be accurate. We find it rather discouraging that several of those hospitals that were critical of our seeming inability to develop an improved wage index in time for the FY 1985 version of the prospective payment system were among those providers that failed to submit a timely response to our July 2 request for verification of the accuracy of the data previously submitted on the survey reports.

Comment—One commenter maintained that multiplying the labor-related portion of the regional rates by the area wage index yielded Federal rates that inappropriately penalize rural hospitals. The commenter pointed out that rural hospitals have lower labor costs when compared to urban facilities. Thus, multiplying these lower labor costs by the applicable rural wage index represents a "double reduction" in computing the Federal rate.

Response—The commenter's statement fails to consider that the labor-related costs used to develop the Federal rates are standardized to remove the effects of differences in wage levels among hospital urban/rural areas. This adjustment is accomplished by dividing the labor-related portion of each hospital's average cost per discharge by the appropriate area wage index. The resulting labor deflated costs are averaged for all urban and rural areas within each region and within the nation. The prospective payment system methodology provides that the regional and national average labor deflated cost per discharge, multiplied by the hospital's area wage index, are the bases for computing the Federal rates. We point out that this method is a technically accurate basis for determining the payment rates that recognize local differences in hospital wage levels. It also complies with sections 1886(d)(2)(C)(ii) and 1886(d)(2)(H) of the Act.

The purpose of standardizing labor costs for area wage levels is to remove the effect of differences in hospital wages from the cost data prior to averaging. Theoretically, the standardized costs represent what labor costs would have been in each locale with hospital wage levels equal to the national average. However, paying hospitals in each area the average labor deflated cost per discharge would result in overpayments to providers in low wage areas and underpayments to hospitals in high wage areas. Therefore, in computing the Federal rates it is necessary to multiply the standardized labor-related regional and national rates by the area wage index in order that the payment rates appropriately reflect local wage levels.

Comment—One commenter was dismayed by the fact that we have not yet developed a wage index that addresses the technical limitations in the BLS data currently used to construct the measure. The commenter inquired whether any improved wage index would be implemented effective October 1, 1984 as required by section 2316(b) of Pub. L. 98–369.

Response—We had hoped that the accuracy of the data provided in response to HCFA's hospital wage survey would have permitted the development of an improved index, one that particularly resolves the inability of the BLS records to control for area differences in hospital part-time employment in time for the fiscal year 1985 update of the prospective payment system. Unfortunately, for reasons explained in our July 3, 1984 proposed rule, as well as in our previous response above, the incompleteness of some of the survey data precluded the implementation of a more refined hospital wage index effective October 1, 1984. We have asked hospitals to verify the accuracy of key items reported in the wage survey. Because of this action, we remain hopeful that the final survey results will provide a data base of sufficiently high quality so that an improved index can be constructed as soon as practicable.

Section 2316(a) of Pub. L. 98–369 provides that the Secretary shall conduct a study to develop an appropriate wage index, one which

explicitly considers wage differences between full-time and part-time workers. Section 2316(b) also provides that any changes made in the wage index pursuant to section 2316(a) shall be retroactive to October 1, 1983. Therefore, in compliance with the law, any revised wage index that addresses the part-time employment problem will be effective October 1, 1983.

Comment—One commenter urged HCFA to expedite the development of a new wage index for the FY 1985 prospective payment system rates. The commenter requested that the new index recognize area differences in full-time versus part-time employment, and in salary and wage scales for rural and urban areas. The commenter suggested that we should not delay in developing a new wage index merely because of the data quality concerns and that those hospitals that refuse to participate in the wage survey or supply erroneous data should be penalized. It was noted that section 2316 of Pub. L. 98–369 required the Secretary to report to Congress within 30 days after the enactment of Pub. L. 98–369 on a new wage index that takes into account wage differences of full-time and part-time workers. In addition, the commenter noted that this report was to include criteria under which a hospital may obtain an adjustment to its wage index if the index does not accurately reflect hospital wage levels in the labor market area serving the hospital.

Response—Contrary to the commenter's position, we believe that the issue of data quality is of utmost importance in deriving a new wage index. As we have explained in prior Federal Register documents, the wage index is a measure of the relative differences in wages paid throughout the various areas of the country. Because the wage index is a crucial part of the prospective payment system payment formula, the data must be of uniform high quality across all areas. If data are missing from a large number of hospitals, or the quality of the data is uneven, the index will be distorted. This would lead to prospective payments that are too low in some areas, and correspondingly too high in other areas. While the commenter suggests that hospitals that do not cooperate with the wage survey effort be penalized, we know of no way this can be accomplished within the framework of the wage index.

In this connection, we note that one major association supported our attempt to obtain accurate data for use in constructing a new wage index. In the view of this association, the importance of data quality has been heightened by the requirement in section 2316(b) of Pub. L. 98–369 that the new wage index be retroactive to October 1, 1983.

The commenter also confuses the issue of full-time and part-time employment, and the issue of labor markets. Provided that accurate data are obtained from the wage survey, an index can be constructed that would take into account differences among areas with respect to full-time and part-time employment.

The issue of labor markets, however, is not one which can be addressed solely through the gathering of appropriate data elements. Rather, the issue is how the data are grouped or aggregated. Under the current construction of the wage index, urban areas are those areas as defined by EOMB, that fall within the boundaries of MSAs or NECMAs. Rural areas are defined on a statewide basis as those counties in a State that do not fall within an MSA or NECMA. (These are the same urban and rural area designations that are used in deriving the Federal standardized amounts under section 1886(d)(2)(D) of the Act.) We realize that these designations, particularly with respect to rural areas, may not in all instances conform to hospital labor markets. We discuss this issue above as well as in previous Federal Register documents. While further research is warranted in this area, we currently have no other statistically valid and widely accepted measures of urban/rural areas comparable to the MSA and non-MSA designations. Consequently, the FY 1985 rates in this addendum continue to reflect usage of the EOMB designations in the construction of the wage index.

We are cognizant of the requirements of section 2316 of Pub. L. 98–369 regarding the development of a wage index. However, the law does not require the development of criteria for making wage index adjustments as part of the report to Congress on a wage index that takes into account wage differences between full-time and part-time workers. This report, as the commenter stated, was due to Congress within 30 days (by August 17, 1984) of the enactment of Pub. L. 98–369. On the other hand, section 2316(c) of Pub. L. 98–369 contains no specific due date for the report on proposed criteria for wage index adjustments. In view of this, and because we are committing our available resources to implementing the wage index report under section 2316(a) of Pub. L. 98–369, we do not intend to address the development of adjustment criteria in the near future.

Comment—One commenter suggested, with respect to designations of rural referral centers, that these centers be granted a wage index adjustment that would amount to a new wage index computed on a county-specific basis. According to this commenter, the current wage index, which aggregates all rural hospitals together in deriving an index value, does not provide adequate consideration to the actual labor market in which a rural referral center operates.

Response—As discussed above in the addendum to this final rule, as well as in previous Federal Register documents, we agree with the commenter's assessment that the state-wide non-MSA status is a less than perfect method for aggregating rural wage and employment data in order to compute a wage index for rural hospitals. As we have noted, this is an area that requires further research for alternative definitions of hospital labor markets.

However, we do not believe that a county-specific wage index represents an acceptable alternative to the current index. The county boundaries may be just as inaccurate as state-wide boundaries in defining hospital labor markets. In addition, the disaggregation of the data that is involved in developing a county-specific wage index magnifies any deficiencies or inaccuracies in the data. Because data from a relatively large number of facilities are used to compute an index (as under the current formula), data deficiencies or inaccuracies tend to balance off. This balancing protection would not occur under a county-specific formula.

Another problem with a county-specific index is that, because each index value would be based on the wages of only a few hospitals, such an index comes close to recognizing the actual wages paid by an institution, even though those wages may be too high relative to the average wage in the area. This method, in effect, would represent a partial return to the cost-based reimbursement system in effect prior to the implementation of the prospective system. (Under that system Medicare is paid on the basis of actual costs incurred by a hospital.) We reiterate that it is not the purpose of the prospective payment system wage index to represent the actual wage costs incurred by any one hospital; rather, the wage index is intended to represent the average cost of wages in a particular area as compared to average hospital wages nationwide.

With respect to the use of BLS data for deriving the wage index, we note that these data are subject to a

confidentiality requirement that would limit their usefulness in computing county-specific index values. Under this requirement, disclosure of actual data or indexes for areas that include fewer than three reporting units is prohibited. (A reporting unit is the smallest unit for which data are recorded on the employer's contribution report. Therefore, two or more hospitals owned by one organization could appear as one reporting unit.) The confidentiality requirement would be a particular problem with respect to rural counties where there are generally fewer hospitals than in urban areas. We note that the commenter was unable to provide county-specific indexes for a large number of rural counties because of the confidentiality requirement.

2. Grouping of Urban/Rural Averages Within Geographic Areas

Under section 1886(d)(2)(D) of the Act, the average standardized amounts per discharge must be determined for hospitals located in urban and rural areas of the nine census divisions and the nation.

For FY 1985 the Federal rates are comprised of the national role (25 percent) and the regional rate (75 percent) (section 1886(d)(1)(D) of the Act). Therefore, we are revising Table 1 in this addendum to add a category for national averages so that Table 1 would contain 20 standardized amounts (ten urban amounts and ten rural amounts further divided into labor-related and nonlabor-related portions).

The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts, except that the national urban and rural categories include hospitals from all urban or rural geographic areas, respectively. However, certain national adjustment factors, such as those for outliers and budget neutrality, differ slightly from the regional adjustment factors.

On June 29, 1984, EOMB announced, effective June 30, 1984, revised listings of MSA/NECMA designations that are used in calculating the standardized amounts. As stated in the January 3, 1984 final rule (49 FR 253), such changes in designation are not recognized in the prospective payment rates until the beginning of the next fiscal year following the announced changes.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A) of the Act, we are updating the urban and rural average standardized amounts using the applicable target rate percentage specified in section 1886(b)(3)(B) of the Act as amended by section 2311 of Pub. L. 98–369. This section of the law specifies that, effective October 1, 1984, the annual inflation rate to be applied for updating the target rate applicable to hospitals that are subject to section 1886(b) of the Act, as well as to hospitals under the prospective payment system, will be equal to the annual rate of increase in the hospital market basket plus .25 percent instead of the annual rate of increase in the market basket plus one percent as previously provided. The market basket identifies the most commonly used categories of goods and services that contribute to total hospital inpatient operating expense and weights each category to reflect the estimated proportion of total hospital operating expenses attributable to that category. The table below includes the estimated percentages used for updating the average standardized amounts for calendar years 1984 through 1986.

MARKET BASKET PLUS .25 PERCENT

Calendar year	Percentage
1984	6.25
1985	6.75
1986	7.35

Section 1886(b)(3)(B) of the Act also requires that the market basket rate of increase plus .25 percent be applied in determining the target amounts for those hospitals that are excluded from the prospective payment system but subject to the target rate-of-increase limits specified in § 405.463. These target rate percentages would be applied in computing hospital target amounts for cost reporting periods beginning on or after October 1, 1984.

Comment—Several commenters expressed concern that the reduction in the annual inflation rate used to compute the prospective payments from the market basket plus one percent to the market basket plus one quarter of one percent would result in inadequate reimbursement for new technology.

Response—Section 2310 of Pub. L. 98–369 amended section 1886(b)(3)(B) of the Act to provide that the inflation factor used to develop the prospective payment rates for FY 1985 and FY 1986 would be equal to the market basket rate plus one quarter of one percentage point. Although the commenters implied that the purpose of the previous one percent allowance was to provide an explicit adjustment for the costs of new technology, we point out that the precise basis for the add-on (one percent) was not specified by Congress in the conference committee reports that accompanied Pub. L. 97–248 and Pub. L. 98–21. One could also reasonably conclude that the purpose of the one percent add-on was to provide a tolerance factor for imprecision in the market basket forecasts, or to account for the net effect of those variables not reflected in the hospital imput price index, such as changes in population, productivity, or service intensity.

We believe the explicit language of section 2310 of Pub. L. 98–369 and section 1886(d)(3)(A) of the Act requires a reduction in the standardized amounts used to compute the Federal rates before adjusting for budget neutrality. Similarly, the revision to section 1886(b)(3)(B) of the Act also affects the updating of the hospital-specific portion of the prospective payment rates (again prior to adjusting for budget neutrality), as well as the maximum rate of increase in costs allowed for hospitals excluded from the prospective payment system. Although section 2310 of Pub. L. 98–369 requires a reduction in the add-on to the inflation factor used to trend the FY 1984 rates, the law makes no change in the budget neutrality provisions. Thus, while the Federal rates and updating factors used to trend the hospital-specific portion have been reduced in this final rule to reflect the inflation factor prescribed by section 2310 of Pub. L. 98–369, we point out that the offset for budget neutrality has also been adjusted. The reduction in the regional and national standardized rates and hospital-specific portion update factors attributable to section 2310 of Pub. L. 98–369 is entirely due to the revised budget neutrality adjustments for 1984 and 1985.

Comment—One commenter recommended that we adjust the prospective payment rates if our market basket estimates of inflation prove to be inaccurate. In order to preserve the prospective nature of the system, it was suggested that we compensate for market basket forecasting errors by providing for a corresponding adjustment in the rates for the following fiscal year.

Response—The main thought of this comment parallels comments raised in previous prospective payment regulations. As we have stated one of the purposes of the prospective payment system is the establishment of known payment rates prospectively.

Therefore, we have not adopted the suggestion that the rates be adjusted retroactively.

Comment—One commenter noted that only one firm, Data Resources Incorporated (DRI), currently prepares

the forecasts of the rate of change in the hospital input price index, (that is, the market basket), which is used to update the prospective payment system. It was recommended that we use several firms to obtain forecasts of the rate of increase in the market basket to trend the prospective payment system.

Response—The basis for the commenter's recommendation is that several estimates would increase the precision of the market basket forecasts used to develop the prospective payment rates. However, we have no reason to believe the use of several economic forecasting firms would yield superior or more accurate estimates of the rate of increase in the market basket than those currently provided by one contractor. Aside from the substantial additional expense that use of several firms would entail, there is no evidence that the forecasts provided to us to date have been biased. In addition, we point out that all economic forecasting firms have an equal opportunity to bid competitively for the contract under which the estimates of the rate of change in the hospital input price index are provided according to prescribed criteria.

4. Adjustments to Average Standardized Amounts

a. *Part B Costs.* Section 1862(a)(14) of the Act prohibits payments for nonphysician services furnished to hospital inpatients unless the services are furnished either directly by the hospital or by an entity under arrangements made by the hospital. In order to adjust urban and rural regional and national standardized amounts per discharge so that they represent costs previously billed under Part B, the amounts for FY 1985 are increased by .13 percent. (We note that this figure (.13 percent) represents the same percentage increase that is used in FY 1984.) This is an estimate made by HCFA's Office of Financial and Actuarial Analysis of the costs of inpatient hospital services previously billed to HCFA under Part B.

b. *FICA Taxes.* Section 1886(b)(6) of the Act requires that adjustments be made for purposes of the target rate limits in recognition that certain hospitals were required to enter the Social Security system and begin paying FICA taxes as of January 1, 1984. As explained in the preamble of the interim final rule (48 FR 39766), the conference committee report accompanying Pub. L. 98–21 expressed the intent that the Federal rate under prospective payment also be adjusted to reflect this change (H.R. Rep. No. 98–47, 98th Cong., 1st Sess. 184 (1983)). We estimate the amount of the adjustment for FY 1985 to the urban and rural, regional and national standardized amounts necessary to account for additional costs of payroll taxes for hospitals entering the Social Security system to be .18 percent, which is the same percentage increase as in FY 1984.

Therefore, we are increasing the standardized amounts by this percentage.

c. *Outliers.* Section 1886(d)(5)(A) of the Act requires that in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may also be made for cost outliers. Section 1886(d)(2)(E) of the Act correspondingly requires that the standardized amounts be reduced by a proportion that is estimated to reflect outlier payments. Furthermore, section 1886(d)(5)(A)(iv) of the Act directs that outlier payments may not be less than five percent nor more than six percent of total payments projected to be made based on the prospective payment rates in any year.

We are reducing the size of the reserve for outliers from 6.0 percent of total payments, which we had established for FY 1984, to 5.0 percent of total payments while providing proportionately greater payment for typical cases and avoiding any great risk of general disadvantage to hospitals. As we indicate in the final rule (49 FR 265), we will pay for any outlier that meets the criteria in § 405.475, even if aggregate outlier payments result in more than five percent (as proposed) of total payments. For those hospitals that experience a higher incidence of outliers, we believe that, in the aggregate, other adjustments (such as the medical education adjustment) are in place to assist these hospitals.

In accordance with these requirements, we have calculated the factors necessary to adjust the national and regional amounts for FY 1985 to take into account outlier payments of five percent of total payments based on the blended Federal rates. The outlier adjustment factors are as follows:

Regional—.950
National—.950

We are revising, as well, the day outlier and cost outlier thresholds so that total estimated outlier payments for FY 1985 would be 5.0 percent of total payments. A discharge in FY 1985 will be considered an outlier if the number of days in the stay exceeds the mean length of stay for discharges within the DRG by the lesser of 22 days or 1.94 standard deviations. We refer the reader to Table 5 in this addendum for the DRG outlier thresholds.

For FY 1985, a discharge that does not qualify as a day outlier will be considered a high cost outlier if the cost of covered services exceeds the greater of 2.0 times the Federal rate for the DRG or $13,000.

The methodology for calculating these factors is explained in detail in section V. of this addendum. It should be noted that the regional outlier reduction value (.950) represents an adjustment to the standardized amounts for FY 1985 but without regard to reductions for outlier payments in FY 1985.

Comment—We received comments from a number of teaching hospitals objecting to the proposd increase in the outlier thresholds necessary to maintain the reduction in the reserve for outliers from 6.0 percent of total payments to 5.0 percent of total payments. Because these hospitals generally have a higher incidence of outlier cases, they argued that we should retain the 6.0 percent outlier reserve.

Response—We believe that it is desirable to reduce the size of the outlier reserve from 6.0 percent to 5.0 percent because it allows proportionately greater payment for typical cases and avoids any great risk of general disadvantage to hospitals. Maintaining a 6.0 percent outlier reserve results in less payment to all hospitals for typical cases. While benefiting facilities with a greater incidence of outliers, it penalizes those hospitals with relatively few outlier cases. We believe that it is in the greater interest of hospitals and the program to eliminate some of the reserve for outliers and include the corresponding amount in the standardized amounts thereby providing all hospitals with somewhat larger Federal rates for typical cases. We believe that the indirect medical education adjustment provided to teaching hospitals will help to minimize the effect that increases in the outlier thresholds might have on these hospitals.

As we indicated in the January 3, 1984 final rule (49 FR 265), we will pay for any outlier that meets the criteria in § 405.475 even if the aggregate outlier payments result in more than the estimated level.

Comment—We received comments suggesting that the mean lengths of stay by DRG should be recalculated based on actual prospective payment experience to date in order to reflect decreases in the average length of stay resulting from implementation of the prospective payment system. Since these numbers are used to calculate transfer and outlier payments, failure to recalculate the mean lengths of stay removes financial

incentives for additional improvements by the hospital industry.

Response—The standardized amounts reflect the number of inpatient days per case based on 1981 hospital experience. Therefore, if the mean length of stay were recalculated to reflect the actual changes in lengths of stay from the 1981 data base, adjustment to the standardized amounts would also be required to reflect the decreased costs resulting from shorter inpatient stays.

Comment—Several commenters objected to the increase in the outlier thresholds stating that recent HCFA reports indicate that outlier payments to date account for less than two percent of total DRG payments. This would indicate that the outlier thresholds established for FY 1984 were too high since outlier payments thus far under the prospective payment system appear to be well below the 6.0 percent expected outlier payment level. Therefore, while a reduction in the outlier reserve is appropriate, inceases in the outlier thresholds are not warranted. Also, one commenter stated that we have presented no evidence to demonstrate a quantitative relationship between the newly established thresholds and the expected reduction in outlier payments.

Response—The 2 percent figure cited by the commenters is misleading in that it represents the proportion of total DRG payments that were paid for outlier cases. The outlier adjustment, however, is applied only to the Federal portion of the payment amount (that is, 25 percent during the first year of the transition period). Since the cost of outlier cases are already reflected in each hospital's base period operating costs used to compute the hospital-specific portion of the blended rate during the transition period, the outlier adjustment is not applied to the hospital-specific portion of the DRG payment. Therefore, in determining the extent of outlier payments, only the Federal portion (25 percent) of total DRG payments should be considered rather than total DRG payments overall.

We calculated the revised outlier thresholds using 1981 MEDPAR data such that estimated outlier payments would equal 5.0 percent of total Federal DRG payments. The length-of-stay and cost outlier criteria were calibrated so that the national average shares of length-of-stay and cost outlier payments would be 85 and 15 percent respectively. Therefore, based on the revised outlier thresholds, we estimate that in total, 4.25 percent of Federal DRG payments will be for day outliers and .75 percent will be for cost outliers.

Based upon outlier and DRG payment data received through July 27, 1984, there is no evidence to suggest that total outlier payments are below the levels intended. Therefore, as discussed above, we are continuing to set the outlier thresholds on the basis of the 1981 MEDPAR data.

Comment—One commenter objected to the current provision that a case that qualifies for payment as a day outlier is not eligible for cost outlier payments. It was recommended that cost outlier status be granted for those cases in which a hospital could demonstrate a "significant financial loss" due to the requirement to treat such cases as day outliers.

Response—We recognize that hospitals may receive less payment under the day outlier criteria for cases that otherwise qualify as both day and cost outliers. This fact, however, does not mean that a hospital will incur a significant financial loss because the pospective payment system provides financial incentives for cases in which a provider's costs are less than the standard payment rate. Aside from the administrative burden presented by the need to establish standards under which a "significant financial loss" has occurred if the recommendation were adopted, we point out that the commenter's suggestion may be at odds with statutory intent. Under section 1886(d)(5)(D)(ii) of the Act, a case is eligible for payment as a cost outlier only if it cannot be considered a length of stay outlier. Our interpretation, which we believe is reasonable and supportable, precludes greater cost outlier payments if a case also qualifies as a day outlier. We previously responded to similar comments received in this connection in the interim final rule of September 1, 1983 (48 FR 39776). The reader is referred to a summary of the comments and our responses, which appeared in the final rule of January 3, 1984 (49 FR 266). For these same reasons we have not adopted the recommendation.

d. *Anesthetists' Services.* Under section 2312 of Pub. L. 98-369, the costs to the hospital of the services of nonphysician anesthetists will be reimbursed in full by Medicare on a reasonable cost basis. In order to ensure that these services will be paid for only once, we must remove their costs from the prospective payment rates.

For cost reporting periods beginning in FY 1985, we have reduced the adjusted standardized amounts to reflect the removal of these costs by means of the budget neutrality adjustment methodology. Our method for doing this is explained in section V.D. of this Addendum. We estimate that FY 1985 payments for anesthetists services will be about $160 million, or 0.5 percent of Medicare operating costs for hospital accounting years beginning in FY 1985.

By incorporating these estimated costs in the nonoperating costs of each hospital for purposes of the budget neutrality comparisons, we have, in effect, reduced the national adjusted average standardized amount by 0.32 percent, and reduced the regional adjusted average standardized amount by 0.42 percent. (The reason for the difference in the FY 1985 blending portions for Federal national and regional rates and the phasing in of cost reimbursement for anesthetists services at the beginning of each hospital's cost reporting period.)

Since the requirement of budget neutrality does not apply for FY 1986, next year we will adjust the average standardized amounts directly to take the costs of anesthetists services into account. Based on current data, we expect this to result in an 0.524 percent reduction in those amounts. Since the national and regional blending portions are equal for FY 1986 Federal rates, and since cost-based reimbursement for anesthetists' services is effective for all of FY 1986, the same reduction would apply in both cases.

e. *Budget Neutrality.* In accordance with section 1886(e)(1) of the Act, the prospective payment system should result in aggregate program reimbursement equal to "what would have been payable" under the reasonable cost provisions of prior law; that is, for FYs 1984 and 1985, the prospective payment system must be "budget neutral".

During the transition period, the prospective payment rates are a blend of a hospital-specific portion and a Federal portion. Further, effective October 1, 1984, the Federal portion will be a blend of national and regional rates. As a result, we must determine three budget neutrality adjustments—one each for both the national and regional rates, and one for the hosptial-specific portions. The methodology we are using to make these adjustments is explained in detail in section V. of this addendum.

Based on the data available to date, we have computed the following Federal rate budget neutrality adjustment factors:

Regional—.950
National—.954

As with the regional outlier adjustment factor, the regional budget

neutrality factor represents estimated payments under the prospective payment system for FY 1985 as compared to estimated reimbursement under the law in effect prior to Pub. L. 98–21, for the same period (FY 1985), without regard to the reduction for either outlier payments in FY 1984 or budget neutrality in FY 1984.

B. Adjustments for Area Wage Levels and Cost-of-Living in Alaska and Hawaii

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the intermediaries in determining the prospective payment rates as described in section C. below. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Table 1, as revised in this addendum, contains the actual labor-related and nonlabor-related shares that will be used to calculate the Federal payment rates.

1. Adjustment for Area Wage Levels

Section 1886(d)(2)(H) of the Act requires that an adjustment be made to the labor-related portion of the national and regional prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amount by the appropriate wage index for the area in which the hospital is located.

In the absence of a HCFA wage index, we decided to continue using the BLS wage index computed from the 1981 ES 202 data to adjust the Federal standardized rates applicable for FY 1985. The wage index appearing in the addendum to the September 1, 1983 interim final rule (48 FR 39871) was also computed from hospital wage and employment data for 1981 furnished to us from BLS through its ES 202 employment and wage system. However, the wage indexes appearing in Tables 4a and 4b of this addendum have been updated to reflect the most recent corrections in the 1981 ES 202 data. The revised wage indexes incorporate corrections that were—

- Published in the NPRM (49 FR 27442);
- Issued to regional offices after publication of the interim final rule; or
- Based on revised data reviewed subsequent to the last issuance to the regional office.

In addition, the index also reflects the most recent changes in urban area definitions. These new MSA definitions were announced by EOMB on June 29, 1984 (see EOMB Announcement 84–16 for further information).

As result of these corrections and revisions, the national average monthly wage for hospital workers has increased from the previous average of $1,071.50 used to compute the wage index in the September 1, 1983 document to $1,073.68. We believe that this is an appropriate time to recalculate all the urban and rural wage index values using the new national average wage so as to achieve the greatest accuracy possible for reflecting the relative differences in wage levels between the various urban and rural areas throughout the country. Usually, during the year when we receive corrected employment and wage data for a particular area from BLS, we revise only the index for that particular area. While the corrected data, depending on the magnitude of the correction, could also affect the national average, we do not revise all the index values at that time to reflect the new national average. We do not do so because generally the effect on the national average is minimal. Moreover, recalculating all the index values to take account of this new average would lead to continuing uncertainty amoung many hospitals as to the amount of payment they would receive for discharges. This uncertainty and its attendant administrative complexity would be compounded if there were several such changes during a particular period, as is frequently the case.

However, because we are now promulgating new rates for the second year of the prospective payment system, we believe that this is an appropriate time to fully revise the hospital wage index to reflect all the changes that have occurred over the previous year (FY 1984). In this manner, we hope to ensure the greatest possible accuracy in the wage index consistent with administrative simplicity and equitable treatment for all hospitals.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(C)(iv) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States were included in the adjustment for area wages above. For FY 1985, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii is made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

TABLE—COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.15
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.125

(The above factors are based on data obtained from the U.S. Office of Personnel Management, published in their FPM–591 letter series.)

C. DRG Weighting Factors

In both the interim final rule (48 FR 39889) and the final rule (49 FR 332), we explained that, as a part of applying budget neutrality, we were adjusting the Federal standardized amounts downward to reflect a 3.38 percent expected improvement in hospitals reporting of patient diagnoses and procedures performed on the Medicare hospital bill. This improvement in the accuracy and completeness of reported patient information was anticipated because the prospective payment system makes payments to hospitals based on a patient's diagnosis and procedures performed. Thus, the prospective payment system offers hospitals an incentive to report complete and accurate medical information on the billing records sent to the fiscal intermediaries, whereas the previous system, based as it was on the reimbursement of incurred costs, without regard to a patient's condition, provided no such incentive.

Increasing the accuracy and completeness of medical data reported on the bills has the effect of raising hospital case-mix index values, which in turn results in higher payments to hospitals. The emerging experience under the prospective payment system indicates that the average case mix submitted on the inpatient bills has increased more than the 3.38 percent anticipated for FY 1984. To correct for the distortion caused by this higher than expected case mix, we are revising the payment system for FY 1985.

In the NPRM, we noted that, as of March 1984, we had observed an increase in case mix 2.4 percent more than the 3.38 percent anticipated for FY 1984. Additional data received through July 1984 indicate that average case mix has increased 7.3 percent, or 3.8 percent more than anticipated for FY 1984 (1.0338 x 1.038 = 1.073).

We believe that, for the most part, this does not represent a "real" increase in case mix, but a paper one. Recent study shows that, in the absence of the

prospective payment system, average case mix might have been expected to increase by about 0.3 percent through FY 1984. However, it is possible that a portion of the increase in case mix could have resulted from factors such as shifting lower intensity cases to the outpatient setting. As discussed in more detail below, commenters offered many explanations for the increase in average case mix that we have not been able to support from the data available to us currently. As a result, we plan to do a study that will enable us to identify with greater precision the relative influence of the various potential causes of this increase.

Since the results of such a study are not yet available, and considering the controversy resulting from the NPRM proposal to reduce DRG weights across-the-board by 2.4 percent, we have decided not to fully reduce, at this time, the DRG weights by the method proposed. Instead, we subtracted 0.3 percent (representing the estimated real increase in case mix that might have occurred in the absence of the prospective payment system) from 2.4 percent. The remaining 2.1 percent represents an increase in average case mix that may or may not be based on real increases in resource consumption per case. Because it is virtually certain that a substantial portion of this 2.1 percent increase in average case mix is not "real", but considering that we are not yet able to identify how much, we are reducing DRG weights by only half of that percent, or 1.05 percent.

Thus, for discharges occurring on or after October 1, 1984, we are reducing each DRG relative weight by an amount equal to only a portion of the observed increase in hospital case-mix values over the increase projected from fiscal year 1984. That is, we are reducing the DRG relative weights 1.05 percent by dividing each of the relative weights published in Table 5 of the interim final rule (48 FR 39876) by 1.0105. (We note that the relative weight for DRG 302 was corrected in a **Federal Register** notice published on October 19, 1983 (48 FR 48469).)

All inpatient hospital discharges are categorized according to one of 470 DRGs, as discussed in the interim final rule (48 FR 39760). We believe that the titles of five DRGs, as issued in Table 5 of the interim final rule, are inaccurate or misleading. For example, the title of DRG 316 should have been "Renal Failure" instead of "Renal Failure Without Dialysis". Accordingly, revised titles for DRGs 57, 58, 129, 316 and 317 are included in Table 5 of this addendum.

We received comments from hospital associations and consultant groups. Most of the comments concerned the proposed reduction of the DRG relative weights.

Comment—Many commenters suggested that, since we had already adjusted the fiscal year 1984 standardized amounts downward to reflect a 3.38 percent improvement in coding, we should not make any further adjustments related to reporting diagnoses and procedures.

Response—We used the best data available at the time to adjust the fiscal year 1984 standardized amounts to take expected improvements in the accuracy of coding into account. However, we did not have data on how the payment incentives established by the prospective payment system would affect reporting of diagnoses and procedures. Therefore, the adjustments we made did not reflect potential behavioral changes related to those incentives. To date, we have now analyzed 2.5 million discharges under the prospective payment system, which fully reflect the effect of those incentives, and we believe this affords us a better measure of the effect of coding improvements in the average case mix.

Comment—Several commenters stated that the hospital industry should have timely access in the data and methodologies used to construct the prospective payment rates, the factor by which the DRG weights were reduced, and the calculation of the adjustment factors, especially the budget neutrality adjustment. It was also recommended that all data be released at the time the payment rates are published in the **Federal Register.** Some commenters recommended that the data used to compute the reduction in the DRG relative weights and the budget neutrality adjustment be published for review and comment, or that we at least offer additional opportunities to inspect and comment on the data and their utilization.

Response—We agree that hospitals should have access to the data used in connection with the development of the prospective payment system. We would like to point out that public access to disclosable information is provided under the Freedom of Information Act (5 U.S.C. 552). While we cannot guarantee that all requested information will be disclosed at all or in the format desired by the requester, we will respond promptly to all information requests and provide all available data to assist the hospital industry and other interested parties in the evaluation of the prospective payment system.

It should be noted that most of the data that the budget neutrality adjustment is based on has already been made available. We believe that these data in conjunction with the explanation of the budget neutrality methodology presented in the NPRM (49 FR 27458) should enable individuals to replicate the adjustment factors.

We do not agree that all data should be released simultaneously with the publication of prospective payment rates in the **Federal Register.** The data are voluminous, and would be of no interest to many hospitals and individuals that are otherwise involved in hospital payments. In addition, we believe the lengthy and detailed description of the data and the development of rates contained in the **Federal Register,** along with the many examples furnished, afford the reader all the information necessary for an understanding of the propective payment system. Those individuals, hospitals, or associations desiring additional data and other material, either for verification of rates or for other purposes, may request this data under the Freedom of Information Act.

Furthermore, we disagree that additional opportunity to comment is warranted. In the NPRM, we included an explanation of the budget neutrality determination and the methodology used to reduce the relative weights that is sufficiently detailed to permit replication of the computation as noted above.

We believe this explanation meets the requirements of section 1886(d)(6) of the Act, which requires that the published notice of methodology, data, and rates includes an explanation of any adjustments. We fully expect to be actively involved in dialogue with hospitals and other parties during the continuing implementation of the prospective payment system. Further, we will publish future notices of methodology, data, and rates for public review and comment on an annual basis. Accordingly, we have not offered further opportunity for comment on this rulemaking as commenters suggested.

Also, as noted above, we will attempt to furnish all data that has not been previously released upon request under the Freedom of Information Act and that is consistent with maintaining the privacy of individuals and sound management of the program.

Comment—A number of commenters challenged our legal authority to reduce the DRG weights across the board as we proposed. Some stated that the

Secretary does not have the authority to recalibrate the DRG weights until FY 1986. Others said the law specifically states that budget neutrality adjustments should be made to the standardized amounts (for Federal rates) and to the updating factors (for hospital-specific rates) before application of the DRG weights.

Response—We believe that the reduction in the DRG weightings is fully authorized by the statute. The source of the Secretary's authority to assign particular weightings to each DRG is section 1886(d)(4)(B) of the Act, which provides that for each DRG "the Secretary shall assign an appropriate weighting factor which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups." Thus, the Secretary has clear authority to assign any weightings to the DRGs as long as they collectively reflect the relative use of resources associated with the DRGs. The across-the-board reduction of the DRG weightings does not alter the relative relationship between the DRG weightings. The DRG weightings continue to reflect the relative hospital resources used for discharges within the DRG, and therefore are wholly consistent with the statutory requirement.

The commenters are not correct when they argue that the Secretary is prohibited from revising the DRG weightings prior to FY 1986. This argument is based on section 1886(d)(4)(C) of the Act, which states that "The Secretary shall adjust the classifications and weighting factors . . . for discharges in fiscal year 1986 and at least every four fiscal years thereafter, to reflect charges in treatment patterns, technology, and other factors which may change the relative use of hospital resources." In the first place, this provision is not the source of the Secretary's authority to assign DRG weightings, but is simply a requirement as to when and how the Secretary must, at a minimum, exercise the authority conferred by section 1886(d)(4)(B) of the Act to assign DRG classifications and weightings. The language of section 1886(d)(4)(C) does not purport to limit the Secretary's authority. Moreover, the legislative history of section 1886(d)(4)(C) demonstrates that it was intended simply to require periodic updating of the DRG weightings to keep the DRG system current. The reference to FY 1986 was evidently inserted into the statute by the Conference Committee to require the Secretary to update the DRGs *earlier* than would have been required under the versions of the bill passed by the House and the Senate. There is no indication that Congress intended to prohibit the Secretary from acting until FY 1986. Finally, section 1886(d)(4)(C) addresses only the issue of revising the DRG weightings to account for changes in the relative use of hospital resources. It is irrelevant to the issue of across-the-board revisions to the weightings that do not alter the relative weightings.

Section 1886(e)(1) of the Act requires that both the Federal portion and hospital-specific portion of transition period payment rates for FYs 1984 and 1985 be adjusted to be budget neutral—that is, that they be adjusted to ensure that the aggregate payment amounts resulting from prospective payment rates for the operating costs of inpatient hospital services are not greater or less than the aggregate payment amounts that would have been payable for such services under the law in effect before the enactment of Pub. L. 98–21 on April 20, 1983. Our methodology for determining the amount of these adjustments is described in section V. of this Addendum.

It is true that in developing the FY 1984 budget neutrality adjustment factors we included our estimate of the increase in case mix that we expected to result from improvements in coding. Further, we could include the new information we have on increases of case mix in the budget neutrality adjustment factors for FY 1985. Several considerations contributed to our decision not to do that. First, we identified that there was an increase of case mix significantly in excess of our earlier estimated increase. Second, we determined that, if we took no action to take this increase into account, we would be making aggregate payments under the prospective payment system at a case-mix level significantly higher than intended, and higher than we estimated would have resulted in response to the case-mix adjusted limits and rate of increase limits established under TEFRA. This would violate the requirement of budget neutrality, and would also undercut the understanding on which prospective payment rates were initially set. Finally, we considered various ways of taking this change in case mix into account. One means was through the budget neutrality adjustment methodology. However, as discussed below, we determined that this alternative would have adverse consequences that could be avoided by adjusting the DRG weights.

By maintaining the level of the average case-mix index, we are able to eliminate the need to decrease the budget neutrality adjustment factor, since the reduction in the DRG weights effectively negates the increased payments associated with higher valued case-mix indexes. Nonetheless, this adjustment, while it certainly affects the budget neutrality adjustment, is not a budget neutrality adjustment per se. Rather, it is an adjustment designed to ameliorate certain undesirable effects of the budget neutrality adjustment. Furthermore, even if this reduction in the weights were construed purely as a budget neutrality adjustment, we believe it conforms to the intent of the law.

If the adjustment to reflect increased case-mix indexes were included in the budget neutrality factors for FY 1985, the hospital-specific payment amounts would be reduced below the level set for FY 1984. This reduced hospital-specific rate would continue for some hospitals into FY 1986, after the DRG weights have been recalibrated, and would adversely affect the revenues of some hospitals. Those hospitals that have cost reporting periods beginning early in FY 1985 would bear a disproportionate budget neutrality burden in order to compensate for those hospitals whose reporting periods begin late in FY 1985. Therefore, we believe periods begin late in FY 1985. Therefore, we believe applying an overall adjustment to the DRG weights is more equitable, since it distributes the burdens of the adjustment more equitably and provides a more even cash flow for all hospitals. We do not believe we have acted counter to the intent of the law by reducing the DRG weights in order to alleviate the adverse impact such an adjustment would have if it was applied to the updating factors for computing the hospital-specific portion of the payment rate. It should be emphasized that reducing the DRG weights instead of the updating factors does not affect aggregate payments to hospitals.

Comment—We received comments from hospitals whose cost reporting periods begin later in the Federal fiscal year objecting to making the across-the-board reduction in the DRG weights effective October 1, 1984. They do not believe this is equitable, since hospitals with cost reporting periods beginning earlier in the Federal fiscal year have the benefit of more months of DRG payments at the higher cost weights.

Response—We believe it is appropriate to apply an adjustment to take into account the higher case-mix indexes resulting from improved coding and other changes in hospital behavior and that this adjustment should be applied to all providers on the same

basis through adjustment of the DRG weighting factors.

Hospitals whose cost reporting periods begin later in the Federal fiscal year did not enter the prospective payment system until later and remained under cost reimbursement for a longer time relative to hospitals whose cost reporting periods begin early in the Federal fiscal year. These hospitals had greater opportunity to adapt to the new system and to implement improved coding practices as well as other changes in behavior prior to entering the prospective payment system. Therefore, we believe the timing of the adjustment should be the same for all hospitals, since it is expected that the same degree of behavior adjustments will have been implemented in all hospitals regardless of their cost reporting periods. The alternative, which is to take account of increased case-mix indexes through the budget neutrality adjustment to the Federal standardized amounts and the hospital-specific rates, would have meant that hospitals whose cost reporting periods begin later in the Federal fiscal year would have been subsidized at the expense of those hospitals whose periods begin earlier in the Federal fiscal year. This could hardly be characterized as an equitable solution, given the greater opportunity of those whose reporting periods begin later in the Federal fiscal year to anticipate and adapt to the new system.

Comment—We received many comments suggesting that a large part of the reported increase in the average case-mix index is "real" and that we should allow for the full amount of the "real" increase in the prospective payment rates. Commenters suggested that the increase in case mix was due to increased use of outpatient services for low-severity cases, leaving a higher case mix in the inpatient setting. Commenters also suggested that Medicare beneficiaries are growing older and sicker with a resulting higher inpatient case mix. Many comments suggested that admission levels have dropped and that we should not reduce the rates.

Response. As noted above, we are planning to do a study that will enable us to identify the relative influence of the various potential causes of the increase in average case mix.

The budget neutrality adjustment factors are determined by computing an estimated reimbursement level under TEFRA and comparing it to estimated payment levels under the prospective payment system, separately for both Federal and hospital-specific rates, as if there were no budget neutrality requirement.

The estimated reimbursement level under TEFRA is computed by estimating each hospital's cost per admission limited by each hospital's estimated peer group limit and target amount limit. Any increase in "real" case mix result in increased costs per admission and are built into our assumptions on the rate of increase in cost per admission. To the extent that the cost per admission assumptions used in determining the TEFRA payments recognize an increase in case mix, case-mix increases that would have occurred under TEFRA have already been recognized in the calculation of the TEFRA cost per admission. We would be recognizing case mix increases twice in the prospective payment rates if we failed to make any adjustment for reported case mix.

It is apparent that many of the commenters were not aware that, even if the observed case-mix increase would have occurred under TEFRA, it would have been recognized only under the exceptions process, because section 1886(a) of the Act allowed for adjustments to the limits only due to increases in costs per admission and in the hospital market basket.

Under our regulations at §§ 405.460 and 405.463, we would not have, except under limited circumstances, adjusted the TEFRA limits for reported increases in case mix. We estimate these limited case-mix adjustments to have a negligible effect on the overall average per case costs under TEFRA, so we did not adjust the estimated payments under the TEFRA limits for changes in case mix. (See also the next comment and response.)

In estimating the payment level under the prospective system, we must reflect all changes in case mix from the 1981 MEDPAR level, regardless of cause, since payments are directly proportional to the case-mix level. If we ignored changes in case mix, we would incorrectly estimate the prospective payment level. The budget neutrality ratio is computed by dividing the estimated TEFRA reimbursement by the estimated prospective payment amount.

We modeled the expected increase in average case mix due to the aging of the Medicare population. Assuming that the case mix level of each age-sex interval would not change from the 1981 MEDPAR level, we computed the average case mix for the estimated Medicare population for the next 25 years. After 25 years, the case-mix level was 0.1 per cent higher than the first-year case-mix level. Over three to four years, the change in case-mix level attributable to aging is negligible. This analysis suggests that the aging of the Medicare population is not the cause of the observed increase in case-mix level.

We compared the average case-mix levels of the 1979, 1980, and 1981 MEDPAR files. The case-mix level increased 0.3 percent in 1980 and decreased 0.1 percent in 1981. This relatively small change in average case-mix level would not lead us to expect the increase in average case-mix observed under the prospective payment system.

For the three waiver States that do not reimburse on the basis of DRGs (Maryland, Massachusetts, and New York), we compared the 1984 case-mix level with the 1981 MEDPAR case-mix level. In each case, the 1984 average case mix is slightly lower than the 1981 average case mix.

We compared increases in admission levels for admissions under TEFRA and the prospective payment system using the admission notices and discharge notices through July 1984. We found that admission rates under TEFRA and the prospective payment system were about the same. If low-severity cases are now being treated on an outpatient basis, this is a continuation of a trend in medical practice that began before the prospective payment system.

We also cannot adjust payment rates for the observed decline in admission levels since admissions for all patients, not just Medicare, are declining. This decline in admissions cannot be attributed to the incentives of the prospective payment system.

We have analyzed the patterns of case-mix increases as hospitals phase into the prospective payment system. If the case-mix increase were entirely "real", it would continue to progressively increase both before and after the hospital was on the prospective payment system. Our analysis shows that case-mix increases almost immediately when the hospital comes onto the prospective payment system and then remains at that level.

Comment— Some commenters argued that in determining the changes in case-mix indexes resulting from implementation of the prospective payment system we failed to consider changes in case-mix under the TEFRA provisions which may have affected the level of payment under TEFRA. One commenter pointed to the provisions in the regulations that establish changes in case-mix as a basis for an exception to both the limit on allowable cost (§405.460(g)(9)) and the rate of increase ceiling (§405.463(e)). According to this commenter, these exceptions would

certainly impact payments under TEFRA.

Response— While changes in case-mix indexes may have occurred under TEFRA, the effect on the level of payments would be negligible, since hospitals are paid actual cost up to an established limit. The regulations do permit the granting of exceptions to the TEFRA cost limits and rate of increase ceiling based on changes in case mix. However, these exceptions are granted only on a limited basis and only where the provider can demonstrate that it has experienced an abrupt change in case mix due to the addition of new services or the discontinuance of previously provided services. Therefore, in the aggregate, changes in case mix under TEFRA would have little effect on total cash outlays since only a comparatively few hospitals will be granted increases in their TEFRA cost limits or rate of increase ceiling. To date, only a handful of exceptions have been granted. In addition, we do not believe the same incentives to improve coding of bills exist under TEFRA since hospital payments are not dependent on the DRG to which a case is assigned.

Finally, it should be noted that budget neutrality and adjustments for increases in case mix are based on estimates using the best data available and are made on a prospective basis. To the extent definitive data could be obtained on exceptions and adjustments, it would not be available until some time after the estimates were made. For example, final determinations on exception requests are generally not made until many months or even years after the period to which they pertain has closed.

Comments— Some commenters suggested that hospitals would increase their reported case mix under TEFRA, especially if they felt they would be affected by the TEFRA limits in later years.

Response— While this scenario is likely, it would not "pass through" these reported increases in case mix for the following reasons.

1. The FY 1985 TEFRA limits would have been based on the 1982 MEDPAR experience, which is almost entirely pre-TEFRA experience.

2. Even if TEFRA data with higher case mix were used to set TEFRA limits in later years, the limits would not increase by the magnitude of the reported increase in case mix because we would continue to divide the cost experience by the case mix in computing peer group means. We would then apply each hospital's case mix to the peer group means to compute the hospital's limit. Since we would, on average, divide and multiply by the same average case mix, the only way the limits could increase is by increases in actual costs. True underlying increases in case mix would increase the limits because they are part of overall cost increases, even though reported increases in case mix would not affect the average level of the limits.

Comment—Many commenters suggested that the proposed 2.4 percent adjustment for increase in case mix be withdrawn because the adjustment was based on inadequate and biased data. Many comments stated that the hospitals that started early under prospective payment are unlike the hospitals that start later, especially in terms of case mix.

Response—The proposed 2.4 percent adjustment for case mix increase was based on analysis of approximately 896,000 admissions processed in HCFA representing about 15 percent of the prospective payment admissions expected during FY 1984. These were the best data at the time the NPRM was published. Our analysis showed that average case mix under prospective payment had increased about 5.85 percent above the 1981 levels. This was 2.4 percent greater than we had estimated case mix would increase due to improved coding. We now have approximately 2.5 million admissions processed in HCFA, representing about half of the admissions in FY 1984. These data show that the increase in average case mix is 7.3 percent rather than 5.85 percent. Because we cannot identify with certainty why each additional update of the data shows that the average case mix is increasing, we are undertaking a study, as described above, that will enable us to identify with greater precision the causes of this increase.

Comment—Some comments suggested that we assumed that hospitals would have identical diagnosis and admission patterns every year for purposes of computing case-mix increases.

Response—We assumed that case-mix index patterns averaged over all hospitals would be about the same every year. Since we observed a stable case-mix level over the 1979 through 1981 MEDPAR files, we believe that this assumption was reasonable.

Comment—Some commenters suggested that new diagnostic and treatment services would increase the case weights which is part of the reason for the increase in average reported case mix.

Response—Since we did not recalibrate the DRGs, these new diagnostic and treatment services are not included in the DRG weights. The only way reported case mix can increase is by changing the relative frequency of different DRGs, not by the treatment mode for any particular DRG.

Comment—Some commenters suggested that because some healthy beneficiaries elected to continue to receive health benefits coverage from their employers, Medicare is left with a sicker population with a higher case mix.

Response—Even though these hospital stays are reimbursed by a plan other than Medicare, Medicare will pay for any gaps in coverage. Further, these hospital stays are still applied to the beneficiary's spell of illness. Therefore, we must receive bills for these purposes. Since the bills must have diagnostic information, they are also included in the calculation of the average case mix. The fact that a beneficiary may elect to have his health coverage provided by his employer has no effect on the average case mix.

Comment—Many commenters suggested that hospital inpatients are now more acutely ill than previously, and that is part of the reason for increases in reported case mix.

Response—We are puzzled by the term "more acutely ill" because of its unclear meaning. Some of the factors that determine the assignment of a DRG are the particular illness, the presence of additional illnesses that may complicate the case, age, sex, and the presence or absence of certain procedures. The degree of illness is not a factor in assigning a DRG. If a particular case of an illness is more severe than average, we have outlier provisions to handle these cases, even though the DRG does not change. It is not clear that more acutely ill patients would necessarily increase the average case mix.

Comment—Several comments suggested that we should not reduce the DRG weights because admissions are lower than the level of projected admissions used to determine Medicare expenditures as projected in the Federal budget. These commenters seemed to believe that the purpose of reducing the DRG weights was to achieve some targeted amount of savings. They argued that the lower level of admissions would result in substantial savings and that we should not seek more.

Response—Under Medicare, we pay only when beneficiaries receive covered services. Budget neutrality requires that for FYs 1984 and 1985 we pay in the aggregate the same amount for covered services furnished under the prospective payment system as would have been paid for those services under TEFRA. The amount submitted to the Federal budget is a projection for planning

purposes, not a promise to pay a specific amount. Therefore, in determining payment rates under the prospective payment system, we do not have to make up any differences between projected and actual admissions. As discussed above and in section V of this addendum, we do not believe that the decline of admissions is a consequence of the prospective payment system.

Comment—We received many comments suggesting that we should not reduce the DRG relative weights because of a few hospitals "gaming" the system. We should address gaming on an institution by institution basis.

Response—The increase in case mix is pervasive and is spread throughout the country. Because of the extent of the case-mix increase, it is not possible to attribute this increase solely to a few "gaming" hospitals. Since the prospective payment system sets a payment rate for a DRG, we cannot set rates differently for different Hospitals, other than the adjustments specified in the law.

Comment—Some comments stated that the severe winter weather raised the case-mix level by postponing elective admissions, and that the increased case-mix level would decline in the spring and summer.

Response—When we analyzed case-mix data through July 1984, we didn't see the increased level in case-mix decrease in spring and summer. Rather, it continued to increase.

Comment—A commenter suggested that a higher reported case mix implies greater resource consumption. The commenter also suggested that we shouldn't compare case mix to the 1984 level and that we are assuming a 2.4 percent case-mix increase from 1984 to 1985, but that our assumed increase in case mix from 1981 to 1984 is zero percent. It was also suggested that the validity of the case-mix adjustment for 1985 was not addressed.

Response—Even though the reported case mix has increased, we do not believe that resources are being consumed at a higher rate. The substantial decrease in the rates of hospital cost increases suggests that resource consumption may possibly be declining. We must compare case-mix levels to 1981, since the 1981 case mix was used to set the payment rates. We are not projecting a 2.4 percent case-mix increase from FY 1984 to FY 1985. At the time of the NPRM, we had observed an increase in case mix of 2.4 percent beyond what we expected. Subsequently, the observed FY 1984 case mix level is 3.8 percent higher than expected. We are projecting no further increase in the case-mix level for FY 1985.

We expect the FY 1985 case-mix level to be as valid as the FY 1984 case mix for payment purposes. Diagnostic coding is now being reviewed, and we expect the level of review to be similar in FY 1985.

Comment—A commenter suggested that more intense cases should be paid for at the value of care given.

Response—The DRG system was constructed to achieve this result in the aggregate.

Comment—A commenter stated that its length of stay dropped from 9 days to 7 days.

Response—We have not reduced payments for decreases in length of stay.

Comment—Some commenters suggested that we should adjust only those DRG weights that cause the increase in average case mix.

Response—Although some DRG weights affect the average case mix more than others due to a greater relative frequency and higher values, we cannot adjust the relative weights for individual DRGs simply because more discharges fall into them. The relative weights of DRGs reflect their relative resource consumption. Adjusting the weights of individual DRGs to reflect frequency would distort the relationship of these relative measures.

Comment—A commenter suggested that the 2.4 percent reduction in the DRG relative weights is inappropriate because we had no sound actuarial techniques for estimating what case-mix change would have been payable under TEFRA, because the 1979 to 1981 change in case mix is inaccurate and has no bearing on the 1981 to 1984 period, and because the 0.5 percent annual change in case mix from 1979 to 1981 is significant.

Response—The statement that case mix increased at a 0.5 percent annual rate from 1979 to 1981 is incorrect. The case mix changed at a 0.1 percent annual rate over the period 1979 to 1981. Whatever case mix level hospitals would have reported under TEFRA if there was no prospective payment system, we would not, except under extraordinary circumstances, have adjusted the TEFRA limits for changes in case mix level. If the cost per admission increased because of increases in case mix, we would have paid the increased cost subject to the TEFRA limits. Hence we have reliable estimates what case mix change would have been payable under TEFRA.

Even though the MEDPAR data do not have the most accurate diagnostic information, we believe that comparing the trends in case-mix in the 1979, 1980, and 1981 MEDPAR files is valid for the following reasons:

1. All the MEDPAR years used the ICD–9 codes and the same DRG Grouper program.

2. The reporting incentives and level of review were the same in all three years.

3. We feel the biases in all three years are similiar and that analyzing trends in case mix is valid. We believe that the 1979 to 1981 experience has a bearing on the 1981 to 1984 case mix trends. We do not expect the mix of diseases to change greatly and permanently.

Comment— One commenter noted that the outlier threshold values in Table 5 of the addendum to the NPRM (49 FR 27451), that is, DRGs 223, 224, and 225, were incomplete.

Response— The outlier threshold values for DRGs 223, 224, and 225 were misprinted in the addendum to the NPRM. Those values for DRGs 223, 224, and 225 should be 29, 24, and 15 respectively. The corrected values are listed in Table 5 of the addendum to this final rule.

D. Further Changes as a Result of Pub. L. 98–369

This section contains a discussion of two changes made as a result of enactment of Pub. L. 98–369. Both changes are effective with cost reporting periods beginning on or after October 1, 1984.

1. Indirect Medical Education

In accordance with section 2307(b) of Pub. L. 98–369, in counting the number of interns and residents for purposes of calculating the additional payment for indirect medical education, we are counting on the basis of where services are provided and not on the basis of who employs them. Additionally, as required under § 405.477(d)(2)(v)(B) (as revised), hospitals must submit quarterly reports regarding interns and residents and final payment will not be made until cost reports are audited and the correct number of interns and residents verified by the fiscal intermediaries.

2. Payment for Services of Nonphysician Anesthetists

Section 2312 requires that the anesthesia services of certified registered nurse anesthetists be paid for on a reasonable cost basis. Also, as described in the new § 405.477(c)(3), we are paying on this basis for anesthesia services of anesthesiology assistants. Because hospitals will receive additional payment amounts for these

services, we are removing such costs, based on our best estimates, from the Federal rates and hospital-specific rates.

E. Calculation of Prospective Payment Rates for FY 1985

FY 1985 represents the second year of the three-year transition period.

General Formula for Calculation of Prospective Payment Rates for Cost Reporting Periods Beginning on or after October 1, 1984 and Before October 1, 1985 Prospective Payment Rate = Hospital-Specific Portion + Federal Portion

1. Hospital-Specific Portion

The hospital-specific portion of the prospective payment rate is based on a hospital's historical cost experience and is derived from the following formula:

Prior Year Hospital-Specific Portion × Updating Factor × 50 percent × DRG Weight—For a more detailed discussion of the hospital-specific portion, we refer the reader to the interim final rule (48 FR 39772).

Comment—Several commenters cited problems with the formula for determining the hospital-specific portion in calculating the prospective payment rates for FY 1985 (49 FR 27445). Specifically, they stated that the formula was unclear and appeared to be inconsistent with the updating factors used in determining the hospital-specific portion.

Response—We agree that the summary formula expressing the calculation of the hospital-specific portion for the second year of the prospective payment system was confusing and inconsistent with the updating factors. We have revised the formula accordingly to indicate that for FY 1985 the hospital-specific portion is—

Prior Year Hospital-Specific Portion × Updating Factor × 50 percent × DRG Weight.

a. Budget Neutrality. The hospital-specific portion of the payment rates will be adjusted for cost reporting periods that begin between October 1, 1983 and October 1, 1985, to maintain budget neutrality in accordance with section 1886(e)(1)(A) of the Act. The hospital-specific portion of the rate is set at 50 percent in the hospital's second transition year.

An adjustment will be made to the otherwise applicable target rate percentage to maintain budget neutrality of the hospital-specific portion of the payment. To determine the necessary adjustment, we estimated what the average payment per case would have been under the reasonable cost methodology under the law in effect before enactment of Pub. L. 98–21. This estimate is compared to a projection of average payment per case based on the hospital-specific portion of the prospective payment amount. The methodology we used in making these estimates and comparisons is explained in further detail in section V of this addendum. The applicable factor for adjusting the hospital-specific portion to maintain budget neutrality in FY 1985 is .993. This factor has been included in the updating factor discussed in section b below.

b. Updating Factor. For cost reporting periods ending between September 30, 1984 and August 31, 1986, we are applying an update factor to a hospital's previous hospital-specific rate that is equal to the compounded applicable target rate percentage (as applied under the rate of increase limits in § 405.463) as adjusted by a budget neutrality factor of .993. The table below sets forth the updating factors applicable to discharges in FY 1985.

If cost reporting period ends	And second cost reporting period under PPS ends	Updating factor
Sept. 30, 1984	Sept. 30, 1985	1.05878
Oct. 31, 1984	Oct. 31, 1985	1.05920
Nov. 30, 1984	Nov. 30, 1985	1.05961
Dec. 31, 1984	Dec. 31, 1985	1.06003
Jan. 31, 1985	Jan. 31, 1986	1.06052
Feb. 28, 1985	Feb. 28, 1986	1.06102
Mar. 31, 1985	Mar. 31, 1986	1.06151
Apr. 30, 1985	Apr. 30, 1986	1.06201
May 31, 1985	May 31, 1986	1.06251
June 30, 1985	June 30, 1986	1.06300
July 31, 1985	July 31, 1986	1.06350
Aug. 31, 1985	Aug. 31, 1986	1.06400

If a hospital's cost reporting period ends on a date other than those listed above, the update factor for the month nearest to the actual ending date (that is, either before or after) is used. However, for those cases in which a hospital's cost reporting year ending date for the first year under the prospective payment system (column 1 in the table shown above) does not match the ending date of the second cost reporting year under the prospective payment system (column 2 in the table shown above), the fiscal intermediary must contact HCFA for the appropriate adjustment factor.

Comment—One commenter suggested that the language in the NPRM (49 FR 27445) describing the inclusive dates for which the updating factors apply was inaccurate. The commenter believes that, in our discussion, we imply that the updating factors would apply only to cost reporting periods ending on or after September 30, 1984 and through August 30, 1986. He suggests that the updating factors apply to cost reporting periods ending on or after September 30, 1985 and before September 1, 1986.

Response—We agree that the cost reporting dates for applying the updating factors do not clearly express our intention that the factors cover periods ending up through August 31, 1986. We have revised this discussion of cost reporting periods above to include the August 31, 1986 end-date. However, contrary to the commenter's understanding, the updating factors apply to cost reporting periods that begin during Federal FY 1985. Therefore, the period covered by these updating factors begins with the September 30, 1984 end-date.

c. *New Providers.* Hospitals that have not completed a 12-month cost reporting period under Medicare (either under current or previous ownership) prior to September 30, 1983 are considered new providers for purposes of the prospective payment system. Their prospective payment rates are computed without regard to the hospital-specific portion. Thus, new providers are paid a blend of 75 percent of the appropriate Federal regional rate and 25 percent of the Federal national rate for discharges occurring on or after October 1, 1984 and before October 1, 1985.

2. Federal Portion

For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, the Federal portion of the hospital's total prospective payment will be 50 percent of the hospital's payment amount. Beginning with discharges occurring on or after October 1, 1984, the Federal portion is comprised of a blend of the Federal regional rate (75 percent) and the Federal national rate, (25 percent).

III. Summary of Prospective Payment Rate Changes

We are making the following changes in determining prospective payment rates for FY 1985:

A. Calculation of Adjusted Standardized Amounts

- Update the market basket index.
- Reduce the updating factors to the market basket plus .25 percent in accordance with section 2310 of Pub. L. 98–369.
- Update the cost-of-living adjustment factors for hospitals in Alaska and Hawaii.
- Revise the table of adjusted standardized amounts to include 20 standardized amounts, that is, nine regional figures and a national figure for labor-related and non-labor-related amounts (Table 1).
- Adjust the average standardized amounts upward to reflect more recent

data in estimating costs previously billed under Part B and for FICA taxes.

- Adjust the average standardized amounts downward to remove the estimated costs for outliers.
- Adjust the average standardized amounts to reflect budget neutrality.
- Adjust the average standardized amounts (and hospital-specific portion) to reflect the removal of costs of nonphysician anesthetists' services.

B. Calculation of Prospective Payment Rates

- Determine a new target rate percentage factor for computing the hospital-specific portion that incorporates an adjustment for budget neutrality.
- Determine total prospective payment based on 50 percent Federal portion and 50 percent hospital-specific portion.
- Determine Federal portion based on 75 percent of the Federal regional rate and 25 percent of the Federal national rate.
- Reduce the DRG relative weights for increases in case mix based on bills submitted under the prospective payment system.

IV. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this addendum.

TABLE 1.—ADJUSTED STANDARDIZED AMOUNTS, LABOR/NONLABOR

Region	Urban		Rural	
	Labor related	Nonlabor related	Labor related	Nonlabor related
1. New England (CT, ME, MA, NH, RI, VT)	2,453.88	668.56	2,098.04	507.22
2. Middle Atlantic (PA, NJ, NY)	2,205.94	660.71	2,088.21	514.40
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2,296.98	612.25	1,889.46	427.43
4. East North Central (IL, IN, MI, OH, WI)	2,452.00	712.68	2,052.37	478.79
5. East South Central (AL, KY, MS, TN)	2,085.43	544.93	1,905.97	399.94
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2,391.81	634.00	1,915.33	410.91
7. West South Central (AR, LA, OK, TX)	2,248.19	599.67	1,845.62	398.47
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2,208.95	636.52	1,913.21	447.21
9. Pacific (AK, CA, HI, OR, WA)	2,325.13	745.34	1,999.49	521.49
10. National	2,320.61	664.44	1,943.21	438.18

TABLE 4a.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX (Taylor, TX)	.9395
Akron, OH (Portage, OH, Summit, OH)	1.0713
Albany, GA (Dougherty, GA, Lee, GA)	.8897
Albany-Schenectady-Troy, NY (Albany, NY, Greene, NY, Montgomery, NY, Rensselaer, NY, Saratoga, NY, Schenectady, NY)	.8907
Albuquerque, NM (Bernalillo, NM)	1.0558
Alexandria, LA (Rapides, LA)	.9716
Allentown-Bethlehem, PA-NJ (Warren, NJ, Carbon, PA, Lehigh, PA, Northampton, PA)	1.0496
Alton-Granite City, IL (Jersey, IL, Madison, IL)	.9699
Altoona, PA (Blair, PA)	1.0228
Amarillo, TX (Potter, TX, Randall, TX)	.9677
Anaheim-Santa Ana, CA (Orange, CA)	1.2419
Anchorage, AK (Anchorage, AK)	1.5417
Anderson, IN (Madison, IN)	1.0142
Anderson, SC (Anderson, SC)	.8729
Ann Arbor, MI (Washtenaw, MI)	1.2065
Anniston, AL (Calhoun, AL)	.8608
Appleton-Oshkosh-Neenah, WI (Calumet, WI, Outagamie, WI, Winnebago, WI)	.9644
Asheville, NC (Buncombe, NC)	.9503
Athens, GA (Clarke, GA, Jackson, GA, Madison, GA, Oconee, GA)	.8800
Atlanta, GA (Barrow, GA, Butts, 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, Rockdale, GA, Spalding, GA, Walton, GA)	.9395
Atlantic City, NJ (Atlantic, NJ, Cape May, NJ)	1.0627
Augusta, GA-SC (Columbia, GA, McDuffie, GA, Richmond, GA, Aiken, SC)	.9595
Aurora-Elgin, IL (Kane, IL, Kendall, IL)	.9937
Austin, TX (Hays, TX, Travis, TX, Williamson, TX)	1.0631
Bakersfield, CA (Kern, CA)	1.2246
Baltimore, MD (Anne Arundel, MD, Baltimore, MD, Baltimore City, MD, Carroll, MD, Harford, MD, Howard, MD, Queen Annes, MD)	1.0920
Bangor, ME (Penobscot, ME)	.9253
Baton Rouge, LA (Ascension, LA, East Baton Rouge, LA, Livingston, LA, West Baton Rouge, LA)	1.0154
Battle Creek, MI (Calhoun, MI)	1.0578
Beaumont-Port Arthur, TX (Hardin, TX, Jefferson, TX, Orange, TX)	.9854
Beaver County, PA (Beaver, PA)	1.0841
Bellingham, WA (Whatcom, WA)	1.0522
Benton Harbor, MI (Berrien, MI)	.8716
Bergen-Passaic, NJ (Bergen, NJ, Passaic, NJ)	1.0269
Billings, MT (Yellowstone, MT)	.9628
Biloxi-Gulfport, MS (Hancock, MS, Harrison, MS)	.8692
Binghamton, NY (Broome, NY, Tioga, NY)	.9507
Birmingham, AL (Blount, AL, Jefferson, AL, Saint Clair, AL, Shelby, AL, Walker, AL)	1.0026
Bismarck, ND (Burleigh, ND, Morton, ND)	1.0080
Bloomington, IN (Monroe, IN)	.9289
Bloomington-Normal, IL (McLean, IL)	1.0096
Boise City, ID (Ada, ID)	1.0733
Boston-Lawrence-Salem-Lowell-Brockton, MA (Essex, MA, Middlesex, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA)	1.0927
Boulder-Longmont, CO (Boulder, CO)	.9952
Bradenton, FL (Manatee, FL)	.9180
Brazoria, TX (Brazoria, TX)	.8392
Bremerton, WA (Kitsap, WA)	.8972
Bridgeport-Stamford-Norwalk-Danbury, CT (Fairfield, CT)	1.1548
Brownsville-Harlingen, TX (Cameron, TX)	.9198
Bryan-College Station, TX (Brazos, TX)	.9059
Buffalo, NY (Erie, NY)	.9768
Burlington, NC (Alamance, NC)	.8463
Burlington, VT (Chittenden, VT, Grand Isle, VT)	.9632
Canton, OH (Carroll, OH, Stark, OH)	.9778
Casper, WY (Natrona, WY)	1.0235
Cedar Rapids, IA (Linn, IA)	.9360
Champaign-Urbana-Rantoul, IL (Champaign, IL)	1.0224
Charleston, SC (Berkeley, SC, Charleston, SC, Dorchester, SC)	1.0241
Charleston, WV (Kanawha, WV, Putnam, WV)	1.1011
Charlotte-Gastonia-Rock Hill, NC-SC (Cabarrus, NC, Gaston, NC, Lincoln, NC, Mecklenburg, NC, Rowan, NC, Union, NC, York, SC)	.9756
Charlottesville, VA (Albemarle, VA, Charlottesville City, VA, Fluvanna, VA, Greene, VA)	1.2899
Chattanooga, TN-GA (Catoosa, GA, Dade, GA, Walker, GA, Hamilton, TN, Marion, TN, Sequatchie, TN)	.9680
Chicago, IL (Cook, IL, Du Page, IL, McHenry, IL)	1.2240
Chico, CA (Butte, CA)	1.0536

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Cincinnati, OH-KY-IN (Dearborn, IN, Boone, KY, Campbell, KY, Kenton, KY, Clermont, OH, Hamilton, OH, Warren, OH)	1.0543
Clarksville-Hopkinsville, TN-KY (Christian, KY, Montgomery, TN)	.8325
Cleveland, OH (Cuyahoga, OH, Geauga, OH, Lake, OH, Medina, OH)	1.2004
Colorado Springs, CO (El Paso, CO)	1.1046
Columbia, MO (Boone, MO)	1.1334
Columbia, SC (Lexington, SC, Richland, SC)	.9583
Columbus, GA-AL (Russell, AL, Chattanoochee, GA, Muscogee, GA)	.9180
Columbus, OH (Delaware, OH, Fairfield, OH, Franklin, OH, Licking, OH, Madison, OH, Picksway, OH, Union, OH)	1.0402
Corpus Christi, TX (Nueces, TX, San Patricio, TX)	.9528
Cumberland, MD-WV (Allegeny, MD, Mineral, WV)	.8897
Dallas, TX (Collins, TX, Dallas, TX, Denton, TX, Ellis, TX, Kaufmsn, TX, Rockwall, TX)	1.0766
Danville, VA (Danville City, VA, Pittsylvania, VA)	.8682
Davenport-Rock Island-Moline, IA-IL (Scott, IA, Henry, IL, Rock Island, IL)	.9818
Dayton-Springfield, OH (Clark, OH, Greene, OH, Miami, OH, Montgomery, OH)	1.1095
Daytona Beach, FL (Volusia, FL)	.9673
Decatur, IL (Macon, IL)	.8611
Denver, CO (Adams, CO, Arapahoe, CO, Denver, CO, Douglas, CO, Jefferson, CO)	1.2076
Des Moines, IA (Dallas, IA, Polk, IA, Warren, IA)	1.0587
Detroit, MI (Lapeer, MI, Livingston, MI, Macomb, MI, Monroe, MI, Oakland, MI, Saint Clair, MI, Wayne, MI)	1.1945
Dothan, AL (Dale AL, Houston, AL)	.8830
Dubuque, IA (Dubuque, IA)	1.0260
Duluth, MN-WI (St. Louis, MN, Douglas, WI)	.9148
East St. Louis-Belleville, IL (Clinton, IL, St. Clair, IL)	.9469
Eau Claire, WI (Chippewa, WI, Eau Claire, WI)	.9549
El Paso, TX (El Paso, TX)	.8973
Elkhart-Goshen, IN (Elkhart, IN)	.8907
Elmira, NY (Chemung, NY)	1.0236
Enid, OK (Garfield, OK)	.9000
Erie, PA (Erie, PA)	.9906
Eugene-Springfield, OR (Lane, OR)	.9862
Evansville, IN-KY (Posey, IN, Vanderburgh, IN, Warrick, IN, Henderson, KY)	1.0247
Fargo-Moorhead, ND-MN (Clay, MN, Cass, ND)	1.0031
Fayetteville, NC (Cumberland, NC)	.9311
Fayetteville-Springdale, AR (Washington, AR)	.8290
Flint, MI (Genesee, MI)	1.1500
Florence, AL (Colbert, AL, Lauderdale, AL)	.8072
Florence, SC (Florence, SC)	.8055
Fort Collins-Loveland, CO (Larimor, CO)	.9259
Fort Lauderdale-Hollywood-Pompano Beach, FL (Broward, FL)	1.1082
Fort Myers-Cape Coral, FL (Lee, FL)	.9223
Fort Pierce, FL (Martin, FL, St. Lucie, FL)	.9923
Fort Smith, AR-OK (Crawford, AR, Sebastian, AR, Sequoyah, OK)	.9685
Fort Walton Beach, FL (Okaloosa, FL)	.7857
Fort Wayne, IN (Allen, IN, De Kalb, IN, Whitley, IN)	.9348
Fort Worth-Arlington, TX (Johnson, TX, Parker, TX, Tarrant, TX)	.9826
Fresno, CA (Fresno, CA)	1.1927
Gadsden, AL (Etowah, AL)	.9216
Gainesville, FL (Alachua, FL, Bradford, FL)	.9690
Galveston-Texas City, TX (Galveston, TX)	1.1798
Gary-Hammond, IN (Lake, IN, Porter, IN)	1.1395
Glenns Falls, NY (Warren, NY, Washington, NY)	.8795
Grand Forks, ND (Grand Forks, ND)	.9873
Grand Rapids, MI (Kent, MI, Ottawa, MI)	.9963
Great Falls, MT (Cascade, MT)	1.0286
Greeley, CO (Weld, CO)	1.0807
Green Bay, WI (Brown, WI)	.9783
Greensboro-Winston-Salem-High Point, NC (Davidson, NC, Davie, NC, Forsyth, NC, Guilford, NC, Randolph, NC, Stokes, NC, Yadkin, NC)	.9558
Greenville-Spartanburg, SC (Greenville, SC, Pickens, SC, Spartanburg, SC)	.9455
Hagerstown, MD (Washington, MD)	.9635
Hamilton-Middletown, OH (Butler, OH)	1.0414
Harrisburg-Lebanon-Carlisle, PA (Cumberland, PA, Dauphin, PA, Lebanon, PA, Perry, PA)	1.0335
Hartford-New Middletown-Britain-Bristol, CT (Hartford, CT, Litchfield, CT, Middlesex, CT, Tolland, CT)	1.0670
Hickory, NC (Alexander, NC, Burke, NC, Catawba, NC)	.9484
Honolulu, HI (Honolulu, HI)	1.1448
Houma-Thibodaux, LA (Lafourche, LA, Terrebonne, LA)	.9766

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Houston, TX (Fort Bend, TX, Harris, TX, Liberty, TX, Montgomery, TX, Waller, TX)	1.1097
Huntington-Ashland, WV-KY-OH (Boyd, KY, Carter, KY, Greenup, KY, Lawrence, OH, Cabell, WV, Wayne, WV)	.9830
Huntsville, AL (Madison, AL)	.8972
Indianapolis, IN (Boone, IN, Hamilton, IN, Hancock, IN, Hendricks, IN, Johnson, IN, Marion, IN, Morgan, IN, Shelby, IN)	1.0786
Iowa City, IA (Johnson, IA)	1.1400
Jackson, MI (Jackson, MI)	1.0260
Jackson, MS (Hinds, MS, Madison, MS, Rankin, MS)	.9092
Jacksonville, FL (Clay, FL, Duval, FL, Nassau, FL, St. Johns, FL)	.9894
Jacksonville, NC (Onslow, NC)	.8800
Janesville-Beloit, WI (Rock, WI)	.9022
Jersey City, NJ (Hudson, NJ)	1.0890
Johnson City-Kingsport-Bristol, TN-VA (Carter, TN, Hawkins, TN, Sullivan, TN, Unicoi, TN, Washington, TN, Bristol City, VA, Scott, VA, Washington, VA)	.9221
Johnstown, PA (Cambria, PA, Somerset, PA)	1.0263
Joliet, IL (Grundy, IL, Will, IL)	1.1024
Joplin, MO (Jasper, MO, Newton, MO)	.9560
Kalamazoo, MI (Kalamazoo, MI)	1.2244
Kankakee, IL (Kankakee, IL)	.9125
Kansas City, KS-MO (Johnson, KS, Leavenworth, KS, Miami, KS, Wyandotte, KS, Cass, MO, Clay, MO, Jackson, MO, Lafayette, MO, Platte, MO, Ray, MO)	.9861
Kenosha, WI (Kenosha, WI)	1.0786
Killeen-Temple, TX (Bell, TX, Coryell, TX)	.9383
Knoxville, TN (Anderson, TN, Blount, TN, Grainger, TN, Jefferson, TN, Knox, TN, Sevier, TN, Union, TN)	.9146
Kokomo, IN (Howard, IN, Tipton, IN)	1.0096
LaCrosse, WI (LaCrosse, WI)	.9543
Lafayette, LA (Lafayette, LA, St. Martin, LA)	1.0141
Lafayette, IN (Tippecanoe, IN)	.9240
Lake Charles, LA (Calcasieu, LA)	.9921
Lake County, IL (Lake, IL)	1.1061
Lakeland-Winter Haven, FL (Polk, FL)	.9257
Lancaster, PA (Lancaster, PA)	1.0351
Lansing-East Lansing, MI (Clinton, MI, Eaton, MI, Ingham, MI)	1.0493
Laredo, TX (Webb, TX)	.8544
Las Cruces, NM (Dona Ana, NM)	.8438
Las Vegas, NV (Clark, NV)	1.2165
Lawrence, KS (Douglas, KS)	.9778
Lawton, OK (Comanche, OK)	.9257
Lewiston-Auburn, ME (Androscoggin, ME)	.9149
Lexington-Fayette, KY (Bourbon, KY, Clark, KY, Fayette, KY, Jessamine, KY, Scott, KY, Woodford, KY)	.9555
Lima, OH (Allen, OH, Auglaize, OH)	.9967
Lincoln, NE (Lancaster, NE)	.8998
Little Rock-North Little Rock, AR (Faulkner, AR, Lonoke, AR, Pulaski, AR, Saline, AR)	1.0162
Longview-Marshall, TX (Gregg, TX, Harrison, TX)	.8544
Lorain-Elyria, OH (Lorain, OH)	1.0528
Los Angeles-Long Beach, CA (Los Angeles, CA)	1.3010
Louisville, KY-IN (Clark, IN, Floyd, IN, Harrison, IN, Bullitt, KY, Jefferson, KY, Oldham, KY, Shelby, KY)	1.0832
Lubbock, TX (Lubbock, TX)	1.0067
Lynchburg, VA (Amherst, VA, Campbell, VA, Lynchburg City, VA)	.9221
Macon-Warner Robins, GA (Bibb, GA, Houston, GA, Jones, GA, Peach, GA)	.9830
Madison, WI (Dane, WI)	1.0621
Manchester-Nashua, NH (Hillsboro, NH, Merrimack, NH)	.9327
Mansfield, OH (Richland, OH)	.9158
McAllen-Edinburg-Mission, TX (Hidalgo, TX)	.8438
Medford, OR (Jackson, OR)	.9833
Melbourne-Titusville, FL (Brevard, FL)	.9314
Memphis, TN-AR-MS (Crittenden, AR, De Soto, MS, Shelby, TN, Tipton, TN)	1.0744
Miami-Hialeah, FL (Dade, FL)	1.1468
Middlesex-Somerset-Hunterdon, NJ (Hunterdon, NJ, Middlesex, NJ, Somerset, NJ)	1.0611
Midland, TX (Midland, TX)	1.0761
Milwaukee, WI (Milwaukee, WI, Ozaukee, WI, Washington, WI, Waukesha, WI)	1.0419
Minneapolis-St. Paul, MN-WI (Anoka, MN, Carver, MN, Chisago, MN, Dakota, MN, Hennepin, MN, Isanti, MN, Ramsey, MN, Scott, MN, Washington, MN, Wright, MN, St. Croix, WI)	1.0250
Mobile, AL (Baldwin, AL, Mobile, AL)	.9311
Modesto, CA (Stanislaus, CA)	1.0773
Monmouth-Ocean, NJ (Monmouth, NJ, Ocean, NJ)	.9843
Monroe, LA (Ouachita, LA)	.9531
Montgomery, AL (Autauga, AL, Elmore, AL, Montgomery, AL)	.9706
Muncie, IN (Delaware, IN)	.9673
Muskegon, MI (Muskegon, MI)	.9216
Naples, FL (Collier, FL)	1.1170
Nashville, TN (Cheatham, TN, Davidson, TN, Dickson, TN, Robertson, TN, Rutherford, TN, Sumner, TN, Williamson, TN, Wilson, TN)	1.2232
Nassau-Suffolk, NY (Nassau, NY, Suffolk, NY)	1.2068
New Bedford-Fall River-Attleboro, MA (Bristol, MA)	.9643
New Haven-West Haven-Waterbury-Meriden, CT (New Haven, CT)	1.0645
New London-Norwich, CT (New London, CT)	1.0646
New Orleans, LA (Jefferson, LA, Orleans, LA, St. Bernard, LA, St. Charles, LA, St. John The Baptist, LA, St. Tammany, LA)	1.0115
New York, NY (Bronx, NY, Kings, NY, New York City, NY, Putnam, NY, Queens, NY, Richmond, NY, Rockland, NY, Westchester, NY)	1.3629
Newark, NJ (Essex, NJ, Morris, NJ, Sussex, NJ, Union, NJ)	1.1265
Niagara Falls, NY (Niagara, NY)	.8723
Norfolk-Virginia Beach-Newport News, VA (Chesapeake City, VA, Gloucester, VA, Hampton City, VA, James City Co., VA, Newport News City, VA, Norfolk City, VA, Poquoson, VA, Portsmouth City, VA, Suffolk City, VA, Virginia Beach City, VA, Williamsburg City, VA, York, VA)	.9763
Oakland, CA (Alameda, CA, Contra Costa, CA)	1.2590
Ocala, FL (Marion, FL)	1.0080
Odessa, TX (Ector, TX)	.9756
Oklahoma City, OK (Canadian, OK, Cleveland, OK, Logan, OK, McClain, OK, Oklahoma, OK, Pottawatomie, OK)	1.0502
Olympia, WA (Thurston, WA)	1.0543
Omaha, NE-IA (Pottawattamie, IA, Douglas, NE, Sarpy, NE, Washington, NE)	.8982
Orange County, NY (Orange, NY)	1.0041
Orlando, FL (Orange, FL, Osceola, FL, Seminole, FL	1.0125
Owensboro, KY (Daviess, KY)	.8809
Oxnard-Ventura, CA (Ventura, CA)	1.1962
Panama City, FL (Bay, FL)	.9022
Parkersburg-Marietta, WV-OH (Washingtron, OH, Wood, WV)	.9933
Pascagoula, MS (Jackson, MS)	1.0118
Pensacola, FL (Escambia, FL, Santa Rosa, FL)	.9092
Peoria, IL (Peoria, IL, Tazewell, IL, Woodford, IL)	1.1269
Philadelphia, PA-NJ (Burlington, NJ, Camden, NJ, Gloucester, NJ, Bucks, PA, Chester, PA, Delaware, PA, Montgomery, PA, Philadelphia, PA)	1.1736
Phoenix, AZ (Maricopa, AZ)	1.1099
Pine Bluff, AR (Jefferson, AR)	.8757
Pittsburgh, PA (Allegheny, PA, Fayette, PA, Washington, PA, Westmoreland, PA)	1.1364
Pittsfield, MA (Berkshire, MA)	.9795
Portland, ME (Cumberland, ME, Sagadahoc, ME, York, ME)	.9632
Portland, OR (Clackamas, OR, Multnomah, OR, Washington, OR, Yamhill, OR)	1.1172
Portsmouth-Dover-Rochester, NH (Rockingham, NH, Strafford, NH)	.8438
Poughkeepsie, NY (Dutchess, NY)	1.0897
Providence-Pawtucket-Woonsocket, RI (Bristol, RI, Kent, RI, Newport, RI, Providence, RI, Statewide, RI, Washington, RI)	.9753
Provo-Orem, UT (Utah, UT)	.9452
Pueblo, CO (Pueblo, CO)	1.1576
Racine, WI (Racine, WI)	1.0124
Raleigh-Durham, NC (Durham, NC, Franklin, NC, Orange, NC, Wake, NC)	1.0118
Reading, PA (Berks, PA)	1.0265
Redding, CA (Shasta, CA)	1.0522
Reno, NV (Washoe, NV)	1.2962
Richland-Kennewick, WA (Benton, WA, Franklin, WA)	.9528
Richmond-Petersburg, VA (Charles City Co., 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)	.9281
Riverside-San Bernardino, CA (Riverside, CA, San Bernardino, CA)	1.1729
Roanoke, VA (Botetourt, VA, Roanoke, VA, Roanoke City, VA, Salem City, VA)	.9998
Rochester, MN (Olmsted, MN)	1.0235
Rochester, NY (Livingston, NY, Monroe, NY, Ontario, NY, Orleans, NY, Wayne, NY)	1.0357
Rockford, IL (Boone, IL, Winnebago, IL)	1.0323
Sacramento, CA (Eldorado, CA, Placer, CA, Sacramento, CA, Yolo, CA)	1.2061
Saginaw-Bay City-Midland, MI (Bay, MI, Midland, MI, Saginaw, MI)	1.0928
St. Cloud, MN (Benton, MN, Sherburne, MN, Stearns, MN)	.8788
St. Joseph, MO (Buchanan, MO)	.9856
St. Louis, MO-IL (Monroe, IL, Franklin, MO, Jefferson, MO, St. Charles, MO, St. Louis, MO, St. Louis City, MO)	1.0694
Salem, OR (Marion, OR, Polk, OR)	1.0559
Salinas-Seaside-Monterey, CA (Monterey, CA)	1.2737
Salt Lake City-Ogden, UT (Davis, UT, Salt Lake, UT, Weber, UT)	.9649
San Angelo, TX (Tom Green, TX)	.9269
San Antonio, TX (Bexar, TX, Comal, TX, Guadalupe, TX)	1.0488
San Diego, CA (San Diego, CA)	1.1873
San Francisco, CA (Marin, CA, San Francisco, CA, San Mateo, CA)	1.3946
San Jose, CA (Santa Clara, CA)	1.2928
Santa Barbara-Santa Maria-Lompoc, CA (Santa Barbara, CA)	1.1094
Santa Cruz, CA (Santa Cruz, CA)	1.1363
Santa Fe, NW (Los Alamos, NM, Santa Fe, NM)	1.0089
Santa Rosa-Petaluma, CA (Sonoma, CA)	1.1808
Sarasota, FL (Sarasota, FL)	.9859
Savannah, GA (Chatham, GA, Effingham, GA)	.9501
Scranton/Wilkes Barre, PA (Columbia, PA, Lackawanna, PA, Luzerne, PA, Monroe, PA, Wyoming, PA)	.9742
Seattle, WA (King, WA, Snohomish, WA)	1.0859
Sharon, PA (Mercer, PA)	.9640
Sheboygan, WI (Sheboygan, WI)	.8574
Sherman-Denison, TX (Grayson, TX)	.8997
Shreveport, LA (Bossier, LA, Caddo, LA)	1.0634
Sioux City, IA-NE (Woodbury, IA, Dakota, NE)	1.0301
Sioux Falls, SD (Minnehaha, SD)	.9428
South Bend-Mishawaka, IN (St. Joseph, IN)	.9715
Spokane, WA (Spokane, WA)	1.1170
Springfield, IL (Menard, IL, Sangamon, IL)	1.1394
Springfield, MO (Christian, MO, Greene, MO)	.9518
Springfield, MA (Hampden, MA, Hampshire, MA)	.9855
State College, PA (Centre, PA)	1.0543
Steubenville-Weirton, OH-WV (Jefferson, OH, Brooke, WV, Hancock, WV)	.9743
Stockton, CA (San Joaquin, CA)	1.1624
Syracuse, NY (Madison, NY, Onondaga, NY, Oswego, NY)	1.4527
Tacoma, WA (Pierce, WA)	1.0424
Tallahassee, FL (Gadsden, FL, Leon, FL)	.9251
Tampa-St. Petersburg-Clearwater, FL (Hernando, FL, Hillsborough, FL, Pasco, FL, Pinellas, FL)	.9963
Terre Haute, IN (Clay, IN, Vigo, IN)	.8809
Texarkana-TX-Texarkana, AR (Miller, AR, Bowie, TX)	1.1081
Toledo, OH (Fulton, OH, Lucas, OH, Wood, OH)	1.1307
Topeka, KS (Shawnee, KS)	1.1108
Trenton, NJ (Mercer, NJ)	1.0365
Tucson, AZ (Pima, AZ)	1.0141
Tulsa, OK (Creeks, OK, Osage, OK, Rogers, OK, Tulsa, OK, Wagoner, OK)	1.0386
Tuscaloosa, AL (Tuscaloosa, AL)	1.0166
Tyler, TX (Smith, TX)	1.0008
Utica-Rome, NY (Herkimer, NY, Oneida, NY)	.9332
Vallejo-Fairfield-Napa, CA (Napa, CA, Solano, CA)	1.3266
Vancouver, WA (Clark, WA)	1.0807
Victoria, TX (Victoria, TX)	.8616
Vineland-Millville-Bridgeton, NJ (Cumberland, NJ)	.9479
Visalia-Tulare-Porterville, CA (Tulare, CA)	1.1331
Waco, TX (McLennan, TX)	.8313
Washington, D.C.-MD-VA (District of Columbia, DC, Calvert, MD, Charles, MD, Frederick, MD, Montgomery, MD, Prince Georges, MD, Alexandria City, VA, Arlington, VA, Fairfax, VA, Fairfax City, VA, Falls Church City, VA, Loudoun, VA, Manassas City, VA, Manassas Park City, VA, Prince William, VA, Stafford, VA)	1.1577
Waterloo-Cedar Falls, IA (Black Hawk, IA, Bremer, IA)	.9081
Wausau, WI (Marathon, WI)	.9428
West Palm Beach-Boca Raton-Delray Beach, FL (Palm Beach, FL)	.9990
Wheeling, WV-OH (Belmont, OH, Marshall, WV, Ohio, WV)	.9811
Wichita, KS (Butler, KS, Sedgwick, KS)	1.1191
Wichita Falls, TX (Wichita, TX)	.8701

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Williamsport, PA (Lycoming, PA)	1.0242
Wilmington, DE-NJ-MD (New Castle, DE, Cecil, MD, Salem, NJ)	1.0871
Wilmington, NC (New Hanover, NC)	.8996
Worcester-Fitchburg-Leominster, MA (Worcester, MA)	.9750
Yakima, WA (Yakima, WA)	1.0018
York, PA (Adams, PA, York, PA)	1.0286
Youngstown-Warren, OH (Mahoning, OH, Trumbull, OH)	1.1017
Yuba City, CA (Sutter, CA, Yuba, CA)	1.0807

TABLE 4b.—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	.7775
Alaska	1.4383
Arizona	.8931
Arkansas	.7794
California	1.0100
Colorado	.8317
Connecticut	.9953
Delaware	.8997
Florida	.8682
Georgia	.8481
Hawaii	1.1747
Idaho	.8984
Illinois	.8708
Indiana	.8708
Iowa	.8158
Kansas	.8118
Kentucky	.8146
Louisiana	.8322
Maine	.8648
Maryland	.9370
Massachusetts	.9690
Michigan	.9471
Minnesota	.8572
Mississippi	.8004
Missouri	.8280
Montana	.8694
Nebraska	.7411
Nevada	1.0157
New Hampshire	1.0297
New Jersey [1]	
New Mexico	.9149
New York	.8698
North Carolina	.8487
North Dakota	.8309
Ohio	.9126
Oklahoma	.8582
Oregon	.9543
Pennsylvania	1.0306
Rhode Island [1]	
South Carolina	.8071
South Dakota	.7857
Tennessee	.7860
Texas	.8104
Utah	.8211
Vermont	.8757
Virginia	.8502
Washington	.9477
West Virginia	.9163
Wisconsin	.8454
Wyoming	.9546

[1] All counties within the State are classified urban.

BILLING CODE 4120-03-M

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY CUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
1	1	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.3199	19.4	41
2	1	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.2488	15.8	38
3	1	SURG	* CRANIOTOMY AGE <18	2.9183	12.7	35
4	1	SURG	SPINAL PROCEDURES	2.2219	16.0	38
5	1	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.6606	9.8	31
6	1	SURG	CARPAL TUNNEL RELEASE	.3952	2.6	8
7	1	SURG	PERIPH + CRANIAL NERVE + OTHER NERV SYST PROC AGE >69 +/OR C.C.	1.0172	5.3	27
8	1	SURG	PERIPH + CRANIAL NERVE + OTHER NERV SYST PROC AGE <70 W/O C.C.	.7164	4.1	23
9	1	MED	SPINAL DISORDERS + INJURIES	1.3813	9.1	31
10	1	MED	NERVOUS SYSTEM NEOPLASMS AGE >69 AND/OR C.C.	1.2951	9.6	32
11	1	MED	NERVOUS SYSTEM NEOPLASMS AGE <70 W/O C.C.	1.2415	8.5	31
12	1	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	1.1020	9.4	31
13	1	MED	MULTIPLE SCLEROSIS + CEREBELLAR ATAXIA	1.0045	8.9	31
14	1	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.3386	9.9	32
15	1	MED	TRANSIENT ISCHEMIC ATTACKS	.6604	5.6	24
16	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS WITH C.C.	.8503	7.4	29
17	1	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O C.C.	.8305	7.2	29
18	1	MED	CRANIAL + PERIPHERAL NERVE DISORDERS AGE >69 AND/OR C.C.	.7833	6.6	29
19	1	MED	CRANIAL + PERIPHERAL NERVE DISORDERS AGE <70 W/O C.C.	.6903	5.7	28
20	1	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.3004	7.6	30
21	1	MED	* VIRAL MENINGITIS	.6236	4.5	15
22	1	MED	HYPERTENSIVE ENCEPHALOPATHY	.7787	6.4	28
23	1	MED	NONTRAUMATIC STUPOR + COMA	1.1448	5.9	28
24	1	MED	SEIZURE + HEADACHE AGE >69 AND/OR C.C.	.7203	5.6	26
25	1	MED	SEIZURE + HEADACHE AGE 18-69 W/O C.C.	.6326	4.9	25
26	1	MED	* SEIZURE + HEADACHE AGE 0-17	.4304	3.3	13
27	1	MED	* TRAUMATIC STUPOR + COMA, COMA >1 HR	1.1250	4.1	26
28	1	MED	TRAUMATIC STUPOR + COMA, COMA <1 HR AGE >69 AND/OR C.C.	1.0590	5.9	28
29	1	MED	* TRAUMATIC STUPOR + COMA <1 HR AGE 18-69 W/O C.C.	.7100	3.8	25
30	1	MED	* TRAUMATIC STUPOR + COMA <1 HR AGE 0-17	.3539	2.0	8
31	1	MED	CONCUSSION AGE >69 AND/OR C.C.	.5988	4.6	27
32	1	MED	CONCUSSION AGE 18-69 W/O C.C.	.4472	3.3	19
33	1	MED	* CONCUSSION AGE 0-17	.2457	1.6	5
34	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM AGE >69 AND/OR C.C.	.9824	7.1	29
35	1	MED	OTHER DISORDERS OF NERVOUS SYSTEM AGE <70 W/O C.C.	.8372	6.2	28
36	2	SURG	RETINAL PROCEDURES	.7019	5.0	15
37	2	SURG	ORBITAL PROCEDURES	.5571	3.4	11
38	2	SURG	PRIMARY IRIS PROCEDURES	.4280	3.0	9
39	2	SURG	LENS PROCEDURES	.4958	2.8	6
40	2	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.3936	2.4	7
41	2	SURG	* EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3657	1.6	4
42	2	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS + LENS	.5845	3.8	12
43	2	MED	* HYPHEMA	.3788	4.2	12
44	2	MED	ACUTE MAJOR EYE INFECTIONS	.6233	6.5	22
45	2	MED	NEUROLOGICAL EYE DISORDERS	.5582	4.3	18

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
46	2	MED	OTHER DISORDERS OF THE EYE AGE >17 WITH C.C.	.5902	4.1	23
47	2	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O C.C.	.5011	3.0	12
48	2	MED	* OTHER DISORDERS OF THE EYE AGE 0-17	.4018	2.9	13
49	3	SURG	MAJOR HEAD + NECK PROCEDURES	2.5007	13.6	36
50	3	SURG	SIALOADENECTOMY	.7086	4.6	14
51	3	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.6632	4.2	15
52	3	SURG	* CLEFT LIP + PALATE REPAIR	.6421	3.8	11
53	3	SURG	SINUS + MASTOID PROCEDURES AGE >17	.5834	3.5	11
54	3	SURG	* SINUS + MASTOID PROCEDURES AGE 0-17	.6889	3.2	11
55	3	SURG	MISCELLANEOUS EAR, NOSE + THROAT PROCEDURES	.4110	2.5	7
56	3	SURG	RHINOPLASTY	.4101	2.8	8
57	3	SURG	* T+A PROC EXCEPT TONSILLECTOMY +/OR ADENOIDECTOMY ONLY, AGE >17	.5196	2.7	9
58	3	SURG	* T+A PROC EXCEPT TONSILLECTOMY +/OR ADENOIDECTOMY ONLY, AGE 0-17	.3097	1.5	3
59	3	SURG	* TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE >17	.3114	2.0	4
60	3	SURG	* TONSILLECTOMY AND/OR ADENOIDECTOMY ONLY AGE 0-17	.2616	1.5	3
61	3	SURG	* MYRINGOTOMY AGE >17	.4229	2.1	9
62	3	SURG	* MYRINGOTOMY AGE 0-17	.3089	1.3	3
63	3	SURG	OTHER EAR, NOSE + THROAT O.R. PROCEDURES	1.0975	5.8	28
64	3	MED	EAR, NOSE + THROAT MALIGNANCY	1.0700	5.7	28
65	3	MED	DYSEQUILIBRIUM	.4807	4.6	17
66	3	MED	EPISTAXIS	.4073	3.7	15
67	3	MED	* EPIGLOTTITIS	.6692	4.3	17
68	3	MED	OTITIS MEDIA + URI AGE >69 AND/OR C.C.	.6224	6.0	22
69	3	MED	OTITIS MEDIA + URI AGE 18-69 W/O C.C.	.5361	4.8	19
70	3	MED	* OTITIS MEDIA + URI AGE 0-17	.3659	3.1	10
71	3	MED	* LARYNGOTRACHEITIS	.3552	2.9	9
72	3	MED	NASAL TRAUMA + DEFORMITY	.4807	3.8	18
73	3	MED	OTHER EAR, NOSE + THROAT DIAGNOSES AGE >17	.5163	3.5	17
74	3	MED	* OTHER EAR, NOSE + THROAT DIAGNOSES AGE 0-17	.3427	2.1	9
75	4	SURG	MAJOR CHEST PROCEDURES	2.5773	14.4	36
76	4	SURG	O.R. PROC ON THE RESP SYSTEM EXCEPT MAJOR CHEST WITH C.C.	1.8539	10.6	33
77	4	SURG	O.R. PROC ON THE RESP SYSTEM EXCEPT MAJOR CHEST W/O C.C.	1.7989	9.5	32
78	4	MED	PULMONARY EMBOLISM	1.3949	10.4	32
79	4	MED	RESPIRATORY INFECTIONS + INFLAMMATIONS AGE >69 AND/OR C.C.	1.7795	11.2	33
80	4	MED	RESPIRATORY INFECTIONS + INFLAMMATIONS AGE 18-69 W/O C.C.	1.7264	10.9	33
81	4	MED	* RESPIRATORY INFECTIONS + INFLAMMATIONS AGE 0-17	.8652	6.1	28
82	4	MED	RESPIRATORY NEOPLASMS	1.1282	7.4	29
83	4	MED	MAJOR CHEST TRAUMA AGE >69 AND/OR C.C.	.9707	8.1	30
84	4	MED	* MAJOR CHEST TRAUMA AGE <70 W/O C.C.	.7658	5.3	22
85	4	MED	PLEURAL EFFUSION AGE >69 AND/OR C.C.	1.1342	8.4	30
86	4	MED	PLEURAL EFFUSION AGE <70 W/O C.C.	1.1100	7.6	30
87	4	MED	PULMONARY EDEMA + RESPIRATORY FAILURE	1.5368	7.7	30
88	4	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0304	7.5	30
89	4	MED	SIMPLE PNEUMONIA + PLEURISY AGE >69 AND/OR C.C.	1.0914	8.5	31
90	4	MED	SIMPLE PNEUMONIA + PLEURISY AGE 18-69 W/O C.C.	.9747	7.6	29

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
91	4	MED	* SIMPLE PNEUMONIA + PLEURISY AGE 0-17	.5078	4.6	14
92	4	MED	INTERSTITIAL LUNG DISEASE AGE >69 AND/OR C.C.	1.0262	7.8	30
93	4	MED	INTERSTITIAL LUNG DISEASE AGE <70 W/O C.C.	.9623	6.9	29
94	4	MED	PNEUMOTHORAX AGE >69 AND/OR C.C.	1.4225	9.2	31
95	4	MED	PNEUMOTHORAX AGE <70 W/O C.C.	1.1135	7.7	30
96	4	MED	BRONCHITIS + ASTHMA AGE >69 AND/OR C.C.	.7913	6.9	24
97	4	MED	BRONCHITIS + ASTHMA AGE 18-69 W/O C.C.	.7181	6.2	21
98	4	MED	* BRONCHITIS + ASTHMA AGE 0-17	.4231	3.7	11
99	4	MED	RESPIRATORY SIGNS + SYMPTOMS AGE >69 AND/OR C.C.	.7952	5.5	27
100	4	MED	RESPIRATORY SIGNS + SYMPTOMS AGE <70 W/O C.C.	.7650	5.1	24
101	4	MED	OTHER RESPIRATORY DIAGNOSES AGE >69 AND/OR C.C.	.8941	6.8	29
102	4	MED	OTHER RESPIRATORY DIAGNOSES AGE <70	.8930	5.1	28
103	5	SURG	* HEART TRANSPLANT	.0000	.0	0
104	5	SURG	** CARDIAC VALVE PROCEDURE WITH PUMP + WITH CARDIAC CATH	6.7815	20.9	43
105	5	SURG	** CARDIAC VALVE PROCEDURE WITH PUMP + W/O CARDIAC CATH	5.1764	16.2	38
106	5	SURG	** CORONARY BYPASS WITH CARDIAC CATH	5.2077	20.4	42
107	5	SURG	** CORONARY BYPASS W/O CARDIAC CATH	3.9476	13.5	35
108	5	SURG	CARDIOTHOR PROC,EXCEPT VALVE + CORONARY BYPASS,WITH PUMP	4.3301	13.3	35
109	5	SURG	CARDIOTHORACIC PROCEDURES W/O PUMP	3.6579	12.1	34
110	5	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROCEDURES AGE >69 AND/OR C.C.	2.9023	14.3	36
111	5	SURG	MAJOR RECONSTRUCTIVE VASCULAR PROCEDURES AGE <70 W/O C.C.	2.5582	13.2	35
112	5	SURG	VASCULAR PROCEDURES EXCEPT MAJOR RECONSTRUCTION	2.3256	11.2	33
113	5	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB + TOE	2.6522	21.6	44
114	5	SURG	UPPER LIMB + TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	2.0848	16.6	39
115	5	SURG	PERMANENT CARDIAC PACEMAKER IMPLANT WITH AMI OR CHF	3.8743	15.8	38
116	5	SURG	PERMANENT CARDIAC PACEMAKER IMPLANT W/O AMI OR CHF	2.8367	9.3	31
117	5	SURG	CARDIAC PACEMAKER REPLACE + REVIS EXC PULSE GEN REPL ONLY	1.8021	6.4	28
118	5	SURG	CARDIAC PACEMAKER PULSE GENERATOR REPLACEMENT ONLY	1.7624	4.2	18
119	5	SURG	VEIN LIGATION + STRIPPING	1.0500	7.2	29
120	5	SURG	OTHER O.R. PROCEDURES ON THE CIRCULATORY SYSTEM	2.4942	15.0	37
121	5	MED	** CIRCULATORY DISORDERS WITH AMI + C.V. COMP. DISCH. ALIVE	1.8454	11.9	34
122	5	MED	** CIRCULATORY DISORDERS WITH AMI W/O C.V. COMP. DISCH. ALIVE	1.3509	9.8	32
123	5	MED	CIRCULATORY DISORDERS WITH AMI, EXPIRED	1.1242	3.1	25
124	5	MED	CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH + COMPLEX DIAG	2.1969	8.4	30
125	5	MED	CIRCULATORY DISORDERS EXC AMI,WITH CARD CATH W/O COMPLEX DIAG	1.6284	5.0	27
126	5	MED	ACUTE + SUBACUTE ENDOCARDITIS	2.6368	18.4	40
127	5	MED	HEART FAILURE + SHOCK	1.0300	7.8	30
128	5	MED	DEEP VEIN THROMBOPHLEBITIS	.8549	9.6	28
129	5	MED	CARDIAC ARREST, UNEXPLAINED	1.5345	4.6	27
130	5	MED	PERIPHERAL VASCULAR DISORDERS AGE >69 AND/OR C.C.	.9545	7.1	29
131	5	MED	PERIPHERAL VASCULAR DISORDERS AGE <70 W/O C.C.	.9392	6.4	28
132	5	MED	ATHEROSCLEROSIS AGE >69 AND/OR C.C.	.9087	6.7	29
133	5	MED	ATHEROSCLEROSIS AGE <70 W/O C.C.	.8510	5.2	25
134	5	MED	HYPERTENSION	.6976	6.1	26
135	5	MED	CARDIAC CONGENITAL + VALVULAR DISORDERS AGE >69 AND/OR C.C.	.9819	6.1	28

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
136	5	MED	CARDIAC CONGENITAL + VALVULAR DISORDERS AGE 18-69 W/O C.C.	.9573	4.9	27
137	5	MED	* CARDIAC CONGENITAL + VALVULAR DISORDERS AGE 0-17	.6315	3.3	20
138	5	MED	CARDIAC ARRHYTHMIA + CONDUCTION DISORDERS AGE >69 AND/OR C.C.	.9200	5.7	27
139	5	MED	CARDIAC ARRHYTHMIA + CONDUCTION DISORDERS AGE <70 W/O C.C.	.8217	4.8	23
140	5	MED	ANGINA PECTORIS	.7470	5.5	21
141	5	MED	SYNCOPE + COLLAPSE AGE >69 AND/OR C.C.	.6408	5.0	21
142	5	MED	SYNCOPE + COLLAPSE AGE <70 W/O C.C.	.5621	4.3	18
143	5	MED	CHEST PAIN	.6743	4.4	19
144	5	MED	OTHER CIRCULATORY DIAGNOSES WITH C.C.	1.1150	7.0	29
145	5	MED	OTHER CIRCULATORY DIAGNOSES W/O C.C.	.9916	6.4	28
146	6	SURG	RECTAL RESECTION AGE >69 AND/OR C.C.	2.6801	19.1	41
147	6	SURG	RECTAL RESECTION AGE <70 W/O C.C.	2.4826	17.9	40
148	6	SURG	MAJOR SMALL + LARGE BOWEL PROCEDURES AGE >69 AND/OR C.C.	2.5228	17.0	39
149	6	SURG	MAJOR SMALL + LARGE BOWEL PROCEDURES AGE <70 W/O C.C.	2.1924	15.2	37
150	6	SURG	PERITONEAL ADHESIOLYSIS AGE >69 AND/OR C.C.	2.3499	15.3	37
151	6	SURG	PERITONEAL ADHESIOLYSIS AGE <70 W/O C.C.	2.0063	13.4	35
152	6	SURG	MINOR SMALL + LARGE BOWEL PROCEDURES AGE >69 AND/OR C.C.	1.4697	10.6	33
153	6	SURG	MINOR SMALL + LARGE BOWEL PROCEDURES AGE <70 W/O C.C.	1.2468	9.3	31
154	6	SURG	STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE >69 AND/OR C.C.	2.6621	14.8	37
155	6	SURG	STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE 18-69 W/O C.C.	2.3094	13.0	35
156	6	SURG	* STOMACH, ESOPHAGEAL + DUODENAL PROCEDURES AGE 0-17	.8382	6.0	20
157	6	SURG	ANAL PROCEDURES AGE >69 AND/OR C.C.	.7902	6.0	25
158	6	SURG	ANAL PROCEDURES AGE <70 W/O C.C.	.6341	5.2	19
159	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL + FEMORAL AGE >69 AND/OR C.C.	.9200	7.1	23
160	6	SURG	HERNIA PROCEDURES EXCEPT INGUINAL + FEMORAL AGE 18-69 W/O C.C.	.7596	6.0	18
161	6	SURG	INGUINAL + FEMORAL HERNIA PROCEDURES AGE >69 AND/OR C.C.	.6995	5.7	16
162	6	SURG	INGUINAL + FEMORAL HERNIA PROCEDURES AGE 18-69 W/O C.C.	.5793	4.8	12
163	6	SURG	* HERNIA PROCEDURES AGE 0-17	.4313	2.1	6
164	6	SURG	APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE>69 AND/OR C.C.	1.8130	11.9	33
165	6	SURG	APPENDECTOMY WITH COMPLICATED PRINC. DIAG AGE <70 W/O C.C.	1.5986	11.3	29
166	6	SURG	APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE >69 AND/OR C.C.	1.4179	9.4	29
167	6	SURG	APPENDECTOMY W/O COMPLICATED PRINC. DIAG AGE <70 W/O C.C.	1.0706	7.4	22
168	6	SURG	PROCEDURES ON THE MOUTH AGE >69 AND/OR C.C.	.8541	4.3	25
169	6	SURG	PROCEDURES ON THE MOUTH AGE <70 W/O C.C.	.8899	4.2	26
170	6	SURG	OTHER DIGESTIVE SYSTEM PROCEDURES AGE >69 AND/OR C.C.	2.6326	14.6	37
171	6	SURG	OTHER DIGESTIVE SYSTEM PROCEDURES AGE <70 W/O C.C.	2.3727	13.3	35
172	6	MED	DIGESTIVE MALIGNANCY AGE >69 AND/OR C.C.	1.2141	8.2	30
173	6	MED	DIGESTIVE MALIGNANCY AGE <70 W/O C.C.	1.0408	6.7	29
174	6	MED	G.I. HEMORRHAGE AGE >69 AND/OR C.C.	.9185	6.7	29
175	6	MED	G.I. HEMORRHAGE AGE <70 W/O C.C.	.8150	5.8	24
176	6	MED	COMPLICATED PEPTIC ULCER	1.2309	8.1	30
177	6	MED	UNCOMPLICATED PEPTIC ULCER >69 AND/OR C.C.	.7345	6.6	24
178	6	MED	UNCOMPLICATED PEPTIC ULCER <70 W/O C.C.	.6077	5.5	20
179	6	MED	INFLAMMATORY BOWEL DISEASE	1.0048	8.0	30
180	6	MED	G.I. OBSTRUCTION AGE >69 AND/OR C.C.	.8112	6.2	28

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
181	6	MED	G.I. OBSTRUCTION AGE <70 W/O C.C.	.7763	5.9	28
182	6	MED	ESOPHAGITIS,GASTROENT.+ MISC. DIGEST. DIS AGE >69 +/OR C.C.	.6121	5.4	22
183	6	MED	ESOPHAGITIS,GASTROENT.+ MISC. DIGEST. DIS AGE 18-69 W/O C.C.	.5593	4.8	19
184	6	MED	* ESOPHAGITIS, GASTROENTERITIS + MISC. DIGEST. DISORDERS AGE 0-17	.3782	3.3	11
185	6	MED	DENTAL + ORAL DIS. EXC EXTRACTIONS + RESTORATIONS,AGE >17	.6612	4.2	26
186	6	MED	* DENTAL + ORAL DIS. EXC EXTRACTIONS + RESTORATIONS,AGE 0-17	.4112	2.9	11
187	6	MED	DENTAL EXTRACTIONS + RESTORATIONS	.3949	2.7	8
188	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >69 AND/OR C.C.	.7367	5.1	27
189	6	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 18-69 W/O C.C.	.6508	4.5	23
190	6	MED	* OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.3344	2.1	8
191	7	SURG	MAJOR PANCREAS, LIVER + SHUNT PROCEDURES	4.1357	20.8	43
192	7	SURG	* MINOR PANCREAS, LIVER + SHUNT PROCEDURES	3.8790	20.1	42
193	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE >69 +/OR C.C.	2.4258	17.3	39
194	7	SURG	BILIARY TRACT PROC EXC TOT CHOLECYSTECTOMY AGE <70 W/O C.C.	1.9674	13.9	36
195	7	SURG	** TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE >69 AND/OR C.C.	2.1465	16.0	38
196	7	SURG	** TOTAL CHOLECYSTECTOMY WITH C.D.E. AGE <70 W/O C.C.	2.0380	15.8	38
197	7	SURG	** TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE >69 AND/OR C.C.	1.4714	11.5	29
198	7	SURG	** TOTAL CHOLECYSTECTOMY W/O C.D.E. AGE <70 W/O C.C.	1.2619	10.1	24
199	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.4319	17.9	40
200	7	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.5550	15.1	37
201	7	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.7007	16.9	39
202	7	MED	CIRRHOSIS + ALCOHOLIC HEPATITIS	1.1841	9.3	31
203	7	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.0823	8.0	30
204	7	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	.9581	7.5	30
205	7	MED	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE >69 AND/OR C.C.	1.0710	7.9	30
206	7	MED	DISORDERS OF LIVER EXC MALIG,CIRR,ALC HEPA AGE <70 W/O C.C.	.9151	6.8	29
207	7	MED	DISORDERS OF THE BILIARY TRACT AGE >69 AND/OR C.C.	.8404	6.6	28
208	7	MED	DISORDERS OF THE BILIARY TRACT AGE <70 W/O C.C.	.7239	5.5	24
209	8	SURG	MAJOR JOINT PROCEDURES	2.2674	17.1	39
210	8	SURG	HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >69 AND/OR C.C.	2.0617	17.8	40
211	8	SURG	HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 18-69 W/O C.C.	1.9327	15.9	38
212	8	SURG	* HIP + FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.6954	11.1	33
213	8	SURG	AMPUTATIONS FOR MUSCULOSKELETAL SYSTEM + CONN. TISSUE DISORDERS	2.1094	14.3	36
214	8	SURG	BACK + NECK PROCEDURES AGE >69 AND/OR C.C.	1.8236	15.6	38
215	8	SURG	BACK + NECK PROCEDURES AGE <70 W/O C.C.	1.4765	13.0	35
216	8	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE	1.5434	11.3	33
217	8	SURG	WND DEBRID + SKN GRFT EXC HAND,FOR MUSCSKELETAL + CONN.TISS.DIS	2.2587	13.1	35
218	8	SURG	LOWER EXTREM + HUMER PROC EXC HIP,FOOT,FEMUR AGE >69 +/OR C.C.	1.4102	10.9	33
219	8	SURG	LOWER EXTREM + HUMER PROC EXC HIP,FOOT,FEMUR AGE 18-69 W/O C.C.	1.0678	8.3	27
220	8	SURG	* LOWER EXTREM + HUMER PROC EXC HIP,FOOT,FEMUR AGE 0-17	.9242	5.3	25
221	8	SURG	KNEE PROCEDURES AGE >69 AND/OR C.C.	1.2595	8.3	30
222	8	SURG	KNEE PROCEDURES AGE <70 W/O C.C.	.9794	6.4	28
223	8	SURG	UPPER EXTREMITY PROC EXC HUMERUS + HAND AGE >69 AND/OR C.C.	1.0612	6.9	29
224	8	SURG	UPPER EXTREMITY PROC EXC HUMERUS + HAND AGE <70 W/O C.C.	.8859	5.6	24
225	8	SURG	FOOT PROCEDURES	.6409	4.8	15

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
226	8	SURG	SOFT TISSUE PROCEDURES AGE >69 AND/OR C.C.	.7901	5.1	27
227	8	SURG	SOFT TISSUE PROCEDURES AGE <70 W/O C.C.	.6271	4.2	18
228	8	SURG	GANGLION (HAND) PROCEDURES	.3588	2.2	7
229	8	SURG	HAND PROCEDURES EXCEPT GANGLION	.5936	3.4	14
230	8	SURG	LOCAL EXCISION + REMOVAL OF INT FIX DEVICES OF HIP + FEMUR	1.3453	8.9	31
231	8	SURG	LOCAL EXCISION + REMOVAL OF INT FIX DEVICES EXCEPT HIP + FEMUR	.9420	5.3	27
232	8	SURG	ARTHROSCOPY	.6000	3.6	15
233	8	SURG	OTHER MUSCULOSKELET SYS + CONN TISS O.R. PROC AGE >69 +/OR C.C.	1.7553	13.1	35
234	8	SURG	OTHER MUSCULOSKELET SYS + CONN TISS O.R. PROC AGE <70 W/O C.C.	1.2325	8.2	30
235	8	MED	FRACTURES OF FEMUR	1.7403	13.6	36
236	8	MED	FRACTURES OF HIP + PELVIS	1.3711	11.9	34
237	8	MED	SPRAINS, STRAINS, + DISLOCATIONS OF HIP, PELVIS + THIGH	.7847	6.4	28
238	8	MED	OSTEOMYELITIS	1.5350	12.3	34
239	8	MED	PATHOLOGICAL FRACTURES + MUSCULOSKELETAL + CONN.TISS.MALIGNANCY	1.0865	9.2	31
240	8	MED	CONNECTIVE TISSUE DISORDERS AGE >69 AND/OR C.C.	.9608	8.6	31
241	8	MED	CONNECTIVE TISSUE DISORDERS AGE <70 W/O C.C.	.8954	8.0	30
242	8	MED	SEPTIC ARTHRITIS	1.5715	11.2	33
243	8	MED	MEDICAL BACK PROBLEMS	.7473	7.5	30
244	8	MED	BONE DISEASES + SEPTIC ARTHROPATHY AGE >69 AND/OR C.C.	.7711	7.5	30
245	8	MED	BONE DISEASES + SEPTIC ARTHROPATHY AGE <70 W/O C.C.	.7102	6.3	28
246	8	MED	NON-SPECIFIC ARTHROPATHIES	.7073	6.8	28
247	8	MED	SIGNS + SYMPTOMS OF MUSCULOSKELETAL SYSTEM + CONN TISSUE	.6491	5.8	27
248	8	MED	TENDONITIS, MYOSITIS + BURSITIS	.6072	5.4	24
249	8	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE	1.0097	7.6	30
250	8	MED	FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE >69 +/OR C.C.	.7351	6.0	28
251	8	MED	FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE 18-69 W/O C.C.	.5902	4.2	26
252	8	MED	* FX,SPRNS,STRNS + DISL OF FOREARM,HAND,FOOT AGE 0-17	.3496	1.8	7
253	8	MED	FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE >69 +/OR C.C.	.7388	6.6	29
254	8	MED	FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE 18-69 W/O C.C.	.6193	5.3	27
255	8	MED	* FX,SPRNS,STRNS + DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4638	2.9	15
256	8	MED	OTHER DIAGNOSES OF MUSCULOSKELETAL SYSTEM + CONNECTIVE TISSUE	.8616	6.5	29
257	9	SURG	TOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR C.C.	1.0970	9.3	23
258	9	SURG	TOTAL MASTECTOMY FOR MALIGNANCY AGE <70 W/O C.C.	1.0618	8.9	21
259	9	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE >69 AND/OR C.C.	1.0036	7.4	29
260	9	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY AGE <70	.9228	6.4	27
261	9	SURG	BREAST PROC FOR NON-MALIG EXCEPT BIOPSY + LOC EXC	.7253	4.8	19
262	9	SURG	BREAST BIOPSY + LOCAL EXCISION FOR NON-MALIGNANCY	.4569	3.0	10
263	9	SURG	SKIN GRAFTS FOR SKIN ULCER OR CELLULITIS AGE >69 AND/OR C.C.	2.4480	21.3	43
264	9	SURG	SKIN GRAFTS FOR SKIN ULCER OR CELLULITIS AGE <70 W/O C.C.	2.1802	18.2	40
265	9	SURG	* SKIN GRAFTS EXCEPT FOR SKIN ULCER OR CELLULITIS WITH C.C.	1.4804	8.6	31
266	9	SURG	SKIN GRAFTS EXCEPT FOR SKIN ULCER OR CELLULITIS W/O C.C.	.9386	5.9	28
267	9	SURG	PERIANAL + PILONIDAL PROCEDURES	.6049	5.0	18
268	9	SURG	SKIN,SUBCUTANEOUS TISSUE + BREAST PLASTIC PROCEDURES	.5332	3.0	15
269	9	SURG	OTHER SKIN, SUBCUT TISS + BREAST O.R. PROC AGE >69 +/OR C.C.	.9844	5.7	28
270	9	SURG	OTHER SKIN, SUBCUT TISS + BREAST O.R. PROC AGE <70 W/O C.C.	.8039	4.5	27

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
271	9	MED	SKIN ULCERS	1.3659	12.1	34
272	9	MED	MAJOR SKIN DISORDERS AGE >69 AND/OR C.C.	.8530	7.8	30
273	9	MED	MAJOR SKIN DISORDERS AGE <70 W/O C.C.	.8200	7.3	29
274	9	MED	MALIGNANT BREAST DISORDERS AGE >69 AND/OR C.C.	1.0003	7.5	30
275	9	MED	MALIGNANT BREAST DISORDERS AGE <70 W/O C.C.	.8920	6.4	28
276	9	MED	NON-MALIGANT BREAST DISORDERS	.6003	4.2	22
277	9	MED	CELLULITIS AGE >69 AND/OR C.C.	.8771	8.3	30
278	9	MED	CELLULITIS AGE 18-69 W/O C.C.	.8012	7.2	29
279	9	MED	* CELLULITIS AGE 0-17	.4739	4.2	13
280	9	MED	TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE >69 +/OR C.C.	.6137	5.4	27
281	9	MED	TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE 18-69 W/O C.C.	.5321	4.2	23
282	9	MED	* TRAUMA TO THE SKIN, SUBCUT TISS + BREAST AGE 0-17	.3424	2.2	9
283	9	MED	MINOR SKIN DISORDERS AGE >69 AND/OR C.C.	.6328	5.3	27
284	9	MED	MINOR SKIN DISORDERS AGE <70 W/O C.C.	.5909	4.4	24
285	10	SURG	AMPUTATIONS FOR ENDOCRINE,NUTRITIONAL + METABOLIC DISORDERS	2.8360	24.0	46
286	10	SURG	* ADRENAL + PITUITARY PROCEDURES	2.8651	16.1	38
287	10	SURG	SKIN GRAFTS + WOUND DEBRIDE FOR ENDOC,NUTRIT + METAB DISORDERS	2.7851	22.8	45
288	10	SURG	* O.R. PROCEDURES FOR OBESITY	1.5532	10.0	24
289	10	SURG	PARATHYROID PROCEDURES	1.3593	8.3	29
290	10	SURG	THYROID PROCEDURES	.8460	6.0	17
291	10	SURG	* THYROGLOSSAL PROCEDURES	.4858	2.9	8
292	10	SURG	OTHER ENDOCRINE, NUTRIT + METAB O.R. PROC AGE > 69 +/OR C.C.	2.0096	10.8	33
293	10	SURG	* OTHER ENDOCRINE, NUTRIT + METAB O.R. PROC AGE <70 W/O C.C.	1.4796	8.0	30
294	10	MED	DIABETES AGE =>36	.8003	7.7	30
295	10	MED	DIABETES AGE 0-35	.7380	5.6	26
296	10	MED	NUTRITIONAL + MISC. METABOLIC DISORDERS AGE >69 AND/OR C.C.	.8886	7.3	29
297	10	MED	NUTRITIONAL + MISC. METABOLIC DISORDERS AGE 18-69 W/O C.C.	.7841	6.0	28
298	10	MED	* NUTRITIONAL + MISC. METABOLIC DISORDERS AGE 0-17	.7460	5.4	26
299	10	MED	INBORN ERRORS OF METABOLISM	.9309	6.8	29
300	10	MED	ENDOCRINE DISORDERS AGE >69 AND/OR C.C.	.9630	7.8	30
301	10	MED	ENDOCRINE DISORDERS AGE <70 W/O C.C.	.8058	6.4	28
302	11	SURG	KIDNEY TRANSPLANT	4.1840	24.1	46
303	11	SURG	KIDNEY,URETER + MAJOR BLADDER PROCEDURE FOR NEOPLASM	2.5133	16.2	38
304	11	SURG	KIDNEY,URETER + MAJ BLDR PROC FOR NON-MALIG AGE >69 +/OR C.C.	1.7765	12.8	35
305	11	SURG	KIDNEY,URETER + MAJ BLDR PROC FOR NON-MALIG AGE <70 W/O C.C.	1.6866	11.9	34
306	11	SURG	PROSTATECTOMY AGE >69 AND/OR C.C.	1.1281	8.6	30
307	11	SURG	PROSTATECTOMY AGE <70 W/O C.C.	.9414	7.2	26
308	11	SURG	MINOR BLADDER PROCEDURES AGE >69 AND/OR C.C.	1.0333	7.1	29
309	11	SURG	MINOR BLADDER PROCEDURES AGE <70 W/O C.C.	.9193	5.7	28
310	11	SURG	TRANSURETHRAL PROCEDURES AGE >69 AND/OR C.C.	.6998	4.9	20
311	11	SURG	TRANSURETHRAL PROCEDURES AGE <70 W/O C.C.	.5810	4.1	15
312	11	SURG	URETHRAL PROCEDURES, AGE >69 AND/OR C.C.	.7347	5.2	22
313	11	SURG	URETHRAL PROCEDURES, AGE 18-69 W/O C.C.	.6825	5.1	21
314	11	SURG	* URETHRAL PROCEDURES, AGE 0-17	.4323	2.3	11
315	11	SURG	OTHER KIDNEY + URINARY TRACT O.R. PROCEDURES	2.4625	9.8	32

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED	RENAL FAILURE	1.3176	6.7	29
317	11	MED	* ADMIT FOR RENAL DIALYSIS	.2360	1.2	3
318	11	MED	KIDNEY + URINARY TRACT NEOPLASMS AGE >69 AND/OR C.C.	.9047	5.5	28
319	11	MED	KIDNEY + URINARY TRACT NEOPLASMS AGE <70 W/O C.C.	.7859	4.2	26
320	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE >69 AND/OR C.C.	.8039	7.0	29
321	11	MED	KIDNEY + URINARY TRACT INFECTIONS AGE 18-69 W/O C.C.	.6732	5.6	23
322	11	MED	* KIDNEY + URINARY TRACT INFECTIONS AGE 0-17	.4506	3.7	13
323	11	MED	URINARY STONES AGE >69 AND/OR C.C.	.7057	4.9	26
324	11	MED	URINARY STONES AGE <70 W/O C.C.	.5415	3.9	19
325	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE >69 AND/OR C.C.	.7172	5.4	27
326	11	MED	KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE 18-69 W/O C.C.	.5814	4.3	21
327	11	MED	* KIDNEY + URINARY TRACT SIGNS + SYMPTOMS AGE 0-17	.4975	3.1	14
328	11	MED	URETHRAL STRICTURE AGE >69 AND/OR C.C.	.6440	4.8	22
329	11	MED	URETHRAL STRICTURE AGE 18-69 W/O C.C.	.5271	3.9	17
330	11	MED	* URETHRAL STRICTURE AGE 0-17	.2788	1.6	5
331	11	MED	OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE >69 AND/OR C.C.	.8826	6.3	28
332	11	MED	OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE 18-69 W/O C.C.	.7682	5.0	27
333	11	MED	* OTHER KIDNEY + URINARY TRACT DIAGNOSES AGE 0-17	.5093	3.2	18
334	12	SURG	MAJOR MALE PELVIC PROCEDURES WITH C.C.	1.5450	12.7	30
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O C.C.	1.3449	11.8	29
336	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE >69 AND/OR C.C.	.9974	8.4	22
337	12	SURG	TRANSURETHRAL PROSTATECTOMY AGE <70 W/O C.C.	.8403	7.2	17
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	.8975	6.3	28
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANT AGE >17	.6030	4.5	15
340	12	SURG	* TESTES PROCEDURES, NON-MALIGNANT AGE 0-17	.4335	2.4	7
341	12	SURG	PENIS PROCEDURES	.9879	6.0	23
342	12	SURG	CIRCUMCISION AGE >17	.4184	2.8	10
343	12	SURG	* CIRCUMCISION AGE 0-17	.3788	1.7	4
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.1088	7.4	29
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIG	.8247	5.6	27
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE >69 AND/OR C.C.	.9297	6.9	29
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, AGE <70 W/O C.C.	.8218	5.7	28
348	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE >69 AND/OR C.C.	.8772	6.2	28
349	12	MED	BENIGN PROSTATIC HYPERTROPHY AGE <70 W/O C.C.	.6925	4.9	22
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6033	5.2	20
351	12	MED	* STERILIZATION, MALE	.2627	1.3	3
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.6319	4.4	20
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY + VULVECTOMY	1.9175	12.4	34
354	13	SURG	NON-RADICAL HYSTERECTOMY AGE >69 AND/OR C.C.	1.0993	9.6	20
355	13	SURG	NON-RADICAL HYSTERECTOMY AGE <70 W/O C.C.	1.0050	8.8	17
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.8372	8.1	18
357	13	SURG	UTERUS + ADENEXA PROCEDURES, FOR MALIGNANCY	1.8989	13.9	36
358	13	SURG	UTERUS + ADENEXA PROC FOR NON-MALIGNANCY EXCEPT TUBAL INTERRUPT	1.0777	8.0	30
359	13	SURG	* TUBAL INTERRUPTION FOR NON-MALIGNANCY	.4235	2.3	7
360	13	SURG	VAGINA, CERVIX + VULVA PROCEDURES	.5923	4.2	19

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
361	13	SURG	* LAPAROSCOPY + ENDOSCOPY (FEMALE) EXCEPT TUBAL INTERRUPTION	.4813	2.6	10
362	13	SURG	* LAPAROSCOPIC TUBAL INTERRUPTION	.3094	1.4	3
363	13	SURG	D+C,CONIZATION + RADIO-IMPLANT, FOR MALIGNANCY	.6448	4.3	18
364	13	SURG	D+C,CONIZATION EXCEPT FOR MALIGNANCY	.3986	2.6	9
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.7778	12.7	35
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE >69 AND/OR C.C.	.8356	5.2	27
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM AGE <70 W/O C.C.	.5726	3.5	24
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.7861	6.7	29
369	13	MED	MENSTRUAL + OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.6887	5.1	27
370	14	SURG	* CESAREAN SECTION WITH C.C.	.9809	7.6	15
371	14	SURG	* CESAREAN SECTION W/O C.C.	.7457	6.1	10
372	14	MED	* VAGINAL DELIVERY WITH COMPLICATING DIAGNOSES	.5476	3.8	9
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.4021	3.2	9
374	14	SURG	* VAGINAL DELIVERY WITH STERILIZATION AND/OR D+C	.5435	3.6	7
375	14	SURG	* VAGINAL DELIVERY WITH O.R. PROC EXCEPT STERIL AND/OR D+C	.6817	4.4	15
376	14	MED	* POSTPARTUM DIAGNOSES W/O O.R. PROCEDURE	.4115	2.9	10
377	14	SURG	* POSTPARTUM DIAGNOSES WITH O.R. PROCEDURE	.4712	2.2	8
378	14	MED	* ECTOPIC PREGNANCY	.8010	5.5	11
379	14	MED	* THREATENED ABORTION	.3136	2.2	8
380	14	MED	* ABORTION W/O D+C	.2677	1.5	4
381	14	MED	* ABORTION WITH D+C	.3565	1.4	4
382	14	MED	* FALSE LABOR	.1823	1.2	2
383	14	MED	* OTHER ANTEPARTUM DIAGNOSES WITH MEDICAL COMPLICATIONS	.4272	3.4	14
384	14	MED	* OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.3211	2.2	9
385	15		* NEONATES, DIED OR TRANSFERRED	.6811	1.8	14
386	15		* EXTREME IMMATURITY, NEONATE	3.6480	17.9	40
387	15		** PREMATURITY WITH MAJOR PROBLEMS	1.8267	13.3	35
388	15		** PREMATURITY W/O MAJOR PROBLEMS	1.1571	8.6	31
389	15		* FULL TERM NEONATE WITH MAJOR PROBLEMS	.5425	4.7	16
390	15		* NEONATES WITH OTHER SIGNIFICANT PROBLEMS	.3486	3.4	9
391	15		* NORMAL NEWBORNS	.2218	3.1	7
392	16	SURG	SPLENECTOMY AGE >17	2.7458	16.4	38
393	16	SURG	* SPLENECTOMY AGE 0-17	1.5206	9.1	31
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD + BLOOD FORMING ORGANS	1.1030	6.1	28
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7758	6.1	28
396	16	MED	* RED BLOOD CELL DISORDERS AGE 0-17	.6230	4.1	18
397	16	MED	COAGULATION DISORDERS	.9761	6.7	29
398	16	MED	RETICULOENDOTHELIAL + IMMUNITY DISORDERS AGE >69 AND/OR C.C.	.8808	6.1	28
399	16	MED	RETICULOENDOTHELIAL + IMMUNITY DISORDERS AGE <70 W/O C.C.	.8371	5.6	28
400	17	SURG	LYMPHOMA OR LEUKEMIA WITH MAJOR O.R. PROCEDURE	2.7978	16.9	39
401	17	SURG	LYMPHOMA OR LEUKEMIA WITH MINOR O.R. PROC AGE >69 AND/OR C.C.	1.2280	8.9	31
402	17	SURG	* LYMPHOMA OR LEUKEMIA WITH MINOR O.R. PROCEDURE AGE <70 W/O C.C.	1.1198	7.1	29
403	17	MED	LYMPHOMA OR LEUKEMIA AGE >69 AND/OR C.C.	1.1593	7.1	29
404	17	MED	LYMPHOMA OR LEUKEMIA AGE 18-69 W/O C.C.	1.1665	6.4	28
405	17	MED	* LYMPHOMA OR LEUKEMIA AGE 0-17	1.0408	4.9	27

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPLASM W MAJ O.R.PROC + C.C.	2.2435	15.0	37
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O C.C.	2.1144	13.3	35
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL WITH MINOR O.R.PROC	1.1271	7.1	29
409	17	MED	* RADIOTHERAPY	.8049	5.7	28
410	17	MED	CHEMOTHERAPY	.3490	2.6	12
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.7146	4.7	27
412	17	MED	HISTORY OF MALIGNANCY WITH ENDOSCOPY	.3365	2.0	8
413	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE>69 +/OR C.C	1.0861	7.3	29
414	17	MED	OTHR MYELOPROLIF DISORD OR POORLY DIFF NEOPL DX AGE<70 W/O C.C.	1.0251	6.4	28
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS + PARASITIC DISEASES	2.9715	15.1	37
416	18	MED	SEPTECEMIA AGE >17	1.5343	9.2	31
417	18	MED	* SEPTECEMIA AGE 0-17	.7078	5.2	20
418	18	MED	POSTOPERATIVE + POST-TRAUMATIC INFECTIONS	.9864	8.4	30
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >69 AND/OR C.C.	.8538	6.9	29
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE 18-69 W/O C.C.	.7939	6.2	26
421	18	MED	VIRAL ILLNESS AGE >17	.5982	5.4	21
422	18	MED	* VIRAL ILLNESS + FEVER OF UNKNOWN ORIGIN AGE 0-17	.4315	3.2	10
423	18	MED	OTHER INFECTIOUS + PARASITIC DISEASES DIAGNOSES	1.1981	8.8	31
424	19	SURG	O.R. PROCEDURES WITH PRINCIPAL DIAGNOSIS OF MENTAL ILLNESS	2.1710	14.2	36
425	19	MED	ACUTE ADJUST REACT + DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.6741	5.8	28
426	19	MED	DEPRESSIVE NEUROSES	.9396	9.4	31
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.7598	6.9	29
428	19	MED	DISORDERS OF PERSONALITY + IMPULSE CONTROL	.9640	8.3	30
429	19	MED	ORGANIC DISTURBANCES + MENTAL RETARDATION	.9424	8.8	31
430	19	MED	PSYCHOSES	1.0820	10.8	33
431	19	MED	* CHILDHOOD MENTAL DISORDERS	2.2285	15.4	37
432	19	MED	* OTHER DIAGNOSES OF MENTAL DISORDERS	1.0416	7.2	29
433	20		** SUBSTANCE USE + SUBST INDUCED ORGANIC MENTAL DISORDERS, LEFT AMA	.4411	2.5	17
434	20		** DRUG DEPENDENCE	1.0296	9.1	31
435	20		** DRUG USE EXCEPT DEPENDENCE	1.0626	8.0	30
436	20		** ALCOHOL DEPENDENCE	.8761	8.1	30
437	20		** ALCOHOL USE EXCEPT DEPENDENCE	.6119	3.5	26
438	20		** ALCOHOL + SUBSTANCE INDUCED ORGANIC MENTAL SYNDROME	.8333	6.9	29
439	21	SURG	* SKIN GRAFTS FOR INJURIES	1.8030	8.9	31
440	21	SURG	* WOUND DEBRIDEMENTS FOR INJURIES	1.4653	7.2	29
441	21	SURG	* HAND PROCEDURES FOR INJURIES	.7105	3.0	16
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE >69 AND/OR C.C.	1.8828	9.1	31
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES AGE <70 W/O C.C.	1.5053	6.6	29
444	21	MED	MULTIPLE TRAUMA AGE >69 AND/OR C.C.	.8738	6.7	29
445	21	MED	MULTIPLE TRAUMA AGE 18-69 W/O C.C.	.7452	5.2	27
446	21	MED	* MULTIPLE TRAUMA AGE 0-17	.4796	2.4	10
447	21	MED	ALLERGIC REACTIONS AGE >17	.4735	3.7	19
448	21	MED	* ALLERGIC REACTIONS AGE 0-17	.3469	2.9	9
449	21	MED	TOXIC EFFECTS OF DRUGS AGE >69 AND/OR C.C.	.7255	5.6	28
450	21	MED	TOXIC EFFECTS OF DRUGS AGE 18-69 W/O C.C.	.5895	3.9	23

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

DRG	MDC		TITLE	RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	OUTLIER THRESHOLD
451	21	MED	* TOXIC EFFECTS OF DRUGS AGE 0-17	.2882	2.1	8
452	21	MED	COMPLICATIONS OF TREATMENT AGE >69 AND/OR C.C.	.8404	5.5	28
453	21	MED	COMPLICATIONS OF TREATMENT AGE <70 W/O C.C.	.8926	5.1	27
454	21	MED	OTHER INJURIES, POISONINGS + TOXIC EFF DIAG AGE >69 AND/OR C.C.	.8139	5.3	27
455	21	MED	* OTHER INJURIES, POISONINGS + TOXIC EFF DIAG AGE <70 W/O C.C.	.6121	3.5	22
456	22		** BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	2.0685	11.6	34
457	22		** EXTENSIVE BURNS	6.7918	12.6	35
458	22	SURG	** NON-EXTENSIVE BURNS WITH SKIN GRAFTS	2.8275	18.3	40
459	22	SURG	** NON-EXTENSIVE BURNS WITH WOUND DEBRIDEMENT + OTHER O.R. PROC	2.7282	12.7	35
460	22	MED	** NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.4077	9.0	31
461	23	SURG	O.R. PROC WITH DIAGNOSES OF OTHER CONTACT WITH HEALTH SERVICES	1.6335	8.0	30
462	23	MED	* REHABILITATION	1.8078	13.5	36
463	23	MED	SIGNS + SYMPTOMS WITH C.C.	.7622	6.3	28
464	23	MED	SIGNS + SYMPTOMS W/O C.C.	.7246	6.0	28
465	23	MED	** AFTERCARE WITH HISTORY OF MALIGNANCY AS SECONDARY DX	.2049	1.5	4
466	23	MED	** AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DX	.6311	3.7	26
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.9697	6.1	28
468			UNRELATED OR PROCEDURE	2.0818	11.2	33
469			***PDX INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	0
470			***UNGROUPABLE	.0000	.0	0

* MEDPAR DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRG CATEGORIES COMBINED (IN PAIRS) IN THE CALCULATION OF THE CASE MIX INDEX.
*** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.

BILLING CODE 4120-03-C

V. Technical Explanation of the Budget Neutrality Adjustment Methodology

A. Overview

Section 1886(e)(1) of the Act requires that, for FYs 1984 and 1985, prospective payments be adjusted so that aggregate payments for the operating costs of inpatient hospital services are neither more nor less than we estimate would have been paid under prior legislation for the costs of the same services. To implement this provision, we are making actuarially determined adjustments to the average standardized amounts used to determine Federal national and regional payment rates and to the updating factors used to determine the hospital-specific per case amounts incorporated in the blended transition payment rates for FYs 1984 and 1985. Section 1886(d)(6) of the Act requires that the annual published notice of the methodology, data and rates include an explanation of any budget neutrality adjustments. This section is intended to fulfill that requirement.

In determining the amount of the budget neutrality adjustment factors, we have considered all hospital costs, including pass-through costs such as capital-related and direct medical education costs. However, it should be noted that the *aggregate payments* that will be adjusted to be budget neutral do not include payment for capital-related costs or direct medical education costs, payments for hospital and distinct part unit services excluded from the prospective payment system, payment of a return on equity capital, or payments on a reasonable cost basis to hospitals under the prospective payment system for outpatient services. The costs of anesthetists services are also excluded for hospital cost reporting periods beginning in FY 1985.

For payments in FY 1985, we must take into consideration two situations that did not affect the determination of budget neutrality adjustments for payments in FY 1984. First, effective October 1, 1984, the Federal rate will be a blend of national and regional rates. As a result, we must compute separate estimated per discharge payments for Federal national and regional rates, separate outlier adjustments for those rates, and a budget neutrality adjustment factor for each Federal rate. In addition, during FY 1985 each hospital will experience a change in the blending ratio of its transition payment rates as it enters the cost reporting period beginning on or after October 1, 1984. For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1984, the transition payment rate is a blend of 75 percent hospital-specific rates and 25 percent Federal rates. For cost reporting periods beginning on or after October 1, 1984 and before October 1, 1985, the blend is 50 percent hospital-specific rates and 50 percent Federal rates. These facts must be reflected at several different points in the methodology, as discussed below.

The budget neutrality adjustments required by the statute are determined by comparing an estimate of FY 1985 reimbursement per discharge, as it would have been under the law in effect prior to enactment of Pub. L. 98–21, with estimates of DRG-related payments per discharge under both regional and national Federal rates (including outlier payments, and payments for the indirect costs of medical education, before budget neutrality adjustment) and with an estimate of the hospital-specific payments per discharge (before budget neutrality adjustment). Therefore, payment under each of the four systems (reasonable cost reimbursement, Federal regional rates, Federal national rates, and hospital-specific rates) must be estimated separately.

Based on the estimates of projected payments under all four systems, we must derive three budget neutrality adjustment factors for FY 1985. The first such factor will be applied in computing Federal regional rates for FY 1985. The second budget neutrality adjustment factor will be applied in computing Federal national rates for FY 1985. The third budget neutrality adjustment factor will be applied in computing the updating factors used to determine the hospital-specific portion of transition payment rates for cost reporting periods beginning during FY 1985.

Although, for methodological reasons, the budget neutrality adjustment is calculated on a per discharge basis, it should be emphasized that the ultimate comparison is between the aggregate payments to be made under the prospective payment system and the aggregate payments that would have been incurred had the prior legislation remained in effect. Therefore, changes in hospital behavior from that which would have occurred in the absence of the prospective payment system are required to be taken into account in determining the budget neutrality adjustment if they affect aggregate payment. For example, if admissions were to increase or decrease under prospective payment beyond the level that would have occurred under prior law, that would have to be considered in the adjustment. However, since we have observed no change in admissions beyond the level that would have occurred under prior law, we are making no adjustment for admission levels.

B. Assumptions and Data

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) established a DRG-adjusted limit on the allowable amount of inpatient operating costs per case and a per case limit on the rate of increase of operating costs of inpatient hospital services. If TEFRA had remained in effect, the DRG-adjusted limit on per case costs would have been set at 115 percent of the mean for cost reporting periods beginning in FY 1984, and at 110 percent of the mean for cost reporting periods beginning in FY 1985. Further, although a hosptial that had allowable costs in excess of its rate of increase target amount could expect to be paid for 24 percent of those costs for a cost reporting period beginning in FY 1983 or 1984, it would be paid no more than its target amount per case for its cost reporting period beginning in FY 1985.

Due to the TEFRA per case limits, the incentives that influence hospital admission patterns are similar under TEFRA and prospective payment. In developing the budget neutrality adjustment factors for the first year under prospective payment, we assumed that the number of admissions under both prior law and the prospective payment system will be the same. As a result, the budget neutrality factors can be calculated by comparing reimbusement per discharge for each of the four systems, and there is no need to estimate an actual number of hospital admissions.

Most hospitals have cost reporting periods beginning and ending on dates that do not coincide with the beginning and ending of Federal fiscal years. Further, at the beginning of a hospital's second cost reporting period under the prospective payment system, the blend between the hospital-specific and Federal portions of the hospital's transition payment rate changes, and the hospital's hospital-specific rate is updated using the most recent updating factor (see section II. D.1.b. in this Addendum). As a result, during FY 1985, most hospitals will have two separate hosptial-specific rates and two separate blends of Federal and hospital-specific rates. (The Federal rate blend of regional and national portions changes at the beginning of FY 1985, not at the beginning of hospital cost-reporting periods, and is therefore constant throughout FY 1985.)

To properly allocate the various payment rates, we developed a

distribution of discharges that accounts for:

- The proportion of discharges that occur on or after the beginning of FY 1985 (October 1, 1984) and on or before the end date of the hospital's cost reporting period; and
- The complementary proportion of discharges that occur on or after the beginning date of the hospital's new cost reporting period and on or before the end of the Federal fiscal year (September 30, 1985).

This distribution, which was developed from the March 1983 update of the 1982 discharge notice file, was applied to the number of discharges in the hospital's 1981 data. This procedure properly weights the relative sizes of hospitals and cost reporting period distributions for computing payments per discharge.

Since the prospective payment system is to be budget neutral for included hospitals, and since the prospective payment system will not change payments to hospitals that are excluded from that system, excluded hospitals were removed from the estimates (for example, long term care, psychiatric, and children's hospitals). Further, four States (Maryland, Massachusetts, New Jersey, and New York) currently operate alternative reimbursement systems under Medicare waivers. Since payment amounts in these States will not change because of the prospective payment system, hospitals in these States were removed from the estimation of payment per discharge under each of the systems for purposes of determining budget neutrality.

We also assumed that the means of affording exceptions or special treatment for sole community hospitals under different systems would provide comparable relief to those relatively few hospitals that qualify for such exceptions and treatment. Since the amounts of special payments to these hospitals are assumed to be the same under all four systems, the budget neutrality determination is not affected by these payments. Therefore, we did not make explicit allowance for additional payments to these hospitals in our estimates and comparisons.

Section 1886(e)(1) of the Act requires that total payments under the Federal systems and under the hospital-specific rate system be the same as total payments that would have been payable under provisions of the prior law (that is, the limits that would have been implemented under provisions of TEFRA for FY 1985). To achieve this we have equalized the amounts payable under the Federal rates (both regional and national) and hospital-specific rate systems with those that would have been payable on a periodic basis under TEFRA, not with the total end-of-year cash amounts. As a result, changes of cash flow, timing of payments, and retroactive payments will not affect the budget neutrality determination.

Operating costs are defined differently under the different systems. We excluded malpractice costs and kidney acquisition costs from operating costs under the TEFRA limits. However, both Federal rate systems and the hospital-specific rate system exclude the same kidney acquisition costs but include malpractice costs under operating costs. Further, for hospital cost reporting periods beginning in FY 1985, the costs of services of nonphysician anesthetists must be included in nonoperating costs under both Federal rate systems. We must use a method of comparing costs that takes into account "the payment amounts which would have been payable for such services for those same hospitals", as required under section 1886(e)(1)(A)(ii) of the Act. The actual amounts paid are comparable only if we include both operating and nonoperating costs. Therefore, if we were to compare only the operating costs of the different payment systems we would not fulfill the statutory requirement. Hence, nonoperating costs (excluding payments to proprietary hospitals for a return on equity capital) must also be included in the calculation of the budget neutrality adjustment factors. By using total costs, including nonoperating costs, in the comparisons necessary to determine budget neutrality adjustments, we will ensure that the amounts considered under both Federal rate systems and the hospital-specific rate system are comparable to amounts payable under prior law.

These comparisons will yield adjustments reflecting differences between the systems in a way that prevents distortions by differing definitions of operating costs. The nonoperating costs per discharge were computed using data from the same cost reports and the same increase assumptions as for operating costs. Hence, any inaccuracies in nonoperating cost assumptions would also affect the operating cost estimates in the same manner, so that the effect on the budget neutral factors would be negligible. Further, only the *difference* between prospective payment nonoperating costs and TEFRA nonoperating costs affects the budget neutrality factor. Since the difference is extremely small, the impact of any inaccuracies is minimal.

The equations below illustrate that comparing total costs in determining budget neutrality adjustments produces results identical to those that would have been produced using only operating costs under the Federal national rate system and comparable costs under the TEFRA system.

Cost Components Under Federal Rate and TEFRA systems

(Federal national rate × budget neutral factor) + anesthetists costs = TEFRA operating costs + Malpractice costs

Federal national rate × budget neutral factor + (kidney acquisition costs + capital costs + direct medical education costs + anesthetists costs) = TEFRA operating costs + (Malpractice costs + capital costs + kidney acquisition costs + direct medical education costs)

Federal national rate × budget neutral factor + Federal system nonoperating costs = TEFRA operating costs + TEFRA nonoperating costs

The analysis is identical for the Federal regional rate system and the hospital-specific rate system. Note that payments for a return on equity (which are not classified as operating costs) are excluded from the equations. Since the amounts for return on equity differ among the systems, adding in return on equity would unbalance the equations. (Under prior law, which must be reflected in the TEFRA estimates, the rate of return was set at 1.5 times the Hospital Insurance Trust Fund interest rates, whereas under Pub L. 98–21 the rate of return applicable to the costs related to inpatient hospital services was reduced to 1.0 times that rate.)

C. Estimated Payment Per Discharge Under Prior Law (TEFRA Limits)

To estimate payment per discharge under prior law, the TEFRA limits that would have been published must first be determined. These limits are calculated in the same manner as the FY 1983 limits, except that more recently available data (that is, 1981 cost report and billing data) are used, and the FY 1984 and 1985 limits are set at 115 and 110 percent of the mean, respectively, instead of 120 percent of the mean, in accordance with section 1886 (a)(1)(A)(ii) of the Act. In addition, for cost reporting periods beginning in FY 1985, we would have discontinued payment of 25 percent of the excess costs over a hospital's target amount. The FY 1984 limits are computed using the same cost per discharge assumptions and market basket increase published on January 3, 1984. Since the FY 1984 limits would have been promulgated by October 1, 1983 under the prior law, they must be computed using data and assumptions comparable to what would have been available at the time of

issuance, rather than data or assumptions developed subsequently.

Both FY 1984 and 1985 limits were increased by 0.1326 percent to account for the shift to Part A of the cost of certain services furnished by physicians to providers as a result of the regulations on payment for those physicians' services published March 2, 1983. (These rules implement section 1887 of the Act, established by section 108 of TEFRA. (48 FR 8902; 43 CFR 405.480 through 405.482, and 405.550 through 405.556.))

To estimate payment per discharge under the TEFRA limits, cost per discharge must be estimated for each hospital and compared to the costs allowable under the TEFRA limits, that is, DRG-adjusted cost per case limits on inpatient operating costs and the separate limit on the rate of increase of those costs. Since the rate of increase target rate percentage is less than the average rate of increase in hospital costs, comparison of the rate of increase target rate percentage to the average rate of increase in hospital costs would lead to the conclusion that all hospitals would be penalized by the rate of increase limit and that no hospital would receive a bonus. To overcome this erroneous conclusion, the rate of increase target must be compared to cost increases that vary by hospital.

Under section 1886(b)(1) of the Act, a hospital that has per case costs less than its target amount would be paid a bonus of 50 percent of the amount by which the target amount exceeds its cost, or five percent of its target amount, whichever is less. Alternatively, a hospital that has costs in excess of its target amount for any cost reporting periods beginning in FYs 1983 or 1984 would be paid only 25 percent of its costs in excess of the target amount. However, such a hospital would be paid no more than its target amount per discharge for any cost reporting period beginning on or after October 1, 1984.

Hospital cost per discharge data for cost report years 1978, 1979, 1980, and 1981 were analyzed for patterns in rates of increase in costs per discharge. Since the second year of TEFRA uses a two-year rate of increase target over the hospital's base year, and the third year uses a three-year rate of increase target, we analyzed both two-year and three-year rates of increases.

We developed two empirical distributions covering two-year periods of hospitals' percentage rates of cost increase from the available data for 1978 to 1981, inclusive. The means of the two distributions differed, but, for both distributions, the best-fit normal distribution had a standard deviation of 12 percent. In addition, for both cases the standard error of the fit was less than 0.2 percent. Hence, both empirical distributions showed a close fit to normal distribution. In addition, their standard deviations were equal, even though the means were different. Similarly, we found that a normal distribution with a standard deviation of 17 percent closely approximated the three-year rate of increase distribution.

To compute a hospital's cost per discharge for comparison to the hospital's TEFRA rate-of-increase target amount, the hospital's base year costs were increased by a randomly determined factor. For cost reporting periods beginning in FY 1984 this factor was computed by adding the estimated two-year average rate of increase in cost per case to a random number. This random number is generated from a statistical distribution that is normal with a mean of zero, and has a standard deviation of 12 percent. For cost reporting periods beginning in FY 1985, the factor was computed by adding the estimated three-year average rate of increase to a random number generated from the normal distribution with a mean of zero and a standard deviation of 17 percent. In all cases, the random numbers were restricted so that none were further than three standard deviations from the mean. This randomly determined cost per admission for a hospital was compared to the rate of increase limit target amount for determining the reimbursement per discharge under TEFRA. Because of the randomizing process, not all hospitals are shown to be penalized by the target. Hospitals with cost per case over the target amount for reporting periods beginning in FY 1984 are shown as receiving one quarter of their excess costs over that limit. Hospitals with costs over the target amount for periods beginning in FY 1985 are shown as receiving no more than the limits. For purposes of this estimate, payments to those hospitals assigned rates of increase that would result in bonus payments are affected by cost reporting period beginning dates only in relation to the applicable target rate percentage, since the method for determining the amount of bonus payments does not change. To measure the overall stability, the model was tested with ten different sets of random numbers and found to be stable.

The cost per discharge that is compared to the TEFRA limits was adjusted by 0.1326 percent before comparison to the TEFRA limits to account for the shift of certain types of costs to Part A of Medicare because of the regulations on payment for physician's services to patients and providers, published March 2, 1983 and referred to above. Since this adjustment increases the costs of hospitals below the limits, it will have the effect of raising slightly the estimate of TEFRA payment per discharge.

D. Estimated Payment on a Federal Rate (DRG) Basis

The estimated payments per discharge based on DRG-related payments (that is, Federal rates plus outlier payments) were computed separately for national and regional Federal rates and were estimated by directly using the appropriate national or regional adjusted average standarized amounts, adjusted by the applicable wage index, cost of living adjustment (for hospitals in Alaska and Hawaii), and case mix for each hospital. Additional outlier payments were computed using each hospital's historical experience in the MEDPAR file. The payment amounts were further adjusted to include the indirect costs of medical education.

Before the ratios of estimated DRG-related payments to the estimated payments under prior law are computed, we made adjustments to reflect the provisions of these regulations and certain changes of circumstances.

These adjustments take into account:

- The difference in case mix between cases actually reported under the prospective payment system and the 1981 MEDPAR file;
- Payment for transfer cases at less than the full DRG-related payment rate;
- Payment to hospitals located in MSAs that cross census division (regional) boundaries based on the regional rate of the region in which most of the hospitals in the affected MSA are located;
- Payment to hospitals reclassified from urban to rural by the EOMB MSA redesignation;
- The projected increased number of rural referral centers expected to meet the new criteria; and
- Increased nonoperating costs as result of paying for nonphysician anesthetist services on a cost basis.

To adjust for the latest case-mix data, we increased the estimated regional and national payment rates by 4.47 percent, which is the compounded combination of the 3.38 and 1.05 percent increases ($1.0338 \times 1.0105 = 1.0447$). The derivation of this factor is discussed earlier in this Addendum. Since the relative weight for each DRG was reduced by 1.05 percent, as described earlier in this Addendum, this 4.47 percent adjustment is actually

split between the 1.05 percent adjustment in the DRG relative weights, and the 3.38 percent case mix increase factor we developed for the FY 1984 Federal rates.

In order to take the level of payment for transfer cases into account, we computed the transfer savings by month for each hospital using the prospective payment billing data described above. For each transfer case, we subtracted the actual payment from the standard payment for the DRG assigned to that case, then we summed the savings for all transfers in each month to determine the total transfer savings by month. We then divided each hospital's transfer savings by month by the total of what the standard payments would have been for that month if all discharges, including transfers, had been paid at the full DRG-adjusted rate. We then weighted the savings ratios for each hospital by month by the 1981 MEDPAR discharge data for the corresponding months. By this means, we determined that the average payment per case was 0.5 percent lower than if all transfer cases had been paid at the full rate for the applicable DRG.

To reflect the proposed changes affecting hospitals in MSAs that cross census division (regional) boundaries, we took into account the change in payments to hospitals whose regional rates changed as a result of reclassification. The estimated national payment rates are not affected by this provision.

Similarly, we recomputed the estimated national and regional payment rates using the payment rates that would apply for FY 1985 for hospitals that were reclassified from urban to rural as a result of the June 1983 EOMB redesignation of MSAs. For those hospitals so affected, we would pay, for cost reporting periods beginning in FY 1984, two-thirds of the difference between the applicable Federal urban and rural rates, and for cost reporting periods beginning in FY 1985, one-third of the difference between the applicable Federal urban and rural rates.

We also recomputed the estimated national and regional payment rates to reflect appropriate payments to existing referral centers with more than 500 beds and to new rural referral centers with less than 500 beds. We identified rural hospitals in the 1981 cost report files and MEDPAR files with admissions and case-mix index values meeting the national and regional criteria for rural referral centers with less than 500 beds. For these hospitals, we substituted urban for rural adjusted average standardized amounts.

Under section 2312 of Pub. L. 98-369, the costs to the hospital of the services of nonphysician anesthetists will be reimbursed in full by Medicare on a reasonable cost basis. In order to ensure that these costs will be paid for only once, we must remove them from prospective payments. For purposes of determining budget neutrality, we must include these costs in the nonoperating costs under both Federal rate systems.

To estimate the increase in nonoperating costs, we made use of data provided to us by the American Association of Nurse Anesthetists. From the data provided, we determined that there are about 20,000 nurse anesthetists, about one-half of whom are employed by hospitals for inpatient care. Their average 1982 salary was $36,775 in the direct patient care category. Twenty percent must be added for fringe benefits. We used these data and inflated them to FY 1985 using the labor component of the hospital input price index (market basket) to estimate an average FY 1985 total compensation level of $53,554. The average compensation level times one half of the of the 20,000 nurse anesthetists times the 40 percent Medicare share of inpatient days yields an estimated 1985 full year cost to Medicare of about $214 million. $214 million divided by the estimated FY 1985 Medicare operating costs for all hospitals (including hospitals not paid under the prospective payment system) yields the 0.5 percent adjustment factor. We applied the 0.5 percent factor the estimated costs for each hospital and added it to the nonoperating costs for each hospital.

For purposes of this methodology, we did not directly reduce the estimated operating reimbursements for FY 1985 under either Federal rate system because any required adjustment will be part of the budget neutrality factors to be applied to the national and regional standardized amounts.

We did not increase the estimated national or regional payments to reflect the costs of hospital-based physicians' services shifted from Part B to Part A as a result of the regulations published March 2, 1983. The law does not authorize us to adjust the standardized amounts for the effect of those regulations. However, we increased the estimated average per case payments for both hospital-specific rates and payments under prior law to reflect the March 2, 1983 regulations, thus indirectly increasing the national and regional adjusted standardized amounts for FYs 1984 and 1985. Our reasons for making this adjustment in only the latter two cases are quite specific. First, the hospital-based physician regulations were primarily intended to implement section 10B of TEFRA. As such, they are clearly related to the Social Security Act as it stood on April 19, 1983, and should be included, with the case-mix limits and rate of increase limit, among provisions affecting payment levels under previous law. Second, the methodology used by intermediaries to determine each hospital's hospital-specific rate permits hospitals to submit data on this shift from Part B to Part A for purposes of adjusting base-year costs. Thus, the hospital-specific estimates would be inaccurate if we failed to take into account the hospital-based physicians regulations.

By increasing the estimated average per case payments under prior law, we increase the amount against which estimated prospective payments are compared to determine the budget neutrality adjustment. This increases the budget neutrality adjustment factor, which in turn results in higher payments under the prospective payment system. Hence, the adjustment for the hospital-based physicians regulations is reflected in both the Federal rate systems and the hospital-specific rate system, even though the standardized amounts from which the Federal rates are determined are not explicitly adjusted. Further, if the Federal rates did reflect explicit adjustment for the hospital-based physicians regulations, the resulting Federal rate budget neutrality adjustment factor would have been lower than it actually is. The net result would be virtually identical.

E. Estimated Hospital-Specific Payment Per Discharge

To properly estimate the payments per discharge based on the hospital-specific rates to be used during the transition period, the hospital's base year cost per case must first be estimated, since actual base year data are not available currently. To estimate the base year cost, the 1981 cost report data were adjusted by the change in the nursing differential from 1981 to the base year. These data were updated to the base year and the resulting routine operating costs were compared with the appropriate routine cost limit applicable to base year cost reporting periods, as calculated from the September 30, 1981 Federal Register notice, to compute the savings resulting from application of the routine cost limits. Total costs were also reduced by the remainder of the amounts based on the Medicare nursing differential, since section 103 of TEFRA, by amending section 1861(v)(1)(J) of the Act, eliminated this differential effective

with services furnished on or after October 1, 1982.

Operating costs were computed by carving direct medical education, capital-related, and certain kidney acquisition costs out of total costs. Operating costs were increased by 0.18 percent and 0.13 percent to adjust, respectively, for the extra estimated costs hospitals will report for their base year because of required coverage of their employees under FICA (as required by section 1886(b)(6) of the Act) and for the requirement that certain services are now required to be paid under Part A of Medicare, which were formerly paid under Part B (as required by section 1886(b)(5)(D) of the Act). Operating costs were further increased by 0.1326 percent to account for the shift of certain types of costs to Part A of Medicare because of the regulations on payment for physicians' services to patients and providers, published March 2, 1983 and referred to above.

We increased the nonoperating costs for each hospital by 0.5 percent of estimated operating costs in order to reflect the payment for costs of nonphysician anesthetists services on a cost basis. Since, to implement section 2312 of Pub. L. 98-369, each hospital's hospital-specific portion will be recomputed to carve out the costs of nonphysician anesthetists, we reduced the estimated hospital-specific rate for each hospital by the same amount that we added to the nonoperating costs.

For hospital cost reporting periods beginning in FY 1984, we inflated the base year operating costs by two years of the market basket index increased by one percentage point for each year, using the market basket index values published in the January 3, 1984 final rule. For hospital cost reporting periods beginning in FY 1985, we increased each hospital's estimated hospital-specific rate by the most recently available market basket index values plus one-quarter of one percentage point. We then increased the resulting amount for each hospital by 4.47 percent to account for increases in reported case mix, divided by 1.0105 to account for the revision of the DRG relative weights, and decreased the amount by 0.5 percent to account for payment for transfer cases at less than the full DRG-related amount. These adjustments are discussed above in the section on Federal rates.

F. Adjustment for Outlier Payments

Sections 1886(d)(2)(E) and (d)(3)(B) of the Act require that the average standardized amounts for the Federal rates be reduced so that, when combined with the outlier payments, the resulting payments will be the same as payments under a DRG-related system with no outlier payments but full standard DRG-adjusted rates.

The determination of the outlier payment criteria budget neutrality adjustment was done only with respect to hospitals that will be reimbursed under the prospective payment system, since outlier payments and standard payments under the prospective payment system will not be on behalf of excluded hospitals and hospitals in waiver States. Reimbursement to excluded hospitals and hospitals in wavier States is not changed by the provisions of the prospective payment system.

The outlier criteria were calibrated using experience in the 1981 MEDPAR file so that outlier payments would be five percent of total Federal rate payments.

Since the outlier criteria were calibrated to yield outlier payments equal to five percent of Federal rate payments, the outlier adjustment for both the national and regional rates is 1−.05=.95.

G. Calculation of Budget Neutrality Adjustment Factors

As noted above, we must compute three budget neutrality adjustment factors—one each for adjusting Federal national and regional rates and the other for adjusting the updating factors used to determine the hospital-specific rates. Further, the Federal rate blend changes effective October 1, 1984, and each hospital's blending ratio of hospital-specific and Federal rates will change during FY 1985. To reflect these factors in computations of the budget neutrality adjustment factors, we have weighted estimated payment rates and outlier payments by the discharges that would be paid under each blending ratio.

1. Federal Regional Rate Budget Neutrality Adjustment

Since the standard Federal rate before outlier adjustment, by definition, equals the outlier adjusted Federal rate plus outlier adjusted outlier payments, the former can be substituted for the latter in computing budget neutrality while producing identical results.

For the Federal regional rate system, the following equation must be solved:

Federal regional standard weighted payment per discharge × Federal regional rate budget neutral factor (FRBN) + Federal rate system weighted nonoperating cost per discharge = weighted TEFRA operating reimbursement per discharge + weighted TEFRA nonoperating cost per discharge.

EXAMPLE: COMPUTATION OF FEDERAL REGIONAL RATE BUDGET NEUTRALITY ADJUSTMENT FACTOR (FRBN)

Estimated values:	
TEFRA operatiang reimbursement per discharge (Federal blend weighted)	$1,362.86
TEFRA nonoperating cost per discharge (Federal blend weighted)	153.76
Weighted Federal regional rate standard payment per discharge	1,442.53
Weighted Federal nonoperating cost per discharge	145.56

Solve:
$1,442.53 × FRBN + $145.56=$1,362.86+153.76
FRBN=($1,362.86 + $153.76−$145.56) divided by $1,442.53=.950

2. Federal National Rate Budget Neutrality Adjustment

For the Federal national rate system, the following equation must be solved:

Federal national standard weighted payment per disharge × Federal national rate budget neutral factor (FNBN) + Federal rate system weighted nonoperating cost per discharge = weighted TEFRA operating reimbursement per discharge + weighted TEFRA nonoperating cost per discharge.

EXAMPLE: COMPUTATION OF FEDERAL NATIONAL RATE BUDGET NEUTRALITY ADJUSTMENT FACTOR (FNBN)

Estimated values:	
TEFRA operating reimbursement per discharge	$1,362.86
TEFRA nonoperating cost per discharge	153.76
Federal national rate standard payment per discharge	1,436.73
Federal nonoperating cost per discharge	145.56

Solve:
$1,436.73 × FNBN + $145.56=$1,362.86+153.76
FNBN=($1,362.86 + $153.76−$145.56) divided by $1,436.73=.954

3. Hospital-Specific Rate Budget Neutrality Adjustment

The budget neutrality adjustment factor for the hospital-specific rate system is only applied to payments for discharges occurring in cost reporting periods starting in FY 1985. We cannot readjust a hospital's hospital-specific rate for its first cost reporting period under prospective payment (the period beginning in FY 1984). The first year hospital-specific rates have been calculated using an updating factor that is already adjusted for FY 1984 budget neutrality. These rates will change only as each hospital begins its second cost reporting period under prospective payment.

As a result, any differences between budget neutrality levels for FYs 1984 and 1985 can be applied only to each hospital's second year hospital-specific rate. Thus, a change in overall level is

allocated over less than the full number of discharges occurring in FY 1985.

For the hospital-specific rate system (HSP) the following must be solved:

(HSP payment per discharge for cost reporting periods starting in FY 1985 × Fraction of discharges in FY 1985 for cost reporting periods starting in FY 1985 × 0.50 blending factor × hospital-specific budget neutrality adjustment factor (HSBN)) + (HSP payment per discharge for cost reporting periods starting in FY 1984 adjusted for FY 1984 budget neutrality adjustment factor × Fraction of discharges occurring in FY 1985 for cost reporting periods starting in FY 1984 × 0.75 blending factor) + weighted HSP system nonoperating cost per discharge = weighted TEFRA operating reimbursement per discharge + weighted TEFRA nonoperating cost per discharge.

This yields an HSBN that includes the effect of the FY 1984 HSBN on discharges occurring in FY 1985 for cost reporting periods starting in FY 1984. The effect of the FY 1984 HSP budget neutrality factor must be removed to avoid double application of two years' HSBNs when updating the hospital-specific rates for cost reporting periods starting in FY 1985. This is done by dividing the result of the calculation described above by the FY 1984 HSBN, which was .983.

EXAMPLE: COMPUTATION OF HOSPITAL-SPECIFIC RATE BUDGET NEUTRALITY ADJUSTMENT FACTOR (HSBN)

Estimated values:	
TEFRA operating reimbursement per discharge (HSP blend weighted)	$2,112.45
TEFRA nonoperating cost per discharge (HSP blend weighted)	238.97
HSP payment per discharge for cost reporting periods beginning in FY 1985 × fraction of FY 1985 discharges × 0.50 blending factor	1,021.41
HSP payment per discharge for cost reporting periods × fraction of FY 1985 discharges beginning in FY 1984 × 0.75 blending factor × FY 1984 HSBN of 0.983	1,131.23
Weighted HSP nonoperating cost per discharge	223.45

Solve:
($1,021.41 × HSBN) + $1,131.23 + $223.45 = $2,112.45 + $238.97
HSBN = ($2,112.45 + $238.97 − $1,131.23 − $223.45) divided by $1,021.41 = .976
Then, to remove the effect of the FY 1984 HSBN: .976 divided by .983 = .993

Note that the HSP budget neutral factor is not applied to the outlier payments. Outlier payments are paid based only on applicable Federal rates, which already incorporate an adjustment for budget neutrality.

H. SUMMARY—TABLE OF INFLATION ASSUMPTIONS USED IN BUDGET NEUTRALITY DETERMINATION

[In percent]

Calendar year	Cost per admission	Hospital input price index
1982	15.0	9.4
1983	10.9	6.2
1984	9.8	6.0
1985	9.8	6.5

I. SUMMARY—TABLE OF OUTLIER AND BUDGET NEUTRALITY ADJUSTMENT FACTORS—FEDERAL FISCAL YEAR 1985

Adjustment factors	Federal national rates	Federal regional rates	Hospital specific rates
Outlier	0.950	0.950	.....
Budget neutrality	0.954	0.950	0.993

J. Summary of Changes from Proposed Methodology

As noted elsewhere, this final budget neutrality adjustment methodology incorporates some changes from the methodology as proposed on July 3, 1984. These changes are as follows:

- We incorporated an adjustment to reflect the cost-based reimbursement for non physician anesthetists.
- We modified the modeling of rural referral centers, hospitals redesignated from urban to rural, and MSAs that cross census divisions to be consistent with the provisions of this final rule.
- We reduced the updating of the hospital-specific rates and the Federal rates to market basket plus one quarter percent as specified by section 2310 of Pub. L. 98–364. Since that law did not amend section 1886(e)(1) of the Act, we continued to update the estimated TFRA limits and target amounts by the market basket rate plus one percentage point, in accordance with the law as in effect on April, 20, 1983. Since because of budget neutrality, the actual payment amounts are set by our estimated payments under TEFRA, this provision of Pub. L. 98–369 does not change the FY 1985 payment amounts under the prospective payment system.
- We decreased, from 2.4 percent to 1.05 percent, the factor (to be applied to the DRG weights) to take unanticipated increases in average case mix into account. We also applied this reduced case-mix increase factor to estimated Federal and hospital-specific payments.

K. Responses to Comments on the Proposed Methodology

We received a number of comments on the budget neutrality adjustment methodology as published in the addendum to the July 3, 1984 proposed rule. A summary of those comments and our responses to them follow. (See section II. C. of this Addendum for comments and responses on the reduction of the DRG weights to take into account the increase in average case mix.)

Comment—A number of commenters suggested that we should make adjustments to take the increase in average case mix into account only through the budget neutrality methodology amounts) rather than reducing DRG weights.

Response—We do not agree with these commenters. Our reasons are discussed at length in the sections on DRG weighting factors earlier in this Addendum.

Comment—Some commenters said that in the NPRM discussion of the budget neutrality adjustment methodology, we provided incomplete descriptions of the model used to develop estimates of cost per case under TEFRA; our assumptions, adjustments, and formulae; special studies, including the study of average case-mix increase that regulated in reduction of the DRG weights; and changes in the proposed methodology from that we had used for FY 1984 payments rates. It was suggested that we had not fully complied with section 1886(d)(6) of the Act, requiring us to publish a description of the methodology and data used in computing the prospective payment rates.

Response—We do not agree. We believe that our descriptions are adequate and that we have satisfied all legal requirements. We have released a substantial amount of data, as discussed above in regard to the reduction of DRG weights. Most commenters are satisfied with the level of description we have provided.

Comment—Some commenters suggested that the assumptions for cost per admission increases that we used in modeling TEFRA were too low because recent data partially reflected prospective payment system behavior.

Response—We explicitly adjusted our assumptions upward to remove the effects of prospective payment, especially the shorter lengths of stay. Even after these adjustments, our assumptions are higher than would be justified by recent experience.

Comment—Some commenters suggested that we should further adjust the FICA tax adjustment for those hospitals that first started paying FICA tax in 1983 to reflect the scheduled increase in the FICA tax rate for 1985.

Response—The FICA tax adjustment only makes the costs of hospitals that were not paying FICA tax in the past more comparable to the costs of the remaining hospitals. Any increases in the FICA tax rate are built into our cost per admission assumptions and the hospital input price index and adjusts for the FICA tax increases for all hospitals. Any further adjustment would be an over-adjustment.

Comment—Some commenters suggested that hospitals that are affected by the TEFRA limits would respond and reduce their costs. They suggested that we should assume such changes in behavior for purposes of modeling TEFRA.

Response—This comment makes sense, but we didn't have the time or resources to study hospital responses to the TEFRA reimbursement limits. However, we should point out that if we were to implement the suggestion, the estimated costs under TEFRA would likely be lower, and as a result the budget neutrality ratios would decline.

Comment—A commenter suggested that because we reduced the outlier pool from six percent to five percent, the outlier adjustment should be .952 to be consistent with the adjustment for the six percent outlier pool.

Response—The six percent outlier pool was six percent of Federal standard payments, which is less than six percent of total Federal payments. The five percent outlier pool is set at five percent of total Federal payments, pursuant to section 1886(d)(5)(A)(iv) of the Act, which requires that outlier payments be set at between five percent and six percent.

Comment—One commenter suggested that, in adjusting budget neutrality for rural referral centers, we should assume that only one-half of the hospitals that meet the mandatory requirements would meet any of the optional requirements.

Response—We believe that nearly all of these hospitals will be able to meet at least one of the optional requirements. Further, comments from potential referral centers did not indicate that they would have any problems meeting at least one of the optional requirements.

Comment—One commenter suggested that the hospital-specific rate used in the budget neutrality comparison is too low because of incorrect 1981 case-mix data.

Response—Since the case-mix in 1981 is more likely understated, using "corrected" higher 1981 data would further reduce the hospital-specific rate, since in calculating the hospital-specific rate, we divide by the 1981 case-mix index. It is more likely that the hospital-specific rate is too high.

Comment—One commenter suggested that it was too early in the implementation of the prospective payment system for us to have acquired sufficient experience to estimate regional and national Federal rate payments.

Response—Since prospective payment rates are set in advance, we only need to estimate the number of admissions and average case-mix level to estimate payment levels. We believe that our early experience actually may have understated the increase in average case mix, because the case-mix level has increased more with the accumulation of more experience. We believe that it is likely that our estimate has understated the increase in case-mix level that will actually occur by the end of FY 1985.

[FR Doc. 84-23345 Filed 8-30-84; 1:01 pm]
BILLING CODE 4120-03-M

Reader Aids

Federal Register

Vol. 49, No. 171

Friday, August 31, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

30679-30910.....1
30911-31050.....2
31051-31254.....3
31255-31388.....6
31389-31658.....7
31659-31844.....8
31845-32052.....9
32053-32170.....10
32171-32322.....13
32323-32532.....14
32533-32734.....15
32735-32838.....16
32839-33000.....17
33001-33108.....20
33109-33200.....21
33201-33430.....22
33431-33620.....23
33621-33844.....24
33845-33988.....27
33989-34192.....28
34193-34342.....29
34343-34438.....30
34439-34798.....31

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:
457.....34132
500.....34132

3 CFR

Executive Orders:
December 12, 1917 (Amended by PLO 6562).....32068
12486.....33989

Proclamations:
5227.....33109
5228.....33111
5229.....33113
5230.....33201
5231.....34343

5 CFR

Ch. XIV.....31051
734.....33115
735.....33115
737.....33115
950.....32735
960.....34193

Proposed Rules:
870.....34364
871.....34364
872.....34364
873.....34364
1201.....32072

7 CFR

2.....33621
254.....32753
278.....32533
279.....32533
301.....32325, 32533, 33991
318.....34195
354.....32331
402.....34345
724.....33118
725.....33621
726.....31052
800.....30911
908.....31389, 32336, 33119, 34345
910.....31054, 31255, 32171, 32854, 33625
911.....32323, 33203
915.....32323, 33203
916.....32323
917.....32323
918.....32323
921.....31255, 32323
922.....32323
923.....32323
924.....32323
925.....32323
926.....32839
928.....32323
930.....31389
932.....34439
944.....32839, 34439
945.....32323
946.....32323, 32539
947.....32323
948.....32323
953.....32323
958.....31257, 32323
967.....32323, 33204
982.....32323
985.....32323
989.....33992
993.....32323
1004.....33431
1030.....32336, 33204
1036.....32053
1076.....33205
1139.....32054
1207.....31390
1955.....33845
1980.....31258

Proposed Rules:
Ch. IV.....30963
Ch. XIV.....33273
1.....31292
2.....30911
46.....34024
52.....32855
301.....32207
319.....32207
402.....31696
403.....31696
404.....31696
408.....31696
409.....31696
410.....31696
411.....31696
413.....31696
414.....31696
415.....31696
416.....31696
417.....31696
418.....31696
419.....31696
420.....31696
421.....31696
422.....31696
423.....31696
424.....31696
425.....31696
427.....31696
428.....31696
429.....31696
430.....31696
431.....31696
432.....31696
433.....31696
434.....31696
435.....31696
436.....31696
437.....31696
438.....31696

439.....31696
440.....31696
441.....31696
442.....30964, 31696
443.....31696
444.....31696
445.....31696
446.....31696
447.....31696
448.....32363
800.....32074
810.....31432, 31697, 32077
907.....32080
908.....32080
917.....32367
920.....33670
929.....32771
981.....32856
993.....32368
1004.....32213, 34028
1006.....30720, 31072, 34028
1007.....31072, 34028
1011.....31072, 34028
1012.....30720, 31072, 34028
1013.....31072, 34028
1046.....31072, 34028
1065.....34366
1076.....30964
1079.....32598
1093.....31072, 34028
1094.....31072, 34028
1096.....31072, 34028
1097.....31072, 34028
1098.....31072, 34028
1099.....31072, 34028
1102.....31072, 34028
1108.....31072, 34028
1427.....34511

8 CFR

100.....31054, 31845
204.....33432
205.....30679
235.....33433
238.....31258, 34441

Proposed Rules:

235.....33451
239.....31293
245.....34037

9 CFR

51.....33845
72.....32539
73.....33120
78.....31659
81.....31055
92.....32840, 33434
94.....33846
201.....32842, 33001, 33206
203.....32842, 33001, 33206
318.....32055, 33434
319.....33434
381.....32055

Proposed Rules:

72.....33134
73.....32598, 33134
307.....33135
350.....33135
351.....33135
354.....33135
355.....33135
362.....33135
381.....33135

10 CFR

9.....31259
25.....32171
50.....34658, 34688
51.....34658, 34688
600.....31390

Proposed Rules:

Ch. I.....32599
4.....34132
50.....30726, 31432, 32369
55.....31700
73.....30726, 30735, 30738
430.....32944
455.....34164
1017.....31236

11 CFR

6.....33206
9007.....33225
9038.....33225

12 CFR

5.....33846
7.....30920
20.....33435
29.....33215
217.....34441
524.....34197
525.....34197
552.....32340
563b.....32340
618.....34442
701.....30679, 30682, 30683, 32540

Proposed Rules:

211.....33895
268.....33822
303.....33452
308.....33452
332.....33690
337.....33690
571.....33137
591.....32081
602.....31293, 33273
721.....30739
741.....30740
746.....30740
794.....34132

13 CFR

102.....31660
103.....33626
104.....33626
105.....33626
108.....33626
109.....33626
110.....33626
112.....33626
113.....33626
115.....33626
120.....33626
121.....34346
122.....32845, 33626
123.....32310
124.....33626
132.....33626
133.....33995
134.....33626

Proposed Rules:

116.....33692
123.....32530, 33198
129.....31899

14 CFR

39.....31057–31059, 31660, 31661, 33005
71.....30688, 31060, 31259, 31664, 32540, 33006, 33007, 33215, 33639, 33640, 34442
73.....33216
95.....33216
97.....30923, 33224, 34444
207.....33436
208.....33436
211.....33437
212.....33436
214.....33436
255.....32540
302.....33441
320.....33997
380.....33436
389.....32564
1214.....34445

Proposed Rules:

23.....32300
25.....31830
39.....30965, 31074, 31295, 31433, 31702, 31703, 32063, 33693, 33694, 33895
71.....31075–31077, 31298, 31434, 32369, 32370, 33024, 33274
73.....31435
93.....33082
121.....31298, 32306, 32599, 33025
152.....31078
221.....30742, 34038
223.....30746
250.....30742, 34038
255.....30742, 31438
257.....34038
298.....30742
399.....32599

15 CFR

0.....32056
399.....33640

16 CFR

13.....31845, 32757
305.....31061
1500.....32564
1700.....32565

Proposed Rules:

13.....30967, 31440, 31901, 31903, 32213
454.....32857
460.....31906
1205.....31908

17 CFR

33.....33641
229.....32762
239.....32058
240.....31846
249.....31846
270.....31062, 31064, 32058
274.....32058

Proposed Rules:

1.....31442
149.....34132
240.....31300
249.....32370
270.....32370
274.....32370

18 CFR

2.....33849
11.....32568, 33859
34.....32496
41.....32496
101.....32496
104.....32496
116.....32496
141.....32496
154.....31259, 32172, 32496, 32764, 33849
158.....32496
159.....32496
201.....32496, 33849
204.....32496
216.....32496
260.....32496
270.....33849
271.....33849, 33863, 33864
282.....34199
292.....33866
375.....33859
385.....33869
389.....32172, 32496, 32568

Proposed Rules:

Ch. I.....31705
2.....34038, 34039
154.....34233
270.....34233
271.....32857, 34038, 34039, 34238, 34367
273.....34233
1313.....34132

19 CFR

4.....32846
6.....31248, 34199
12.....31248, 34199
18.....31248, 34199
19.....31248, 34199
141.....31248, 34199
143.....31248, 34199
144.....31248, 34199
146.....31248, 34199
151.....31850
201.....32569
204.....32569
207.....32569

20 CFR

626.....31664
627.....31664
628.....31664
629.....31664
630.....31664

Proposed Rules:

10.....33695
632.....33141

21 CFR

14.....30688
16.....32172
73.....34447
74.....31852, 34447
81.....30925, 30926, 31852
82.....31852
105.....32173
178.....30689, 32344
184.....32060
193.....30702, 31666
430.....34346–34350
436.....34346–34350
442.....34346–34350
444.....34350
448.....34350
510.....31065
520.....33997
522.....32061
524.....34352
540.....34352

556.....33442
558.....30927, 31065, 31280, 31281, 32061, 32345, 32346, 33442, 33443, 34448
561.....31667
607.....34448
680.....31394
1020.....34698
1240.....31065
1308.....32062, 32064, 33870, 34451
1316.....32174

Proposed Rules:
101.....31301, 32216
105.....32218
510.....31444
544.....33025
546.....33025
555.....33025
801.....32402
1308.....30748

22 CFR

Proposed Rules:
121.....34240
122.....34240
123.....34240
124.....34240
125.....34240
126.....34240
127.....34240
128.....34240
130.....34240
144.....34132
308.....33896
530.....34132
1005.....34132
1600.....34132

23 CFR

16.....32572
630.....33008

Proposed Rules:
630.....31079
1204.....34513

24 CFR

17.....32346
40.....31620
52.....32174
105.....32042
111.....32042
115.....32042, 32049
200.....31853-31857
207.....32174
232.....33871
235.....33871
251.....32016
255.....32174
290.....31858
511.....33443
570.....31069
811.....32174
850.....32174, 33444
880.....31281, 31395
881.....31281, 31395
882.....31858
883.....31281, 31395
884.....31281, 31395
886.....31281, 31285,
965.....31399
968.....31860
1700.....31366, 33644
1710.....31366, 31372, 33228, 33644, 33874
1730.....31366, 33644
3280.....31996, 32847

Proposed Rules:
203.....31444
570.....31446
990.....33455
3282.....32219, 33456

25 CFR

Proposed Rules:
151.....32859
177.....33901
273.....33585
720.....34132, 34148

26 CFR

1.....32175, 33228, 33444, 34451-34464
5f.....33228
35a.....33236, 33239, 34340
41.....34466
48.....34466
301.....32712, 34200

Proposed Rules:
Ch. I.....33275
1.....30971, 31080, 31086, 33144, 33145, 33275-33283, 33458, 34240, 34518-34528
5.....31080
20.....33144
25.....33144
46.....33285
51.....34241
53.....33145
301.....32728, 33145, 34246

27 CFR

4.....31667
5.....31667
7.....31667
9.....34353

Proposed Rules:
9.....32223

28 CFR

0.....32065
2.....34205-34209
56.....33997
541.....32990

Proposed Rules:
540.....32995, 33901
544.....32995, 33901
550.....32995, 33901
570.....32995, 33901

29 CFR

1601.....31410
1621.....31411
1949.....32065
1952.....31676, 33120, 33123
2619.....32573

Proposed Rules:
2205.....34132
2608.....34132

30 CFR

870.....31412
913.....33645
917.....33244
931.....30689
935.....31676
936.....34000
944.....34210
946.....30927, 34475

Proposed Rules:
55.....33087
56.....33087
57.....33087
913.....31448
915.....34530
917.....34529
925.....34532
935.....31912, 32403, 32404
936.....32772
938.....31913
942.....32860
943.....30972
950.....30973

31 CFR

128.....33446
210.....32066

Proposed Rules:
103.....32861
210.....31450
223.....31454

32 CFR

58.....31862
65.....31862
83.....31864
224.....31865
770.....34003
2003.....31412

Proposed Rules:
155.....31455

33 CFR

3.....33874
89.....33875
100.....30930-30932, 31286, 31866, 32175-32176, 33447, 33876
110.....31287
117.....30933, 31867, 33014, 33447
147.....33014
165.....31286, 32177, 32178, 33016, 34355
167.....32847
207.....33646
401.....30934

Proposed Rules:
72.....32228
100.....30974, 30975, 31459
117.....30976, 30977, 33458
165.....30978

34 CFR

7.....31679
8.....31679
10.....31679
21.....31868
64.....32847
67.....31679
222.....31628
301.....32355
621.....31679

Proposed Rules:
200.....31914
204.....31918

35 CFR

251.....31070

36 CFR

7.....34477-34481
264.....31413

Proposed Rules:
9.....31086
612.....34132
909.....34132

37 CFR

1.....34716
201.....33016

Proposed Rules:
1.....33790
2.....30749, 31460, 33790
10.....33790

38 CFR

1.....32848, 34482
2.....30691
8.....34483
14.....32848
18.....32574
36.....32765

Proposed Rules:
1.....30979
3.....32863, 34532
17.....32864, 34533

39 CFR

10.....33017
111.....33247, 33560, 33877
262.....30693

Proposed Rules:
10.....33025, 33901
265.....32600

40 CFR

Ch. I.....31680
52.....30694, 30695, 30696, 30694, 30936, 31413-31416, 31683-31687, 32180-32184, 32574-32577, 33126, 33127, 34484
60.....32848, 33842
65.....33128
81.....30697, 30698, 31689, 33018
86.....32580
87.....31873
122.....31840
123.....31840
147.....30698, 31875
152.....30884, 30909
162.....30884
180.....30699, 30700, 30701, 31690-31694, 33878
228.....33647, 34485
260.....32766
271.....31417, 33018
403.....31212
415.....33402
465.....33648
704.....32067, 33649
761.....33019

Proposed Rules:
Ch. I.....31706
50.....31923
52.....31086, 32601, 32865, 32866, 33286, 33902, 34039, 34247
60.....32867, 32987
61.....33695, 33904
62.....33905
65.....33288-33293
80.....31032
81.....31091, 31093, 32868
122.....31843

124.....31462
125.....31462
162.....33293
170.....32605
180.....30751, 31716, 32085–32088, 34247
228.....34248
270.....31094
271.....31301
419.....34152
421.....33026
455.....30752
763.....31302
773.....31302

41 CFR

Ch. 101.....33248
101–11.....33251
101–19.....31625
105–61.....33253

Proposed Rules:

Ch. 201.....34534
51–9.....34132
101–8.....34132
101–11.....31302
201–19.....33906

42 CFR

57.....30702, 32848
124.....33019
405.....34728

Proposed Rules:

405.....33907
434.....33907

43 CFR

2880.....31208
8370.....34332

Public Land Orders:

6428 (Corrected by PLO 6561).....32068
6558.....31695
6559.....31876
6560.....32068
6561.....32068
6562.....32068
6563.....33255

Proposed Rules:

1880.....31473
2650.....31475
2880.....31094
3110.....32609

44 CFR

1.....33878
2.....33878
9.....33878
11.....33878
12.....33878
59.....33654
60.....33654
61.....33654
62.....33654, 33878
64.....30708, 32190, 32848 33878,33879
67.....34212
68.....33878
71.....33878
77.....33878

Proposed Rules:

67.....31095, 34040, 34252

45 CFR

302.....33255
303.....33255
304.....33255
307.....33255
801.....33022
1622.....30939

Proposed Rules:

1153.....34132
1630.....34190
2104.....34132

46 CFR

2.....34004
61.....32192
63.....32192
160.....34004

Proposed Rules:

7.....32229, 33294
67.....32773
204.....34368
507.....34132
508.....33696
510.....34253

47 CFR

Ch. I.....30710
0.....33263, 33588
1.....30943, 34004, 34007
2.....32194, 32769, 34011
73.....30712, 30946, 31288, 31289, 31877, 32201–32204, 32357–32359, 32581, 32586, 33129–33131, 33264, 33588, 33658, 34011–34016, 34225–34227
74.....32581, 32590, 34356
81.....32194
83.....32069, 32194
87.....32194, 33269
90.....32194, 32769
94.....34017
97.....32194, 32769, 32850

Proposed Rules:

Ch. I.....31115, 31926, 32405, 32869, 32871, 34041
15.....34370
22.....31115, 31716
69.....31118
73.....30752–30760, 31115, 31119, 31303–31307, 31719–31731, 32237, 32410, 32619, 32876, 33148, 33294, 33459–33468, 34254–34257, 34373
74.....32610
76.....32619
81.....31115, 31734
83.....31734, 31736
87.....31734
90.....31115

48 CFR

Ch. 5.....32360, 34018
Ch. 7.....33666
15.....34487
513.....32204
713.....31898

Proposed Rules:

Ch. 5.....33698
504.....32411
1801.....34258
1803.....34258
1804.....34258
1805.....34258
1807.....34258
1808.....34258
1809.....34258
1813.....34258
1815.....34258
1816.....34258
1817.....34258
1819.....34258
1823.....34258
1825.....34258
1828.....34258
1830.....34258
1832.....34258
1836.....34258
1842.....34258
1843.....34258
1845.....34258
1846.....34258
1850.....34258
1851.....34258
1852.....34258
1853.....34258

49 CFR

1.....31290
571.....33669, 34357, 34488
575.....32069
831.....32852
845.....32852
1011.....31070
1033.....33270
1115.....31070
1160.....31070
1220.....34489

Proposed Rules:

Ch. X.....32412
172.....32090, 33907, 34044
173.....32090, 33469, 33907, 34044
174.....32090, 33907
178.....32774, 34044
393.....30980
571.....31740, 32412, 32413, 34049, 34374
575.....32238
1014.....34132
1039.....33026, 34534

50 CFR

10.....31290
17.....31418, 33881–33885, 34228, 34490–34504
20.....31421, 34648
23.....34020
250.....31657
285.....30713, 33132, 34510
611.....33270
630.....32205
638.....31427
646.....33448
652.....30946, 31430
654.....30713
658.....30713
661.....30948, 31430, 32205, 32362, 32596
662.....31291
663.....30948, 31431, 33449
672.....33270
674.....30951, 32853
675.....33270

Proposed Rules:

17.....31112, 32320, 32321, 33296, 34535
20.....33090
32.....33027
33.....33027
611.....32242
628.....33470
651.....31307
652.....32413
661.....32414, 33907
663.....32242
676.....33033

LIST OF PUBLIC LAWS

Last List August 30, 1984

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register,** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

H.R. 4596 / Pub. L. 98–402

To amend section 1601(d) of Public Law 96–607 to permit the Secretary of the Interior to acquire title in fee simple to McClintock House at 16 East Williams Street, Waterloo, New York. (Aug. 28, 1984; 98 Stat. 1478) Price: $1.50

S. 2085 / Pub. L. 98–403

To provide continuing authority to the Secretary of Agriculture for recovering costs associated with cotton classing services to producers and to authorize the Secretary of Agriculture to invest funds derived from fees for certain voluntary grading and inspection services. (Aug. 28, 1984; 98 Stat. 1479) Price: $1.50

H.R. 1652 / Pub. L. 98–404

The Reclamation Safety of Dams Act Amendments of 1984. (Aug. 28, 1984; 98 Stat. 1481) Price: $1.50

H.R. 3787 / Pub. L. 98–405

To amend the National Trails System Act by adding the California Trail to the study list, and for other purposes. (Aug. 28, 1984; 98 Stat. 1483) Price: $1.50

H.R. 4707 / Pub. L. 98–406

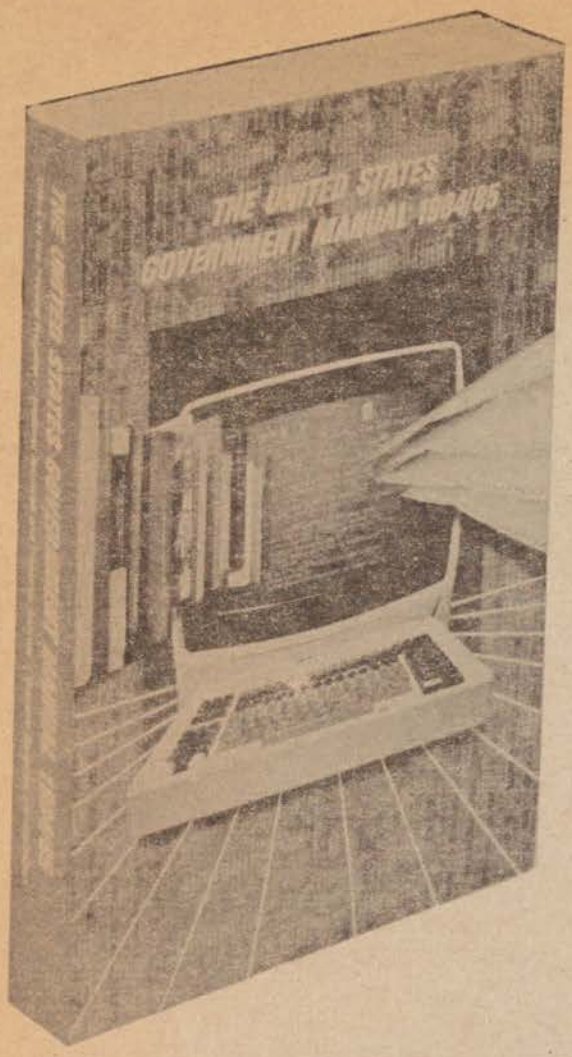
Arizona Wilderness Act of 1984. (Aug. 28, 1984; 98 Stat. 1485) Price: $2.00

H.R. 5604 / Pub. L. 98–407

Military Construction Authorization Act, 1985. (Aug. 28, 1984; 98 Stat. 1495) Price: $3.50

S. 2201 / Pub. L. 98–408

To convey certain lands to the Zuni Indian Tribe for religious purposes. (Aug. 28, 1984; 98 Stat. 1533) Price: $1.50



Order Now!

The United States Government Manual 1984/85

As the official handbook of the Federal Government, the *Manual* is the best source of information on the activities, functions, organization, and principal officials of the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies and international organizations in which the United States participates.

Particularly helpful for those interested in where to go and who to see about a subject of particular concern is each agency's "Sources of Information" section, which provides addresses and telephone numbers for use in obtaining specifics on consumer activities, contracts and grants, employment, publications and films, and many other areas of citizen interest. The *Manual* also includes comprehensive name and subject/agency indexes.

Of significant historical interest is Appendix A, which describes the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

The *Manual* is published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

$12.00 per copy

Order Form

Mail To: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

★ 6049

Enclosed is $ _____ ☐ check, ☐ money order, or charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No. _____

MasterCard and VISA accepted.

MasterCard VISA

Credit Card Orders Only

Total charges $_____

Fill in the boxes below.

Customer's Telephone No.

Area Code | Home | Area Code | Office

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Charge orders may be telephoned to the GPO order desk at (202)783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday-Friday (except holidays).

Please send me _____ copies of The United States Government Manual, 1984/85 at $12.00 per copy. Stock No. 022-003-01109-9

PLEASE PRINT OR TYPE

Company or Personal Name

Additional address/attention line

Street address

City State ZIP Code

(or Country)

For Office Use Only

Quantity	Charges
_____ Publications	
_____ Subscription	
Special Shipping Charges	
International Handling	
Special Charges	
OPNR	
_____ UPNS	
_____ Balance Due	
_____ Discount	
_____ Refund	

882